

1978 WL 35176 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 20, 1978

*1 Peter D. Hyman, Esquire
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Post Office Box 1770
Florence, South Carolina 29503

Dear Mr. Hyman:

In response to your request of August 10, 1978, concerning the authority of municipal corporations to engage in condemnation proceedings over property beyond the corporate limits of the municipality, in my opinion, a municipality may exercise eminent domain beyond its corporate limits.

The general rule holds that 'a municipality cannot condemn lands within the State outside its own corporate limits unless the power has been delegated by the legislature. However, the legislature may delegate such power, as frequently has been done in express terms.' McQUILLIN, MUNICIPAL CORPORATIONS § 32.66 (3d ed. 1977). This power has been explicitly delegated to municipalities in South Carolina; [S.C. CODE ANN. § 5-7-50 \(1976\)](#) provides that '[a]ny municipality desiring to become owner of any land . . . for any authorized corporate or public purpose shall have the right to condemn such land . . . , subject to the general law of this State, within and without the corporate limits in the county in which it is situated and in any adjoining county or counties.' (Emphasis added.) Moreover, Chapter 9 of Title 28 governing condemnations by municipalities contains a provision which states: 'The right of condemnation by a municipality shall not be limited to the county in which the municipality is located.' S.C.CODE ANN. § 28-9-110 (1976). Thus, municipalities are clearly empowered to exercise eminent domain beyond their corporate limits.

The remaining question is whether this 'extra-territorial' eminent domain power extends to storm drainage systems. '[W]hile there is no settled rule in respect to this question, it would seem that the rule supported by the better reasoning is that if the power exists to construct public works or improve property outside the municipal limits, and if the statute or charter expressly or by necessary implication authorizes the condemnation of property within the corporate limits for . . . (certain) purposes, then the municipality is impliedly authorized to condemn property outside the limits for such purposes.' McQUILLIN, MUNICIPAL CORPORATIONS § 32.66 (3d.ed. 1977). As municipalities are specifically empowered to condemn property for surface water drains by [S.C.CODE ANN. § 5-31-450 \(1976\)](#), it is clear that such power would extend beyond its corporate limits by virtue of [§§ 5-7-50](#) and 28-9-110.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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