

1973 WL 27036 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1973

**\*1 re: Fairfield County Airport**

Thomas B. Barrineau, Jr.

Attorney at Law

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Winnsboro, S. C. 29180

Dear Tom:

You have requested that this office advise you as to whether Fairfield County has the authority to condemn the power line Right of Way of an Electric Co-operative for purposes of constructing an airport facility.

It is clear that the governing bodies of several counties within the State may acquire land by condemnation for the purpose of building, constructing and maintaining landing strips and airports. § 2-103.1 Code of Laws of South Carolina 1962. Under normal circumstances this authority may be exercised freely in accordance within prescribed procedures. In the instant case however, it is sought to exercise the power of eminent domain to acquire land already devoted to public use (power line Right of Way).

The law of this State appears to be that where a taking pursuant to powers of eminent domain will destroy or materially interfere with land previously devoted to public use, the mere general authority to exercise the power of eminent domain is insufficient and that such authority must be given by the legislature in expressed terms or by necessary implication. This general rule is well settled. 29 C.J.S. Eminent Domain § 74 p. 861; Nichols on Eminent Domain, 3rd Edition, § 2.2. It was recognized in [County Board of Commissioners for Clarendon County v. Holliday](#) 182 S.C. 510, 189 S.E. 885, 109 A.L.R. 1496, and [Twin City Power Company v. Savannah River Electric Company](#), 163 S.C. 438, 161 S.E. 750. It was stated in Township of [Weehauken v. Erie Railroad Company](#), 20 New Jersey 572, 120 Atlantic 2nd 593, that this rule 'stems from the recognition that municipal and many private corporations possess general powers of condemnation delegated by the legislature. If one such body may acquire land used or held for a public purpose by another corporation under a general power of condemnation, the latter would logically be free to reacquire the same property.' However, the general rule does not ordinarily apply 'where the power of Eminent domain is being exercised by the sovereign itself, such as the state or federal government, for its immediate purposes, rather than by a public service corporation or municipality.' 29 C.J.S. p. 862.

Based upon the preceding it is the opinion of this office that Fairfield County cannot utilize its power of Eminent domain for purposes of acquiring land presently devoted to public use by an electric co-operative.

I trust that this has been sufficient in answer to the question which you posed. If we may be of any further assistance, please do not hesitate to call or write.

Very truly yours,

Timothy G. Quinn

Senior Assistant Attorney General

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