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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 17, 2000

James S. Gibson, Jr.
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901-0040

RE: Informal Opinion

Dear Mr. Gibson:

By your letter of September 6, 2000, you have requested an opinion on the recent amendments to the statutes governing annexation. The amendments to South Carolina Code Section 5-3-310 provide a method to modify the boundaries of a special purpose district when a municipality annexes part of the service area of the district upon petition by either 75% of the freeholders (§ 5-3-150) or 25% of the freeholders (§ 5-3-300). Before the amendments of May of 2000, § 5-3-310 only provided for the modification of the special purpose district boundaries when the annexation occurred pursuant to the 25% method, or § 5-3-300. Specifically you ask how the boundaries to a special purpose district are modified after an annexation pursuant to the 75% method (§ 5-3-150) that occurred before the recent amendments were enacted. In other words, you inform us that the annexation was complete before May of 2000, but is currently being appealed.

As a preliminary note, State law does not authorize this Office, by issuing an opinion, to attempt to supersede or intervene in any pending litigation or pending administrative proceedings. Therefore, this opinion does not comment specifically on the areas involved in the litigation and will only attempt to provide some general clarification to your question.

Act No. 250, 2000 Acts and Joint Resolutions amended § 5-3-310 to read, in part: "When all or part of the area of a special purpose district ... is annexed into a municipality *under the provisions of Section 5-3-150 or 5-3-300, the following provisions apply ...*" (Emphasis added). Prior to the amendments, § 5-3-310 contained similar language, but read "under the provisions of Section 5-3-300, the following provisions apply...," in contrast to the emphasized language. The statute makes no mention of whether the amendments are to apply prospectively or retroactively.

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Request Letter

The question of whether a statute will operate retroactively or prospectively has been addressed in previous opinions of this Office. In an Opinion dated July 13, 1989, we stated the following:

> [s]tatutes generally must be construed prospectively, rather than retroactively, absent specific provision or clear legislative intent to the contrary unless the statute is remedial or procedural in nature. Bartley v. Bartley Logging Co., 293 S.C. 88, 359 S.E.2d 55 (1987). Accord Sutherland STAT. CONSTR. § 41.04 (4th ed. 1986) § 41.04 (4th ed. 1986) ("Retrospective operation is not favored by the courts, however, and a law will not be construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application. [Footnote omitted.]"). According to Bartley, supra, a "remedial" statute that may be retroactively applied, even without specific provision or clear legislative intent, refers to procedure, rather than the right to collect some particular amount. A statute is "remedial" and may be retroactively applied when it creates new remedies for existing rights or enlarges the rights of persons under disability, unless it violates a contractual obligation, creates a new right, or divests a vested right. Hooks v. Southern Bell Telephone & Telegraph Co., 291 S.C. 41, 351 S.E.2d 900 (Ct.App.1986).

Under similar principles of statutory interpretation, the South Carolina Supreme Court found that the retroactive application of an annexation exception, applying to a rural electric co-operative's service in an area annexed by a municipality, was compelled to prevent the co-op's ouster from the town. See Carolina Power & Light Co. v. Town of Pageland, 321 S.C. 538, 471 S.E.2d 137 (1996). In that case the Court said that a prospective application of the statute would defeat its legislative intent, which was to permit co-operatives to continue serving existing customers in the annexed area. In this instance, the legislative intent of the amendments is less clear. Indeed, in contrast to Carolina Power & Light, the boundaries of special purpose districts would be reduced by retroactive application to prior annexations. As a result, contractual obligations formed prior to the amendments could be adversely affected. Thus, because the retrospective operation of a statute is not favored by the courts, and statutes are presumed to be prospective in effect, we are inclined to conclude that the amendments to § 5-3-310 apply prospectively. However, we cannot opine with any high degree of confidence that a court would necessarily concur. We must advise, therefore, that further clarification from the courts is necessary to determine this question with finality.

As a final note, you have asked if any mechanisms exist for changing the boundaries of a special purpose district after an annexation that occurred before May of 2000. Although not part of the statutes governing the change of corporate limits, S.C. Code Ann. § 6-11-420 authorizes the governing board of each county to enlarge, diminish, or consolidate the boundaries of a special purpose district. Although this statute is not implicated immediately upon annexation of an area by a municipality, as is § 5-3-310, it does empower a local governing body to change the boundaries of the special purpose district as needed.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Susannah R Cole

Susannah Cole
Assistant Attorney General