



ALAN WILSON  
ATTORNEY GENERAL

November 6, 2019

Carl L. Holloway, Jr., Esq.  
City of Forest Acres  
5209 North Trenholm Road  
Forest Acres, SC 29206

Dear Mr. Holloway:

You have requested an opinion from this Office regarding annexation. You state that the "Factual Situation" is as follows:

The Cities of Forest Acres and Columbia are contemplating a boundary adjustment of certain real property located in the corporate limits of Forest Acres adjacent and contiguous to certain real property located in the corporate limits of Columbia wherein, by ordinance of each municipality, Forest Acres would authorize, transfer and release and Columbia would accept a small portion of Forest Acres into the corporate limits of Columbia wherein a creek would become the municipal boundary line. By virtue of the transfer, Columbia would remove debris and storm damage from the property.

You are requesting an opinion as to the following question:

Can the two South Carolina municipal corporations agree to a municipal boundary adjustment by ordinance of both municipalities under the provisions of S.C. Code Section 5-3-40 (Agreement upon terms of consolidation) without complying with the election and other provisions of SC Code Section 5-3-280 (Reduction of corporate limits)?

**LAW/ANALYSIS:**

Our South Carolina Supreme Court addressed the same question prior to the enactment of the 1976 South Carolina Code of Laws. In Town of Forest Acres v. Seigler, 224 S.C. 166, 77 S.E.2d 900 (1953), the Town of Forest Lake had annexed a portion of the Town of Forest Acres, after an election in which the voters of Forest Lake and the voters of the area to be annexed in Forest Acres had voted. The issue was "whether under the statutes of this state, a portion of one municipality may be annexed to another without submitting the question of said detachment to [all of] the voters of the municipality whose area is to be reduced." Id. at 169, 901.

The applicable statutes were sections 7230, 7231, and 7232 of the 1942 South Carolina Code of Laws.<sup>1</sup> Section 7230, as amended by 1948 Acts No. 806, provided the procedure for a municipality to extend its corporate limits, and its lengthy provisions have been summarized as follows:

Section 7230 authorized a town to extend its corporate limits. As amended by Act No. 806 of the Acts of 1948, 45 St. at L. 1974, the procedure fixed is substantially as follows: A petition must first be submitted to the town council by a majority of of the freeholders of the territory which it is proposed to annex, asking that an election be ordered to determine whether such territory shall be included in said town. An election, of which there must be due notice, is then held both within the corporate limits of the municipality and within the territory proposed to be annexed. The votes cast at such election within the municipality and those within the territory proposed to be annexed are required to be counted separately and the results declared separately. If a majority of the votes cast in each instance shall be in favor of the annexation, the town council shall then declare the annexed territory a part of said town.

See Town of Forest Acres v. Seigler, 224 S.C. at 171, 77 S.E.2d at 902, supra (citing S.C. Code § 7230 (1942 Code)).

Section 7231 worked in tandem with section 7230 to extend a municipality's corporate limits, stating:

Whenever it is proposed to extend the corporate limits of any city or town in this State so as to include any adjacent territory under the provisions of section 7230, whether the said adjacent territory be in whole or in part in incorporated municipality, it shall be lawful for said city or town and such adjacent territory to stipulate and agree upon terms of consolidation, and such stipulations shall become a binding contract upon the city or town when enlarged: *provided*, that such stipulations shall be printed in full, or fully identified by reference to some easily accessible publication thereof in full, on a majority of the affirmative votes cast at the election held under the requirements of the preceding section, both in the city or town seeking enlargement and in the territory or portion of territory so included as a result of such election.

S.C. Code § 7231 (1942 Code).

Finally, section 7232 provided the procedure for the reduction of a town's corporate limits:

How limits reduced – Any town or city may reduce its corporate limits in the following manner: whenever a petition is presented to the town council signed by a majority of the resident freeholders of said town asking for a reduction of the corporate limits of said town,

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<sup>1</sup> As will be discussed, these code sections have been superseded by sections 5-3-10, 5-3-40, and 5-3-280 of the 1976 South Carolina Code of Laws, as amended, which are the code sections applicable to your question.

then said council shall order an election after not less than ten days' public advertisement; such advertisement shall describe the territory that is proposed to be cut off. At such election, should a majority of the qualified electors vote in favor of the release of the territory, then said council shall issue an ordinance declaring the territory no longer a portion of said town, and shall so notify the secretary of state, furnishing him at the same time with the new boundaries of said town . . .

S.C. Code § 7232 (1942 Code).

In the Seigler case, the court considered whether a town could validly annex a portion of an adjacent town under sections 7230 and 7231, without complying with section 7232's procedure for reducing the size of the adjacent town. The court determined that section 7232 "must be harmonized with the preceding sections relating to the enlargement of the corporate limits of a municipality," stating that:

[i]t will be noted that under Section 7232, in order to reduce the corporate limits of a municipality, a petition asking for such reduction must be signed by a majority of the resident freeholders of said town, after which a majority of the qualified electors must vote in favor of releasing the territory involved. It was clearly the intention of the legislature that the voters of the ENTIRE town should have a voice in determining the question of detachment.

Town of Forest Acres v. Seigler, 224 S.C. at 176, 77 S.E.2d at 904, supra. Accordingly, the court concluded that the annexation of a portion of the Town of Forest Acres was invalid because the question of annexation had not been submitted to all of the voters of Forest Acres.<sup>2</sup>

Sections 7230, 7231, and 7232 of the 1942 South Carolina Code of Laws have been superseded by sections 5-3-10, 5-3-40, and 5-3-280 of the 1976 South Carolina Code of Laws. The 1976 South Carolina Code of Laws provides for "Change of Corporate Limits" of Municipalities. See S.C. Code Ann. § 5-3-10 et seq. (as amended). Section 5-3-10 provides that "[a]ny city or town council may extend the corporate limits of the municipality in the manner set forth in this chapter." S.C. Code Ann. § 5-3-10 (1976 Code, as amended). As you indicated in your request letter, section 5-3-40 is entitled "Agreement upon terms of consolidation" and it states:

Whenever it is proposed to extend the corporate limits of any municipality by inclusion of territory of another adjacent municipality in whole or in part, the governing bodies of the municipalities may, after public hearing, stipulate and agree upon terms of consolidation or

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<sup>2</sup> The Seigler court also determined that section 7232 solely authorized the annexation of a portion of an adjacent municipality. However, this part of the court's analysis is no longer valid, since the Legislature has amended former section 7231 to reflect that the corporate limits of a municipality, defined as "any incorporated city or town located within this State," can be extended "by inclusion of territory of another adjacent municipality in whole or in part." See S.C. Code Ann. §§ 5-3-40, 5-3-290 (1976 Code, as amended).

boundary adjustment by ordinance adopted by each municipality, which shall be binding upon the enlarged municipality, and the consolidation or adjustment shall be effective on the date of adoption of the final ordinance.

S.C. Code Ann. § 5-3-40 (1976 Code, as amended).

Meanwhile, section 5-3-280 is entitled “Reduction of corporate limits” and it provides:

Whenever a petition is presented to a city or town council signed by a majority of the resident freeholders of the municipality asking for a reduction of the corporate limits of the city or town, the council shall order an election after not less than ten days' public advertisement. This advertisement shall describe the territory that is proposed to be cut off. If a majority of the qualified electors vote at the election in favor of the release of the territory, the council must issue an ordinance declaring the territory no longer a portion of the municipality and must notify the Secretary of State of the new boundaries of the municipality.

S.C. Code Ann. § 5-3-280 (1976 Code, as amended).

As shown, the language requiring an election for extending a municipality's corporate limits has been removed from sections 5-3-10 and 5-3-40 of the 1976 Code. However, section 5-3-280 maintains the same procedure for reducing the size of a municipality, which includes an election, as former section 7232. It has the same mandatory language that a municipal council “shall” hold an election, “shall” advertise a description of the territory proposed to be cut off, “must” issue an ordinance declaring the territory no longer part of the municipality, and “must” notify the Secretary of State of the new municipal boundaries.<sup>3</sup> S.C. Code Ann. § 5-3-280, supra.

In a prior opinion, we discussed some principles of statutory construction:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.” Harris v. Anderson County Sheriffs Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). “If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning.” Strickland v. Strickland,

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<sup>3</sup> See Op. S.C. Atty. Gen., 2019 WL 1644877, at \*3 (Mar. 29, 2019) (citing S.C. Police Officers Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990) (“shall” and “must” are considered mandatory words according to principles of statutory construction); S.C. Dep't of Highways & Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) (“Ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.”)).

375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). “[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). “[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.” State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct.App. 2011).

Op. S.C. Atty. Gen., 2016 WL 6122509, at 1–2 (Oct. 10, 2016) (quoting Op. S.C. Atty. Gen., 2013 WL 5494616 (September 18, 2013)).

A review of the plain, unambiguous language of section 5-3-280 shows that an election is required to reduce the size of a municipality. As found by the court in Seigler when considering the sections of the 1942 Code, the code sections regarding changing municipal corporate limits must be harmonized. Reading sections 5-3-10, 5-3-40, and 5-3-280 as a whole, it is clear that that the conclusion of the court in the Seigler case remains valid. The legislative intent that all of the voters in a municipality whose territory is to be reduced in size have a vote has not changed. Accordingly, it is our opinion that the Cities of Forest Acres and Columbia must comply with the election requirements of section 5-3-280 in order to adjust their boundaries.

**CONCLUSION:**

Because the sections of the South Carolina Code of Laws regarding changing municipal corporate limits (S.C. Code Ann. § 5-3-10 et seq. (as amended)) must be read together, it is our opinion that the Cities of Forest Acres and Columbia must comply with the election requirements of section 5-3-280 in order to adjust their boundaries.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General