



HENRY McMASTER
ATTORNEY GENERAL

September 17, 2009

The Honorable Lee Bright
Member, South Carolina Senate
Post Office Box 1079
Roebuck, South Carolina 29376

Dear Senator Bright:

We understand you have a constituent who is expressing concerns regarding the annexation of his subdivision by the City of Spartanburg. After reviewing several emails from this constituent, we understand the City of Spartanburg (the "City") plans to annex this subdivision using section 5-3-150 of the South Carolina Code and your constituent is concerned with the requirements under this provision.

Law/Analysis

Section 5-3-150 of the South Carolina Code (2004) provides as follows:

(1) Any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by seventy-five percent or more of the freeholders, as defined in Section 5-3-240, owning at least seventy-five percent of the assessed valuation of the real property in the area requesting annexation. 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. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law; however, this property may not be annexed unless the following has been complied with: (1) the petition must be dated

before the first signature is affixed to it and all necessary signatures must be obtained within six months from the date of the petition; (2) the petition and all signatures to it are open for public inspection at any time on demand of any resident of the municipality or area affected by the proposed annexation or by anyone owning property in the area to be annexed; (3) the petition must state the act or code section pursuant to which the proposed annexation is to be accomplished; (4) the petition must contain a description of the area to be annexed and there must be attached to the petition a plat of the area to be annexed; (5) 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; (6) not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal bulletin board, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time. This public hearing must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for the provision or assumption of these services.

(2) The conditions relating to petitions set forth in this section apply only to the alternate method of annexation as defined in subsection (1) of this section.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. 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. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

(4) For purposes of this section any real property owned by a governmental entity and leased to any other entity pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is considered to have an assessed valuation equal to the original cost of the real property as determined under Section 4-29-67(D). For purposes of this section, the lessee of real property pursuant to a fee in lieu of taxes transaction under Section 4-29-67 or 4-29-69 is the freeholder with respect to the property.

(5) For purposes of this section, any real property included within a multicounty park under Section 4-1-170 is considered to have the same assessed valuation that it would have if the multicounty park did not exist. Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under Section 4-1-170 and title to which is held by the State of South Carolina, only may be annexed with prior written consent of the State of South Carolina, and when title to real property in the park is held by a political subdivision of the State, the property may be annexed only with prior written consent of the governing body of the political subdivision holding title.

According to this provision, a municipality may annex contiguous property if at least 75% of the freeholders owning at least 75% of the assessed value of the property to be annexed sign a petition. Our Supreme Court has interpreted the word “contiguous” as used in this provision to mean “touching” and further stated that so long as the area to be annexed shares a common boundary with the annexing municipality, it is sufficiently contiguous. Bryant v. City of Charleston, 295 S.C. 408, 411, 368 S.E.2d 899, 900 (1988).

We cannot opine as to whether or not the area referred to in your constituent’s emails qualifies for annexation pursuant to section 5-3-150 as this would require us to make factual determinations, which are beyond the scope of an opinion of this Office. Op. S.C. Atty. Gen., August 4, 2009 (“[T]his Office does not have the authority to investigate and determine factual

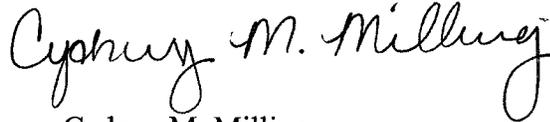
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issues.”). However, we understand that the area to be annexed not only includes your constituent’s subdivision, but also other areas. Thus, in determining whether the requirements under section 5-3-150 are satisfied, one should look to whether at least 75% of the freeholders holding at least 75% of the assessed value of property in the entire area to be annexed signed the petition.

We hope this information proves useful to you and your constituent.

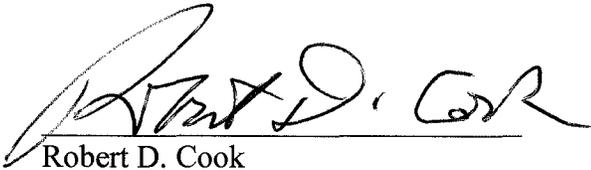
Very truly yours,

Henry McMaster
Attorney General



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