

1981 WL 157813 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1981

**\*1 Re: Opinion Request**

The Honorable David S. Taylor  
Senator  
Laurens and Greenville Counties  
Post Office Box 142  
Suite 613  
Gressette Senate Office Bldg.  
Columbia, South Carolina 29202

Dear Senator Taylor:

This is in reference to your opinion request of May 26, 1981. You have asked whether or not the public has the right to fish from the banks of Watershed Project Lakes in Laurens and Greenville Counties, specifically the Duncan Creek, Beaver Dam, and Rayburn Creek Projects. It is the opinion of this office that the public has no such right in regard to these particular projects because no provision was made for public access in the easements obtained by the Watershed Conservation Districts from the property owners involved.

Once a Watershed Conservation District has been created pursuant to Section 48-11-10, et seq., Code, the District may acquire land, rights-of-way, or easements necessary to accomplish the purpose of 'control and prevention of soil erosion, flood prevention, or the conservation, development and utilization of soil and water resources, and the disposal of water.' [Section 48-11-20, Code](#). In pursuit of this stated purpose, the Districts negotiated with the landowners within the areas you have mentioned and obtained easements for the impounding of water. A sample copy of the form easement used by the Districts is enclosed.

As is evident from an examination of the form easement the property owners have retained the rights to use the land in any manner not inconsistent with the stated function of the project. None of the projects now existing in the areas you have mentioned list public recreation as a stated function. It goes without saying that the landowners retain full rights to any adjoining property, except that the sponsoring agency is granted the right of ingress and egress to the project. The landowners can, therefore, legally deny access to the property under their control to members of the public desiring to fish in the Watershed impoundments you have mentioned. Having negotiated and procured the easements containing these provisions, the Districts are now bound by them.

There is nothing in the law which would prevent future Watershed Projects from being designated for public recreation. In fact, the Watershed Protection and Flood Prevention Act, a federal statute, specifically mentions this possibility. I have enclosed a copy of that act for your convenience. If future Watershed Projects are to be used for public recreation, a different easement form must be used or the sponsoring agency must purchase the property outright.

I trust this has sufficiently answered your question. If not, please feel free to contact me at your convenience.

Sincerely,

Clifford O. Koon, Jr.  
Assistant Attorney General

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