CHAPTER 27

Streets and Sidewalks

ARTICLE 1

Purchase of Land

**SECTION 5‑27‑10.** Purchase of land for purpose of establishing or improving streets, alleys, roads, courts or lanes.

 Whenever the mayor and aldermen of any city or the intendant and wardens of any town in this State shall think it expedient to widen, open, lay out, extend or establish any street, alley, road, court or lane, they may purchase the lot, lots or parts of lots of land necessary for such street, alley, road, court or lane, and the fee simple of such land shall be vested in such city or town for the use of the public from the day of delivery of the deed of sale.

HISTORY: 1962 Code Section 47‑1301; 1952 Code Section 47‑1301; 1942 Code Section 7367; 1932 Code Section 7367; Civ. C. ‘22 Section 4499; Civ. C. ‘12 Section 3065; Civ. C. ‘02 Section 1396; R. S. 1181; 1884 (18) 781; 1905 (24) 964.

CROSS REFERENCES

Accidents, generally, see Section 56‑5‑1210 et seq.

Annexation of right‑of‑way area of street lying beyond but abutting on corporate limits, see Section 5‑3‑110.

Approval required for inclusion of certain streets in mall developments, see Section 5‑37‑170.

Authority of municipalities to construct speed‑control devices in certain areas, see Section 57‑7‑230.

Condemnation by municipality of lands for construction or improvement of streets by Department of Transportation, see Section 57‑5‑370.

Department authorized to grant rights of way over State marshlands for roads or power or pipe lines to State agencies or political subdivisions, see Section 1‑11‑90.

Disposition of abandoned and derelict vehicles on public or private property, see Section 56‑5‑5810 et seq.

Eminent Domain Procedures Act, see Section 28‑2‑10 et seq.

Excavation by municipality in or across road with regard to municipally owned waterworks or sewerage outside its limits, see Section 57‑7‑70.

Highways, bridges and ferries, generally, see Section 57‑1‑10 et seq.

Inclusion of streets near courthouses in mall development, see Section 5‑37‑180.

Local authorities putting stop sign or traffic signal on State highway, see Sections 56‑5‑910 to 56‑5‑930, 56‑5‑940.

Local or special laws concerning roads or highways, see Article II of the Amendments to the Constitution.

Local ordinances regulating buses and trolley coaches, see Section 56‑5‑4040.

Local regulation of operation of vehicles, see Sections 56‑5‑710 to 56‑5‑720.

Local regulation of pedestrians, see Section 56‑5‑3120.

Local restrictions on size, load and weight of vehicles, see Sections 56‑5‑4210, 56‑5‑4220.

Motor vehicles abandoned on highways, see Section 56‑5‑5620 et seq.

Ownership of property, generally, see Section 5‑7‑40.

Power of condemnation, see Section 5‑7‑50.

Power of local authorities to alter State size and weight limits on vehicles, see Section 56‑5‑4010.

Regulation of traffic on highway, generally, see Section 56‑5‑10 et seq.

Speed limits by local authorities, see Sections 56‑5‑4210, 56‑5‑4220.

Taking of private property, see SC Const Art. I, Section 13.

When highway may cross railroad, see Section 58‑17‑1360.

LIBRARY REFERENCES

Municipal Corporations 223.

Westlaw Key Number Search: 268k223.

C.J.S. Municipal Corporations Section 881.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Thomas v Atlantic Coast Line Ry. Co., 168 SC 185, 167 SE 239 (1933). Greenwood County v Watkins, 196 SC 51, 12 SE2d 545 (1940).

For additional related cases, see Pope v Comm’rs, 12 Rich (46 SCL) 407. Comm’rs v Durant, 11 Rich (45 SCL) 440. McKenna v Comm’rs, Harp. (16 SCL) 381. Comm’rs v Taylor, 2 Bay (2 SCL) 282.

Application of section. This section [Code 1962 Section 47‑1301] does not have to be considered in conjunction with Code 1962 Section 58‑996, which authorizes a highway or town way to be laid across a railroad. Prosser v. Seaboard Air Line R. Co. (S.C. 1949) 216 S.C. 33, 56 S.E.2d 591, certiorari denied 70 S.Ct. 569, 339 U.S. 911, 94 L.Ed. 1338.

Applied in Houston v. Town of West Greenville (S.C. 1922) 126 S.C. 484, 120 S.E. 236.

ARTICLE 3

Provisions Affecting Certain Cities and Towns

**SECTION 5‑27‑110.** Maintenance and repair of streets and ways in towns of less than 1,000.

 Every town council of a town of less than one thousand inhabitants shall keep all streets and ways which may be necessary for public use within the limits of the town open and in good repair and for that purpose they are hereby invested with the powers, rights and privileges granted by law to the governing body of the county without the limits of the town. For neglect of duty they shall be liable to the pains and penalties imposed by Section 57‑17‑80 upon governing bodies of counties for like neglect.

HISTORY: 1962 Code Section 47‑1321; 1952 Code Section 47‑1321; 1942 Code Section 7411; 1932 Code Section 7411; Civ. C. ‘22 Section 4523; Civ. C. ‘12 Section 2902; Civ. C. ‘02 Section 1944; 1896 (22) 78.

CROSS REFERENCES

Addition of certain municipal streets to the state highway secondary system, see Section 57‑5‑70.

Construction and improvements in highway system within municipalities, see Sections 57‑5‑810 et seq.

Requirement of consent of municipality to certain laws affecting municipal streets, see SC Const Art. VIII, Section 15.

Responsibility of municipality for roads removed from the state highway secondary system, see Section 57‑5‑80.

State highways within municipalities, see Section 57‑5‑140.

LIBRARY REFERENCES

Municipal Corporations 269(2).

Westlaw Key Number Search: 268k269(2).

**SECTION 5‑27‑120.** Repair of streets, ways and bridges in municipalities of over 1,000.

 The city or town council of any city or town of over one thousand inhabitants shall keep in good repair all the streets, ways and bridges within the limits of the city or town and for such purpose it is invested with all the powers, rights and privileges within the limits of such city or town that are given to the governing bodies of the several counties of this State as to the public roads.

HISTORY: 1962 Code Section 47‑1323; 1952 Code Section 47‑1323; 1942 Code Section 7438; 1932 Code Section 7438; Civ. C. ‘22 Section 4550; Civ. C. ‘12 Section 2951; Civ. C. ‘02 Section 1985; 1896 (22) 67; 1901 (23) 649; 1908 (25) 1023.

CROSS REFERENCES

Additions of certain municipal streets to the state highway secondary system, see Section 57‑5‑70.

Construction and improvements of highway system within municipalities, see Sections 57‑5‑810 et seq.

Requirement of consent of municipality to certain laws affecting municipal streets, see SC Const Art. VIII, Section 15.

Responsibility of municipality for roads removed from the state highway secondary system, see Section 57‑5‑80.

State highways within municipalities, see Section 57‑5‑140.

LIBRARY REFERENCES

Municipal Corporations 269(2).

Westlaw Key Number Search: 268k269(2).

Attorney General’s Opinions

The municipality is responsible for maintenance and repair of roads within its corporate limits. S.C. Op.Atty.Gen. (November 15, 2016) 2016 WL 7031993.

NOTES OF DECISIONS

In general 2

Alternate uses 3

Validity 1

1. Validity

Statute requiring town to maintain its streets did not create special duty, pursuant to special duty exception to public duty rule’s general principle of non‑liability, upon which pedestrian who had fallen on sidewalk and sustained injuries could base negligence action against town, as statute did not have identifiable class of persons intended to be protected by statute beyond classification of general public, and intention of statute to protect general public was insufficient to amount to an “identifiable class” as required to find a special duty. Vaughan v. Town of Lyman (S.C. 2006) 370 S.C. 436, 635 S.E.2d 631. Municipal Corporations 763(1)

As to constitutionality of an ordinance closing a street, and the liability of the town for damages thereby caused to a property owner, see Houston v. Town of West Greenville (S.C. 1922) 126 S.C. 484, 120 S.E. 236.

2. In general

Applied in Chapman v Greenville, 127 SC 173, 120 SE 584 (1923). Whitlock v Jonesville, 111 SC 391, 98 SE 142 (1919).

Cited in Webber v Jonesville, 94 SC 189, 77 SE 857 (1913). Dillingham v Spartanburg, 75 SC 549, 56 SE 381 (1907).

Statute requiring city to maintain its streets did not create special duty upon which pedestrian who had fallen on sidewalk and sustained injuries could base negligence action against city; statute defined a municipality’s duty to the general public to maintain its streets, but it did not establish an identifiable class of persons intended to be protected and, thus, the public duty rule, under which public officials were generally not liable to individuals for their negligence in discharging public duties, precluded private right of action based on the statute. Fickling v. City of Charleston (S.C.App. 2007) 372 S.C. 597, 643 S.E.2d 110, rehearing denied, certiorari denied. Municipal Corporations 757(1)

If the power of a city to enter into a city‑railway agreement for the improvement of city streets is not expressly stated in former Code 1962 Section 47‑61 and this section [former Code 1962 Section 47‑1323], it is necessarily implied. Sadler v. Lyle (S.C. 1970) 254 S.C. 535, 176 S.E.2d 290.

This section [former Code 1962 Section 47‑1323] has to do with the use of streets and roadways for the material interest of the general public, but does not authorize a city council to grant permission to private individuals to encroach upon streets or highways which have been heretofore dedicated to the exclusive use of the public. Sloan v. City of Greenville (S.C. 1959) 235 S.C. 277, 111 S.E.2d 573, 76 A.L.R.2d 888.

In suit against individual councilman for injuries to pedestrian resulting when overhanging sign fell on him, complaint failing to allege any wrong of individual defendant was insufficient. Heath v. Blackman (S.C. 1934) 172 S.C. 158, 173 S.E. 300. Municipal Corporations 816(2)

3. Alternate uses

Where charter gave council control over streets, extent to which streets are opened for travel or used for parks rests entirely within council’s discretion. Plunkett v. City of Aiken (S.C. 1930) 159 S.C. 97, 156 S.E. 245. Municipal Corporations 662

Where a street intended primarily for travel was needed therefor, city was unauthorized under statute and charter, in absence of legislative authority, to devote the street to purpose interfering with travel. Plunkett v. City of Aiken (S.C. 1930) 159 S.C. 97, 156 S.E. 245. Municipal Corporations 661(1)

Where entire street was not needed for travel, city properly permitted trees and shrubbery in middle of street, such section being reserved as a park. Plunkett v. City of Aiken (S.C. 1930) 159 S.C. 97, 156 S.E. 245. Municipal Corporations 678

Landowner’s consent, required under charter for street change, is unnecessary where city proposed to remove portion of park theretofore allowed in middle of street. Plunkett v. City of Aiken (S.C. 1930) 159 S.C. 97, 156 S.E. 245. Municipal Corporations 655

**SECTION 5‑27‑130.** Prisoners may be required to work on roads in municipalities of over 1,000.

 Every person sentenced to imprisonment in any such city or town, either directly or in consequence of a failure to pay a fine imposed, shall be subject to work upon the public roads of such city or town of over one thousand inhabitants or of the county in which such city or town is situate during the term of such imprisonment.

HISTORY: 1962 Code Section 47‑1325; 1952 Code Section 47‑1325; 1942 Code Section 7432; 1932 Code Section 7432; Civ. C. ‘22 Section 4544; Civ. C. ‘12 Section 2946; Civ. C. ‘02 Section 1982; 1896 (22) 67; 1901 (23) 649.

LIBRARY REFERENCES

Convicts 7(1).

Westlaw Key Number Search: 98k7(1).

C.J.S. Convicts Sections 13 to 15.

**SECTION 5‑27‑140.** Erection of poles, posts and the like on streets in towns under 5,000.

 In towns of less than five thousand inhabitants, incorporated under the provisions of Chapter 1 of Title 5 of the 1976 Code of Laws of South Carolina, the town council may, in its discretion, authorize the erection of poles, posts and any other obstruction which, without legislative sanction, either mediately or immediately given, would constitute nuisances in, upon or under the highways, streets and roads of said town.

HISTORY: 1962 Code Section 47‑1326; 1952 Code Section 47‑1326; 1942 Code Section 7438; 1932 Code Section 7438; Civ. C. ‘22 Section 4550; Civ. C. ‘12 Section 2951; Civ. C. ‘02 Section 1985; 1896 (22) 67; 1901 (23) 649; 1908 (25) 1023.

LIBRARY REFERENCES

Municipal Corporations 691.1.

Westlaw Key Number Search: 268k691.1.

C.J.S. Municipal Corporations Section 1507.

NOTES OF DECISIONS

In general 1

1. In general

In suit against individual councilman for injuries to pedestrian resulting when overhanging sign fell on him, complaint failing to allege any wrong of individual defendant was insufficient. Heath v. Blackman (S.C. 1934) 172 S.C. 158, 173 S.E. 300. Municipal Corporations 816(2)

**SECTION 5‑27‑150.** Opening, closing or otherwise altering streets in cities over 5,000.

 The city council of any city containing more than five thousand inhabitants may open new streets, close, widen, or alter streets in the city when, in its judgment, it may be necessary for the improvement of the city. It shall first pay damages, should any be claimed, to any landowner through whose premises the streets may run, according to the Eminent Domain Procedure Act (Chapter 2 of Title 28).

HISTORY: 1962 Code Section 47‑1327; 1952 Code Section 47‑1327; 1942 Code Section 7455; 1932 Code Section 7455; Civ. C. ‘22 Section 4570; Civ. C. ‘12 Section 2926; Civ. C. ‘02 Section 1967; 1901 (23) 648; 1953 (48) 272; 1987 Act No. 173, Section 7.

CROSS REFERENCES

Abandoning or closing streets, roads or highways, see Sections 57‑9‑10 et seq.

Right of University of South Carolina to close streets bordered by University property, see Section 59‑117‑90.

Widening of streets extending through the Medical University of South Carolina, see Section 59‑123‑80.

LIBRARY REFERENCES

Municipal Corporations 655, 657(2), 663(1).

Westlaw Key Number Searches: 268k655; 268k657(2); 268k663(1).

C.J.S. Municipal Corporations Sections 1431 to 1435, 1443, 1451 to 1452.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dedication Section 23, Reversion.

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

NOTES OF DECISIONS

In general 1

Abandoning or vacating streets 4

Changing street grade 5

Closing streets 3

Opening streets 2

Remedies 6

1. In general

Applied in Solen Corp. v Robertson, 142 SC 56, 140 SE 236 (1927). Chapman v Greenville, 127 SC 173, 120 SE 584 (1923).

Transfer of property to railroad. By virtue of its charter and the general law authorizing cities to lay out, open, close up, widen or otherwise alter streets as may be necessary for the improvement or convenience of the city, the city of Rock Hill is vested with authority to enter into and implement an agreement with a railroad, including those provisions which provide for the transfer of property owned by the city to the railroad. The fact that property acquired with public funds will by virtue of the agreement pass to the ownership of a private corporation and that the proposed transaction involves an exchange of property between the city and a railroad does not exceed the authority of the city nor violate any public policy. Sadler v. Lyle (S.C. 1970) 254 S.C. 535, 176 S.E.2d 290. Municipal Corporations 224

This section [Code 1962 Section 47‑1327], and Code 1962 Sections 25‑161 to 25‑170 implement Art 1, Section 17 (now Art 1, Section 13) of SC Const, by providing method of ascertaining amount of just compensation to which landowner entitled by reason of the taking of his property for public purpose by municipal corporation. Sease v. City of Spartanburg (S.C. 1963) 242 S.C. 520, 131 S.E.2d 683.

Do not extend to permitting individuals to encroach on streets. This section [Code 1962 Section 47‑1327] has to do with the use of streets and roadways for the material interest of the general public, but does not authorize a city council to grant permission to private individuals to encroach upon streets or highways which have been heretofore dedicated to the exclusive use of the public. Sloan v. City of Greenville (S.C. 1959) 235 S.C. 277, 111 S.E.2d 573, 76 A.L.R.2d 888. Dedication 60

Stated in Bobo v. City of Spartanburg (S.C. 1956) 230 S.C. 396, 96 S.E.2d 67.

Powers of city council. Under this section [Code 1962 Section 47‑1327] a city council is vested with full and exclusive power to control and direct the use of land for street purposes, and the exercise of that power is purely a legislative function. Grady v. City of Greenville (S.C. 1924) 129 S.C. 89, 123 S.E. 494. Municipal Corporations 661(1)

Ejusdem generis is inapplicable to section. The rule of ejusdem generis cannot be invoked in construing this section [Code 1962 Section 47‑1327] as to cities having authority to lay out, open, close, and widen streets, or otherwise alter those in use, since the specific words “lay out,” “open,” “close,” and “widen” are not all of the same general nature. Stone v. City of Greenville (S.C. 1918) 111 S.C. 78, 96 S.E. 520. Municipal Corporations 269(3)

2. Opening streets

Review of discretion in opening new street. Decision of question of necessity of opening new street lies with municipality and not subject to review by courts in absence of fraud, bad faith, or clear abuse of discretion, and when landowner brings action to enjoin condemnation proceeding burden upon plaintiff to allege and establish fraud, bad faith, or clear abuse of discretion on part of condemnor. Sease v. City of Spartanburg (S.C. 1963) 242 S.C. 520, 131 S.E.2d 683.

3. Closing streets

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.

Under this section [Code 1962 Section 47‑1327] a city has the power to close a road if “in its judgment” such was necessary for the improvement or convenience of the city. City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290.

But only when it is no longer required for public use or convenience. The power to close a street may be exercised only when it is determined by the council, in the exercise of a sound official discretion, that the street is no longer required for the public use or convenience. City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290.

Public necessity is required to close street. If all the persons whose property physically abuts on the closed portion of a street would consent to it being closed, their consent would not justify the city council in closing such street, which affords the only feasible means of access to the plaintiff’s property, without public necessity. Bethel M. E. Church v. City of Greenville (S.C. 1947) 211 S.C. 442, 45 S.E.2d 841. Municipal Corporations 657(4)

A municipal corporation holds and controls its streets in trust for the use and benefit of the general public, without power of converting them to any other use. It follows, necessarily, that the right to vacate a street is to be exercised only when the municipal authorities, in the exercise of a sound official discretion, determine that the street is no longer required for the public use or convenience. There must be a showing that the public interests would be subserved by closing the street. Bethel M. E. Church v. City of Greenville (S.C. 1947) 211 S.C. 442, 45 S.E.2d 841.

Review of discretion in closing streets. In dealing with discretion in closing streets, the general rule is that courts will not interfere with the exercise of such discretionary powers by a municipal body, except in cases of fraud or clear abuse of power. Bethel M. E. Church v. City of Greenville (S.C. 1947) 211 S.C. 442, 45 S.E.2d 841.

4. Abandoning or vacating streets

Abandonment vests possession in abutting owners. In the absence of some statutory disposition, abandonment or vacation of a public street vests absolute possession and title in the abutting property owners and not the original owner, at least unless the original owner is the abutting owner at the time of the vacation, or has specifically reserved the right of reversion on vacation. City of Greenville v. Bozeman (S.C. 1970) 254 S.C. 306, 175 S.E.2d 211. Municipal Corporations 663(2)

5. Changing street grade

As to liability in damages to abutting owner for altering grade of sidewalk, see Bramlett v Laurens, 58 SC 60, 36 SE 444 (1892). Wilkins v Gaffney City, 54 SC 199, 32 SE 299 (1899). Paris Mt. Water Co. v Greenville, 53 SC 82, 30 SE 699 (1898).

Section applies to injury to abutting owner from street grade change and alteration. Under this section [Code 1962 Section 47‑1327] city is liable for damages resulting to abutting property from change of grade and alteration of street, and liability is broader under this section [Code 1962 Section 47‑1327] than that imposed by SC Const, Art 1, Section 17 (now Art 1, Section 13). Willimon v. City of Greenville (S.C. 1963) 243 S.C. 82, 132 S.E.2d 169.

Municipality liable to abutting landowner though work done by Highway Department under Code 1962 Section 33‑173. Even though work of change in grade and alteration of street done by Highway Department as provided in Code 1962 Section 33‑173 municipality liable for damages to property of abutting owner under this section [Code 1962 Section 47‑1327] as though it had performed work itself. Willimon v. City of Greenville (S.C. 1963) 243 S.C. 82, 132 S.E.2d 169.

Writ of mandamus properly issued by lower court directing city to comply with this section [Code 1962 Section 47‑1327] even though work of change in grade and alteration of street was performed by Highway Department as provided in Code 1962 Section 33‑173. Willimon v. City of Greenville (S.C. 1963) 243 S.C. 82, 132 S.E.2d 169.

But not to injury from improper surface drainage. Where a city after raising a street failed to provide a proper system of surface drainage, the remedy of a property owner, damaged thereby, was not under this section [Code 1962 Section 47‑1327]. Wilson v. City of Laurens (S.C. 1926) 134 S.C. 271, 132 S.E. 590.

Under this section [Code 1962 Section 47‑1327] a city is liable for damages resulting to abutting property from change of grade of street, since the words “otherwise alter” do not refer only to alterations of the same general nature as those described by the words “lay out,” “open,” “close,” and “widen.” Stone v. City of Greenville (S.C. 1918) 111 S.C. 78, 96 S.E. 520.

6. Remedies

Code 1962 Section 47‑1327 [Code 1976 Section 15‑27‑150] does not authorize a suit against the city for damages caused by state construction of state highway where city’s only role was to approve construction plans of the state. Roddey v. Lyle (S.C. 1977) 268 S.C. 424, 234 S.E.2d 236.

Injunction to prevent obstruction of street. An injunction lies to prevent obstruction of a public street or alley if the plaintiff has no adequate remedy at law, as when plaintiff has suffered a special injury different in degree and in kind from that suffered by the general public. Bethel M. E. Church v. City of Greenville (S.C. 1947) 211 S.C. 442, 45 S.E.2d 841.

Method for ascertaining damages is exclusive. The method appointed in this section [Code 1962 Section 47‑1327] for ascertaining damages is exclusive. Garraux v. City Council of Greenville (S.C. 1898) 53 S.C. 575, 31 S.E. 597.

**SECTION 5‑27‑160.** Approval of subdivisions in cities of 35,000 or more.

 It shall be unlawful to sell and convey lots or parcels of real estate subdivided into lots and streets, situated within five miles of a city having a population of thirty‑five thousand or more, unless and until a map or plat has been approved by the city engineer of the city constituting the county seat in the county in which such lot or parcel is located and until such map, with the approval of such city engineer, has been duly recorded in the office of the clerk of the court of common pleas or of the register of deeds for such county in which it is located. If the city engineer shall disapprove the plans submitted to him or if his rulings shall be unsatisfactory to those persons submitting such plans an appeal may be had to the city council or other governing body of the city.

HISTORY: 1962 Code Section 47‑1329; 1952 Code Section 47‑1329; 1942 Code Section 7549; 1932 Code Section 7389; 1925 (34) 14; 1940 (41) 1849; 1997 Act No. 34, Section 1.

CROSS REFERENCES

Approval of subdivision plats, see Sections 6‑29‑1130 et seq.

Local and regional comprehensive planning programs, see Section 6‑7‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 40.

Westlaw Key Number Search: 268k40.

**SECTION 5‑27‑170.** Change of street names near cities of 50,000 or more.

 In any county and beyond the borders of any incorporated city or town and within a radius of five miles of any city having a population of fifty thousand or more, the city engineer of such city and the county engineer of such county may change the name of any street or road. Any such change of name when made shall be certified to the office of the clerk of court of common pleas and general sessions or of the register of deeds for such county, there to be recorded. In any county having no county engineer the executive officer of the county department or agency having jurisdiction of the construction and maintenance of county roads and highways shall act in his stead. But the city engineer of a city that had a population of more than sixty thousand and less than seventy thousand according to the 1940 United States census shall not have the right to change the names of streets that lie outside the county in which the city hall of such city is located.

HISTORY: 1962 Code Section 47‑1330; 1952 Code Section 47‑1330; 1942 Code Section 7549; 1932 Code Section 7389; 1925 (34) 14; 1940 (41) 1849; 1944 (43) 1294; 1997 Act No. 34, Section 1.

CROSS REFERENCES

Naming or changing name of streets by planning commissions, see Section 6‑29‑1200.

LIBRARY REFERENCES

Municipal Corporations 651.5.

Westlaw Key Number Search: 268k651.5.

C.J.S. Municipal Corporations Section 1423.

**SECTION 5‑27‑180.** Names of streets and numbers of lots in counties with cities between 85,000 and 100,000.

 In any county containing a city having a population of more than eighty‑five thousand and less than one hundred thousand, according to the latest official United States census, the city engineer of such city and the county engineer of such county may name any street or road beyond the borders of such incorporated city or town and may change and give a number to designate each lot of land facing and fronting on such street or road for a distance of every twenty‑six feet. A copy of the plat, and any revisions thereof, showing the street or road to be named and lots to be numbered shall be filed with the county engineer before he or the city engineer may name any street or road or give a number to any lot thereon. The street or road shown on such plat shall be located and referenced with an existing named street or road or a fixed or natural marker. Any such name or any number designating such a lot facing on a street or road, when made, shall be certified to the office of the clerk of court of such county for recording.

HISTORY: 1962 Code Section 47‑1331; 1952 Code Section 47‑1331; 1944 (43) 1294; 1957 (50) 168; 1961 (52) 97.

CROSS REFERENCES

Naming or changing name of street by planning commissions, see Section 6‑29‑1200.

LIBRARY REFERENCES

Municipal Corporations 651.5.

Westlaw Key Number Search: 268k651.5.

C.J.S. Municipal Corporations Section 1423.

ARTICLE 5

Assessment of Abutting Property for Street and Sidewalk Improvements

**SECTION 5‑27‑310.** Authorization for assessment.

 Any incorporated city or town of this State may provide by ordinance for the payment of the cost of the permanent improvements of its streets and sidewalks by levying upon the owners of property immediately abutting on the streets and sidewalks or parts of either so improved an assessment in proportion to the frontage only of such property on such streets or sidewalks or parts of either so improved of not exceeding in the aggregate one half of the cost of such improvements.

HISTORY: 1962 Code Section 47‑1341; 1952 Code Section 47‑1341; 1942 Code Section 7374; 1932 Code Section 7374; Civ. C. ‘22 Section 4506; 1915 (29) 250; 1919 (31) 140.

CROSS REFERENCES

Paving bonds, see Sections 5‑21‑610 et seq.

LIBRARY REFERENCES

Municipal Corporations 413 to 416.

Westlaw Key Number Searches: 268k413 to 268k416.

C.J.S. Municipal Corporations Sections 1131 to 1133, 1135 to 1145.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

The imposition of assessments for public improvements does not violate the Fourteenth Amendment to the Federal Constitution. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831. Constitutional Law 4059

This [Code 1962 Section 47‑1341] and following sections requiring election as to street improvements, if construed applicable to city of Columbia, would violate SC Const, Art 10, Section 14, adopted February 3, 1911, authorizing certain cities, including Columbia, to order improvements on petition of abutting owners. Ballentine v. City of Columbia (S.C. 1925) 132 S.C. 88, 129 S.E. 82.

2. In general

Cited in Cleveland v Spartanburg, 185 SC 373, 194 SE 128 (1937). DePass v Spartanburg, 234 SC 198, 107 SE2d 350 (1959).

Stated in City of Orangeburg v. Southern Ry. Co., 1943, 134 F.2d 890.

Applied in Carolina & N.W. Ry. Co. v. Town of Clover, 1931, 46 F.2d 395.

ARTICLE does not apply to Columbia. Ballentine v. City of Columbia (S.C. 1925) 132 S.C. 88, 129 S.E. 82.

**SECTION 5‑27‑320.** Prerequisites to assessment.

 No such assessment shall be so laid upon the abutting property owners until such improvements have been ordered pursuant to such ordinance upon the written consent, signed and filed with the city or town clerk, of not less than two thirds in number of the owners of the property abutting upon the street, sidewalk or part of either proposed to be improved and provision made for the payment by the corporate authorities of such city or town of not less than one half of the cost of such improvement. The times and terms of payment and rates of interest on deferred payments of assessments by such property owners shall be such as may be prescribed by ordinance.

HISTORY: 1962 Code Section 47‑1342; 1952 Code Section 47‑1342; 1942 Code Section 7374; 1932 Code Section 7374; Civ. C. ‘22 Section 4506; 1915 (29) 250; 1919 (31) 140.

LIBRARY REFERENCES

Municipal Corporations 280.

Westlaw Key Number Search: 268k280.

C.J.S. Municipal Corporations Section 960.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

Abutting owner may be estopped from contesting validity of street assessment on ground that election as to whether improvement should be made was not held as required by this [Code 1962 Section 47‑1342] and following sections. Ballentine v. City of Columbia (S.C. 1925) 132 S.C. 88, 129 S.E. 82.

Consent of two thirds of owners is indispensable. In action to recover back assessment paid by plaintiff, on ground that written consent of two thirds of owners was not filed with clerk of council as required by this section [Code 1962 Section 47‑1342], the fact that it had been reported to the council that a sufficient number had signed and that the ordinance so declaring had been passed was held to be no defense to such requirement. Ballentine v. City of Columbia (S.C. 1924) 129 S.C. 410, 124 S.E. 643. Municipal Corporations 280(1)

Estoppel to deny validity of assessment. Abutting owner, who received benefit of street improvement with full knowledge of making improvement without objection, was estopped to deny validity of assessment on ground that written consent of two thirds of owners was not filed with clerk of council. Ballentine v. City of Columbia (S.C. 1924) 129 S.C. 410, 124 S.E. 643. Municipal Corporations 488(1)

In abutting owner’s action to recover back assessment paid, defense that city had issued certificates representing assessments and that certificates had passed into hands of bona fide holders had bearing on defense of estoppel by failure to object, also asserted against plaintiff, and should not have been dismissed on demurrer. Ballentine v. City of Columbia (S.C. 1924) 129 S.C. 410, 124 S.E. 643. Municipal Corporations 488(1)

**SECTION 5‑27‑330.** Use of funds.

 The amounts of money raised by such assessments, together with the amounts added thereto by the city or town authorities from the city or town treasury, shall constitute and be kept as a separate fund, to be used only for the purpose for which it was raised and appropriated.

HISTORY: 1962 Code Section 47‑1349; 1952 Code Section 47‑1349; 1942 Code Section 7375; 1932 Code Section 7375; Civ. C. ‘22 Section 4507; 1919 (31) 140.

LIBRARY REFERENCES

Municipal Corporations 887.

Westlaw Key Number Search: 268k887.

C.J.S. Municipal Corporations Section 1627.

**SECTION 5‑27‑340.** Assessment as lien; enforcement.

 Such assessments shall be entered in a book kept by the city or town clerk, to be entitled “assessment liens,” stating the names of the owners, the location of the property and the amount of the assessment and the time or times of payment. When so entered such assessments shall constitute and be a lien upon the property so assessed and payment thereof may be enforced as the payment of city or town taxes is enforced. Such lien shall continue from the date of entry on such book until the expiration of five years from the date when final payment is due and payable, unless sooner paid. Upon default in the payment of any installment or deferred portion of any assessment, at the time and in accordance with the terms and conditions fixed by ordinance, the total amount of any such assessment then unpaid, including deferred installments or payments and interest, shall immediately become due and collectible as city or town taxes are collected and with such penalties and costs as are now provided for the payment of such taxes.

HISTORY: 1962 Code Section 47‑1350; 1952 Code Section 47‑1350; 1942 Code Section 7376; 1932 Code Section 7376; Civ. C. ‘22 Section 4508; 1919 (31) 140.

LIBRARY REFERENCES

Municipal Corporations 519.

Westlaw Key Number Search: 268k519.

C.J.S. Municipal Corporations Sections 1388 to 1389, 1391 to 1392.

NOTES OF DECISIONS

In general 1

Acceleration clause 3

Enforcement of lien 2

Limitation period 4

1. In general

Except earlier Federal lien. Even though State, county and city taxes, and special assessments are assessed against specific property and become liens upon it, liens of the United States for past‑due income taxes maturing before such other taxes and special assessments have priority thereover. U.S. v. City of Greenville, 1941, 118 F.2d 963. Counties 193; Counties 194; Municipal Corporations 456(1); Municipal Corporations 519(1); Municipal Corporations 972(1); Municipal Corporations 975; Taxation 2431; Taxation 2730; Taxation 2736

Cited in Cleveland v. City of Spartanburg (S.C. 1937) 185 S.C. 373, 194 S.E. 128.

Lien is constitutional. The imposition of the paving assessment cannot violate any provision of the State Constitution, for the lien is created by the Constitution itself. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831. Municipal Corporations 519(1)

As is interest for nonpayment of assessment. The imposition of interest at the rate of six per cent upon the nonpayment of the assessment is not an unconstitutional attempt to collect a penalty, for such action is not prohibited by any provision of the Constitution. On the other hand, the very power to impose the assessment may well be held to carry with it the power to impose reasonable penalties for nonpayment as an essential characteristic of the right itself. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

And lien ranks above all private interests. Unlike a tax, the paving assessment creates a paramount lien superior to every private interest in the property. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831. Municipal Corporations 519(6)

2. Enforcement of lien

Lien enforcement is in rem proceeding. Assessments for street improvements do not give rise to a personal liability, and suits to enforce them are actions in rem. City of Orangeburg v. Southern Ry. Co., 1943, 134 F.2d 890. Municipal Corporations 525; Municipal Corporations 586

The language of this section [Code 1962 Section 47‑1350] as to enforcement is permissive and not mandatory. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

In a suit to foreclose a paving assessment lien, it is immaterial whether the defendants or any of them were the owners of the property at the time the assessment was imposed or whether they acquired their titles thereafter. The assessment is against the property, not the person, and follows the property at all times and under all conditions until it is paid. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

And foreclosure can be had in equity. A paving assessment lien can be foreclosed by a suit in equity, for such foreclosure is not restricted to the procedure provided for the enforcement of taxes. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

Interest of residents and nonresidents may be barred. The enforcement of the lien of the paving assessment is against the property alone, and, as in cases of nonresident attachment, foreclosures against nonresidents, and the like, the court is not without power to bar the interests of nonresidents and residents alike, where jurisdiction of the interests of the nonresidents is obtained in the manner provided by the statutes relating to publication of the summons. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831. Municipal Corporations 563

And court may decree sale free of dower. The court has power to decree a sale to enforce a paving assessment free of all dower or other interests on the part of all of the defendants who are before the court. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

No right of redemption at sale. The purchaser at a sale made to enforce a paving assessment is entitled to the property free of any right of redemption on the part of any owner of the property or interest therein. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

In South Carolina, taxes, even those on real estate, are primarily enforceable against the personality of the taxpayer, but that is untrue of a street improvement assessment. There is no personal liability, but it is wholly and entirely a lien on a tract of land itself, and the municipality must look to the land and not to the owner. Proceedings to enforce a street improvement are entirely in rem. City of Orangeburg v. Southern Ry. Co., 1942, 45 F.Supp. 734, affirmed 134 F.2d 890. Municipal Corporations 405; Municipal Corporations 586

3. Acceleration clause

Acceleration clause is quasi penalty. The purpose of the acceleration provision is clearly to give the creditor a “sword of Damocles” with which to impress upon the property owner the importance of making payments as stipulated. It is in the nature of a penalty. It is an additional remedy, and usually an oppressive action, the threat of which is well calculated to insure payment of the assessment. Barker v. Town of Allendale (S.C. 1943) 203 S.C. 149, 26 S.E.2d 393.

Which is optional remedy. The acceleration provision of this section [Code 1962 Section 47‑1350] is not automatic, but is optional with the municipality. Barker v. Town of Allendale (S.C. 1943) 203 S.C. 149, 26 S.E.2d 393.

This section [Code 1962 Section 47‑1350] does not require acceleration. City of Orangeburg v. Southern Ry. Co., 1944, 55 F.Supp. 167.

4. Limitation period

Where a city ordinance allowed assessment either to be paid in full within thirty days or to be paid in installments, the five‑year limitation begins to run from the end of the thirty‑day period unless the property owner affirmatively exercises the right to pay in installments. Southern Ry. Co. v. City of Orangeburg, 1944, 145 F.2d 725, certiorari denied 65 S.Ct. 866, 324 U.S. 860, 89 L.Ed. 1417.

Running of five‑year limitation period. The acceleration provision in this section [Code 1962 Section 47‑1350] is optional with the municipality. Unless and until the municipality exercises its right to declare the whole balance of the assessment to be due and payable because of default in payment of an installment, the installment arrangement continues in effect, and the five‑year limitation period does not begin to run until the last installment matures. Town of Cheraw v. Turnage (S.C. 1937) 184 S.C. 76, 191 S.E. 831.

**SECTION 5‑27‑350.** Entry of satisfaction upon payment.

 The city or town clerk shall be required by ordinance of the city or town to make entry of satisfaction on such “assessment liens” book as soon as full payment is made, and the lien shall be thereby extinguished.

HISTORY: 1962 Code Section 47‑1352; 1952 Code Section 47‑1352; 1942 Code Section 7377; 1932 Code Section 7377; Civ. C. ‘22 Section 4509; 1919 (31) 140.

LIBRARY REFERENCES

Municipal Corporations 519(5).

Westlaw Key Number Search: 268k519(5).

C.J.S. Municipal Corporations Section 1393.

**SECTION 5‑27‑360.** Notice of transfer of property before extinguishment of assessment lien.

 Such cities or towns may, by ordinance, require the grantor and grantee of any property or part thereof sold or transferred after such assessment has been laid thereon and before such assessment lien has been extinguished, as provided herein, to file in writing with the city or town clerk, within ten days after every such sale or transfer, the name of such grantor and grantee, an accurate description of the property sold or transferred and the date of such sale or transfer.

HISTORY: 1962 Code Section 47‑1356; 1952 Code Section 47‑1356; 1942 Code Section 7379; 1932 Code Section 7379; Civ. C. ‘22 Section 4511; 1919 (31) 140.

LIBRARY REFERENCES

Municipal Corporations 519.

Westlaw Key Number Search: 268k519.

C.J.S. Municipal Corporations Sections 1388 to 1389, 1391 to 1392.

**SECTION 5‑27‑370.** Provisions not effective locally until approved by local elections.

 The provisions of Sections 5‑27‑310, 5‑27‑320, 5‑27‑330, 5‑27‑340, 5‑27‑350 and 5‑27‑360 shall not apply or become operative in any city or town until upon being submitted to the qualified electors thereof by the city or town council for approval, a majority of the qualified electors voting on the question of such approval vote in favor thereof at any general municipal election or at any special municipal election, whether called and held for that purpose or not, when the question of such approval of said sections is submitted and voted on separately and the ballots thereon deposited in a separate box properly labeled and provided for that purpose.

HISTORY: 1962 Code Section 47‑1357; 1952 Code Section 47‑1357; 1942 Code Section 7381; 1932 Code Sections 7380, 7381; Civ. C. ‘22 Section 4512; 1919 (31) 140; 1922 (32) 974; 1925 (34) 281; 1926 (34) 1028; 1929 (36) 624; 1930 (36) 1324; 1932 (37) 1149; 1936 (39) 1288; 1937 (40) 304, 457; 1938 (40) 1802.

LIBRARY REFERENCES

Municipal Corporations 279.

Westlaw Key Number Search: 268k279.

C.J.S. Municipal Corporations Section 962.

ARTICLE 7

Buildings or Parking Facilities Projecting Over Sidewalks

**SECTION 5‑27‑510.** Municipalities empowered to construct or authorize construction of buildings projecting over sidewalks.

 A municipality may construct or authorize the construction of any building which encroaches upon or projects over a public sidewalk. Any encroachment on a street which is included in the state highway system shall be subject to the approval of the South Carolina Department of Transportation.

HISTORY: 1962 Code Section 47‑1334; 1968 (55) 2660; 1993 Act No. 181, Section 63.

CROSS REFERENCES

Off‑street parking facilities, see Sections 5‑29‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 691.1.

Westlaw Key Number Search: 268k691.1.

C.J.S. Municipal Corporations Section 1507.

**SECTION 5‑27‑520.** Municipalities empowered to construct or authorize parking facilities which project over sidewalks.

 A municipality may construct or authorize the construction of motor vehicle parking facilities which encroach upon or project over a public sidewalk in the shopping districts of such municipality. Any such encroachment or projection shall be, in the opinion of the municipality’s governing body, of a sufficient height above the sidewalk so as not to impede or interfere with normal pedestrian or vehicular movement. No such parking facility shall be allowed to encroach upon or project over any street within the State highway system or which has been constructed or improved with Federal aid funds, but this provision shall not apply to any such parking facility constructed or in the process of construction on May 23, 1961. The encroachment or projection of any such parking facility shall be removable and shall be removed, without compensation, upon reasonable notice given by the governing body of the municipality that the area subject to encroachment or projection is needed for street‑widening purposes or that the encroachment or projection interferes with normal pedestrian or vehicular movement.

HISTORY: 1962 Code Section 47‑1335; 1961 (52) 553.

LIBRARY REFERENCES

Municipal Corporations 691.1.

Westlaw Key Number Search: 268k691.1.

C.J.S. Municipal Corporations Section 1507.

ARTICLE 9

Permits for Solicitation of Funds

**SECTION 5‑27‑910.** Issuance to certain organizations of permits to solicit funds from motorists.

 Any rescue squad, volunteer fire department, or charitable or eleemosynary organization in this State may solicit funds from motorists on highways and streets located within a municipality with a permit issued by the governing body of the municipality or within the unincorporated areas of a county with a permit issued by the governing body of the county. The governing body may grant or deny a permit. Permits may be issued for more than one day but no organization may be issued more than two permits in any one calendar year. Permits may impose limits upon solicitation as the governing body of the municipality or county determines are necessary to protect the health and safety of motorists, pedestrians, and those soliciting for an organization and to ensure that solicitation does not unreasonably impede the flow of traffic. The governing body issuing the permit shall have responsibility for supervising the solicitation and enforcing the terms of the permit; provided, that the municipality or county is immune from liability as provided in the Tort Claims Act for any loss or injury occurring as a result of these solicitations.

HISTORY: 1986 Act No. 392, Section 1; 1988 Act No. 373, Section 1.

CROSS REFERENCES

Application of this section to the prohibition against standing on a highway for the purpose of soliciting contributions, see Section 56‑5‑3180.

Non‑waiver of governmental liability with respect to losses or injuries suffered while soliciting funds pursuant to this section, see Section 15‑78‑60.

LIBRARY REFERENCES

Charities 41.5.

Westlaw Key Number Search: 75k41.5.

C.J.S. Charities Sections 47, 61.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 194, Duties, Generally.