



ALAN WILSON
ATTORNEY GENERAL

March 14, 2024

The Honorable Richard W. Anderson
Chester County Assessor
P.O. Drawer 580
Chester, SC 29706

Dear Mr. Anderson:

We received your letter requesting an Attorney General's opinion regarding the legality of a recent annexation by the City of Chester (the City). By way of background, you informed us:

In October 2022, the City passed an annexation ordinance pursuant to section 5-3-150(3) of the South Carolina Code (2004), of four parcels of undeveloped land. The annexation was a result of four petitions for annexation. The petitions reference section 5-3-140 of the South Carolina Code (Supp. 2023). The annexation petitions have the following errors:

1. The petitions are not dated and are signed by the buyer, not the owners, without a power of attorney or other authorization.
2. The petitions reference section 5-3-140 for annexation of property owned by the State or federal land, not privately owned property.
3. The City failed to give public notice, via newspaper, signs, or other notification.

Attached to your letter was information pertaining to the ownership of the parcels that were annexed to the City and the City's notification of the annexation, a dated copy of the annexation ordinance, and undated copies of the petitions for annexation.

Law/Analysis

We begin by noting this Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, "[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." Op. S.C. Att'y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att'y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of

The Honorable Richard W. Anderson
Page 2
March 14, 2024

facts, we cannot render an opinion as to the legality of the annexation referenced in your letter. However, we provide the following law in the hope it may be helpful to you.

Section 5-3-10 of the South Carolina Code (2004) provides, “Any city or town council may extend the corporate limits of the municipality in the manner set forth in this chapter.” Chapter Three of Title Five of the South Carolina Code provides for alternate methods of annexation when the area proposed to be annexed is owned by the federal government or the State or when the annexation petition is “signed by all persons owning real estate in the area requesting annexation” (the 100% petition method).

If the territory proposed to be annexed belongs entirely to the federal government or to the State of South Carolina and is adjacent to a municipality, it may be annexed upon the petition of the federal government or of the State to the city or town council thereof. As used in this section, a petition by the State shall mean a petition executed by the State Fiscal Accountability Authority. Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation is complete.

S.C. Code Ann. § 5-3-140 (Supp. 2023).

Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

S.C. Code Ann. § 5-3-150(3) (2004).

When interpreting a statute, the primary goal is to determine the General Assembly’s intent. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”). “[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When interpreting a statute, the Court must read the language in a sense which harmonizes with

its subject matter and accords with its general purpose.” Allen v. S.C. Pub. Emp. Ben. Auth., 411 S.C. 611, 616, 769 S.E.2d 666, 669 (2015).

If proceeding under the 100% petition method, “all persons owning real estate” in the area requesting annexation must file a petition with the municipal governing body. As held by the Supreme Court of South Carolina:

The 100% petition method provides neither an express notice provision nor an authorization for third parties to challenge the annexation. The absence of such provisions in the 100% petition method is readily understood in light of the requirement that **all** property owners in the annexed area consent by signing the annexation petition. Notably, residents of the annexing municipality are not permitted to challenge a 100% petition annexation. Rather, “[i]n order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.” St. Andrews Public Service District v. City Council of Charleston, 349 S.C. 602, 604, 564 S.E.2d 647, 648 (2002) (citing State, by State Budget and Control Bd. v. City of Columbia, 308 S.C. 487, 489, 419 S.E.2d 229, 230 (1992)). In sum, the 100% petition method is a “fast track” for annexation that may be used only when all of the property owners consent.

Ex parte State ex rel. Wilson, 391 S.C. 565, 572, 707 S.E.2d 402, 406 (2011) (alteration in original). Accordingly, because all persons owning real estate in the area to be annexed must file a petition for annexation with the municipal governing body, express notice of the annexation is not required.

If proceeding under section 5-3-140, either the federal government or the State Fiscal Accountability Authority must petition to the municipal governing body for annexation of territory belonging entirely to the federal government or the State. Like the 100% petition method, section 5-3-140 does not contain an express notice provision. See Sloan, 371 S.C. at 498, 640 S.E.2d at 459 (“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.”). Applying our State Supreme Court’s reasoning in Wilson to section 5-3-140, because the government having sole possession of the land in the area to be annexed must file a petition for annexation with the municipal governing body, express notice of the annexation is not required.

Further, we believe a court would find that under these alternate methods of annexation, it is the municipal governing body’s responsibility to determine whether the petitions meet the statutory requirements. Sections 5-3-140 and 5-3-150(3) contain similar language indicating that upon agreement of the municipal governing body to accept the annexation petition and the enactment of an ordinance to that effect, the annexation is complete. The statutory language is silent as to any additional requirements such as a special election. See Allen, 411 S.C. at 616, 769 S.E.2d at 669 (“When interpreting a statute, the Court must read the language in a sense which harmonizes with its subject matter and accords with its general purpose.”); cf. S.C. Code Ann. § 5-3-300 (2004)

The Honorable Richard W. Anderson
Page 4
March 14, 2024

(providing under the annexation procedure requiring the filing of a petition signed by twenty-five percent or more of the qualified electors who are residents within the area proposed to be annexed, a special election must be held).

We note, however, that an action challenging a valid municipal annexation is subject to the statute of limitation provisions under section 5-3-270 of the South Carolina Code (2004). *See* S.C. Code Ann. § 5-3-270 (“When the limits of a municipality are ordered extended, no contest thereabout shall be allowed unless the person interested therein files, within sixty days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the extension, nor unless, within ninety days from the time the result has been published or declared an action is begun and the original summons and complaint filed with the clerk of court of the county in which the municipality is located.”); *Vicary v. Town of Awendaw*, 427 S.C. 48, 56, 828 S.E.2d 229, 234 (Ct. App. 2019) (holding a challenge to a purported annexation was not barred by the statute of limitations when the annexation was void).

Conclusion

We cannot opine as to the legality of the annexation referenced in your letter because it would involve a determination of facts, which is beyond the scope of an opinion of this Office. *Op. S.C. Att’y Gen.*, 2006 WL 1207271 (S.C.A.G. April 4, 2006) (“[B]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” (quoting *Op. S.C. Att’y Gen.*, 1989 WL 406130 (April 3, 1989))). However, in an effort to assist you, we have set forth the generally applicable law for sections 5-3-140 and 5-3-150(3). If proceeding under section 5-3-140, either the federal government or the State Fiscal Accountability Authority must petition to the municipal governing body for annexation of territory belonging entirely to the federal government or the State. If proceeding under section 5-3-150(3), all persons owning real estate in the area requesting annexation must file a petition with the municipal governing body. As discussed, neither of these alternate annexation methods are subject to an express notice provision and we believe a court would find it is the municipal governing body’s responsibility to determine whether the petitions meet the statutory requirements.

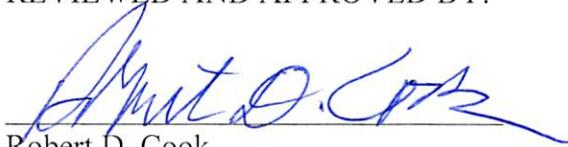
Sincerely,



Elizabeth McCann
Assistant Attorney General

The Honorable Richard W. Anderson
Page 5
March 14, 2024

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General