

1977 S.C. Op. Atty. Gen. 59 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-58, 1977 WL 24400

Office of the Attorney General

State of South Carolina

Opinion No. 77-58

February 14, 1977

*1 Mr. William R. Byars, Jr.
County Attorney, Kershaw County
Messrs. Savage, Royall, Kinard & Savage
Attorneys at Law
1111 Church Street
Camden, South Carolina 29020

Dear Mr. Byars:

In conference today with you and other attorneys, together with the attorney for the petitioners who have submitted a petition for the annexation of a portion of Kershaw County to Lancaster County, the following questions have been submitted:

In passing upon whether the Commission, appointed by the Governor pursuant to Act No. 697, approved July 2, 1976, has satisfactorily completed the duties and functions, does the Governor have the power to amend the plat and description of the area involved by eliminating therefrom real property which he finds improvidently included thereby by the Commission?

Is the Commission bound in respect to the area involved by the sketch and plat attached to the petition or may it eliminate real property which it finds is improvidently included therein by the petitioners?

A petition has been presented to the Governor, seeking annexation of an area designated in paragraph 1 of the petition, and annexing to the petition, as referred to in the prayer of the petition, a plat describing the area to be annexed. Subsequent to the submission of the petition, the attorney for the petitioners submitted a description by metes and bounds of the area included within the plat theretofore filed with the Governor.

The petition and plat were forwarded by the Governor to the Commission named by him, pursuant to Act No. 697.

The Commission then employed surveyors, as prescribed in the Act, and the resultant plat was recorded in the Office of the Secretary of State and an election ordered to be held on February 22, 1976.

Act No. 697 provides that upon submission of a petition for a part of a county with an adjoining county to the Governor, he shall appoint a Commission which may 'contract for the survey and location for the proposed change of line—.'

Upon compliance with the requirements of the Act, 'the Governor shall order an election to be held in the area sought to be transferred—.'

It is my opinion that upon receipt of the petition reciting the description of the area, the Governor has no authority to vary from the description of the area as submitted. There is authority that the Governor may amend the petition upon presentment to him of a proper petition, but no such petition has been presented to the Governor at the present time. Any such petition would, however, in my opinion, be required to include all of the living petitioners who submitted the original petition for annexation.

The same conclusions are applicable with respect to the lack of discretionary authority being vested in the Commissioners appointed to survey the area and to ascertain certain constitutional requirements, none of the latter of which, I am informed, are now questioned.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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