

February 1982

The State of South Carolina



Office of the Attorney General

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March 20, 1985

The Honorable Palmer Freeman, Jr.
Member, House of Representatives
532-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Freeman:

By your letter to Attorney General Medlock dated February 26, 1985, you have asked whether public usage of a lake created by damming Cane Creek in Lancaster County is permissible, or whether persons crossing the property owned by others, which property is now covered by water, would be guilty of trespass. You stated that property owners executed a number of Easements for Construction and Impoundment Purposes, which with the dam resulted in a lake covering approximately 245 acres. The underlying question is thus whether the public may use the lake for boating and fishing, or whether ownership of the waters lies with those who granted the easements so that the lake could be built.

This Office has addressed the same issue in several prior opinions, which are enclosed herewith. One of the critical questions to be addressed is whether Cane Creek (and the resulting lake) is navigable; if so, the public has a right to navigate those waters. See Ops. Atty. Gen. dated March 31, 1982 and July 16, 1982; Article XIV, Sections 1 and 4, Constitution of the State of South Carolina. If the waters are not navigable, property owners would have the right to restrict access to the public. See Ops. Atty. Gen. dated July 16, 1982; August 24, 1981; and September 8, 1978 and authority cited therein.

This Office was advised by the South Carolina Water Resources Commission that Cane Creek, which originates in North Carolina and drains into the Catawba River, is considered to be navigable.

REQUEST LETTER

Continuation Sheet Number 2
To: The Honorable Palmer Freeman, Jr.
March 20, 1985

Bear Creek is not considered navigable, however, because it appears from your letter that Cane Creek is the body of water in question, the opinion and constitutional provision dealing with navigable waterways appear to be most relevant, thus permitting the conclusion that the lake would be open to the public.

We trust that this information and prior opinions will satisfactorily resolve your questions. If we may provide additional information or clarification, please do not hesitate to call.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
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