

1980 WL 120863 (S.C.A.G.)

Office of the Attorney General

State of South Carolina  
September 10, 1980

**\*1 RE: Use of Department Right of Way**

E. S. Coffey  
State Highway Engineer  
Post Office Box 191  
Columbia, South Carolina 29202

Dear Mr. Coffey:

You have inquired as to whether the Department may grant an encroachment permit to the Wildlife Department, pursuant to [Code of Laws of South Carolina § 57-5-600](#) to allow a right of way area acquired by easement, and located under a bridge to be used for a public parking area and boat ramp. That Section provides in pertinent part:

Whenever the State Highway Department shall determine that any property previously acquired for right of way is not required for either right of way or departmental purposes, it may . . . grant written permits to encroach thereon under such rules and regulations as the Highway Department may establish.

As a general rule, statutes are not to be imposed with interpretations which render them unconstitutional. [Peeples National Bank of Greenville vs. South Carolina Tax Commission, 250 S.C. 187, 156 S.E.2d 796 \(1967\)](#). The Constitution of South Carolina, as well as the United States, prohibits the taking of private property for public use without just compensation being first made therefor. In the context of your inquiry, if it were determined that the issuance of an encroachment permit allowing the construction and use of a boat ramp on Highway Department right of way constitutes an additional servitude upon the underlying fee owner, then such action would be considered unconstitutional. The Department's interest is a right of way for a public highway. Case law in this State indicates that the grant is made not only for the purposes and usages as are known to the landowner at the time of its acquisition, but for all new and improved methods which may afterwards be discovered and developed in aid of the general purpose for which highways are designed. On two separate occasions the South Carolina Supreme Court has found that the erection of poles and the construction of lines for the transmission of electricity and telephone communications, did not constitute an additional servitude which would entitle a landowner to additional compensation. [Leppard vs. Central Carolina Telephone Company, 205 S. C. 1, 30 S.E.2d 755 \(1944\)](#); [Lay vs. State Rural Electrification Authority, 182 S.C. 378 188 S.E. 368 \(1936\)](#). In the [Leppard](#) opinion, the court stated:

But viewing, as we do, highways as being designed as public avenues of travel, traffic and communication, the use of which is not necessarily limited to travel and the transportation of property and moving vehicles, but extends as well to communication by the transmission of intelligence, it seems that such a use of a highway is within the general purpose for which highways are designed, and within the limitations which we have suggested, and does not impose an additional servitude upon the land.

It is the opinion of this office that the Department can issue an encroachment permit permitting the use of right of way acquired by easement for the purpose of a public boat ramp. This use is consistent with the purpose of that right of way as a public avenue of travel, traffic and communication, and such use does not amount to an additional servitude upon the land.

Sincerely,

**\*2** Richard D. Bybee  
Assistant Attorney General

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