

1977 WL 37257 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1977

*1 Leonard B. Burgess
Mayor
Town of Kingstree
Post Office Box 207
Kingstree, South Carolina 29556

Dear Mayor Burgess:

You have requested the advice of this Office on the question of whether a municipal annexation conducted pursuant to Section 47-19.5(3) is constitutionally valid. Specifically you have inquired whether the constitution permits a municipality to annex territory without first conducting an election on the question of annexation and receiving a favorable vote thereon.

The only provision of South Carolina Constitution that deals with municipal annexation is found in Article VIII Section 8: The General Assembly shall provide by general law the criteria and the procedures for the incorporation of new municipalities and for the readjustment of municipal boundaries and for the merger of incorporated municipalities provided that any city or town shall be organized with the consent of a majority of the electors voting in such election who reside in and are entitled by law to vote within the district proposed to be incorporated . . .

Although the constitutionality of Section 47-19.5(3) has never been specifically considered, the South Carolina Supreme Court has consistently stated the following quotation when addressing an attack on an annexation procedure:

In the absence of constitutional limitation it is generally considered that the power of a state legislature over the boundaries of the municipalities of the state is absolute and that the legislature has power to extend the boundaries of a municipal corporation, or to authorize an extension of its boundaries, without the consent of its inhabitants of the territory annexed, or the municipality to which it is annexed, or even against their expressed protest. [General Battery Corp v. City of Greer, 263 S. C. 533, 211 S. E. 2d 659 \(1975\)](#).

Since the constitution does not require an election as a prerequisite to a municipal annexation and in light of the absolute control over municipal annexation held by the General Assembly, it is my opinion that a valid municipal annexation may be had by following the procedure set forth in Section 47-19.5(3).

Yours very truly,

Daniel R. McLeod
Attorney General

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