

1981 WL 157819 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1981

*1 Mr. Paul W. Cobb
Chief Commissioner
South Carolina Department of Highways and Public Transportation
P. O. Box 191
Columbia, South Carolina 29202

Dear Mr. Cobb:

You have requested an opinion of this office as to whether the Department may use 'C' funds to relocate utilities on construction projects on the State secondary system. In the case of [South Carolina Highway Department vs. Parker Water & Sewer District 247 S.C. 137, 146 S.E.2d 160 \(1966\)](#) the Department brought suit against the utility company in an attempt to require that it pay for the cost of the utility relocation occasioned by construction work of the Department. The Supreme Court held that in the absence of a statute or an agreement to the contrary, that it was the utility's responsibility to pay for the cost of relocation if it has located its facilities within the right-of-way of the Department. If, however, the utility was present before the highway was built, then the cost of relocation should be borne by the Department. The Parker case implies that the Department has the ability to agree to pay for the relocation if it desires. The Department is also empowered by statutes to enter into whatever contract is necessary for the performance of its functions and it has historically paid for the relocations of utilities in circumstances where the companies have had prior rights.

This situation applies to both municipalities and rural water and sewer districts whether they are located within the maintained area of the road way and whether they are within or without the municipal city limits. If the Department acquires right-of-way by dedication the rule of the Parker case would still apply. However, the deed might contain language concerning utilities and the records need to be consulted to determine if an exception to the rule exists. In short, the Department is under no obligation to pay for the cost of relocation of utilities necessitated by highway construction or maintenance unless the utility was present before the highway was built. If I can be of any further assistance, please let me know.

Sincerely yours,

Richard D. Bybee
Assistant Attorney General

1981 WL 157819 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.