

1975 S.C. Op. Atty. Gen. 168 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4089, 1975 WL 22385

Office of the Attorney General

State of South Carolina

Opinion No. 4089

August 20, 1975

*1 A municipality which selects a form of government pursuant to the provisions of Article 2 of Part II of Act No. 283 of 1975, the 'home rule' legislation, is not required by the provisions of that Act to pay a fee to the office of the Secretary of State for the issuance of an appropriate certificate of incorporation.

To: The Honorable O. Frank Thornton
Secretary of State

QUESTION PRESENTED

Do the provisions of Section 47-7 of Act No. 283 of 1975, the 'home rule' legislation, requiring the payment of a fee to the Secretary of State's office for the issuance of a certificate of incorporation, also apply to Section 47-22 of that Act?

STATUTES, CASES, ETC., INVOLVED

Act No. 283 of 1975.

DISCUSSION OF ISSUES

Section 47-7 of the Act provides in part:

Before any certificate of incorporation is delivered by the Secretary of State, he shall require the production of a receipt from the State Treasurer for the payment of the incorporation fees as follows: . . .

Section 47-7 is part of several consecutive sections which specify the procedures to be followed in the incorporation of a new or proposed municipality. See, §§ 47-2 through 8.

Section 47-22, on the other hand, applies to an already existing municipality which selects one of the three forms of municipal government provided for in the Act and reads in part:

. . . The ordinance selecting the form of government shall be filed in the office of the Secretary of State who shall issue an appropriate certificate of incorporation to the municipality. . . .

Article II of Part II of the Act, of which Section 47-22 is a part, does not expressly or impliedly require the payment of an incorporation fee before a certificate of incorporation specifying a new form of government for an already existing municipality is issued. Moreover, Section 47-7 does not expressly or impliedly require the payment of an incorporation fee before such a certificate of incorporation can be issued inasmuch as it applies only to the incorporation of a new or proposed municipality and not to the selection of a new form of government by an already existing municipality.

CONCLUSION

The opinion of this office is, therefore, that a municipality which selects a form of government pursuant to the provisions of Article 2 of Part II of Act No. 283 of 1975, the 'home rule' legislation, is not required by the provisions of that Act to pay a fee to the office of the Secretary of State for the issuance of an appropriate certificate of incorporation.

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