



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

June 25, 2003

Terry A. Finger, Esquire  
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**Re: Town of Bluffton - Annexation Petition**

Dear Mr. Finger:

You have requested an opinion from this Office related to an annexation petition which is to be presented to the Bluffton Town Council. By way of background, you indicate that

An annexation petition has been circulated by a group of qualified electors to annex certain property into the Town of Bluffton pursuant to the 25% elector petition/election method. When the petition was originally circulated, it had attached to it a map showing the proposed area to be annexed. Prior to the petition being submitted and accepted by town council for certification, it became apparent that the annexation stood a better chance of succeeding if certain additional commercial property was added to the original map.

Given this background, you specifically ask the following questions:

1. Can the map be amended prior to the petition being submitted to the Bluffton Town Council?
2. If the map is amended, can the people who have already signed the petition ratify the modification to the map? If so, what form of ratification is necessary?
3. If ratification is not possible, does the petition need to be re-circulated and re-signed with the new map attached prior to being submitted to the Town Council?

### LAW/ANALYSIS

As our Supreme Court has long recognized, “[i]t is well settled that in the absence of constitutional limitations, the legislature has plenary power over municipalities, including the right to regulate the manner in which the boundaries of such governmental units may be extended or diminished.” Town of Forest Acres v. Town of Forest Lake, 226 S.C. 349, 85 S.E.2d 192 (S.C. 1954). Pursuant to Chapter 3, Title 5 of the South Carolina Code of Laws, the General Assembly has provided a number of options to municipalities to change their corporate limits. The option relevant to the situation described in your letter, the circulation of a petition by qualified electors “... pursuant to the 25% elector petition/election method” is found in S.C. Code Ann. §5-3-300. Subsections (A), (B) & (C) of Section 5-3-300 provide that

(A) In addition to other methods of annexation authorized by this chapter, any area which is contiguous to a municipality may be annexed to the municipality by the filing of a petition with the council signed by twenty-five percent or more of the qualified electors who are residents within the area proposed to be annexed.

(B) The petition must contain a description of the area to be annexed, the signature of the qualified elector, the address of residence, and the act or code section pursuant to which the proposed annexation is to be accomplished.

(C) If the municipal council finds that the petition has been signed by twenty-five percent or more of the qualified electors resident within the area proposed to be annexed, the council may certify that fact to the county election commission of the county in which the area is situated. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area proposed to be annexed to the municipality on the question of extension of the corporate limits of the municipality by annexation of the area proposed to be annexed.

Among other things, the petition must include a description of the area to be annexed and the signature of the elector. As for the description of the area to be annexed, our Court has consistently held that the description must be “... sufficient to enable a person of ordinary reason and intelligence to identify the property involved ... .” See Harrell v. City of Columbia, 216 S.C. 346, 58 S.E.2d 91 (1950). It is also clear that this sufficient description must be provided “... at a time when the petitions [are] being circulated.” See General Battery Corp. v. City of Greer, 263 S.C. 533, 211 S.E.2d 659 (1975).

Further, while the petition for annexation must include those elements set out in Section 5-3-300(B), there is no prescribed form that the petition must take. With regard to the sufficiency of the signatures on the petition, our Court has indicated that it is “... the duty of the [municipal] Council to determine, as a question of fact, whether or not the petitions [have] been signed ...” by the requisite number of qualified persons. Harrell v. City of Columbia, 211 S.E.2d at 95. In absence of charges or evidence of fraud, accident or mistake, a municipal council's certificate that petitions for annexation of areas to a municipality have been signed by the necessary persons is generally not open

Mr. Finger  
Page 3  
June 25, 2003

to question. Id. Additionally, it has been held that substantial compliance with statutes related to annexation is sufficient. See General Battery Corp. v. City of Greer, 211 S.E.2d at 664.

The above represents general law related to the annexation of territory by municipalities in South Carolina. You have specifically asked questions related to the amendment of the map (description) of the area to be annexed prior to the petition being submitted to the Town of Bluffton. In a prior opinion, this Office recognized that “[t]he South Carolina statutes on annexation do not provide for amendments of the petition, it should be noted that it does not expressly prohibit them either.” See Op. S.C. Atty. Gen., dated January 28, 1988. In that opinion, we noted that “[t]o change the geographical description of an area after individuals have already signed the petition presents an interesting question of whether the individuals would have signed the annexation petition with the amended geographical boundaries. Even a slight variation may have been sufficient to have changed an individual's mind about signing the petition.” In that case, we opined “[i]n that any alteration to the description would alter the petition that induced persons to sign the petition, it would not appear that the petition could be altered at this time.” *Supra*. Apparently, the situation addressed in the January 28, 1988 opinion involved a petition that had already been presented to the municipal council and the amendment was contemplated without further action on the part of those who had signed the petition.

### CONCLUSION

Based on the general law and our prior opinion cited above, it would appear that a map or description of an area to be annexed to a municipality cannot be materially amended after the signature of a qualified elector has been affixed to a petition requesting annexation. It also appears, however, that an amendment to the map or description of the area to be annexed is not prohibited as long as the signatures on the petition represent the electors' assent to the annexation of the area actually intended to be annexed. In the situation you describe, it appears clear that the petition, along with the amended map, could be re-circulated and resigned prior to the presentation of the petition to Town Council. As to whether or not “... the people who have already signed the petition [can] ratify the modification to the map” presents a more difficult question. As stated above, it is for the municipal council to determine as a matter of fact that a sufficient number of qualified persons have signed the petition. If a council determines that a person has actually ratified his or her previous signature and that ratification expresses his or her assent to the annexation of the area reflected on the amended map, it seems that a reviewing court may find that S.C. Code Ann. §5-3-300 has been substantially complied with. I would suggest that, in the case a petition with ratified signatures is presented, Town Council ensure that the ratification is clearly indicated and that the ratification is clearly related to the amended map.

Sincerely,



David K. Avant  
Assistant Attorney General