

1976 S.C. Op. Atty. Gen. 309 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4448, 1976 WL 23065

Office of the Attorney General

State of South Carolina

Opinion No. 4448

September 16, 1976

*1 Section 3 of Act 697 of 1976 requires that the annexation commission employ a team of three surveyors to prepare a plat of the proposed change of line in a county annexation proceeding.

Section 3 of Act 697 of 1976 requires a ground survey of the entire proposed boundary.

TO: Ray Faulkenberry
Chairman
Kershaw-Lancaster County Boundary Line Commissioners

QUESTIONS PRESENTED:

1. May the Annexation Commission employ only one surveyor to survey the location of the proposed change of the Kershaw-Lancaster County boundary?
2. Does Act 697 of 1976 require an actual field survey to determine the location of the proposed change of line in a county annexation proceeding?

AUTHORITIES INVOLVED:

Act 697 of 1976

Sections 56–701(6), 56–703, 1962 Code of Laws of South Carolina, as amended.

DISCUSSION:

Act 697 of 1976, An Act To Provide For The Merger Of A Part Or Parts Of A County With One Or More Adjoining Counties, states in Section 3 the requirements for the employment of surveyors by the annexation commission: The commission may contract for the survey and location of the proposed change of line and for such purpose may employ three competent disinterested surveyors, who are nonresidents of the counties affected, two to be selected by the commission and the third by the two selected by the commission. Such surveyors shall clearly mark the proposed change of line upon the land with due regard to all legal provisions and limitations and certify plats showing such line.

The above cited provision of Act 697 of 1976 is substantially identical to the Code section it replaced, Section 14–105, 1962 Code of Laws of South Carolina, as amended and has never been the subject of judicial interpretation.

The rules of statutory construction indicate that the use of the word ‘may’ by the Legislature normally evidences the legislative intent that the attendant duty is directory only and not mandatory. Vol 2A Sutherland Statutory Construction Section 57.03. Under such a construction, the annexation commission would be authorized but not required to employ surveyors to survey the proposed change of line.

However, the commissioners are required by Section 4 of Act 697 to file certified plats of the proposed change of line with the Secretary of State and the respective clerks of court of each county affected by the annexation. This required filing necessitates the employing of a surveyor by the commissioners since only a licensed surveyor is qualified to certify a plat of land. Sections 56–701(6) and 56–703, 1962 Code of Laws of South Carolina. Section 3 clearly indicates that the survey is to be performed by three surveyors; there is no suggestion in the language of that section that fewer than three surveyors may be employed. Section 5, which requires an itemized statement of the expense of the survey and plats, appears to contemplate a mandatory survey. Thus, although the language of Section 3 seems to indicate that the commission may or may not employ surveyors, the practical impact of Section 4 is to make the hiring of three surveyors necessary in all annexation proceedings. There is no requirement in the Act that surveyors within the affected counties be hired; hence, surveyors from other counties may be employed if the commission so desires.

Question II:

*2 Section 3 of Act No. 697 makes no exception as to any particular portion of the proposed boundary to be surveyed, and it is difficult to see how the surveyor could file a certified plat without having surveyed the entire boundary, including paved roads. However, the portion of Section 3 which provides that the surveyors ‘shall clearly make the proposed change of line along the land’ is obviously intended as a means of giving the public notice as to the area involved; there would thus be no deed to mark such readily identifiable landmarks as roads, rivers and streams.

CONCLUSION:

Section 3 of Act 697 of 1976 requires that the annexation commission employ a team of three surveyors to prepare a plat of the proposed change of line in a county annexation proceeding. Section 3 of Act 697 of 1976 requires a ground survey of the entire proposed boundary. Therefore, it is the opinion of this Office that in all county annexation proceedings a survey must be conducted by the annexation commissioners to prepare a plat of the area to be annexed and that the commissioners must employ a team of three surveyors in the manner provided for by Act No. 697 of 1976.

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