

1974 WL 27512 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 20, 1974

\*1 The Honorable John C. West  
Governor  
Columbia, South Carolina

Dear Governor West:

I have received a copy of a letter from Mr. William F. Able, County Attorney of Richland County, dated November 12, 1974, referring to a difficulty which has arisen in annexation proceedings now being undertaken with a view to annexing a portion of Richland County to Lexington County.

Mr. Able has quoted a portion of Section 2 of Article VIII of the State Constitution but has not quoted it in its entirety in his letter. This section provides that the boundaries of counties shall remain as now established 'until changed by the General Assembly, as allowed by this Constitution.' Section 5 of Article VIII specifically provides that the General Assembly shall be empowered to provide for the merger of a part of a county with another county.

A procedure is now in effect under the laws of this State by which annexation can presently validly be accomplished. The new constitutional provisions are inconsistent with some of the statutory procedures now existing and any inconsistent existing statutory provisions would be repealed pro tanto by the new constitutional amendment, in my opinion, however, the existing procedure can still be continued in effect after its inconsistent provisions are disregarded. The new constitutional provisions make it mandatory to conduct an election in the area proposed to be annexed to an adjoining county, as well as in the adjoining county itself, and existing procedures provide a method for the ordering of elections upon the filing of petitions found to comply with the new constitutional provisions. The same is true with respect to the number of votes required to be received in each of the areas. With respect to such details, the Constitution is evidently self-executing. The procedures which the Legislature is required to provide are already provided by law and can be constitutionally adapted to the new provisions without rendering existing statutes incapable of execution. 'The repeal of a statute by a new constitutional provision is effective only the extent of the inconsistency.' 73 Am. Jur. (2d) Statutes ¶ 398. It is my opinion that present statutory procedures for annexation may be utilized under the new constitutional provisions. These new provisions can be applied to existing county annexation procedures without doing total violence to the existing laws and in a manner so as to leave them capable of implementation.

There is, in my opinion, no valid reason why the annexation proceedings instituted may not be carried forward at this juncture. There must, of course, be full compliance with all statutory and constitutional provisions.

Very truly yours,

Daniel R. McLeod  
Attorney General

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