

1973 WL 26644 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1973

***1 Re: No. 209—Municipal—Requirements for Incorporations, Dlections**

Honorable Richard H. Riley
Senator
Greenville a Laurens Counties
The State Capitol
Columbia, South Carolina

Dear Senator Riley:

You have requested that this office advise you whether or not the community of Joanna can incorporate its existing community boundaries while leaving certain areas currently owned by textile plants unincorporated within the existing community boundaries. Sections 47-1 through 47-10 of the Code of Laws of South Carolina prescribe the method and effect of municipal incorporation. Reference to these sections, however, provides no guidance in regard to the question which you posed, inasmuch as our Code is silent on the territorial requirements of initial incorporation. Although our Code is silent on the initial incorporation, there are certain basic factors which must be present for incorporation to be effective. 62 C.J.S. Municipal Corporations, Section 9(b) provides that the word ‘city’ with respect to territory implies the idea of compactness, unity and continuity and an assemblage of inhabitants living in the vicinity of each other and not separated by another intervening division of the State. A city cannot be organized so as to entirely surround unorganized or unincorporated territory. (emphasis added.)

See also, Morgan Park v. Chicago, 99 N.S. 388, McCullin, Municipal Corporations, Section 3.15f (Rev. Ed. 1971).

Our Supreme Court seemingly has followed the general legal principles set forth above. In Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 82 (1961), our court had before it an annexation problem which arose pursuant to Sections 47-11 to 47-24 of the Code of Laws of South Carolina. One of the issues in the Tovey case was whether or not the annexation was faulty because of lack of continuity of the annexed area. In discussing this issue, our court had this to say:

The statutes of many states require that the land annexed be contiguous or adjacent to the municipal borders . . . [I]t seems to be generally recognized, and is so conceded in this case, that there must be continuity even in the absence of a statutory requiremant to that effect. McGraw v. Merryman, 133 M.D. 247, 104, 540; 37 Am. Jur., Municipal Corporations, Section 27; 62 C.J.S., Municipal Corporations, Section 46. Such is ordinarily essential to make the city a collective body having unity and compactness. corporations, Section prevailing law, and in light of the language of our Supreme Court in the Tovey case, it is the opinion of this office that the community of Joanna could not incorporate and leave within its contiguous corporate limits unincorporated property.

I hope this sufficiently answers the question which you posed.

Very truly yours,

Billison D. Smith, IV
Assistant Attorney General

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