

Reg. 4998



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 30, 1995

John P. Mann, Sr., Esquire
Mauldin City Attorney
Post Office Box 10296
Greenville, South Carolina 29603

RE: Informal Opinion

Dear Mr. Mann:

By your letter of June 22, 1995, on behalf of the City of Mauldin, you have sought an informal opinion on the following issue:

The statutes involved are sections 5-3-150(1) and 5-3-240 of the S.C. Code (75% method of annexation by petition). If a person owns four or five separate tracts of land in the petitioning area, can that person sign the petition four or five times and be counted as four or five freeholders in order to reach the 75% requirement? In other words, does a freeholder qualify as one regardless of the number of parcels owned or can he or she be counted more than once based on ownership of numerous parcels?

The definition of "freeholder" is found in §5-3-240 of the Code, as follows:

For purposes of §§5-3-20, 5-3-50, and 5-3-160 to 5-3-240, a "freeholder" is defined as any person eighteen years of age, or older, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

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The method by which annexation is sought is found in §5-3-150(1) of the Code, which provides in pertinent part:

(1) Any area or property which is contiguous to a city or town may be annexed to the city or town 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. ...

These two statutes are silent as to how to count freeholders who own more than one tract or parcel of property in the area seeking annexation to the municipality. My research has shown that there is very little authority among the courts or Attorneys General of the various states to which we can turn for assistance in interpreting statutes such as these. Thus, this is a question of novel impression and the response is therefore not free from doubt.

I am of the opinion that the legislature, in adopting these statutes, intended that freeholders sign such a petition only one time regardless of the number of parcels or tracts he or she may own. Section 5-3-150(1) takes two calculations into account: seventy-five percent of the freeholders and seventy-five percent of the assessed valuation of the property seeking to be annexed to the municipality. Clearly the freeholder's multiple ownership will be taken into account in the second calculation.

In Harley v. City of Spartanburg, 230 S.C. 478, 96 S.E.2d 828 (1957), the court examined the concept of who would be a freeholder under the specific circumstances described in that decision. While the exact issue raised by your letter is not discussed therein, the decision is nevertheless informative in that the court seems to have counted the number of people who were to be considered freeholders. There are references in the decision to "the names of 736 persons..." (230 S.C. at 485) and striking "13 names" from the list of names in the appellants' brief (230 S.C. at 490). The court seems to have been concerned about individual persons in determining who was to be considered a freeholder.

The concept of voting or signing a petition based upon the number of parcels which an individual might own (either singly or jointly) could be likened to weighted or cumulative voting, the latter often found in corporate elections. In such circumstances, the General Assembly has specifically provided for voting by taking into account the number of shares of stock which an individual owns in the particular corporation. See S.C. Code Ann. §33-7-280 as an example of cumulative voting. I am of the opinion that if the General Assembly had intended that an individual having an ownership interest in more than one parcel of property seeking annexation to the municipality, the General

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Assembly could have specifically provided for the individual to be counted more than once in signing the petition required by §5-3-150(1), as it so provided in other situations. Because such is lacking with respect to §5-3-150(1), I am of the opinion that a freeholder should sign the petition requesting annexation to a municipality only one time regardless of the number of parcels or tracts of which he may have the requisite ownership interest.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it responds to your inquiry as satisfactorily as is possible under the circumstances.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Senior Assistant Attorney General