

The State of South Carolina

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Office of the Attorney General

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August 28, 1989

The Honorable John T. Campbell  
Secretary of the State of South Carolina  
P. O. Box 11350  
Columbia, South Carolina 29211

Dear Mr. Secretary:

As you are aware, your letter of May 1, 1989 to Attorney General Medlock has been referred to me for response. By way of that letter, and its enclosure, you have indicated that 1976 S. C. Code, Section 33-31-130 contains provisions governing the manner in which the charter of a non-profit corporation may be amended. However, Sections 33-7-104 and 33-8-210 of the Business Corporation Act of 1988, contain provisions which permit the amendment of the charter of a business corporation in a manner that is, arguably, less stringent than the amendment requirements set forth in Section 33-31-130.

In addition, Section 33-20-103 of the Business Corporation Act of 1988, states that the Act:

"...applies to every domestic nonprofit corporation and to every foreign nonprofit corporation which is authorized or transacts business in this State except as otherwise provided in this act or by the law regulating the organization, qualification, or governance of the nonprofit corporation." (emphasis supplied).

Thus, in view of the provisions of Section 33-20-130, your inquiry appears to be:

What statute properly governs the process of amending the charter of a nonprofit corporation?

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The answer to your inquiry seems to rest upon whether the provisions of Section 33-20-103 are susceptible of construction. It is the opinion of this Office that they are not.

It is an elemental rule of statutory interpretation that where the terms of a statute are clear and not ambiguous, there is no room for construction; and such terms must be applied in accordance with their literal meaning, McCollum v. Sipes, 213 S.C. 254, 49 S.E.2d 12 (1948); Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214, (1977). We can perceive no ambiguity in the provisions of Section 33-20-103.

The statute plainly states that the provisions of the Business Corporation Act of 1988 apply to nonprofit corporations except as otherwise provided "by the law regulating the organization, qualification or governance of the nonprofit corporation." It seems clear and unmistakable that the legislative intent was that the provisions of the Business Corporation Act of 1988 would apply to nonprofit corporations only to the extent that such provisions were not inconsistent with provisions in the existing nonprofit statutes. (See: South Carolina Reporters' Comments, annotated to Section 33-20-103).<sup>(1)</sup>

Clearly, the amendment provisions of Sections 33-7-104 and 33-8-210 are inconsistent with those of 33-31-130. Accordingly, it is the opinion of this Office that the provisions of Sections 33-7-104 and 33-8-210 are inapplicable and that the method of amending the charter of a nonprofit corporation is properly governed by the provisions of Section 33-31-130.

I trust that you will find the foregoing information to be responsive to your inquiry. Please contact me if I can be of further assistance.

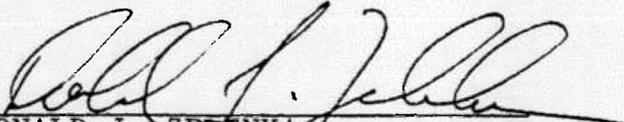
Very truly yours,

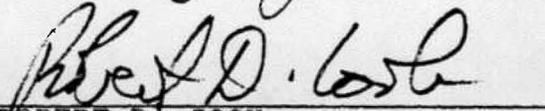
*Wilbur E. Johnson*  
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Assistant Attorney General

WEJ/fc

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REVIEWED AND APPROVED BY:

  
DONALD J. ZELEENKA  
Chief Deputy Attorney General

  
ROBERT D. COOK  
Executive Assistant for  
Opinions

1. As is reflected by the Reporters' Comments, the language employed by the General Assembly in Section 33-20-103 leaves little room for discretion or interpretation. If the conclusion reached by the Reporters, and in this opinion, is not the result intended by the General Assembly, legislative clarification would seem to be in order.