

1977 S.C. Op. Atty. Gen. 153 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-202, 1977 WL 24544

Office of the Attorney General

State of South Carolina

Opinion No. 77-202

June 28, 1977

\*1 TO: Paul W. Cobb  
Chief Highway Commissioner

### QUESTION

Does the Department of Highways and Public Transportation have authority to bear the expense of a ferry to be built and operated as a part of Highway S-362?

### AUTHORITY

Section 33-229, Code of Laws of South Carolina, 1962.

Section 33-734, Code of Laws of South Carolina, (1962). Section 33-734, Code of Laws of South Carolina, 1962. Act No. 1316, 58 Acts and Joint Resolutions 3071 (1974). [Jeff Hunt Machinery Co. v. South Carolina State Highway Department](#), 217 S.C. 423, 60 S.E. 2d 859 (1950). 36A CJS 'Ferries' § 1(2).

### DISCUSSION

In 1974 the General Assembly directed the Department of Highways and Public Transportation to 'establish, maintain and operate a public ferry across the intracoastal waterway between Brookgreen Gardens and Mont Arena, . . . such ferry and its approaches to form a part of Highway S-362'. Act No. 1316, 58 Acts and Joint Resolutions 3071 (1974). You have now asked for an opinion as to whether the Department has the authority to bear the expense of this ferry.

As a general rule, ferries are regarded as public highways, being continuations of the highways with which they connect. See, 36A CJS. 'Ferries', § 1(2). While there are no Supreme Court cases in South Carolina adopting this rule, the Supreme Court has had one opportunity to determine if a ferry is included within the term highway. In [Jeff Hunt Machinery Co. v. South Carolina State Highway Department](#), 217 S.C. 423, 60 S.E. 2d 859 (1950), the plaintiff was attempting to recover for injuries suffered from an alleged defect in a ferry owned and operated by the Highway Department. Section 33-229, Code of Laws of South Carolina, 1962, authorizing such suits only makes reference to defects in 'any state highway'. Ferries are not mentioned therein. However the statute creating the ferry provided that 'the said Ferry and its approaches [were] to form a part of said State Highway No. 716'. Section 33-734, Code of Laws of South Carolina 1962. Based on the quoted language, the Court ruled that the ferry in question was part of a state highway and thus included within the term 'highway' as used in § 33-229.

The similarity between the language in Section 33-734 and Act No. 1316 is obvious and it must be concluded that the Brookgreen Gardens' ferry is, or will be when placed in operation, a part of a state highway. Therefore, because the ferry is a state highway, the Department has the necessary authority to expend thereon highway funds in accordance with the directives of Act No. 1316 and other applicable statutes governing the construction and maintenance of state highways.

### CONCLUSION

The Department of Highways and Public Transportation has the authority to bear the expense of a ferry to be built and operated as a part of Highway S-362.

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