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OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

January 18, 2005

Mr. Michael B. Phillips
Chester City Administrator
100 West End Street
Chester, South Carolina 29706

Dear Mr. Phillips:

In a letter to this office you referenced the provisions of S.C. Code Ann. §§ 5-3-100, 5-3-300 and 5-3-305 (2004). Section 5-3-100 states

> If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the 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.

Section 5-3-300 (A) provides:

> In addition to other methods of annexation authorized by this chapter, any area which is contiguous to a municipality may be annexed to the municipality by the filing of a petition with the council signed by twenty-five percent or more of the qualified electors who are residents within the area proposed to be annexed.

Section 5-3-305 defines "contiguous property" in the following manner:

> For purposes of this chapter, "contiguous" means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

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Leonard Kerr

Referencing such you have questioned whether if a city purchases a property which is one property removed from the city limits, can it be annexed as being "near". In such circumstances you questioned whether the size of the in-between property would be a factor. You also questioned what constitutes "adjacent" and whether adjacent could be two properties separate and still near.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990) Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth, Section 5-3-100 with regard to property belonging to a municipality provides that the property proposed to be annexed must be "adjacent thereto" to the municipality. Other provisions provide for annexation of other particular types of properties. See: S.C. Code Ann. Sections 5-3-110 et seq. (2004). As noted, Section 5-3-300(A) provides for annexation of an area "contiguous to a municipality." The term "contiguous" is defined by Section 5-3-305 as "property which is adjacent to a municipality and shares a continuous border. In Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899, 901, the Supreme Court determined that "(t)he statutory word 'contiguous' must be afforded its ordinary meaning of 'touching'."

Concerning the question you raise, in my opinion, property which is one property removed from the city limits cannot be annexed as being "near". As set forth in Section 5-3-100 "(i)f the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed...." In Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872, 876, the State Supreme Court referenced that

> The statutes of many States require that the land annexed be contiguous or adjacent to the municipal borders. Appellants say that the reference in Section 47-13 of our annexation statute to "adjacent territory" necessarily implies such requirement. Whether this be true or not, it seems to be generally recognized, and is so conceded in this case, that there must be contiguity even in the absence of a statutory requirement to that effect...Such is ordinarily essential to make the city a collective body having unity and compactness. (emphasis added).

An opinion of the North Dakota Attorney General, Op. No. 93-03, dealt with the construction of the terms "contiguous" and "adjacent" as used in a statute that provided that annexation is limited to territories "contiguous or adjacent". The opinion stated that

> As these terms have been used in annexation statutes, they have generally been held to be synonymous to the extent both terms require at a minimum some "touching" between the municipality and the territory sought to be attached...We conclude that the terms "contiguous" or "adjacent"...(as used in the statute)...means that if the territory to be annexed to the city is in actual contact with the boundaries of the city, at least to the extent of touching at a common corner,...the territory is adjacent or contiguous to the city.

The opinion citing 56 Am.Jur.2d Municipal Corporations Section 69 (1971) stated further that

> There are obvious objections to the annexation of land to a municipality which is not contiguous thereto but is separated by land constituting some other territorial unit. The legal as well as the popular idea of a municipal corporation in this country, both by name and use, is that of oneness, community, locality, vicinity, a collective body, not several bodies; a collective body of inhabitants–that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation.

An opinion of the Missouri Attorney General, Op. No. 57-89, dealt with the construction of the term "adjacent" stating

> Webster's Third New International Dictionary defines adjacent as follows:
> Relatively near and having nothing of the same kind intervening; having a common border...immediately preceding or following with nothing of the same kind intervening...Applied to things of the same type, it indicates either side-by-side proximity or lack of anything of the same nature intervening...While this and other definitions of adjacent include the word near, it is important to note that the word near is qualified by the phrase "having nothing of the same kind intervening." Thus two buildings may be adjacent though separated by a stream or a road. But two areas of land are not adjacent when they are separated by a third area of land. This is the plain and ordinary meaning of adjacent and produces the most lucid and logical construction...We believe that the term "adjacent"...(as used in the statute)...clearly means that territory to be annexed must be either abutting and touching the annexing municipality or not have territory of the same kind intervening between it and the annexing municipality.

Consistent with such, in my opinion, the term "adjacent" as used in Section 5-3-100 should be construed in keeping with the term "contiguous" as set forth by Section 5-3-305 which is defined as "property which is adjacent to a municipality and shares a continuous border." Therefore, as to your situation regarding purchase of property which is one property removed from the city limits, such property may not be annexed as being "near". Regardless of the size of any property in between the property, in my opinion, the property to be annexed must be touching the property of the municipality. Similarly, properties "adjacent" should not be construed as two properties separate and still near. Again, in my opinion, the property to be annexed must be touching the property of the municipality.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General