1975 WL 28845 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 17, 1975

***1 Re: Distinction between public road and private drive.**

Mr. Larry J. Lassiter
Cherokee County Administrator
P. O. Box 866
Gaffney, South Carolina 29340

Dear Mr. Lassiter:
Attorney General McLeod has referred your letter concerning the distinctions between public and private roads to me for answer. You request an individual response for each of eleven (11) situations. As will be obvious from the nature of this opinion, such a response is impossible.

A public road is defined as
. . . a way established and adopted by proper authority for the use of the public, which every person has a right to use for all purposes of travel or transportation to which it is adapted and devoted, and over which he has a right to pass. Whether a road is public depends in a measure on the particular facts. Thus it must, of physical necessity, be so situate and connected as to be accessible to the public, but it does not depend on its length, or on the place to which it leads, or on the number of people who use it. It is enough if its use is free and common to all citizens, and that the public has actual access to it, whether by a mere neighborhood or settlement road, or by some established public highway. It is inmaterial that one person may be most benefited by it. 39 C.J.S., 'Highways' Section 1 at 918-919.

Other than being established by statute or statutory proceeding, a public way or road can be established by prescription. By continuous adverse use for twenty (20) years, the public can acquire a prescriptive right to a certain road over any land which is subject to the state's right to lay out a road over it. State v. Washington, 80 S.C. 376, 379, 61 S.E. 896 (1908); see also: State v. Allen, 107 S.C. 133, 92 S.E. 193 (1916); State v. Rodman, 86 S.C. 155, 68 S.E. 343 (1910). Permissive use of a road does not convert it into a public highway. Fanning v. Stroman, 113 S.C. 495, 498, 101 S.E. 861 (1919). In discussing the type use the public acquires by prescription, the Supreme Court has stated:
If the adverse use on which the prescriptive claim to a way is based was for one particular purpose only, as in the case of a way used by foot passage only, or for the carriage of timber only, this is not sufficient to support a claim to a right of way for all purposes. Bussell v. Kirkland, 242 S.C. 201, 207, 130 S.E. 2d 470 (1963).

Furthermore, the '. . . route must be used by the public generally and not by particular individuals. In other words, the use must not be by a limited community or class of people. Craft v. Seaboard Airlines Railway, 92 S.C. 291, 75 S.E. 501.' Bussell, supra 208. Finally, on numerous occasions, the State Supreme Court has held that the termini of a road must be in a public highway or public place in order for the road in question to be public. Bussell, supra; State v. Dodenhoff, 153 S.C. 7, 150 S.E. 315 (1929); Fanning, supra.

***2** Although the courts have established the basic guidelines as to whether or not a road is public or private, the ultimate determination of whether a public road exists by prescription is primarily one of fact for a jury. 39 C.J.S., 'Highways' Section 24 at 945. In that this office does not have the facts concerning the use of the situations outlined in your letter, it

is impossible to opine as to the public or private nature of these roads. Certainly, however, if this list were given to your County Attorney, an attorney more familiar with the fact situation, he will be able to render an informed judgement. Should he require any assistance, this Office is willing to render whatever help it can.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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