

1975 S.C. Op. Atty. Gen. 180 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4102, 1975 WL 22398

Office of the Attorney General

State of South Carolina

Opinion No. 4102

September 2, 1975

*1 There is no 'grade crossing' for purposes of Code of Laws of South Carolina § 58–841, et seq. (1974 Cum. Supp.) where railroad tracks penetrate the right-of-way of a state highway but fail to pass from one side of the improved portion of the highway to the other side.

TO: Charlie A. McDuffie, Jr.
Utilities Engineer

QUESTION PRESENTED:

You have requested an opinion as to whether railroad tracks which enter the paved portion of the right-of-way of a state highway and occupy several hundred feet of highway right-of-way without crossing to the other side of the road is a 'grade crossing' for purposes of Code of Laws of South Carolina § 58–841, et seq. (1974 Cum. Supp.).

AUTHORITIES:

Code of Laws of South Carolina § 58–841 (1974 Cum. Supp.).

[Armour & Co. v. New York, N.H. & H.R. Co.](#), 41 R.I. 361, 103 A. 1031 (1918) [South Carolina State H.R. Dept. v. Southern Ry. Co.](#), 239 S.C. 227, 122 S.E. 2d 422 (1961).

[Prosser v. Seaboard Air Line R. R. Co.](#), 216 S.C. 33, 56 S.E. 2d 591 (1949) *Ex parte* [Bacot](#), 36 S.C. 125, 15 S.E. 204 (1892).

DISCUSSION:

No case from South Carolina has attempted to define the term 'grade crossing'. However, a Rhode Island court has held that a grade crossing is a place where a railroad is crossed at grade by a public or private road, or by another railroad, or where one highway crosses another. [Armour & Co., v. New York, N.H. & H.R. Co.](#), 41 R.I. 361, 103 A. 1031 (1918).

Other cases have held the term crossing to mean an intersection in the same plane, or in the broader sense all means by which one may pass from one side of an obstructing railroad to another. See generally, 74 C.J.S. (Railroads) § 140 (1951). Thus, it would appear that the term 'grade crossing' requires that the tracks intersect or traverse the highway on or near the same horizontal axis or plane. This definition is not inconsistent with cases in the state which have used the term, see e.g., [South Carolina State Hwy. Dept. v. Southern Ry. Co.](#), 239 S.C. 227, 122 S.E. 2d 422 (1961), [Prosser v. Seaboard Air Line R. R. Co.](#), 216 S.C. 33, 56 S.E. 2d 591 (1949), *Ex parte* [Bacot](#), 36 S.C. 125 15 S.E. 204 (1892), or with the language of the statute, 'operators of railroads which are now or hereafter shall be crossed at grade by a public highway'. Code of Laws of South Carolina § 58–841 (1974 Cum. Supp.).

CONCLUSION:

Where railroad tracks penetrate the right-of-way of a state highway but fail to pass from one side of the improved portion of the highway to the other side, there is no 'grade crossing'.

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