

1975 WL 29241 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 26, 1975

\*1 Distribution of State funds to municipalities on basis of total population that includes inhabitants of annexed areas does not constitute overpayment when annexed area subsequently declared in judicial proceeding to have been improperly annexed.

TO: Honorable Grady L. Patterson  
Treasurer of the State of South Carolina

#### QUESTION

The City of Goose Creek annexed by election held June 8, 1971 an area known as Boulder Bluff and the population of the City was consequently increased by the inhabitants of the subdivision. The General Assembly annually appropriates funds for aid to political subdivisions that are distributed upon a population basis. Payments from such appropriation have been made to the City for periods subsequent to the annexation based upon the population of the whole area. The Supreme Court, on August 7, 1975, in Opinion No. 20080, rendered in the case of Elwood Construction Company, et al. v. Richards, et al., declared the annexation to be void. The population of the City with the annexed area was 6022 and the population without the annexed area is 5254. The question is whether there has been any overpayment of appropriated funds to the City by reason of the population increase brought about by the annexation of the Boulder Bluff area and, if so, should the same be recovered?

#### DISCUSSION

We find no South Carolina case in point, however, the general rule is that a municipal corporation may have a de facto existence.

'The doctrine of de facto municipal corporation is generally recognized in the United States. The doctrine is that where there is authority in law for a municipal corporation, the organization of the people of a given territory as such a corporation under color of delegated authority, followed by a user in good faith of the governmental powers incidental thereto, will be recognized by the law as a municipal corporation de facto, wherever through failure to comply with statutory requirements the corporation cannot be said to exist de jure.' 56 Am. Jur., Municipal Corporations, Sec. 34, p. 98.

A related question was considered in the case of [Ash Realty Corp. v. City of Milwaukee](#), 25 Wis. 2d 169, 130 N. W. 2d 260, and it was stated:

'Where village had substantive right to attempt annexation and attempt would have in all respects been valid if a corporate petitioner had taken appropriate internal action to authorize its officers to sign petition, village's attempted annexation amounted to a 'de facto annexation', and where it rendered municipal services to area involved, it levied tax under color of right, and equity would not require it to repay tax on any theory it had made mere usurpation of power and that annexation was wholly void.'

Likewise, de facto courts have been recognized where created under a statute apparently valid but subsequently declared unconstitutional. [Marckel Co. v. Zitzow](#), 218 Minn. 305, 15 N. W. 2d 777; [Gildemeister v. Lindsay](#), 212 Mich. 299, 180 N. W. 633. See also 11A, Words and Phrases, De Facto Courts.

CONCLUSION

\*2 It is therefore the opinion of this office that there has not been an overpayment of appropriated funds to the City by reason of the population, increase brought about by the invalid annexation of the Boulder Bluff area.

Joe L. Allen, Jr.  
Assistant Attorney General

1975 WL 29241 (S.C.A.G.)

---

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.