

1984 S.C. Op. Atty. Gen. 278 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-123, 1984 WL 159929

Office of the Attorney General

State of South Carolina

Opinion No. 84-123

October 18, 1984

*1 The Honorable Parker Evatt
Member
House of Representatives
District No. 71—Richland County
Post Office Box 363
Columbia, South Carolina 29202

Dear Representative Evatt:

Your recent letter has been referred to me for reply. You have inquired if there is any prohibition to a municipality including within its proposed boundaries for incorporation certain state property, specifically the South Carolina Department of Youth Services and the South Carolina Department of Corrections.

I have found no specific law regarding this question in regard to incorporation. However, the law clearly indicates that there is no prohibition to a city annexing state or federal lands. Therefore, there would likewise appear to be no prohibition to the inclusion of state lands in the territory of a proposed area requesting to be incorporated.

The South Carolina statutes specifically provide a method for annexing land that is owned by the federal or state government. South Carolina Code of Laws, 1976, Section 5-3-140. In [Tovey v. City of Charleston](#), 237 S.C. 475, 117 S.E. 2d 872 (1961), the South Carolina Supreme Court found that a city could annex property owned by the State. See also, 56 Am.Jur.2d, [Municipal Corporations](#); § 66; 62 C.J.S., [Municipal Corporations](#); § 46, p. 133; 2 [McQuillin, Municipal Corporations](#), § 7.186; 1967-68 Op. Atty. Gen., No. 2474, p. 143; cf. 56 Am.Jur.2d, [Municipal Corporations](#); § 586; § 6-7-830.

Other states have also found there to be no prohibition to annexing state or federal land. See in general, [City of Anchorage v. Akers](#), 100 F. Supp. 2; [Day v. City of Salem](#), 131 P. 1028, 1030; [Aqua Caliente Band of Missions Indians' Tribal Council v. City of Palm Springs](#), 347 F. Supp. 42.

Therefore, there would appear to be no prohibition to annexing state property. This being so there appears to be no rationale reason or applicable law why this procedure would not also be valid in regard to an incorporation procedure.

Of course, as with annexation of state or federal lands, an incorporation which included state lands would not confer control to that incorporated city over the state land that would in any way interfere with the superior authority of the state over this property. 1967-68 Op. Atty. Gen., No. 2474, p. 143; 2 [McQuillin, Municipal Corporations](#), § 7.186; nor could the municipality tax this property. 1969-70 Attorney General Opinions 287, No. 3004. Further, this opinion only addresses the legal question that is posed as to whether or not there is a legal prohibition against including state property in an incorporated area. This opinion does not address the question of whether the area proposed to be incorporated actually meets the necessary statutory provisions regarding incorporation. South Carolina Code of Laws, 1976, Section 5-1-10, *et seq.*

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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