

1980 WL 120704 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1980

*1 Mr. E. S. Coffey
State Highway Engineer
S. C. Department of Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 29202

Dear Mr. Coffey:

You have requested advice as to whether the Department may, pursuant to § 57-5-80, remove certain roads from its highway system which were initially brought into the system under the authority of Act 167 in 1945 and Act 827 of 1948. Act 167 of 1945 in pertinent part provides: 'On July 1, 1945, June 1, 1946, and July 1, 1947 the State Highway Department shall take over and accept as part of the State highway system, five (5%) percent of the roads remaining in the various county road systems which have been maintained by the respective counties . . . After said roads have been taken over by the State Highway Department, they shall be maintained and constructed in the same manner that other roads in the State highway system are maintained and constructed. Act 827 of 1948 has similar provisions.

In 1952, Act 824 was passed which also concerned the addition of roads to the State highway secondary system from various county road systems. This legislation, however, provided more discretion to the Department in selecting which roads were to be added on the basis of availability of funds. The Department was also given the authority, which is now codified as § 57-5-80, to delete and remove from the State secondary system, roads which were of low traffic importance and to substitute, therefore, an equal or less mileage of other roads of higher traffic importance, as determined by traffic surveys and estimates. This Act was subsequently modified in 1959, to remove provisions which required the approval of the Senator and one-half (½) of the members of the Legislative Delegation to any such decisions of the Department. Both Acts had a repeal section which indicated that all Acts or parts of Acts which were inconsistent with the above-recited provisions, were to be repealed. It is the opinion of this office that to the extent that the 1945 and 1948 Acts mandated the acquisition and maintenance of certain road mileage in each of the counties is thereby inconsistent with the authority of the Department to remove from its systems, roads of low traffic importance, and that those Acts have been repealed.

You have also inquired as to whether in deleting roads pursuant to § 57-5-80, whether you are required to substitute similar mileage of a higher traffic volume. Section 57-5-80 provides that 'the Department may delete and remove. . . roads which are of low traffic importance and substitute therefor an equal or less mileage of other roads of higher traffic importance, as determined by traffic surveys and estimates.' Since the legislation is clear that less mileage can be accepted, it is clear that the term 'less' can include no mileage.

This interpretation is consistent with [Code § 57-5-600](#), which authorizes the Department to abandon rights of way if it is not required for Departmental purposes. I trust that this response answers your inquiries, but if you have any further questions, please let me know.

Sincerely yours,

*2 Richard D. Bybee
Assistant Attorney General

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