1978 WL 35203 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 2, 1978

***1** Albert E. Wheless, Esquire
City Attorney
North Myrtle Beach
457 Main Street
North Myrtle Beach, SC 29582

Dear Mr. Wheless:
This is in response to your letter concerning the validity of a walkway relocation on Ocean Boulevard and the sufficiency of a proposed walkway relocation procedure. While the 1973 relocation of the Ocean Boulevard walkway did not conform to the optimum procedural requirements, apparently the defects were not so extreme as to invalidate the 1973 relocation procedure. However, it may be advisable for the city council to formally hold hearings and officially ratify the 1973 change in order to cure any defects in the proceeding.

The authority of a municipal corporation regarding public improvements, which would include sidewalk construction and relocation, is governed by the 'Municipal Improvement Act of 1973', §§ 5-37-10 et seq., South Carolina Code of Laws, 1976. The Act authorizes public improvements within the corporate limits of a municipality (§ 5-37-30), and provides for procedures relating to resolutions, public hearing (§ 5-37-50) and the publication thereof (§ 5-37-60). The Act constitutes statutory recognition of the fact that '[o]rdinarily, the first step in the improvement proceeding is a preliminary ordinance or resolution declaring the intention to make the specified improvement, or declaring the proposed improvement expedient or the existence of a necessity therefor.' McQUILLIN, Municipal Corporation, § 37.66 (3d ed. 1971). Therefore, even if the Municipal Improvement Act had not been enacted at the time this situation occurred, the Act is merely a codification of the relevant common law requirements for public improvements.

The city council's actions in relocating the sidewalk did not conform to the requirements of the Act; nevertheless, such non-conformity probably does not render the relocation fatally defective. 'Usually the municipal corporation possesses power to alter streets and public ways,' McQUILLIN, Municipal Corporations, § 37.20 (1971), and since the council's action was pursuant to a legitimate corporate purpose, it would not be strictly ultra vives. 'Irregularities and defects in ordinances and the proceedings for public improvements made by a municipality, . . . may be cured and legalized by a subsequent act.' McQUILLIN, Municipal Corporations, § 37.94 (1971). See also Caldwell v. Guardian Trust Co., 26 F.2d 218 (1928), Gallimor v. Thomasville, 191 N.C. 648, 132 S.E. 657 (1926). It may, therefore, be advisable for the city council to ratify the prior relocation, conforming to all requirements of the 'Municipal Improvement Act of 1973'.

Any public improvement entered into by a municipality should conform to §§ 5-37-10, et seq., of the South Carolina Code of Laws. The proposed relocation procedure outlined in your letter adopts the essence of these requirements. I have not carefully checked the requirements you have outlined and the statutory provisions of the 'Municipal Improvement Act'. Of course, if there are any conflicts, the statute would control. Therefore, it may be advisable to closely compare the two provisions to ensure the municipality is following the statutory requirements.
Very truly yours,

***2** Treva G. Ashworth
Assistant Attorney General

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