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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 20, 2000

Anne E. Stelts, Esquire
Rock Hill City Attorney
P.O. Box 790
Rock Hill, South Carolina 29731-6790

RE: Informal Opinion

Dear Ms. Stelts,

By your letter of June 8, 2000, you have requested an opinion of this Office on an interpretation of the newly amended S.C. Code Ann. § 5-3-150 (found in Senate Bill 226), which provides an alternate method of annexation by which 75% of the freeholders owning more than 75% of the assessed valuation of the property to be annexed sign a petition requesting annexation. The amendment adds a notice requirement to the preconditions to annexation. Among those required to be noticed are "all public service or special purpose districts." You have concerns about the breadth of the language used and question which entities must be notified in accordance with the amendment.

Of course, with any question of statutory interpretation, the context of the amendment is important. The preconditions to annexation require: 1) the petition for annexation must be properly dated and include all necessary signatures; 2) the petition must be made available for public inspection; 3) the petition must state the act or code section by which the property is to be annexed; 4) the petition must contain a description and plat of the are to be annexed; 5) the municipality, any resident of the municipality, and a resident of the area to be annexed may challenge any issue relating to the annexation in the court of common pleas; and finally this addition:

> 6) not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal bulletin board, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time. ...

S.C. Code Ann. § 5-3-150.

In attempting to determine the meaning of § 5-3-150, a number of principles of statutory interpretation are relevant. First and foremost, of course, is the time-honored tenet that all rules are subservient to the one requiring that the legislative intent must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). Moreover, a court will reject the meaning of the words of a statute which would lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expounding the statute's operation. In other words, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1947).

Thus, under the guiding principles above, an interpretation of the amendment requiring proper notice before annexation must be sufficiently broad to conform to the intent of the General Assembly, but not so broad as to be absurd. For the reasons that follow, given the context of the requirement, we think a reasonable interpretation of "all public service or special purpose districts" would include all those public service and special purpose districts potentially affected by the annexation.

The sixth requirement focuses on the importance of the public hearing before the annexation. So that interested parties are adequately informed about the annexation, the hearing must include a map and a legal description of the area to be annexed, "a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services." S.C. CODE ANN. § 5-3-150. The public hearing appears to be for the benefit of the communities involved in the annexation, with particular emphasis on the services affected by the annexation, as well as their costs. Although the terms "all public service or special purpose districts" have no limitations imposed upon them, such as "all districts in the county" or "all districts in the area to be annexed," the language of the sixth requirement does contain clues that indicate a somewhat conservative reading of the notice requirement. For example, notice must also be given to taxpayers "within the area proposed to be annexed" and to the chief administrative officer "of the county." The notice must be published in a newspaper of general circulation "in the community." The General Assembly appears to have intended some localized limitation on the necessary parties for notification.

You have offered several possible readings of the statute. For example, the amendment could require a municipality to notify all special purpose and public service districts that serve the county, or only those that serve the area to be annexed. You also suggest that the requirement could refer to districts that serve the county or the annexed area indirectly by "for example, selling water, sewer,

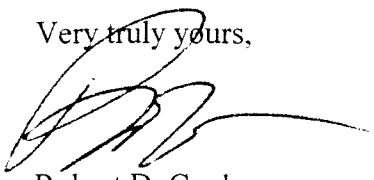
gas or electricity at wholesale to special purpose and public service districts which serve" the county or the area to be annexed. As a practical matter, it is conceivable to imagine how all three situations could include parties affected by the annexation. Certainly the public service and special purpose districts that serve the area to be annexed and the area annexing the property would be interested entities. It is also conceivable that special purpose districts indirectly serving special purpose districts in the relevant area would also be affected by the annexation, for example, if the demand for services in an area drastically increased such that a special purpose district increased its demand for the water or electricity. With other special purpose or public service districts that serve the proposed area neither directly nor indirectly, but are in the same county, the need for notice is less clear. However, determining the impact of the annexation on each public service district or special purpose district in the county would involve numerous questions of fact which are beyond the scope of an opinion of this Office to answer.

Thus, although we believe it was probably the intent of the General Assembly to limit the necessary notice requirement to interested, or affected, special purpose or public service districts, it is impossible to advise in the abstract exactly which districts this includes. The safest course of action to prevent any future challenges based on lack of notice to any entity would be to notify all special purpose districts and public service districts in the county. The municipality is already required to notify all the taxpayers of record in the proposed area to be annexed, as well as the county administrator and all fire departments. Compared to this mandate, the additional efforts to notice all special purpose and public service districts in the county are not that great of a burden for the sake of caution. In doing so, the municipality may well exceed the requirements of the statute – at worst only taking unnecessary steps but at best insulating the annexation from challenge by a party wrongfully deprived of notice.

This letter is an informal opinion only. It has been written by a designated Senior 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,



Robert D. Cook
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