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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 22, 1996

Honorable Joe A. Wilson
Box 5709
West Columbia, South Carolina 29171

Dear Senator Wilson:

You have asked the Office of the Attorney General to advise you regarding the ability of a municipality to annex a United States military installation using Section 5-3-150 of the South Carolina Code, which provides for a method of annexation when a petition is signed by all or at least seventy-five (75%) percent of the area's landowners.

The South Carolina statutes provide that an area owned by the United States government, such as a military base, may be annexed upon the petition of the federal government. See, S.C. Code Ann. §5-3-140 (Law.Co-op. 1978 & Supp. 1995). Alternatively, South Carolina law allows an area, which may include the federal military base, to be annexed upon the filing "with the municipal governing body a petition signed by seventy-five (75%) percent or more of the freeholders . . . owning at least seventy-five (75%) percent of the assessed valuation of the real property in the area requesting annexation." S.C. Code Ann. §5-3-150 (Law.Co-op. Supp. 1995). The municipality's governing body may accept the petition by ordinance declaring the area annexed, assuming all other conditions set forth in the statute are met, without need for an election. Id. The statute expressly states that the method of annexation is "in addition to" all other methods allowed by law, including §5-3-140.

Although several South Carolina annexation statutes have been declared unconstitutional, those rulings have been limited to statutes which predicate an election among registered electors upon

Request Letter

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some established level of consent among area freeholders.[1] Once the right to vote on an issue is established, any restrictions placed upon that right based upon property ownership is unconstitutional. See, e.g., Hayward v. Clay, 573 F.2d 187, 190 (4th Cir. 1978), cert. denied, 439 U.S. 959 (1978) (statute which conditioned holding of annexation elections upon majority vote by freeholders of area violates equal protection clause of Fourteenth Amendment). However, neither the United States Constitution nor any other legal mandate requires that the State of South Carolina grant anyone the right to vote on annexation questions. Id., see also, Op. Atty. Gen. dated September 28, 1995 (method of annexation set forth in Section 5-3-150 is most likely to pass constitutional muster). Although it is solely within the province of a court of competent jurisdiction to rule on the constitutionality of any statute, Section 5-3-150 is distinguishable from those statutes which have previously been declared unconstitutional and is a permissible alternative method for annexing an area which includes a military installation.

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 raised herein. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

If you have any further questions regarding this matter, please do not hesitate to call the Office of the Attorney General.

With kind regards, I am

Very truly yours,

Reginald I. Lloyd
Assistant Attorney General

RIL/fg

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[1] See e.g., Fairway Ford, Inc. v. Timmons, 281 S.C. 57, 314 S.E.2d 322 (1984) (declaring Sections 5-3-160 to 5-3-230 unconstitutional); The Harbison Group v. Town of Irmo, et al., C.A. No.: 3:90-284-16 (D.S.C. April 13, 1990) (declaring Sections 5-3-20, 50, 60, 70 and 80 unconstitutional).