

1975 WL 29445 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1975

\*1 Mr. Pawl W. Cobb  
State Highway Engineer  
S. C. State Highway Dept.  
P. O. Box 191  
Columbia, South Carolina 29202

Dear Mr. Cobb:

Reference is made to letter of January 28, 1975, to the Honorable J. Wilton Graves, member of House of Representatives from Beaufort County, wherein Mr. E. V. Lewis, General Manager and Executive Vice President of Central Electric Power Cooperative, advises that said Cooperative would relinquish its present 100-foot right of way and move its existing line to the median of the proposed highway into Hilton Head Island upon the following conditions:

1. Central Electric Power Cooperative, Inc. would be given a perpetual easement of 60 feet wide.
2. Central Electric Power Cooperative, Inc. would be reimbursed for all costs in connection with the relocation of the transmission line, including the cost of structures sufficient to carry an additional future transmission circuit.
3. Central Electric Power Cooperative, Inc. will have access (ingress and egress) to the said right of way at all times for construction, operation and maintenance of its facilities, including the right to use necessary equipment.

In reviewing this matter for the State Highway Department, it must be recognized that the State Highway Department, being a statutory creature of the State, derives its powers from the Legislature. Whatever power the Highway Department attempts to exercise must be found in some Act. [Southern Railroad Company v. S. C. Highway Dept.](#), 237 S.C. 75, 115 S.E.2d 685. In previous conferences, it was evident that the Highway Department would be forced to acquire right of way from private landowners in order to widen the highway into Hilton Head Island. The letter from Central Electric Power Cooperative would require the Highway Department to relinquish portions of the highway right of way for purposes of granting a perpetual easement 60 feet in width to Central Electric Power Cooperative, Inc., for purposes of relocating its transmission lines. It is the opinion of this Office that the Highway Department does not have sufficient authority to grant a perpetual easement to Central Electric Power Cooperative, Inc., in order to relocate the utility lines into the median of the highway in question.

Yours very truly,

Victor S. Evans  
Deputy Attorney General

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