

1980 WL 120667 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 12, 1980

**\*1 Re: Michelin Employee Activity Association, Inc.—U.S. 4**

Honorable John T. Campbell  
Secretary of State  
P.O. Box 11350  
Columbia, SC 29211

Dear Mr. Campbell:

You have recently asked for an opinion from this Office concerning the propriety of issuing a charter for the incorporation of the referenced non-profit corporation. Pursuant to the Declaration and Petition for Incorporation, the purposes of the proposed corporation are to promote, organize and operate recreational and social activities for members of the corporation, their spouses and dependent children. The officers of the corporation are all residents of the State of Alabama and it appears that all activities of the corporation will take place in Alabama. Furthermore, the Declaration and Petition for Incorporation is signed by the Clerk of Court, Sheriff, Probate Judge and County Treasurer of Dale County, Alabama, and the Declaration and Petition is further subscribed by 25 freehold electors from Dale County, Alabama. Finally, it appears that notice of the proposed incorporation was given in a newspaper published in Dale County, Alabama. Your question asks whether issuance of a charter for incorporation to this corporation under these circumstances would be appropriate.

As you know, incorporation of non-profit corporations is generally governed by Chapter 31 of Title 3 of the 1976 South Carolina Code of Laws. South Carolina Code § 33-31-40 provides as follows:

Such declaration shall be approved by the Clerk of Court, Sheriff, Probate Judge, County Treasurer and County Auditor in the county in which the association proposes to have its principal place of business and, if located within an incorporated city or town, must be endorsed by at least 50 freehold electors or, if without an incorporated city or town, by at least 25 freehold electors. But the provisions of this section requiring declarations to be approved by the Clerk of Court, Sheriff, Probate Judge, County Treasurer and County Auditor and endorsed by freehold electors shall not apply to the applications for charters for religious or eleemosynary institutions.

The Declaration and Petition for Incorporation which has been submitted for your review has been signed by the Clerk of Court, Sheriff, Probate Judge and County Treasurer of Dale County, Alabama. However, it does not appear that the County Auditor of Dale County, Alabama, signed the Declaration and Petition. Inasmuch as the requirements of § 33-31-40 are mandatory, and the proposed corporation does not fall within the religious or eleemosynary exemption (since the purposes are for social and recreational activities), no charter to incorporate the proposed corporation should be issued.

Moreover, it would not appear that, as a general matter, the Legislature intended that your office should issue charters in circumstances such as those outlined above. It appears that the requirements contained in § 33-31-20, requiring public notice of an intention to incorporate and the requirements of § 33-31-40 requiring approval by public officials and freehold electors exist to protect citizens in a community where the proposed corporation will operate. The requirements permit citizens to be heard in opposition to a proposed incorporation, and since the laws of South Carolina are enacted to protect the citizens of this State, it seems reasonable that the intent of these statutes would only be concerned with protecting citizens of this state. Neither your office nor the State of South Carolina has any interest in extending the protections of its laws into Alabama and it must be assumed that the State of Alabama has a vital interest in protecting its own citizens. Although the laws of this State are

designed to protect the residents of this State, no public officials nor freehold electors living in this State signed the Declaration and Petition for Incorporation. By the same token, the only persons who did sign the Declaration and Petition were citizens and residents of Alabama, for whose benefit and protection the laws of this State were not primarily enacted.

\*2 Furthermore, corporations are creatures of statute and possess only such power as the laws creating them allow. Such laws can give a corporation force and effect only in the State of creation and may not extend the corporation's authority beyond that State's borders. Since the proposed corporation's headquarters, members and activities are all located in Alabama it would seem that issuance of the requested charter would be a unilateral attempt to extend the authority of a South Carolina corporation beyond the borders of this State.

Finally, Section 33-31-60 gives further indication that the General Assembly intended that the provisions of this chapter would not apply to the proposed corporation under consideration. That statute requires investigations by the Secretary of State before issuing a charter and specifically authorizes the Secretary of State to obtain information and assistance 'from any State agency including but not limited to the Department of Social Services and the Tax Commission and shall have access to any relevant records of such State agencies.' There appears to be little reason why the South Carolina Department of Social Services, the should have in their possession or any other State agencies should have in their possession any wealth of information concerning individuals or organizations in Alabama or any other State other than South Carolina. Also, it would not appear that the General Assembly would have intended the South Carolina Secretary of State to have to make investigations of individuals or organizations in distant parts of the country prior to issuing charters of incorporation.

For all of these reasons, it is the opinion of this Office that the Secretary of State should not issue a charter for the incorporation of the referenced non-profit corporation.

Very truly yours,

L. Kennedy Boggs  
Assistant Attorney General

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