



ALAN WILSON
ATTORNEY GENERAL

March 14, 2013

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
Post Office Box 742
Gaffney, South Carolina 29342

Dear Senator Peeler:

Attorney General Alan Wilson has referred your letter of December 17, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Which county is a constituent's property located in where the home built on the property has been taxed since it was built close to fifteen years ago by Cherokee County but, for the first time, Spartanburg County assessor sent notice on March 19, 2012 to the constituent and to Cherokee County that he is taxing the home as being located in Spartanburg County?

Short Answer: This Office does not answer factual questions, so this Office will not answer your question of whether a particular home is located in Cherokee County or Spartanburg County. However, this Office will present what it believes to be the applicable law and possible remedies for the legal questions presented.

Law/Analysis:

The South Carolina legislature has defined the boundaries of Cherokee and Spartanburg counties. S.C. Code § 4-3-110 (1976 Code, as amended) details the boundaries of Cherokee County as:

“[B]eginning at the mouth of Brown's Branch and running up branch 76.60 chains to near where G. W. Webster now lives or formerly resided, placing his present or former residence in new county; thence S. 75° W. 66.23 chains to rock N. E. corner lot of property now or formerly owned by Pacolet Manufacturing Company at Brown's old mill; thence N. 63° W. 15.70 with line of said lot to rock; thence S. 45° N. 5.73 to maple; thence same course 87 links to Pacolet River; thence with said river upstream 7.36 to stake on Pacolet; thence N. 16° W. property now or formerly owned by H. L. C. Murphy in old county, property known as Hammett property in new county, Hammett School House near crossroads in old county, property now or formerly owned by Miss Mary Brown in new county, 509.80 chains to stake 1 mile east of town of Cowpens; thence N. 24° W. 64 chains to line of Lime Stone township; thence west with Lime Stone township 80 chains to southwest corner of said township; thence N. 116.80 chains with line of Lime Stone township to mark line running N. 24° W.; thence N. 24° W., leaving property now or formerly owned

by Joel Petty and property now or formerly owned by Cleveland Gossett in old county, passing through house now or formerly occupied by J. G. Powell, leaving the property now or formerly owned by Andy Norton in Spartanburg County, also house now or formerly owned by Mrs. Price, placing the house now or formerly belonging to Cash and the house now or formerly owned by Fate Martin in new county, passing through the storeroom now or formerly belonging to Finch Martin, but leaving his present or former dwelling house in old county, leaving properties now or formerly owned by John Walker and Mrs. Cudd in Spartanburg County, 785.65 chains to stake on North Carolina line; thence with said line crossing Broad River, and continuing at the corner of Cherokee township in York County; thence south with east boundary of said township to stake; thence west to corner of said township on King's Creek; thence down King's Creek to middle of Broad River; thence down Broad River to center of river opposite Pacolet River; thence up Pacolet River to opposite Brown's Branch to beginning point, and in addition thereto the following territory containing two square miles transferred from York County by act of the General Assembly, approved February 11 1921, to wit: beginning at a stake in road in State line on top of mountain at Burned Grocery and running thence S. 43.5° W. 224 chains to a large pine at northeast end of Brown Mountain; thence with the Cherokee County line N. 2.5° W. 152 chains to B. O., E. A. Patterson's corner in State line; thence S. 86° E. 165 chains with State line to the beginning corner, containing two square miles."

S.C. Code § 4-3-480 (1976 Code, as amended) gives the boundaries of Spartanburg County as:

"[O]n the north by the North Carolina line; on the west by Greenville County from which it is divided by a line commencing on the North Carolina line at a stone marked "S.C. 1815" on one side and "N.C. Sept.15" on the other side at N 1,225,788.54 and E 1,636,650.35 [North American Datum 1983-86 (NAD 83-86)]; thence following a straight line southsouthwestward to a point at N 1,193,615.00 and E 1,635,730.00 (NAD 83-86); thence following a straight line southsouthwestward to a point at N 1,155,409.00 and E 1,634,410.00 (NAD 83-86); thence following a straight line southsouthwestward to a point at N 1,133,159.00 and E 1,633,701.00 (NAD 83-86) at the north end of North Line Street at its approximate intersection with Arlington Avenue in the City of Greer; thence following a straight line southward approximately along the centerline of North Line Street to a point N 1,131,240.00 and E 1,633,595.00 (NAD 83-86) where North Line Street becomes South Line Street in the City of Greer; thence following a straight line southward approximately along the centerline of South Line Street to a point at N 1,128,573.00 and E 1,633,500.00 (NAD 83-86) where the centerline of South Line Street is approximately tangent to the centerline of New Woodruff Road in the City of Greer; thence following a straight line southsouthwestward to a point at N 1,102,217.00 and E 1,632,108.00 (NAD 83-86) which is a point where the old bridge crossed the Enoree River; thence down the Enoree River to a point about one and three-fourths miles below Anderson's Bridge (the corner of Greenville and Laurens Counties); on the southwest by the Enoree River, down to a dead Spanish oak below Head's Ford, and a little above the mouth of a small creek which divides it from Laurens County; on the southeast by Union County, from which it is divided by the following lines:

beginning at the dead Spanish oak on the north side of the Enoree River, and running N. 12° E.3 miles and 26 chains; thence N. 17° E.2 miles and 28 chains; thence N. 6.5° E.11 miles and 15 chains, crossing Tyger River to Fair Forest Creek; thence N. 33° 45' E.6 miles and 37 chains to Pacolet River, a little below Gist's Mill; thence along the western boundary of Cherokee County to the North Carolina state line.”

In South Carolina the General Assembly bears the responsibility of altering county lines, which it usually does so through an Act, but it must first submit and have two-thirds of the votes of the qualified electors for the modification of the property proposed to be removed from one county and granted to another county. Ops. S.C. Atty. Gen., 1990 WL 482454 (November 21, 1990); 1977 WL 48 (February 4, 1977); S.C. Const. Article 7 § 7; Clarendon County v. Sumter County, 116 S.C. 258, 108 S.E. 103 (1921). However, no election is required where there are no registered voters located in the property proposed to change counties. Op. S.C. Atty. Gen., 1990 WL 482454 (November 21, 1990).

South Carolina formerly used S.C. Code § 12-37-660 (1976 Code, as amended, previously § 65-1619 of the 1962 Code) which was repealed in 1993. It specified that a landowner with land in multiple counties pay each county according to the acreage that was in each county. Op. S.C. Atty. Gen., 1965 WL 8061 (September 14, 1965). Also previously in South Carolina real property tax appeals were handled through the county assessor's office and then went to the Comptroller General per S.C. Code of Laws § 65-2653 and § 65-2654 (1962 Code). Op. S.C. Atty. Gen., 1973 WL 20941 (February 23, 1973). However, those statutes, which later became S. C. Code § 12-47-30 and §12-47-40 (1976 Code), were repealed in 1995. Currently, real property tax appeals in South Carolina begin with the assessor and then are handled through the local county board of assessment appeals. S.C. Code § 12-60-2510, -2520, -2530 (1976 Code, as amended). The board of assessment appeals is authorized to hear any relevant claims to a property tax assessment other than claims concerning property tax exemptions. S.C. Code § 12-60-2530 (1976 Code, as amended). Appeals from the county board of assessment appeals go to the Administrative Law Judge Division, per S.C. Code § 12-60-2530(J)(3)(c) and § 12-60-2540 (1976 Code, as amended). Appeals from the Administrative Law Judge Division are then heard by the South Carolina Court of Appeals. S.C. Code § 12-60-3380 (1976 Code, as amended). As long as the taxpayer pays or posts bond for the outstanding taxes, he may appeal the Administrative Law Judge Division's decision. S.C. Code § 12-60-3370 (1976 Code, as amended).

Ordinarily a boundary line dispute is an action at law, and the question of where the actual line is is a question of fact for a jury. Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383 (2008) (citing Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 544 S.E.2d 194 (1995)). However, a taxpayer who brings an action appealing real property taxes in circuit court may have the case dismissed without prejudice, pursuant to S.C. Code § 12-60-3390. The courts may determine a boundary line to be established by acquiescence of the parties, which is a question of fact to be determined by a jury based on the intent of the parties. Id. (citing Kirkland v. Gross, 286 S.C. 193, 197-198, 332 S.E.2d 546, 548-549 (1985), receded from on other grounds by Boyd. V. Hyatt, 294 S.C. 360, 364 S.E.2d 478 (1988)). “[I]f a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interest[s] are affected. His silence is acquiescence and it estops him.” Id. (citing McClintic v. Davis, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955) (quoting S. Ry. v. Day, 140 S.C. 388, 138, S.E. 870 (1926))). Additionally, “[i]f adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long

period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one.” *Id.* (citing Gardner v. Mozingo, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987)). “In other words, such recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line.” *Id.* (citing Knox v. Bogan, 322 S.C. 64, 72, 472 S.E.2d 43, 48 (1996)). Acquiescence regarding a boundary line has been cited by this Office in regards to a municipality with a boundary in place forty-seven years without dispute. Op. S.C. Atty. Gen., 1984 WL 249864 (April 23, 1984). Additionally, estoppel may be a defense to any such change in the county the property is located in. Estoppel arises “when a person executes some deed, or is concerned in or does some act, either of record or in pais, which will preclude him from averring anything to the contrary... In the broad sense of the term ‘estoppel’ is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the act of the party himself, either by conventional writing or by representations, express or implied, in pais.” Southern Ry. Co. v. Day, 140 S.C. 388, 138 S.E. 870 (1926) (citing 10 R. C. L. 675 and 21 C.J. 1059). There are numerous other cases and principles governing boundary disputes, which, for the sake of time, this Opinion will not go into and will defer to a court of law to address.

Over the course of South Carolina’s history there have been previous disputes between counties over where the boundary lines are. For example, Edgefield County has previously sued Aiken County to settle the issue of a boundary line. Op. S.C. Atty. Gen., 1973 WL 27694 (May 15, 1973). Where there is a boundary dispute between two parties, the court is the proper venue. Op. S.C. Atty. Gen., 1960 WL 11387 (February 19, 1960). In such boundary line dispute cases, including between counties, a judge must appoint surveyors nominated by the parties. Op. S.C. Atty. Gen., 1972 WL 25175 (January 13, 1972) (citing § 57-452 (1962 Code) now S.C. Code § 27-1-20 (1976 Code, as amended)). In determining a boundary line dispute between two counties, it is not always necessary to perform a new survey if there are permanent landmarks already in place, as long as the boundaries are marked. Op. S.C. Atty. Gen., 1966 WL 12060 (June 27, 1966). However, a change of boundaries between counties requires a new survey be performed. Ops. S.C. Atty. Gen., 1985 WL 259179 (May 21, 1985); 1980 WL 120699 (March 6, 1980) (both citing S.C. Code 4-5-140 (1976 Code, as amended)). If a boundary line is agreed upon by the counties, they may choose to file a declaratory action to have the court confirm the boundary line as mutually agreed. Op. S.C. Atty. Gen., 1976 WL 23095 (October 6, 1976). Additionally, South Carolina’s Geodetic Survey may be used as a mediator between county in boundary line disputes. S.C. Code § 27-2-105 (1976 Code, as amended).

Your constituent has multiple options in settling this matter, of which a few will be discussed here. She may request Cherokee County to resolve the issue with Spartanburg County or to bring suit in court against Spartanburg County to defend its holding that the home is in Cherokee County, as it has been for the last fifteen or so years. The constituent may individually bring a declaratory suit against Spartanburg County to have the property line issue determined by a court. A county sue and may be sued as a political body. S.C. Code § 4-1-10 (1976 Code, as amended). Your constituent may also try to appeal the property taxes through the county board of assessment appeals, but a declaratory action would be the place a court is more likely to make a boundary determination. Additionally, if your constituent ends up paying property taxes for Spartanburg County for 2012, she has an argument that her property taxes for 2012 should be prorated between the two counties based on when she received actual notice for the first time that her home might be in Spartanburg County. Regardless of the course of action taken, your constituent would need pay her property taxes (or at least pay the property taxes under appeal) and file the necessary

The Honorable Harvey S. Peeler, Jr.
Page 5
March 14, 2013

appeal papers in order to prevent a tax lien on her property. S.C. Code § 12-60-2550 (1976 Code, as amended).

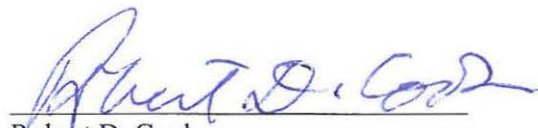
Conclusion: Based on the conclusion that the constituent could have the boundary line determined by a court if she is in not able to resolve the issue to her satisfaction with the counties, please let us know if you need anything else. Any other legal issues should be addressed by a court. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes what the law is in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General