

The State of South Carolina

File 3118



Office of the Attorney General

Opinion 1088-12
Pg 97

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February 5, 1988

The Honorable Sherry Martschink
Senator, District No. 44
601 Gressette Building
Columbia, South Carolina 29202

Dear Senator Martschink:

By your letter of February 2, 1988, you have inquired as to the authority of a municipality to exercise its power of eminent domain over property located outside the corporate limits of the municipality. You have advised that the City of Charleston has announced plans to seize the Angel Oak property located on Johns Island, outside the City of Charleston, by eminent domain. While we are unable to offer an opinion on any specific eminent domain project, including of course the project contemplated by the City of Charleston, we must advise that the concept of condemning of property outside municipal boundaries by the municipality is authorized by state law.

Section 5-7-50, Code of Laws of South Carolina (1976), provides in pertinent part:

Any municipality desiring to become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose shall have the right to condemn such land or right-of-way or easement, subject to the general law of this State, within and without the corporate limits in the county in which it is situated and in any adjoining county or counties. ... [Emphasis added.]

By an opinion of this Office dated October 20, 1978 (copy enclosed), it was determined that Section 5-7-50 clearly empowers

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municipalities to exercise eminent domain beyond their corporate limits.^{1/}

By Section 5-7-30 of the Code, a municipality is specifically authorized to "engage in the recreation function." Recreation is considered to be a public purpose for which public funds may be expended. Op. Atty. Gen. dated June 10, 1955 (1954-55 O.A.G. page 214). Assuming that the Angel Oak property is to be seized for use as a park, as we have been advised by your staff, such would appear to be an authorized purpose for which eminent domain may be utilized by a municipality.

In addition, in 26 Am.Jur.2d Eminent Domain §60, it is stated that "[m]unicipalities generally have the power to acquire land by eminent domain for public parks. ... It is, moreover, now held that it is for a public use to take extensive tracts of land outside the city limits for public parks... ." See also City of Memphis v. Hastings, 113 Tenn. 142, 86 S.W. 609 (1904) and authorities cited therein. Thus, the authority of a municipality to exercise eminent domain over property located outside its corporate limits for use as a public park has been recognized.

While the policy of this Office precludes our commenting upon any particular eminent domain project, including the contemplated project of the City of Charleston, it is the opinion of this Office that Section 5-7-50 of the Code authorizes a municipality to condemn property located outside its corporate limits for authorized corporate or public purposes, which would include recreational purposes.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

^{1/} It should also be noted that Section 5-7-40 of the Code authorizes a municipality to "own and possess property within and without their corporate limits, real, personal or mixed, without limitation"