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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 24, 2000

The Honorable William B. Edwards
Mayor Pro-Tem, Town of McBee
Post Office Box 248
McBee, South Carolina 29101

Re: Informal Opinion

Dear Mr. Edwards:

By your letter of May 5, 2000, you have asked for this Office's opinion regarding the validity of an attempted annexation by the Town of McBee in March of 1972. At the outset, I must advise that the ultimate question here, *i.e.*, whether the Horton/Norwood tract is within the Town's corporate limits, involves numerous factual determinations that are beyond the scope of an Attorney General's Opinion to resolve. Op. Atty. Gen., (Dec. 12, 1983). Thus, while only a court of competent jurisdiction can settle this question with finality, I offer the following legal research, in an effort to assist you to the extent possible.

In March of 1972, "there [were] two main forms of annexation, by election or petition. *See*, South Carolina Code of Laws, 1962, Section 47-11; South Carolina Code of Laws, 1962, as amended, Sections 47-19.5, 47-19.11." Op. Atty. Gen., (Dec. 4, 1974). Based on the Town's limited records regarding this matter, it appears that the annexation was attempted pursuant to the petition method found in §47-19.5. Under this procedure, a city or town could annex property without an election upon the agreement of the governing body to accept a petition from seventy-five percent of the free-holders owning at least seventy-five percent of the assessed real property in the area to be acquired. To complete the annexation, "[u]pon receipt of the petition, the Town Council need only enact an ordinance accepting the petition declaring the area annexed to the city or town." Op. Atty. Gen., No. 77-188 (June 17, 1977).

According to the information and documents you provided, no petition or notice for annexation was ever done, though Mr. Ben Norwood appears to have requested annexation

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in a letter to Mayor J.W. Martin dated March 4, 1972. Moreover, you state that there is no record of a town ordinance being enacted to bring this property into the town, though on March 6, 1972 a motion was presented and approved by the McBee Town Council to annex the Horton/Norwood tract. Finally, you state that council never subsequently addressed the annexation, and no filings were ever made with the Secretary of State or with the State Highway Department. Thus, while I understand the basis for your uncertainty, numerous factual questions must first be answered before the status of the Horton/Norwood tract can be ascertained. Examples of such questions would include, but not necessarily limited to the following issues: whether Mr. Norwood satisfied the seventy-five percent requirements of §47-19.5; whether council viewed Mr. Norwood's letter of March 4, 1972 as a qualifying petition under §47-19.5; and whether council ever enacted an ordinance declaring the area annexed to the town as required by §47-19.5. Finally, additional considerations would include McBee's past practices in regard to providing public services to the area in question or allowing area residents to either vote or be candidates in town elections.

In conclusion, the ultimate question regarding the Horton/Norwood tract raises factual issues that cannot be resolved by an Attorney General's Opinion. Therefore, in order to reach a final resolution that is acceptable all parties, it may be wise to seek a declaratory judgment in a court that can make all of the necessary findings of fact.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an