



HENRY McMASTER
ATTORNEY GENERAL

May 26, 2006

Mr. Eddie Newton
Chairperson, Board of Directors
Buffalo Fire Department
Post Office Box 186
Buffalo, South Carolina 29321

Dear Mr. Newton:

We received your letter concerning the annexation of property contained in the Buffalo Fire District by the City of Union (the "City"). In your letter, you informed us that you understand that if the property owners agree to the annexation it is legal. However, you feel the City is forcing the property owners into annexation by "telling the property owners that because they are going to provide them with water and sewer that they have to be annexed into the city, and they have to sign an agreement." Furthermore, you state:

We are a Special Purpose Tax District that is solely funded from tax dollars collected from the property owners within the bounds of our established tax district. As with all publically funded organizations we are feeling the budget crunches, as money decreases, operational costs increase. Our budgets are to bare bones now; any property that is lost has a major impact on the level of service that we may be able to provide.

Thus, you request an opinion as to whether "what the City is doing is legal, if we can do anything to stop them, and if so where do we start?"

Law/Analysis

Chapter 3 of title 5 of the South Carolina Code governs a municipality's power to extend its corporate limits. This chapter provides numerous ways in which annexation may be accomplished. The primary way property may be annexed is contained in section 5-3-300 of the South Carolina Code (2004). This section requires a petition signed by twenty-five percent or more of the qualified electors, who are residents of the area slated for annexation, to be filed with the city council. S.C. Code Ann. § 5-3-300(A). After city council certifies the petition, an election is held within the area proposed for annexation. *Id.* § 5-3-300(C) - (D). If a majority of the voting electors vote in favor

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of annexation, the city council may pass an ordinance annexing the property. Id. § 5-3-300(F). However, a election within the city may be required if five percent or more of the qualified electors within the city present a signed petition to city council after city council publishes notice of the annexation in a local newspaper. Id. § 5-3-300(E)-(H).

As we mentioned, there are numerous alternate methods by which property may be annexed. Most of the alternate methods depend upon the ownership of the property to be annexed. S.C. Code Ann. §§ 5-3-100-140 (2004). We also note, property may be annexed without holding an election in the proposed annex area if a petition is signed by at least seventy-five percent of the landowners within the annexation area and is submitted to the city council. S.C. Code Ann. § 5-3-150 (2004). "Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete." Id. However, this section sets forth other requirements which must be met, including a public hearing, if not all of the landowners in the proposed annex area sign the petition. Id.

Section 5-3-310 of the South Carolina Code (2004) provides special requirement for the annexation of property within a special purpose district. This section states:

When all or part of the area of a special purpose district as defined in Section 6-11-1610 or a special taxing district created pursuant to Section 4-9-30 or Section 4-19-10, et seq. or an assessment district created pursuant to Chapter 15 of Title 6, or any other special purpose district or special taxing or assessment district is annexed into a municipality under the provisions of Section 5-3-150 or 5-3-300, the following provisions apply:

- (1) At the time of annexation or at any time thereafter the municipality may elect at its sole option to provide the service formerly provided by the district within the annexed area. The transfer of service rights must be made pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.
- (2) Until the municipality upon reasonable written notice elects to displace the district's service, the district must be allowed to continue providing service within the district's annexed area.
- (3) Annexation does not divest the district of any property; however, subject to the provisions of item (4) below, real or tangible personal property located within the area annexed must be transferred to the municipality pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.

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(4) In any case in which the municipality annexes less than the total service area of the district, the district may, at its sole discretion, retain ownership and control of any asset, within or without the annexed area, used by or intended to be used by residents within the district's unannexed area or used or intended to be used to provide service to residents in the unannexed area of the district.

(5) Upon annexation of less than the total area of the district, the district's boundaries must be modified, if at all, by the plan formulated pursuant to the provisions of Sections 5-3-300 through 5-3-315. The plan must specify the new boundaries of the district.

Sections 5-3-311 and 5-3-312 of the South Carolina Code (2004) provides the requirements for the plan referenced in section 5-3-310, which consist of an agreement between the district and the annexing municipality.

As you mentioned in your letter, the Buffalo Fire District (the "District") is a special purpose tax district. The Legislature created the District via Act 1506 in 1974, which was later amended in 1977 to define the District's area and to ratify a previous referendum authorizing the District to levy a four-mill tax for the purpose of fire protection within the District. 1974 S.C. Acts 3527; 1977 S.C. Acts 1014. We are unaware as to which method the property contained in the District is to be annexed. But, we note under the method provided in 5-3-300, the requisite number of qualified electors within the annexation area must first submit a petition and ultimately, a majority of those electors must vote in favor of annexation for it to occur. Moreover, under the alternate method of annexation under section 5-3-150, at a minimum seventy-five percent of the landowners in the annexation area must sign a petition requesting annexation. Thus, as you mentioned in your letter, the property owners/electors must agree to annexation. In addition, because the District is a special purpose district, the requirements as set forth in sections 5-3-310 to 5-3-315 must also be satisfied.

In our review of the statutes pertaining to annexation, we did not discover any statute requiring residents of a proposed annexation area to agree to annexation because of a plan by the city to provide the area with certain services. Additionally, we did not find a provision requiring the landowners within a district sign a petition for annexation based upon the receipt of water service from a municipality. To the contrary, chapter 31 of title 5 of the South Carolina Code contains provisions specifically permitting the extension of a municipalities water and sewer systems beyond its corporate limits. See S.C. Code Ann. §§ 5-31-1710-1930. However, we presume the City may choose not to provide such services to residents outside of its boundaries unless those areas are annexed to the City.

Next, we address what the District can do to oppose the annexation. Section 5-3-315 of the South Carolina Code (2004) allows a special purpose district affected by a proposed annexation to conduct a public hearing prior to a required election. This section provides:

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Any district affected by the proposed annexation may conduct a public hearing within sixty days prior to the required election. The district must give at least fourteen days' notice of the time and place of this public hearing in a newspaper of general circulation within the area proposed to be annexed; however, failure to conduct a public hearing or failure to publish proper notice of the hearing may not delay any election or other proceedings herein.

S.C. Code Ann. § 5-3-315. We suggest holding a public hearing pursuant to this provision may provide you with a platform in which to voice the District's concerns, as mentioned in your letter, about the proposed annexation.

The District's ability to file a formal protest to the annexation may prove difficult, if not impossible. Generally, the Supreme Court stated: "The wisdom of an annexation is a legislative, not judicial, determination." Id. at 606, 564 S.E.2d at 649.

A municipal corporation's annexation of land is a legislative function with which the courts rarely interfere. A proceeding resulting in annexation is presumptively valid. The burden is upon the party attacking the annexation to show that there has not been a compliance with the law.

Ballenger v. City of Inman, 336 S.C. 126, 131, 518 S.E.2d 824, 827 (Ct. App. 1999). In addition, section 5-3-270 of the South Carolina Code (2004) establishes a short statute of limitations for challengers to contest annexation. This statute states:

When the limits of a municipality are ordered extended, no contest thereabout shall be allowed unless the person interested therein files, within sixty days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the extension, nor unless, within ninety days from the time the result has been published or declared an action is begun and the original summons and complaint filed with the clerk of court of the county in which the municipality is located.

S.C. Code Ann. § 5-3-270.

Moreover, challenges to annexation may prove especially difficult for special propose districts. Our Supreme Court in Tovey v. City of Charleston, 237 S.C. 475, 482, 117 S.E.2d 872, 875 (1961), determined that annexation of a portion of public service district by a municipality is not prohibited by any statute or constitutional provision. Moreover, courts have found, in some

instances, special purpose districts lack standing to protest the annexation. In St. Andrews Public Service District v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987), our Supreme Court addressed whether a public service district had standing to contest a municipality's annexation of a portion of the property contained in the district. In that case, the property was annexed pursuant to section 5-3-150 of the South Carolina Code. Id. at 93, 362 S.E.2d at 878. The Court referenced a portion of this statute that grants standing to "[a]ny municipality or any person resident therein and any person residing in the area to be annexed or owning real property therein" Id. (quoting S.C. Code Ann. § 5-3-150¹). Thus, the Court determined because a special purpose district is not a municipality and in this case because the special purpose district did not own real property within the annexation area, it did not have standing to protest the annexation.

More recently, the Supreme Court again addressed the issue of a public service district's ability to protest an annexation in St. Andrews Public Service District v. City Council of City of Charleston, 349 S.C. 602, 564 S.E.2d 647 (2002). Once more, the property was annexed pursuant to section 5-3-150 using the seventy-five percent method for a portion of the property and the one hundred percent method for another portion. Id. at 604, 564 S.E.2d at 648. The Court determined:

A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.

Id. The Court found the special purpose district "is neither a municipality nor a property owner for purposes of [the provision of the 75% method]." Id. at 605, 564 S.E.2d at 648. In addition, it found the special purpose district did not allege an infringement of its proprietary interest or statutory rights. Id. Furthermore, overruling a prior decision, the Court held: "the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit 'outsider' annexation challenges to those brought by the State 'acting in the public interest.'" Id.

Based on the Supreme Court's decisions in the two St. Andrews Public Service District cases, if annexation of the property contained in the District is pursuant to the seventy-five percent method,

¹ The Legislature amended this portion of the statute since the publication of the Supreme Court's opinion in 1987. This section now provides, in relevant part: "the municipality or any resident of it and any person residing in the area to be annexed or owning real property of it may institute and maintain a suit in the court of common pleas, and in that suit the person may challenge and have adjudicated any issue raised in connection with the proposed or completed annexation" S.C. Code Ann. § 5-3-150(1). We believe the amendments would not affect the Supreme Court's analysis.

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the District is without standing to protest. Additionally, if the annexation is pursuant to the one hundred percent method, it must "assert an infringement of its own proprietary interests or statutory rights." St. Andrews Pub. Serv. Dist., 349 S.C. at 604, 564 S.E.2d at 648.

In conclusion, assuming annexation is performed in accordance with chapter 2 of title 5 of the South Carolina Code, we, just as a court, would presume such an annexation is valid. Additionally, we suggest the District keep the above impediments to contesting annexation in mind when deciding if, and how, to address the issue of annexation of a portion of the District.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



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