

1979 WL 43248 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1979

*1 Mr. Henry R. Caughman, Jr.
Deputy State Highway Engineer
South Carolina Department of Highways & Public Transportation
P.O. Box 191
Columbia, S. C. 29202

Dear Mr. Caughman:

You have asked whether the South Carolina Department of Highways and Public Transportation has the authority to establish certain minimum standards which roads must meet as a condition to being accepted by the Department as belt lines under § 57-5-90 of the [Code of Laws of South Carolina \(1976\)](#). This section provides that

The State Highway Commission may establish such belt lines or spurs as it deems proper and construct and maintain such belt lines and spurs from funds otherwise provided by law for the construction and maintenance of the State highway system, but the total length of such belt lines and spurs to be established or constructed in any county shall not exceed two miles in any one fiscal year; provided, that should the Commission fail to establish belt lines or spurs during a fiscal year the allocation to the counties shall be continued from year to year and the mileage shall be cumulative. Provided, further, that any mileage that accumulated prior to June 30, 1972, under this section shall remain to the credit of the county to which it accumulated.

The section provides that the Highway Commission ‘may establish’ proposed belt lines. Ordinarily, where there is no indication to the contrary, the word ‘may’ imports a discretionary authority. 82 C.J.S. *States*, § 380 (1953). As a further indication that the legislature intended the acceptance of roads under this section to be discretionary it should be noted that the allocation to the counties under this section is to be continued from year to year and the mileage accumulated in the event that the Commission fails to establish either belt lines or spurs during any given fiscal year. The legislature obviously contemplated a situation in which the Commission would not necessarily be acting each year.

The Supreme Court has recognized that the Highway Department may exercise discretion when determining the location of roads which are to be incorporated into the State Highway System. [Sloan v. State Highway Department](#), 150 S.C. 337, 148 S.E. 183 (1929); [Hargrove v. Sawyer](#), 149 S.C. 79, 146 S.E. 685 (1929); [Northwestern Railroad Company of South Carolina v. The State Highway Department of South Carolina](#), 147 S.C. 100, 144 S.E. 926 (1928). Furthermore, in construing the predecessor of the section in issue the Court indicated that the Highway Department did not have to establish particular roads as belt lines but rather could exercise a degree of choice in determining which to include. In [Summer v. State Highway Commission](#), 143 S.C. 196, 141 S.E. 366 (1928), the Court construed two segments of a proposed belt line to be two separate belt lines and noted that the state highway commission might legally build either one of these segments, without building the other,

*2

[143 S.C. at 217, 141 S.E. at 373.](#)

The implication is that the determination of which roads are to be incorporated into the State Highway System under this section is a matter which to some degree is within the Highway Department's discretion.

[Section 57-5-90](#) also provides that the Highway Department may establish such belt lines or spurs 'as it deems proper'. The quoted words import a judging or weighing process which the Commission is empowered to undertake before incorporating any road into the System as a belt line. The word 'deem' is almost universally held to mean having an opinion on, to form a judgment on, to pass judgment on, to consider. 11A [Words and Phrases](#), 'Deem' (1971). The Highway Department has, therefore, been given authority to pass judgment on whether certain roads are proper roads to include in the System. The establishment of minimum standards is a determination by the Department of which roads it deems proper for inclusion in the State Highway System under this section.

Since the Highway Department may exercise discretion in determining which roads are to be incorporated into the State Highway System and since the legislature has vested the Highway Department with authority to judge the propriety of including certain roads in the Highway System pursuant to [§ 57-5-90](#), it is the opinion of this Office that the Highway Department may establish minimum standards which roads must meet before they will be accepted by the Department as belt lines under this section.

Very truly yours,

Grady L. Patterson, III
Staff Attorney

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