

1974 WL 28098 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 1, 1974

*1 Miss Ruth Williams
Counsel
The Medical University of South Carolina
60 Barre Street
Charleston, South Carolina 29401

Dear Miss Williams:

After researching the matter, I am able to confirm our conclusion that now legislation would be required to give the Medical University the power to condemn adjacent school district property for the purpose of hospital expansion.

It has been the opinion of this office that before a state authority may exercise the power of eminent domain that power must be delegated to the authority by the State (i.e. by statute). See enclosed copy of 1967 Op. Atty. Gen., No. 2319, pg. 142 and [University of South Carolina v. Mehlman](#), 245 S.C. 180, 139 S.E.2d 771 (1964).

We discussed the legislation which was passed in 1948 and 1949 and conferred the power of eminent domain upon the ‘ . . . Board of Trustees of the Medical College . . . and the County Council of Charleston County, [emphasis added].’ Act No. 920 of 1943 and Act No. 340 (§ 34) of 1949. The 1949 Act was of special significance to your inquiry because it contains the word: ‘ . . . whether or not the said property is already devoted to a public use, or a quasi-public use . . . ’

I must conclude that the above-mentioned statutes did not delegate a continuing power of eminent domain to the Medical College (now University). There are several reasons for this conclusion. First, the wording of the legislation seems to limit its validity to the period of time needed for the acquisition of the original site for the hospital. Further, each statute is included in the ‘Local and Temporary’ part of that year's Acts and Joint Resolutions. Of note, the legislation has never been codified. Lastly, all of the above must be considered in light of the principle that the legislative grant of the power of eminent domain must be strictly construed. [Tuomey Hospital v. City of Sumter](#), 243 S.C. 544, 134 S.E.2d 744 (1964); [Cain v. South Carolina Public Service Authority](#), 222 S.C. 200, 72 S.E.2d 177 (1952).

I hope this information proves helpful to you. If you need further assistance, please do not hesitate to call or write.

Very truly yours,

Wade S. Kolb, Jr.
Legal Assistant

1974 WL 28098 (S.C.A.G.)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.