



ALAN WILSON
ATTORNEY GENERAL

March 1, 2016

Mr. Bradley T. Farrar, Esquire
Chief Deputy Richland County Attorney
P.O. Box 192
Columbia, SC 29202

Dear Mr. Farrar:

Attorney General Alan Wilson has referred your letter dated November 25, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

S.C. Const. Art. VII, Section 7 provides in part:

The General Assembly shall have the power to alter County lines at any time; Provided, That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast...

S.C. Code Ann. Section 27-2-105 makes no reference to the above Constitutional provision nor does it seem to take in into account in the "clarification" (which could entail "alteration" or perceived alteration) of county boundaries. Therefore, the question respectfully submitted for your opinion is as follows:

Does S.C. Code Ann. Section 27-2-105 violate the South Carolina Constitution by not providing for the two-thirds vote of "the qualified electors of the territory proposed to be taken from one County and given to another" requirement of Article VII, Section 7, thereof?

In framing this issue, the concern is not with regard to clarifying a boundary by making that boundary easier to see or locate, but rather demarking a boundary in a way that gives anyone with a stake in that boundary concern that the County line may have been changed as a result of the activities undertaken pursuant to 27-2-105 is consistent with S.C.Const. Art. VII, Section 7 and its requirement for two-thirds approval of qualified electors before a County line may be altered, in the event "clarification" becomes "alteration" in the opinion of anyone alleged to have been aggrieved by the clarification.

Law/Analysis:

By way of background and as you are aware, the General Assembly established Richland County's boundaries by statute as:

Richland County is bounded on the north by Fairfield County, from which it is separated by new boundary lines set forth and specifically described in the location

and boundary of Fairfield County; on the east by Kershaw County and Sumter County from which it is separated by the Wateree River; on the south by Calhoun County; on the west by Lexington County, from which it is separated by a line beginning on the Congaree River where the counties of Lexington and Richland meet on the southern division thereof, and running thence with the Congaree River to where the confluence of the Broad and Saluda Rivers unite to form the Congaree, and following the thread of Saluda River about two and one-half miles to a concrete boundary marker; thence in a northwesterly direction upon the circumference of a circle having Lexington courthouse as its center, with a radius of not less than eight miles and a deflection of $1^{\circ} 21'$ for every one thousand feet, to a concrete boundary marker on the eastern boundary line of the town of Irmo; thence along the boundary line of the town of Irmo to the northeast corner of the town; thence west along the northern boundary of the town of Irmo 2,260 feet to a stake located thereon; thence along the circumference of the circle first described 11,360 feet to a stake; then N. $42^{\circ} 30'$ W. 878 feet; thence west 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. $37^{\circ} 28'$ W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. $34^{\circ} 45'$ W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. $37^{\circ} 5'$ W. 1,313 feet to a stake; thence N. $13^{\circ} 45'$ E. 2,597 feet to a stake; thence N. $56^{\circ} 35'$ E. 3,920 feet to a point on Rocky Ford on Wateree Creek; thence north, northeast and east along the Wateree Creek to where it empties into Broad River. To the above-described area of Richland County is to be added all that territory transferred from Lexington County by act approved March 11 1922, to wit: all that certain piece of land containing 8,900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on the Broad River, and running S. 41° W. 82.51 chains to a stake; thence turning and running S. 32.5° W. 160.65 chains to a stake; thence running along a creek which empties into Wateree Creek 42.24 chains to a stake; thence running to the point where said creek joins Wateree Creek 71.51 chains; thence running along Wateree Creek 94 chains; thence turning and running S. 23° E. 142.50 chains to a point in Slice Creek known as Rocky Ford; thence turning and running northerly along Slice Creek 164 chains; thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River; thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W.A. Counts and J.C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State.

S.C. Code § 4-3-460 (1976 Code, as amended). Thus, the General Assembly has clearly defined Richland County's boundaries by this legal description. *Id.* As you mention in your question, South Carolina Code § 27-2-105 authorizes the South Carolina Geodetic Survey to "assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys" where the boundaries are "ill-defined, unmarked, or poorly marked." S.C. Code § 27-2-105 (1976 Code, as amended) (emphasis added). Moreover, the General Assembly authorized the S.C. Geodetic Survey to

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serve as mediator between any boundary dispute among two or more counties. Id. The statute also authorizes appeals from a boundary determination by the S.C. Geodetic Survey to the S.C. Administrative Law Court. S.C. Code § 27-2-105(B) (1976 Code, as amended).

Regarding your question, this Office has issued previous opinions where two statutes appear to be in conflict. In one opinion, we stated:

The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Atty. Gen., 1988 WL 485345 (December 1, 1988). Based on a plain reading of the statutes, we believe a court would reconcile S.C. Code § 27-2-105 with S.C. Code § 4-3-460 by interpreting S.C. Code § 27-2-105 as assisting counties in defining the county boundaries within the legal description already given in S.C. Code § 4-3-460. Furthermore, we believe a court would use this same reasoning to reconcile the statutes with the Constitutional provision restricting the alteration of county lines to two-thirds of the vote cast after submission to the qualified electors. Thus, construing S.C. Code §§ 27-2-105, 4-3-460 and S.C. Const. Art. VII, Section 7, Section 4-3-460 (Richland County's legal description) could not be changed without a successful election where two-thirds of the voters casting ballots vote to enact the change.¹ Moreover, S.C. Code § 27-2-105 serves as a tool for the county to clarify boundaries and markers within the legal description given in S.C. Code § 4-3-460.

However, a county's boundary line is statutory defined and should not be viewed as equivalent under the law to a dispute between adjoining landowners over a property line. Concerning boundary line disputes we have previously indicated that they can be litigated as an action at law, and the determination of a boundary line is a question of fact for a jury. Op. S.C. Atty Gen., 2013 WL 1695520 (March 14, 2013) (citing Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383 (2008); Bodiford v. Spanish Oak Farms, Inc., 317 S.E. 359, 544 S.E.2d 194 (1995)). We further stated:

Additionally, "[i]f adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one." Id. (citing Gardner v. Mozingo, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987)). "In other words, such recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line." Id. (citing Knox v. Bogan, 322 S.C. 64, 72, 472 S.E.2d 43, 48 (1996)). Acquiescence regarding a boundary line has been cited by this Office in regards to a municipality with a boundary in place forty-seven years without

¹ Please note other sections restrict the alteration of county boundaries. See, e.g., S.C. Const. Art. VII, § 12 and Art. VIII, § 2

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dispute. Op. S.C. Atty. Gen., 1984 WL 249864 (April 23, 1984). Additionally, estoppel may be a defense to any such change in the county the property is located in.

Op. S.C. Att'y Gen., 2013 WL 1695520 (S.C.A.G. Mar. 14, 2013) (emphasis added). Hence, a boundary dispute between adjoining landowners where the boundary is not defined by statute or able to be determined by its statutory definition ultimately may be determined by a jury.

Conclusion:

Thus, it is the opinion of this Office that a court will determine that South Carolina Code § 27-2-105 cannot be used to change Richland County's statutory boundaries as defined by legal description in § 4-3-460. Moreover, any such "clarification" by § 27-2-105 would be limited to the terms within the statute, i.e. as a mediator for a boundary dispute between counties or to assist a county where boundaries are "ill-defined, unmarked, or poorly marked." S.C. Code § 27-2-105. Furthermore, we do not see how one could change the statutory legal description of Richland County as contained in South Carolina Code § 4-3-460 without compliance with South Carolina Constitution Article VII, Section 7, which includes an election by the qualified voters. Therefore, we believe a court will determine that South Carolina Code § 27-2-105 does not violate South Carolina Constitution Article VII, Section 7 where it does not change the statutory boundaries but only assists a county in clarification within the boundaries set by statute. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General