CHAPTER 9

Abandonment or Closing of Streets, Roads, or Highways

**SECTION 57‑9‑10.** Petition to abandon or close street, road, or highway; notice.

 Any interested person, the State or any of its political subdivisions or agencies may petition a court of competent jurisdiction to abandon or close any street, road or highway whether opened or not. Prior to filing the petition, notice of intention to file shall be published once a week for three consecutive weeks in a newspaper published in the county where such street, road or highway is situated. Notice also shall be sent by mail requiring a return receipt to the last known address of all abutting property owners whose property would be affected by any such change, and posted by the petitioning party along the street, road, or highway, subject to approval of the location of the posting by the governmental entity responsible for maintenance of the street, road, or highway. The Department of Transportation shall promulgate regulations which once effective will establish the minimum mandatory size, language, and specific positioning of signs pursuant to this section.

HISTORY: 1962 Code Section 33‑521; 1962 (52) 2183; 2012 Act No. 184, Section 1, eff June 7, 2012.

CROSS REFERENCES

Legal notices, generally, see Sections 15‑29‑10 et seq.

Sign requirements for petitions to close road, see S.C. Code of Regulations R. 63‑1000.

Library References

Highways 79.1.

Municipal Corporations 657(4).

Westlaw Topic Nos. 200, 268.

C.J.S. Highways Sections 192 to 194, 196, 198 to 199.

C.J.S. Municipal Corporations Sections 1819 to 1827, 1830.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 13, Specific Matters.

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1. In general

Section 57‑9‑10, governing the abandonment or closing of streets, roads or highways, authorizes a court of competent jurisdiction to entertain a petition to abandon or close a street. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied.

By creating a formal judicial procedure for terminating a public right of way over land, Section 57‑9‑10 removes the uncertainty attending the common law of dedication and abandonment and ameliorates the rigor of the common law rule requiring strict proof of intent to abandon a public right of way before that right can be extinguished. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(5)

An unpaved public road was properly ordered closed pursuant to the petition of a church which wished to expand its day care facility where the church owned the only property abutting the road, the road was used as a “cut through” for traffic trying to avoid the traffic lights on the major roadways, the road was narrow and had a substantial curve with limited visibility, and the resulting increase in traffic on a parallel residential street could be alleviated by the use of traffic signs. First Baptist Church of Mauldin v. City of Mauldin (S.C. 1992) 308 S.C. 226, 417 S.E.2d 592.

2. Construction with other laws

Section 5‑27‑150 does not give a city the exclusive right to close roads within its limits since (1) the language “as may be necessary for the improvement of the city” does not connote exclusivity, and (2) Section 57‑9‑40 provides that the petition of an interested party to close a road pursuant to Section 57‑9‑10 is to be considered cumulative to other provisions of the law. First Baptist Church of Mauldin v. City of Mauldin (S.C. 1992) 308 S.C. 226, 417 S.E.2d 592.

3. Abandoned road

County road had not been abandoned and thus remained publicly accessible, although county had ceased maintaining road; no interested person had instituted action under statutory process to effect abandonment of road, and county had not abandoned road. South Carolina Dept. of Transp. v. Hinson Family Holdings, LLC (S.C. 2004) 361 S.C. 649, 606 S.E.2d 781. Highways 79.1

In a suit against the city by a landowner seeking title to property, the fact that the city had not maintained the property in question as a street for a number of years preceding the commencement the suit was immaterial; if the city had a fee simple title as opposed to a mere right of way, the city was in legal possession regardless of actual physical possession. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(7)

The trial court was not required to dismiss an action to abandon a portion of a roadway, based on the absence from the litigation of the Department of Highways and Public transportation and the town in which the roadway was located, where these parties could have been joined by the court on its own motion or the motion of the defendants, but no such motion had been made. BancOhio Nat. Bank v. Neville (S.C.App. 1991) 306 S.C. 283, 409 S.E.2d 790, reversed 310 S.C. 323, 426 S.E.2d 773.

Where there was no evidence that city ever considered the vacating of dedicated, publicly accepted street with respect to which through passage was impossible for number of years because of destruction of bridge as a result of a casualty and neither the city nor any of the landowners or tenants sought to have road or any portion thereof closed or abandoned in accordance with statutory procedures, it could not be held that city had abandoned any portion of road of which was still being used at least to a limited extent. Code 1962, Sections 33‑521 et seq., 47‑1327. City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290.

4. Notice

The Department of Transportation (DOT) was not statutorily required to give notice prior to closing railroad grade crossing. Mosteller v. County of Lexington (S.C. 1999) 336 S.C. 360, 520 S.E.2d 620. Highways 77(3)

5. Justiciability

The standing requirement of Section 57‑9‑20 differs from common law rules in that under the common law, only abutting landowners or owners whose property was affected in some special or peculiar way different in degree or kind from that suffered by the general public could bring an action relating to dedicated property; however, Section 57‑9‑20 allows any interested person to petition a court to close or abandon a street. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(4)

6. Parties

State Department of Transportation (DOT) and the local municipality are indispensable parties that must be joined in an action to abandon a public road; without their inclusion, they would not be bound by the decision or discharged from their maintenance duties or other obligations and liabilities. South Carolina Dept. of Transp. v. Hinson Family Holdings, LLC (S.C. 2004) 361 S.C. 649, 606 S.E.2d 781. Highways 77(2)

The state and the town were indispensable parties in an action to close a public road since without their inclusion, they would not be bound by the decision, and thus would not be discharged from their duties of maintenance, or their other obligations and liabilities. BancOhio Nat. Bank v. Neville (S.C. 1993) 310 S.C. 323, 426 S.E.2d 773.

**SECTION 57‑9‑20.** Court shall make determination.

 If the court shall determine that it is to be the best interest of all concerned that such street, road or highway be abandoned or closed, the court shall then determine in whom the title thereto shall be vested and issue an appropriate order.

HISTORY: 1962 Code Section 33‑522; 1962 (52) 2183.

Library References

Highways 79.1.

Municipal Corporations 657.

Westlaw Topic Nos. 200, 268.

C.J.S. Highways Sections 192 to 194, 196, 198 to 199.

C.J.S. Municipal Corporations Sections 1805 to 1815, 1817 to 1844, 1850.

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1. In general

Under statute permitting the court to close a public road upon finding that closure is in best interest of all concerned, when public street is vacated, it must appear clearly that no consideration other than that of public interest could have prompted the action. Town of Kingstree v. Chapman (S.C.App. 2013) 405 S.C. 282, 747 S.E.2d 494. Municipal Corporations 657(2)

Under Section 57‑9‑20, governing the abandonment or closing of streets, roads or highways, the court’s authority to determine title to land once it determines a street should be closed is an ancillary authority; this authority exists to remove uncertainty as to tile and to provide repose for the holder of the fee simple interest; it is an authority to declare title according to law. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(7)

A landowner could not avail herself of Section 57‑9‑20, governing the abandonment or closing of streets, roads or highways, where she failed to meet her burden of proving that the fee simple interest remained in the private proprietor when the city laid out the street in question, or in the alternative, that the city conveyed the fee to the abutting owner. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(7)

In a suit against the city by a landowner seeking title to property, the fact that the city had not maintained the property in question as a street for a number of years preceding the commencement the suit was immaterial; if the city had a fee simple title as opposed to a mere right of way, the city was in legal possession regardless of actual physical possession. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(7)

2. Power of court

Under statute permitting the court to close a public road upon finding that closure is in best interest of all concerned, public street may not be vacated for the sole purpose of benefiting an abutting owner; however, mere fact that the vacation was at the instigation of an individual who owns abutting property does not invalidate the vacation or constitute abuse of discretion, nor does the fact that some private interest may be served incidentally. Town of Kingstree v. Chapman (S.C.App. 2013) 405 S.C. 282, 747 S.E.2d 494. Municipal Corporations 657(2)

Section 57‑9‑20, concerning the adjudication of the abandonment or closing of streets, roads or highways, does not grant the courts power to divest the fee simple owner of title where the law gives only a public right of way over land held in fee by a private landowner. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Highways 78; Highways 79.7; Municipal Corporations 657(7)

Section 57‑9‑20, governing the abandonment or closing of streets, roads or highways, does not give the court naked power to divest the legal owner of title and vest it in another by judicial fiat; thus, if the fee simple to a street is in the municipality, the court can only declare that fact—it cannot divest the fee. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied.

3. Justiciability

The standing requirement of Section 57‑9‑20 differs from common law rules in that under the common law, only abutting landowners or owners whose property was affected in some special or peculiar way different in degree or kind from that suffered by the general public could bring an action relating to dedicated property; however, Section 57‑9‑20 allows any interested person to petition a court to close or abandon a street. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(4)

**SECTION 57‑9‑30.** Recording of court order.

 The clerk of court or register of deeds of the county where the property is situated shall record the order of the court and index the same in the book of deeds to real property.

HISTORY: 1962 Code Section 33‑523; 1962 (52) 2183.

Library References

Highways 79.1.

Municipal Corporations 657(5).

Westlaw Topic Nos. 200, 268.

C.J.S. Highways Sections 192 to 194, 196, 198 to 199.

C.J.S. Municipal Corporations Sections 1815, 1817 to 1826, 1831 to 1833, 1837 to 1838.

**SECTION 57‑9‑40.** Cumulative effect of chapter.

 This chapter shall not be construed to repeal any other provision of law but shall be cumulative thereto.

HISTORY: 1962 Code Section 33‑524; 1962 (52) 2183.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Reference Section 13, Specific Matters.

NOTES OF DECISIONS

In general 1

1. In general

Section 5‑27‑150 does not give a city the exclusive right to close roads within its limits since (1) the language “as may be necessary for the improvement of the city” does not connote exclusivity, and (2) Section 57‑9‑40 provides that the petition of an interested party to close a road pursuant to Section 57‑9‑10 is to be considered cumulative to other provisions of the law. First Baptist Church of Mauldin v. City of Mauldin (S.C. 1992) 308 S.C. 226, 417 S.E.2d 592.