ALAN WILSON
ATTORNEY GENERAL

February 10, 2025

The Honorable Thomas E. Pope
Speaker *pro Tempore*
South Carolina House of Representatives
P.O. Box 11867
Columbia, SC 29211

Dear Representative Pope:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

> As an elected official, I am requesting an opinion from you on a matter of great importance to many of my constituents, and certainly highly important to all South Carolinians who pay real estate and other taxes to state and local governments.
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> It is my understanding under existing S.C. Code Section 5-3-10, et seq., that municipalities are able to annex contiguous land into their city limits, after they follow one of several statutory procedures for doing so. Exceptions to this general authority for municipalities to so annex include prohibitions against annexing regional airport commission property and professional sports team property. Other limitations require annexation preapprovals by governing bodies of various entities, including corporations, special purpose districts, school districts, churches, and others set out in our state Code of Laws.
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> Nevertheless, I am being made aware that municipal governments, on their own volition, are conducting annexations without making specific findings in their annexation ordinances that the Municipality has considered its adopted Comprehensive Plan as well as the provisions of S.C. Code Section 6-29-510 (B) and (E) which specifically set out:
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> > (B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

> (E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.

In addition, S.C. Code Section 6-7-10, *et seq.,* appears to encourage, or even require, municipalities and counties to operate in concert with one another when planning future land development.

Incredibly, it is being shared with me that municipalities may be annexing land without consulting with the county government or planning officials before doing so.

As a result, my questions are:

1. Is there any method, other than the annexation protest filing deadlines and requirements set out in S.C. Code Title 5, for a county government to stop a municipality from annexing tracts contiguous to its city limits, or take any other land use action that has a negative impact on that county?

2. In your opinion, what entity best determines when municipalities are overreaching by annexing adjacent lands or enacting municipal ordinances with negative effects on areas outside of their jurisdiction?

3. Do you agree that given the provisions of S.C. Code 6-7-10, *et seq.,* that municipalities are best advised to work with counties in order to prevent, or minimize, future land use problems?

Law/Analysis

This Office has previously opined, "The matter of annexation in regard to municipalities in this State is a [l]egislative function and the General Assembly has complete power with respect

thereto." Op. S.C. Att'y Gen., 1960 WL 8095 (February 23, 1960).[1] The South Carolina Constitution directs the General Assembly to establish the procedures for incorporation of municipalities and for the "readjustment" of their boundaries. S.C. Const. art. VIII, § 8.[2]

To that end, the General Assembly established three methods allowing a municipality to annex privately owned property. See S.C. Code §§ 5-3-150(1), -150(3), 300. Each of the three methods is initiated by filing a petition with a municipal governing body. First, section 5-3-300 authorizes annexation if a petition signed by "twenty-five percent or more of the qualified electors who are residents within the area proposed to be annexed" is filed with a municipality's council. S.C. Code § 5-3-300(A). The council then certifies that the requirements of the petition are met to the county election commission. See S.C. Code § 5-3-300(C). The county election commission then orders "an election to be held within the area proposed to be annexed to the municipality on the question" of annexation. Id. The county election commission provides "at least thirty days' notice in a newspaper of general circulation" prior to the election. S.C. Code § 5-3-300(D). After the election, additional notice is required after the election to be published in a newspaper of general circulation within the municipality.

Next, section 5-3-150(1) authorizes annexation when a "petition signed by seventy-five percent or more of the freeholders … owning at least seventy-five percent of the assessed valuation of the real property in the area requesting annexation" is filed with a municipal governing body. If the municipal governing body agrees to accept the petition and annex the area, the annexation is completed upon the "the enactment of an ordinance declaring the area annexed to the municipality." Id. However, the property cannot be annexed without complying with six listed conditions within the subsection. Id. There are two particularly relevant conditions to the concerns listed in your letters. The first is the authorization for "the municipality or any resident of it and

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[1] See also Gen. Battery Corp. v. City of Greer, 263 S.C. 533, 541–42, 211 S.E.2d 659, 663 (1975)

> [T]the following language quoted with approval from 37 Am.Jur. 639,37 Am.Jur. 639, is most applicable, 'In the absence of constitutional limitations 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'.

[2] Id.

> 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. …

any person residing in the area to be annexed or owning real property of it" to file suit in the court of common pleas to "challenge and have adjudicated any issue raised in connection with the proposed or completed annexation." Id. The second is that notice of a public hearing must be published "in a newspaper of general circulation in the community" at least thirty days before acting on an annexation petition. Id. Further, written notice of the hearing must be provided "to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time." Id. (emphasis added).

Finally, section 5-3-150(3) authorizes annexation when a "petition signed by all persons owning real estate in the area requesting annexation" is filed with a municipal governing body. The South Carolina Supreme Court has described this method as a "fast track" method to annexation in part because the subsection authorizing it lacks a notice requirement, and third parties generally lack standing to challenge an annexation thereunder. Vicary v. Town of Awendaw, 425 S.C. 350, 358, 822 S.E.2d 600, 604 (2018) ("Unlike the 75% method, the 100% method does not contain a notice provision or an authorization for third parties to challenge the annexation. Again, this makes sense because the 100% method is a 'fast track' scheme available 'only when all of the property owners consent.'"); see also Ex parte State ex rel. Wilson, 391 S.C. 565, 574, 707 S.E.2d 402, 407 (2011) ("[O]ur precedent states that standing to challenge annexations by 100% petition is limited. … An annexation by 100% petition may be challenged only by a person who 'assert[s] an infringement of [his or her] own proprietary interests or statutory rights.'"); St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) ("In our view, the better policy is to limit 'outsider' annexation challenges to those brought by the State 'acting in the public interest.'").

The amount of notice a county must be given when a municipality annexes private property depends on which of the above methods are utilized. The 100% method or "fast track" method authorized in section 5-3-150(3) provides the least notice and opportunity for third-party challenges. The 75% method authorized in section 5-3-150(1) requires a public hearing and notice thereof to the county in writing to its chief administrative officer. The 25% petition and election method authorized in 5-3-300 requires publication in newspapers at set periods before and after the election in the area petitioned to be annexed and the county election commission conducts this election.

As noted in your letter there are several statutes codified within Chapter 3 of Title 5 of the South Carolina Code of Laws that prohibit the annexation of property owned by certain bodies, establish alternative methods of annexation, or allow for consolidation of municipalities. A county that owns property can agree for it to be annexed by a municipality.

> When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

S.C. Code § 5-3-100. Likewise, a municipality can annex property which it owns. See Nat'l Tr. for Historic Pres. in United States v. City of N. Charleston, 439 S.C. 222, 228, 886 S.E.2d 487, 490 (Ct. App. 2023), reh'g denied (May 11, 2023), cert. granted (Sept. 16, 2024) ("Section 5-3-100 is a method for annexation when the municipality wholly owns the property to be annexed.") (emphasis in original). Where all or part of a special purpose district is sought to be annexed, sections 5-3-310 to -315 provide how the municipality and district resolve issues related to maintaining services and developing a plan. Section 5-3-311 allows the district and municipality to formulate a plan by agreement, but if they cannot agree on such a plan "within ninety days following a favorable vote at the last referendum election required to be held to authorize the annexation," they must appoint a committee to formulate a plan. S.C. Code § 5-3-311. The plan "shall seek to balance the equities and interests of the residents and taxpayers of the annexed area and of the area of the district not annexed." S.C. Code § 5-3-312. The code does not, however, contain a similar scheme requiring consultation and mutual formulation of a plan between an annexing municipality and a county.

With this framework in mind, we turn to the questions raised in your letter.

1. Is there any method, other than the annexation protest filing deadlines and requirements set out in SC Code Title 5, for a county government to stop a municipality from annexing tracts contiguous to its city limits, or take any other land use action that has a negative impact on that county?

It is unclear from the question presented what standing the county would have to challenge the annexation or what would be the potential negative impacts. If there are no substantive defects with the annexation ordinance and the municipality makes a good faith attempt to comply with applicable statutory requirements, there is a "presumption of validity bestowed on annexations." Vicary, 425 S.C. at 359, 822 S.E.2d at 604. Presumably, due to the letter's reference to comprehensive plans and land development, these would be the suggested negative impacts of an annexation. The General Assembly has established mechanisms for parties to challenge annexations and zoning regulations. However, a party with standing to challenge a zoning change may not also have standing to challenge an annexation. See Ex parte State ex rel. Wilson, 391 S.C. 565, 574, 707 S.E.2d 402, 407 (2011) ("Appellants Campbell and Kinsey have standing to challenge the annexation pursuant to a statute—South Carolina Code section 6–29–760(C) (2004)—that grants the owners of adjoining land standing to challenge zoning changes. This

statute is inapplicable because this lawsuit challenges annexation, not zoning."). It would be advisable for your constituent to contact legal counsel to determine what specific negative impacts are sought to be avoided and if there are mechanisms our state courts recognize to challenge them.

2. In your opinion, what entity best determines when municipalities are overreaching by annexing adjacent lands or enacting municipal ordinances with negative effects on areas outside of their jurisdiction?

As discussed above, the General Assembly has "complete power" with respect to the adjustment of municipal boundaries. Op. S.C. Att'y Gen., 1960 WL 8095 (February 23, 1960). If the General Assembly finds the current statutory scheme results in negative effects, it is authorized to amend the annexation statutes to address those concerns.

3. Do you agree that given the provisions of S.C. Code 6-7-10, et seq., that municipalities are best advised to work with counties in order to prevent, or minimize, future land use problems?

Section 6-7-10 expressly declares the General Assembly's purpose.

> The intent of this chapter is to enable municipalities and counties acting individually or in concert to preserve and enhance their present advantages, to overcome their present handicaps, and to prevent or minimize such future problems as may be foreseen. To accomplish this intent local governments are encouraged to plan for future development; to prepare, adopt, and from time to time revise, a comprehensive plan to guide future local development; and to participate in a regional planning organization to coordinate local planning and development with that of the surrounding region. As aids in the implementation of the comprehensive plan local governments are encouraged to adopt and enforce appropriate land use controls, and cooperate with other governmental authorities.
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> The provisions of this chapter are declared to be necessary for the promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare.
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> Any county or municipality may, but shall not be required to, exercise any of the powers granted by this chapter. Whenever such a governing authority shall elect to exercise any of the powers granted by this chapter, such powers shall be exercised in the manner hereinafter prescribed.

S.C. Code Ann. § 6-7-10 (emphasis added). The General Assembly expressed its intent in plain language that municipalities and counties might work together or separately to plan for future development. Local governments were additionally encouraged to "participate in a regional planning organization to coordinate local planning and development with that of the surrounding region." Id. Where the General Assembly authorized local governments to act "individually or in concert," this Office has no basis to say which is better.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General