

1975 WL 28970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 1, 1975

**\*1 Re: Easement for Sewage Lines**

The Honorable J. D. Page, Jr.  
Councilman  
Town of Hampton  
Hampton, SC 29924

Dear Mr. Page:

Your letter of May 28, 1975, concerning easements for sewage lines in the Town of Hampton has been assigned to me for answer. The problem presented in your letter is that the Town of Hampton has had sewage lines on certain properties for over twenty (20) years. The Town asked the owner of the property for an easement but such easement was never granted. The question is whether or not the existence of these sewage lines over this property for a period greater than twenty (20) years has created an easement by prescription.

Under the principles of common law an easement by prescription may be acquired by lapse of time. This acquisition is founded on uninterrupted use and enjoyment for a specific length of time. 'Unless there is some statutory provision to the contrary, all easements which may be acquired by grant may also be acquired by prescription.' 28 C.J.S., Easements § 17 at 662.

The use and enjoyment which will give title by prescription to an easement or other incorporeal right is substantially the same in quality and characteristics as the adverse possession which will give title to real estate. That is to say, as explained in succeeding sections, it must be adverse, under a claim of right, *infra* § 14, continuous and uninterrupted, *infra* § 13, open and notorious, *infra* § 11, exclusive, *infra* § 15, with the knowledge and acquiescence of the owner of the servient tenement, *infra* § 12, and must continue for the full prescriptive period, *infra* § 16, and while the owner of the servient tenement is under no legal disability to assert his rights, or to make a grant, *supra* § 9 b. There must also be identity of the thing enjoyed. [Footnotes omitted], 28 C.J.S. Easements, § 10 at 645.

For the Town of Hampton to have acquired an easement by prescription for the referenced sewage lines, the use of these lines must be consistent with the above characteristics. Not being familiar with the fact situation surrounding the lying of and use of the sewage lines, it is impossible for this Office to give an opinion as to whether or not an easement has been acquired. However, the City Attorney for Hampton, being familiar with the fact situation, will be able to render an informed judgment as to whether an easement has been acquired or not. Should he require any assistance in this matter, this Office is more than willing to render any help that it can.

Yours very truly,

M. Elizabeth Crum  
Assistant Attorney General

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