

1980 WL 120956 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 31, 1980

\*1 James B. Carraway, Esquire  
1804 Bull Street  
Columbia, South Carolina 29201

Dear Mr. Carraway:

Your letter of August 20, 1980, concerning two quitclaim deeds executed in 1969 as settlement of the case of State v. East Cherry Grove Realty has been referred to me for reply.

You have asked two questions. The first is whether the grantees and their successors of the quitclaim deed executed by the State on December 17, 1969, may excavate a 200' wide channel as shown on the plat referenced in the deed. The second, as I understand it, is whether the State conveyed to the grantees its interest in lands that were delineated on the plat as being above the mean high water mark, but which in fact were below the mean high water mark.

In answer to the first question, the State's quitclaim deed recites?

That the State of South Carolina grants to C. D. Nixon, et al., the right to excavate a Two Hundred (200) foot wide channel, as shown on the said plat, provided the spoil is deposited above the agreed mean high water mark.

It is the opinion of this Office that the above-quoted provision in the deed, which was approved by the Budget and Control Board and executed by the Governor, is clear and unambiguous. There is accordingly no question that the canal as shown on the plat may be excavated by the grantees or their successors, subject to the provision regarding the deposition of spoil. In addition, it is the position of the South Carolina Coastal Council that a Coastal Council permit is necessary for any and all work done, including that referred to in the quitclaim deeds.

Regarding the second question, it is the opinion of this Office that the essence of the 1969 agreement was that all land within the perimeter of the line designated 'agreed mean high water mark' or 'north edge of the line' was quitclaimed by East Cherry Grove Realty Company, et al., to the State, regardless of the actual elevation of lands within that line. In exchange for this, the State quitclaimed to the grantees all lands outside that perimeter regardless of actual elevation, with certain exceptions. The exceptions are that East Cherry Grove Realty Company, et al., conveyed its interests in all areas lying below mean high water mark as the result of excavation above the agreed mean high water mark to the State, that the deeds specifically did not determine title to the are designated 'recreational lake' on the plat not the area lying southeast from the agreed point on Hog Inlet Creek opposite Canal Street to the Atlantic Ocean and Hog Inlet.

It is the opinion of this Office that it may also be fairly inferred from the deeds that there was no intention to delineate the rights of the respective parties along the oceanfront; there is no line designated 'agreed mean high water mark' along the ocean front and no mention of the ocean boundary in the deeds. The State accordingly claims all lands below the mean high water mark of the Atlantic Ocean.

\*2 I will be glad to discuss this with you as necessary.

Sincerely yours,

Kenneth P. Woodington

Assistant Attorney General

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