

1979 WL 43139 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 29, 1979

*1 Dr. T. E. Wannamaker
196 Elliott Street
Orangeburg, South Carolina 29115

Dear Dr. Wannamaker:

Reference is made to your letter of October 25, 1979, requesting an opinion from this Office relative to procedures in condemnation proceedings initiated by a municipality. I enclose herewith copy of Sections 28-9-10, et seq., of the 1976 South Carolina Code and invite your attention specifically to Section 28-9-20 of said Code, relating to the selection and duties of freeholders in determining compensation in municipal condemnations. Please note that the procedure of Section 28-9-20 contemplates the selection of two freeholders by the condemning municipality through its city council or governing body. The municipality must notify the landowner in writing of the two freeholders selected by the city council or governing body and also deliver a general description of the real estate to be condemned and the purpose for which the real estate is to be used. Within five days after receipt of such notice, the landowner shall also select two freeholders for the condemnation panel and the four freeholders (two selected by city and two selected by landowner) shall select the fifth freeholder to serve on the condemnation panel. The five freeholders who comprise the condemnation panel must be sworn to impartial justice between the municipality and the landowner, and the freeholders in thereafter making their award are required to consider only the value of the real estate or the damages which may accrue to the landowner, taking into consideration any offsetting benefits which may accrue to the landowner because of the contemplated use of the condemned property. If the four freeholders cannot select the fifth to comprise the condemnation panel, Section 28-9-40 contemplates selection of the fifth freeholder by the Clerk of Court of the county in which the real estate is located.

Section 28-9-50 contemplates that the freeholders, after having been selected and sworn to do impartial justice between all interested parties, shall make their award in writing and file the award with the Clerk of Court in the county where the real estate is located, with a copy of the award served on the landowners. The landowner has the right to appeal to the Court of Common Pleas for a trial de novo in the event of dissatisfaction with the award, in which case the appeal will be docketed and handled as a jury trial, with the sole question being the amount of just compensation to which the landowner is entitled. At the appeal stage, the case will be handled in the Circuit Court before a circuit judge and a local jury.

Your letter of October 25, 1979, asks questions whether you, as a freeholder selected for a condemnation panel, have the right to demand court supervision and jury instructions in the proceeding before the condemnation panel. The statutes governing condemnation by municipalities do not contemplate court supervision and jury instructions at the condemnation panel stage, with the panel of freeholders being obligated, however, to make their award by considering the value of the real estate or the damages accruing to the landowner, taking into consideration any offsetting benefits from the improvement project. See Section 28-9-20 of the 1976 Code. Upon any appeal to the Court of Common Pleas, the Circuit Court would be supervising jury selection, as well as instructing the jury as to the proper elements of just compensation. We do not believe that jury instructions and court supervision are applicable at the condemnation panel stage of the proceedings contemplated by Section 28-9-20 of the 1976 Code.

*2 Your further question is whether you can challenge the qualification 'of another juror consistent with the Court's position on disqualification in eminent domain cases.' In the first place, you, as a prospective freeholder, have no standing to challenge the qualification of a freeholder selected by the city in the first instance. However, you, as a freeholder

selected by the landowner, would have input into the selection of the fifth freeholder contemplated by Section 28-9-20 of the 1976 Code. Of course, failure of the four freeholders selected by the city (two) and by the landowner (two) to agree on a fifth freeholder would throw the selection of the fifth freeholder to the Clerk of Court under Section 28-9-40 of the 1976 Code.

It is not known whether any of the freeholders selected for the condemnation panel have been furnished copies of Section 28-9-10, *et seq.*, of the 1976 Code. It is unlikely, however, that the city or landowner would select freeholders not familiar with land values. I am certain, however, that the City of Orangeburg will respond to any criticism stated in your letter of October 25, and that procedures will be developed to more fully guarantee impartial justice between the interested parties in its municipal condemnation proceedings, thereby avoiding the necessity and expense of an appeal to the Court of Common Pleas for Orangeburg County for a trial *de novo* before a Circuit Court and jury.

Please contact me if additional amplification of any portion of this opinion is desired.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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