

1974 S.C. Op. Atty. Gen. 170 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3790, 1974 WL 21298

Office of the Attorney General

State of South Carolina

Opinion No. 3790

June 4, 1974

*1 J. W. Hudson

Chairman

Fourth District

P. O. Box 2506

Spartanburg, S. C. 29302

Dear Mr. Hudson:

You have requested an opinion from this office in regard to several questions you have presented concerning property that may be dedicated to the State.

Specifically you have asked whether or not a provision incorporated in a grant of land to the State stating that if the State should develop the land the property would revert to the grantor would be enforceable. Apparently the answer would be yes. The possibility of reverter has been held to exist in the following situations: Where land was conveyed to a county on the condition that it be used for a courthouse or similar county building (56 AM.Jur.2d Municipal Corporations, § 49); When a school ceases to be used for school proposes (69 AM.Jur.2d Schools, §§ 64, 65); where land is dedicated to park purposes (59 AM.Jur.2d Parks, Squares, and Playgrounds, § 10); and the general rule is that where land is dedicated to a public use, it reverts to the dedicator when the intended use becomes impossible or is abandoned (23 AM.Jur.2d Dedication § 68). See also Waller v. Waller, 220 S.C. 212, — S.E.2d (___); 28 AM.Jur.2d Estates § 184, p. 321; 26 AM.Jur.2d Eminent Domain, § 147; 14 AM.Jur.2d Cemeteries § 24. No South Carolina statute would prevent a reversion of property dedicated to the State and, therefore, if a reversionary interest is reserved in land granted to the State, the reversion could be legally enforced.

Secondly, you have asked if conservation easements where a party other than the title holder retains power to restrict development of the land is recognized and enforceable in South Carolina. There is presently no law in South Carolina regarding the validity of conservation easements.

South Carolina does, however, recognize easements in gross, but research has failed to disclose any case law when a negative easement in gross of this nature has been given approval.

Therefore, in light of the uncertainty surrounding the validity of conservation easements in this State, the objectives you seek may possibly be best attained by utilizing other property devices such as the possibility of reverter or right of entry. Of course, a legislative enactment in this area, similar to the proposed bill I have been sent by Mr. Bill Cotty, would be the most effective way to handle the issue and resolve any unsettled questions in this area.

Sincerely yours,

Treva G. Ashworth

Assistant Attorney General

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