

1979 WL 43245 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1979

***1 RE: Opinion Concerning Approval of Declaration and Petition for Incorporation of a Non-Profit Organization**

Honorable John T. Campbell
Secretary of State
Wade Hampton Office Building
Columbia, SC 29201

Dear Mr. Campbell:

You have asked for advice as to whether or not a declaration and petition for incorporation of a non-profit organization known as the New Bosley's Restaurant & Lounge, Inc. should be accepted by your office, and a Certificate of Incorporation issued, where the declaration and petition have not been signed by the Sheriff of Cherokee County. It is the opinion of this Office that no Certificate of Incorporation should be issued without the signature of the Sheriff upon the declaration and petition.

South Carolina Code § 33-31-40 states in plain and unambiguous terms that declarations and petitions for the incorporation of non-profit corporations must be signed 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. The statute does provide that approval by the foregoing county officers is not required where an application for a charter is made on behalf of religious or eleemosynary institutions. That exemption, however, would not apply to the New Bosley's Restaurant & Lounge, Inc., inasmuch as the declaration and petition for incorporation plainly states that the purpose of the corporation is to operate a non-profit social and fraternal club.

Since the signature of the Sheriff of Cherokee County is required, it is the opinion of this Office that no Certificate of Incorporation should be issued without his signature.

Very truly yours,

L. Kennedy Boggs
Assistant Attorney General

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