



ALAN WILSON
ATTORNEY GENERAL

December 21, 2017

The Honorable Lin Bennett, Member
South Carolina House of Representatives
P.O. Box 11867
Columbia, SC 29211

Dear Representative Bennett:

Attorney General Alan Wilson has referred your letter dated December 19, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our response.

Issue (as quoted from your letter):

"I am requesting an Attorney General's opinion regarding the legality of the expansion and annexation of the City of North Charleston across the Ashely River into the area known as West Ashely, specifically property known as Runnymede, based on current laws regulation how Cities are permitted to annex property"

Our reply:

This Office has addressed similar issues in prior opinions. We included many of those prior opinions within this letter for your review.

This Office has opined that Chapter 3 of Title 5 of the South Carolina Code of Laws contains the methods provided by the General Assembly for municipal annexation. Op. S.C. Att'y Gen., 1986 WL 289739 (S.C.A.G. January 16, 1986). Please note while the prior versions of 5-3-160 through 5-3-230 were declared unconstitutional in Fairway Ford, Inc. v. Timmons, 281 S.C. 57, 314 S.E.2d 322 (1984), the statutes have since been amended by the General Assembly. Id. We stated in a prior opinion that while this Office can advise the legal requirements of contiguity, the determination of contiguity is a factual determination which is beyond the scope of this Office's opinions. Op. S.C. Att'y Gen., 2005 WL 292230 (S.C.A.G. January 18, 2005). Nevertheless, this Office has previous opinions where we discussed the law regarding the definition of "contiguous" property. See, e.g., Ops. S.C. Att'y Gen., 2005 WL 292230 (S.C.A.G. January 18, 2005); 2012 WL 1371025 (S.C.A.G. April 11, 2012); 1981 WL 158066 (S.C.A.G. December 7, 1981).

As used in the municipal annexation context, "contiguous" is statutorily defined as:

For purposes of this chapter, "contiguous" means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between

two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

S.C. Code Ann. § 5-3-305. Moreover, this Office's January 18, 2005 opinion elaborated on the legal requirements of contiguity as follows:

The term "contiguous" is defined by Section 5-3-305 as "property which is adjacent to a municipality and shares a continuous border." In Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899, 901, the Supreme Court determined that "(t)he statutory word 'contiguous' must be afforded its ordinary meaning of 'touching'."

Concerning the question you raise, in my opinion, property which is one property removed from the city limits cannot be annexed as being "near". As set forth in Section 5-3-100 "(i)f the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed...." In Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872, 876, the State Supreme Court referenced that

The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to "adjacent territory" necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect... Such is ordinarily essential to make the city a collective body having unity and compactness. (emphasis added).

Op. S.C. Att'y Gen., 2005 WL 292230, at *2 (S.C.A.G. Jan. 18, 2005). Thus, this Office has opined and the General Assembly has legislated that connecting marshlands and waterways do not destroy contiguity for municipal annexation purposes. As you are also aware, the State is the presumptive owner of marshlands and all lands below the high tide water mark. Op. S.C. Att'y Gen., 2017 WL 569547 (S.C.A.G. January 31, 2017).

Furthermore, this Office has also issued prior opinions that a municipality may annex property owned by the State or Federal government. See, e.g., Op. S.C. Att'y Gen., 1984 WL 159929 (S.C.A.G. October 18, 1984) (citing S.C. Code Ann. § 5-3-140). This Office has also previously opined regarding trusts that:

§ 1-7-130 ["The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law."]; Furman Univ. v. McLeod, 238 S.C. 475, 120 S.E.2d 865 (1961) [in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large].

Op. S.C. Att'y Gen., 2005 WL 3463708, at *26 (S.C.A.G. Dec. 9, 2005). Conversely, this Office has also opined that the State does not have standing to challenge an annexation of land which it does not own.

The Honorable Lin Bennett
Page 3
December 21, 2017

See Op. S.C. Att’y Gen., 1994 WL 84347 (S.C.A.G. February 17, 1994) (citing State of S.C. v. City of Columbia, 308 S.C. 487, 419 S.E.2d 229 (1992)).¹

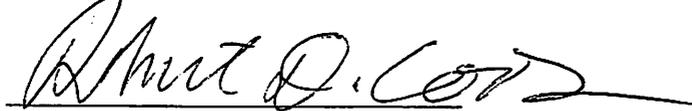
We trust the prior opinions cited herein assist you in your annexation questions. This letter is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only a letter noting prior opinions regarding your question. This letter only addresses some of our prior opinions, but we can include more or answer additional questions in a follow-up letter. 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 (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

¹ See also Ex parte State ex rel. Wilson v. Town of Yemassee, 391 S.C. 565, 707 S.E.2d 402 (2011) (regarding municipal annexation and the right of the State to intervene).