

1976 S.C. Op. Atty. Gen. 157 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4333, 1976 WL 22952

Office of the Attorney General

State of South Carolina

Opinion No. 4333

April 20, 1976

***1 In Re: Meaning of phrase 'latest official United States Census' as used in Section 47-2, Code of Laws, 1962**

The Honorable Norma C. Russell

Member

House of Representatives

Lexington County

92 Nob Hill Road

Columbia, South Carolina 29210

Dear Mrs. Russell:

You have inquired as to whether the phrase 'latest official United States Census' as used in Section 47-2 of the Code of Laws, 1962, as amended, includes a special census made by the Bureau of the Census since the last Decennial Census of 1970.

Authority for the Census Bureau to undertake a special census is given by 13 U.S.C.A. 88. The census so made is, in my opinion, made and promulgated by the Secretary of Commerce. Such a census which was made by the Bureau of the Census under the direction of the Secretary of Commerce is, in my opinion, an official census of the United States.

It is my opinion also that a special census made by the Bureau of the Census and duly promulgated by the Secretary of Commerce since the last Decennial Census is the 'latest official United States Census' as that phrase is used in Section 47-2.

Section 47-2 is a part of the Home Rule Act adopted by the General Assembly in 1975. The only other instance in which reference is made to a census, the General Assembly used the phrase 'each Federal Decennial Census,' indicating thereby that where the Legislature intended that the Decennial Census be used as a benchmark, it specifically so stated. In the case of incorporation of areas into municipalities, it did not specify the Decennial Census as the guiding criteria but, instead, used the phrase 'the latest—Census.'

This indicates to me that the intent of Section 47-2 is to provide a means of incorporation of areas in which population shifts may bring about a desire to incorporate. Many areas, for various reasons, have a sudden influx of population which may be more or less permanent, but which occurs between the periods of the Decennial Censuses. The Legislature was aware of this and it is reasonable to assume that it intended that the opportunity to incorporate be afforded to areas as population densities should occur.

Supportive of this view are the cases cited at the foot of this letter.

It is my opinion, therefore, that a special census, conducted and promulgated by the Bureau of the Census since the last Decennial Census, may be used as a basis for incorporation and that such a census is the 'latest official United States Census' as that phrase is used in Section 47-2 of the Code of Laws.

Very truly yours,

Daniel R. McLeod
Attorney General

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