



ALAN WILSON
ATTORNEY GENERAL

September 9, 2026

Mrs. Mary C. McCormac, Esquire
Town Attorney, West Union
PO Box 1535
Clemson, SC 29633

Dear Mrs. McCormac:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding annexations, particularly of railroads, and the process for challenging annexations.

Your request includes many details specific to two annexations by the Town of West Union. The Office has also received an opinion request from Oconee County regarding these same annexations. This Office is unable to determine facts in an advisory opinion. 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., 2003 WL 21040130 at *1 (Feb. 19, 2003) (quoting Op. S.C. Att’y Gen., Oct. 10, 1985, at *2 and Sept. 3, 1999, at *2). Therefore, this Office cannot make factual determinations regarding these annexations and will not comment specifically on them. If disputes remain regarding these annexations, a final determination of their legality must come from a South Carolina court with jurisdiction over the matter.

Law/Analysis

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. “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., 2025 WL 554376 (Feb. 10, 2025) (citing Op. S.C. Att’y Gen., 1960 WL 8095 (February 23, 1960)).

You ask about the contiguity requirements for annexations and the effect of a railroad owning property on this requirement. The contiguity requirement for annexation is laid out in South Carolina Code Section 5-3-305. S.C. Code Ann. § 5-3-305 (2004). The Office is not aware of any statute that prohibits the annexation of real property on which a railroad track is located, provided it otherwise meets the requirements of Section 5-3-305. Our understanding of Section 5-3-305’s prohibition on contiguity being established by “a road, waterway, right-of-way, easement,

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railroad track, marshland, or utility line” is that Section 5-3-305 provides that unannexed railroad track may not be used to establish contiguity between two parcels but two parcels which are otherwise contiguous remain so when the only separation is an unannexed “road, waterway, right-of-way, easement, railroad track, marshland, or utility line.” This view is buttressed, as you describe in your letter, by the Supreme Court’s holding in St. Andrews Public Service District v. City Council of Charleston, 349 S.C. 602, 606, 564 S.E.2d 647, 649 (2002) (“Accordingly, the record establishes that all the challenged properties touch—albeit via annexed roadways in some cases—property already within the limits of the City of Charleston.”). This understanding does not mean that annexed real property on which railroad tracks sit cannot be used to establish contiguity.

Relatedly, the Office is not aware of any law which places restrictions on the size or shape of an annexed parcel or the length of border that an annexed parcel must have with the municipality.

We now turn to your questions regarding the process of challenging annexations. Section 5-3-270 provides:

[N]o 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.

S.C. Code Ann. § 5-3-270 (2004). We believe this Section adequately answers your questions regarding the timing of a challenge except to note that these deadlines also apply to the State. See State ex rel. Condon v. City of Columbia, 339 S.C. 8, 16, 528 S.E.2d 408, 412 (2000) (“The critical question in this case, however, is whether section 5–3–270 applies when the State is the party challenging an annexation proceeding. We conclude that it does”); Ex parte State rel. Wilson, 391 S.C. 565, 578, 707 S.E.2d 402, 409 (2011) (“In essence, the State requests that the Court create a ‘discovery rule’ for purposes of the section 5–3–270 limitations period. We decline to do so under the facts presented.”).

With regards to who may challenge an annexation, we have previously noted that it is unclear what standing, if any, a county would have to challenge an annexation. Op. S.C. Att’y Gen., 2025 WL 554376 (Feb. 10, 2025). However, the answer depends in part on the method of annexation. Under the 100% Method created in Section 5-3-120, “the only non-statutory party which may challenge a municipal annexation is the State.” See St. Andrews Public Service District v. City Council of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002); see also Ex parte State ex rel. Wilson, 391 S.C. 565, 574, 707 S.E.2d 402, 407 (2011) (noting that South Carolina precedent has held that standing to challenge annexations by the 100% Method is limited and that such annexations may only be challenged by a person who asserts an infringement of that person’s

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proprietary interests or statutory rights). Absent an infringement of a proprietary interest or statutory right of the county, South Carolina appellate courts have found a lack of standing where counties have sought to challenge annexations. See, e.g., Beaufort Cty. v. Trask, 349 S.C. 522, 563 S.E.2d 660 (Ct. App. 2002) (finding that the county lacked standing to challenge an annexation because it could not “show that there has been an infringement of its own proprietary interests or statutory rights”); see also, Lexington County v. City of Columbia, 303 S.C. 300, 400 S.E.2d 146 (1991). Thus, we do not believe a county generally has the ability to challenge an annexation under the 100% Method in Section 5-3-120, which you explain was used in both the West Union annexations at issue in your request.

Under the 75% Method created in Section 5-3-150, the annexation may be challenged by the “municipality or any resident of it and any person residing in the area to be annexed or owning real property of it” by “institute[ing] and maintain[ing] a suit in the court of common pleas.” S.C. Code Ann. § 5-3-150(1) (YEAR). As a result, the county could challenge an annexation under Section 5-3-150 only if the county owns property in the annexed area. See St. Andrews Public Service District v. City Council of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) (“Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area.”). This does not appear to be relevant since you explain that the West Union annexations were completed under the 100% Method in Section 5-3-120.

Again, the Office cannot make factual determinations and therefore will not comment on the specific annexations your request references, but we hope this summary of the law is helpful.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus