

1977 WL 37303 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1977

*1 The South Carolina Department of Parks, Recreation and Tourism may close Jones Gap Road located on a tract of land known as Jones Gap which was recently purchased by Parks, Recreation and Tourism.

Mr. Robert L. Gunter
Assistant Director—Administration

QUESTION INVOLVED:

Does Parks, Recreation and Tourism have the legal right to close Jones Gap Road?

AUTHORITIES INVOLVED:

[Fanning v. Stroman](#), 113 S.C. 495 (1920); [State v. Miller](#), 125 S.C. 289 (1923); [Savannah River Lumber Corp. v. Bray](#), 189 S.C. 224 (1938);

DISCUSSION:

The facts, as presented to this Office, are that Parks, Recreation and Tourism (PRT) recently purchased a tract of land known as Jones Gap, located in upper Greenville County close to the North Carolina border. Sometime in the 1800's one Solomon Jones built a road known as Jones Gap Road through the middle of this property parallel to the Middle Saluda River. This road was operated as a toll road for an unknown length of time. Also, for another unknown period of time this road was maintained by the County of Greenville, but they ceased maintenance in 1928. See attached letter of Mr. Philip B. Ramsey. This road has never been a part of the State Highway System and the State Highway Department has no objection to the closing of this road. See attached letter of Mr. E. S. Coffey. This road originates at an unknown point in North Carolina and terminates at an abandoned fish hatchery located on private property owned by the Greenville YMCA. This road has fallen into extreme disrepair and is impassible to traffic with the exception of four-wheel drive vehicles, motorcycles, pedestrians and horses. A map showing the location of the road is attached to this opinion.

This Office is of the opinion that PRT has the right to close the so-called Jones Gap Road in that it is exceedingly doubtful that this road ever became a public road. To be a public road both its termini must be in a public highway or other public place. [Fanning v. Stroman](#), 113 S.C. 495 (1920). A landowner who merely permits neighbors and strangers to use a road over his property as a matter of of favor and not of right does not thereby convert the road into a public highway. [Fanning, supra](#). Also, '[T]he rule in this State is that a prescriptive right arises in favor of the public after the continuous use of a road for twenty years, when it runs through cultivated land, but that when it passes over unenclosed woodland [such as Jones Gap], it must also be shown that the user was adverse.' [State v. Miller](#), 125 S.C. 289 at 291 (1923) (Emphasis added) (Citation omitted).

See also, [Savannah River Lumber Corp. v. Bray](#), 189 S.C. 224, (1938).

CONCLUSION:

Since at least one terminus of the Jones Gap road does not end in a public place and since the facts at hand are not sufficient to establish a prescriptive right through twenty years adverse use over an unenclosed woodland, this Office is of the opinion that the Jones Gap Road can be closed.

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Assistant Attorney General

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