

1975 WL 29262 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1975

*1 Mr. W. Jerry Fedder
P. O. Box 791
Seneca, South Carolina 29678

Dear Mr. Fedder:

You have requested an opinion from this office as to whether public funds and public machinery may be used for maintenance of private roads and driveways in Oconee County.

This office has consistently advised local authorities in the various counties of our state that the expenditure of public funds and the use of public machinery on private roads and driveways in which the public has no legal interest is unlawful. See, 1961 OPS.ATTY.GEN. 168; 1962 OPS.ATTY.GEN. 176; 1964 OPS.ATTY.GEN. 91. The basis of this conclusion lies in the fact that maintenance and upkeep of private roads and driveways constitutes an expenditure of public funds and utilization of public resources for private purposes.

Article X, § 9 of the Constitution of South Carolina provides that money shall be drawn from the Treasury only in pursuance of appropriations made by law. This section has been construed by our Supreme Court to prohibit any officers of the State from applying public funds to any purpose not authorized by law. [Butler v. Ellerbe](#), 44 S.C. 256, 22 S.E. 425. The universally recognized limitation upon the power of the State to tax and expend tax monies for private benefit was declared forcefully by the United States Supreme Court in [Savings and Loan Association v. Topeka](#), 22 L.Ed. 455, 20 U.S. (Wall) 655:

To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals . . . is nonetheless a robbery because it is done under forms of law . . .

The limitation upon the power of public officials to expend public funds for private purposes is unaffected by enactment of the Home Rule Act by the General Assembly. Accordingly, it remains unlawful for the public officials of any county to maintain private roads and driveways with public funds and machinery.

Sincerely,

W. Joseph Isaacs
Legal Assistant

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