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May 26, 1989

Stephen A. Kern, Esquire
Greenville City Attorney
Post Office Box 2207
Greenville, South Carolina 29602

Dear Mr. Kern:

By your letter of May 3, 1989, you have asked for the opinion of this Office with respect to contiguity of two parcels of property proposed to be annexed to the City of Greenville. You have concluded that these parcels, taken together, sufficiently meet the minimum legal standard for contiguity so that annexation may proceed. We concur with your legal conclusion as to contiguity but refer the question back to the City Council for consideration of the factual question of strip annexation.

Facts

The facts surrounding the proposed annexation have been supplied by you and are uncontroverted, as follows. 1/ The City of Greenville is considering the annexation of an 8.16 acre tract of land and a 0.39 acre tract of land which is adjacent to the present corporate limits of the City of Greenville. The 8.16 acre tract is connected to the City by the 0.39 acre tract which is an easement over commercially zoned property which will serve as the main entrance and driveway for the larger tract, which is proposed to be developed as apartments. The area to be annexed fronts on Pleasantburg Drive for a distance of 51.5 feet and extends approximately 424 feet back to the larger tract. Highway 291, at this point, is the corporate limits for the City. There is no question that the 0.39 acre tract is contiguous to the current corporate limits for the distance of 51.5 feet.

1/ As you are aware, the determination of factual matters is outside the scope of this Office. Op. Atty. Gen. dated January 28, 1988. We herewith opine on the legal issue of contiguity, applying the facts supplied by you.

Annexation Statute

Annexation of these parcels to the City of Greenville is sought under Section 5-3-150 of the South Carolina Code of Laws (1976). The owners of both parcels have petitioned the City for annexation, thus triggering the requirements of Section 5-3-150(3):

> Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a city or town may be annexed to the city or town by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the city or town, the annexation shall be complete and the election provided for in §§ 5-3-50 through 5-3-80 shall not be required. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed shall be eligible to vote on such ordinance. This method of annexation shall be in addition to any other methods authorized by law.

You have further advised that no one within the area to be annexed is contesting the annexation. The legal standard of contiguity is thus at issue.

South Carolina Court Decisions

In construing the term "contiguous" contained in Section 5-3-150 of the Code, the South Carolina Supreme Court in Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988), stated:

> [I]n construing a statute its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. [Cite omitted.] The statutory word "contiguous" must be afforded its ordinary meaning of "touching." Because annexation pursuant to § 5-3-150 requires only that the annexed area be contiguous, the fact that it shares a common boundary with the annexing municipality is sufficient.

Id., 295 S.C. at 411. In Bryant, the Supreme Court reversed the circuit court's imposition of additional requirements of unity, a substantial physical touching, ready access, and contribution to the homogeneity, unity, and compactness of the municipality, for annexation to be valid. Thus, the touching or sharing a common boundary by a parcel sought to be annexed to the municipality, seems to be sufficient by the dictates of the Bryant case.

It has also been stated that when two or more parcels of property seek to be annexed, it is sufficient that the tracts themselves be contiguous and one be contiguous or adjacent to the municipality. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). See also Op. Atty. Gen. dated December 21, 1988. Under this test for contiguity, it must be noted that the 8.16 acre tract abuts the 0.39 acre tract, which itself abuts the city limits for the City of Greenville.

An additional case which is instructive in this instance is Mobay Chemical Corporation v. City of Goose Creek, 278 S.C. 563, 299 S.E.2d 486 (1983). Therein, the City of Goose Creek sought to annex four areas:

> (1) a fifteen acre residential tract known as Holly Court Subdivision; (2) an undeveloped forty acre tract contiguous to Holly Court and Goose Creek; (3) a 400 foot wide, 6.5 mile corridor extending from the forty acre tract to Bushy Park; and (4) Bushy Park, a 4000 acre industrial tract. The petition for annexation was signed by 52 landowners in Holly Court; no landowners in the remaining areas signed the petition.

Id., 278 S.C. at 564. The trial court found that Bushy Park was not within the "territory to be annexed" since it was separate from Holly Court. The Supreme Court affirmed the trial court's finding that, to annex Bushy Park, a majority of the freeholders in Bushy Park must sign the annexation petition. It was argued, however, that the 6.5 mile corridor connecting Bushy Park and the 40 acre tract made Bushy Park a part of the same territory. The Supreme Court disagreed:

> But for the shoestring corridor stretched between the two areas, there is no connection between Bushy Park and the remaining territory. The decision urged by appellants would allow any populous area adjacent to a municipality to force annexation upon sparsely populated outlying areas by simply connecting the areas with a

> shoestring corridor, and allowing those in the populous area to outvote the others. Surely, the legislature did not intend such a result.

Id, 278 S.C. at 564-65. The corridor or shoestring in this case was 400 feet wide by 6.5 miles long; the court invalidated the annexation of Bushy Park since it was not in a geographically unified area in relation to Holly Court.

Opinions of the Attorney General

Various opinions of the Attorney General have stated the principles of contiguity relative to annexation. In Op. Atty. Gen. No. 83-63, quoting from McQuillin, Municipal Corporations, § 3.15f, it was stated:

> ... because of statutory requirements or otherwise, the territory sought to be incorporated must be contiguous and continuous. In order to be considered contiguous the tracts of land in the territory must touch or adjoin one another in a reasonably substantial physical sense. ...

Further, it was stated:

> Territory is not contiguous where the only connection between two tracts is a point at a corner where the boundary lines intersect. ... Held not entitled to incorporation because lacking in homogeneity, was an area divided by nature into two natural drainage systems which would require separate sewer systems, one of which draining into a river, would be an expensive undertaking. ...

After the decision in Bryant v. City of Charleston, supra, the requirement of a substantial physical touching is questionable; definitely, a physical touching at more than merely one point where boundary lines intersect is still required.

In an opinion dated July 9, 1974, this Office examined a proposed annexation of a parcel measuring 400 feet in length, 70 feet of which actually touched the boundary of the municipality. The term "contiguous" was deemed to "generally only require a touching of the property to be annexed to the city limits." That opinion concluded that the property would be contiguous to the city limits for the purpose of annexation.

Finally, in Opinion No. 2191 dated November 16, 1966, this Office opined that "a stretch of highway four-tenths of a mile long connecting an area proposed for annexation to the Town of Clemson is not sufficient to satisfy the requirement of contiguity." That opinion noted the split of authority among the various jurisdictions as to shoestring, strip, or corridor annexations and concluded that the weight of authority, in light of Tovey v. City of Charleston, supra, would disallow such annexations. 2/

Other Jurisdictions

As noted in Opinion No. 2191, supra, there is a split of authority with respect to strip annexations; a determining factor seems to be the statutory definition or requirements of contiguity. For example, in those states in which contiguity requires a reasonably substantial physical touching, annexation of a parcel narrow in width is less likely to occur. See, for example, In Re Annexation of Certain Territory, 24 Ill. App.3d 908, 321 N.E.2d 693 (1974) (annexation of a strip 75 feet by 1320 feet not allowed); In Re City of Springfield, 228 N.E.2d 755 (Ill. App. 1967) (annexation of a strip 40 feet by 2640 feet not allowed, served only as a corridor to two subdivisions seeking annexation).

Additional cases voiding annexation attempts in which narrow parcels served only to connect larger, more remote parcels to a municipality include People v. Village of Burr Ridge, 81 Ill. App.2d 203, 225 N.E.2d 39 (1967) (a strip 300 feet wide by one-half mile long, not contiguous); City of Pasadena v. State ex rel. City of Houston, 442 S.W.2d 325 (Tex. 1969) (10 feet wide by 50 miles long, touching the city only on the two ends, not contiguous); City of West Lake Hills v. State ex rel. City of Austin, 466 S.W.2d 722 (Tex. 1971) (50 vara strip by 6 miles long, invalid); City of Arlington v. City of Grand Prairie, 451 S.W.2d 284 (Tex. Civ. App. 1970) (50 feet wide by 12.5 miles long, invalid, not contiguous); Clark v. Holt, 237 S.W.2d 483 (Ark. 1951) (50 feet wide by 3060 feet long, invalid, a subterfuge as it only connected a larger, more remote parcel to the municipality); Town of Mt. Pleasant v. City of Racine, 24 Wis.2d 41, 127 N.W.2d 757 (1964) (strip 152 to 306 feet wide by 1705 feet long, connected the municipality to a 145 acre tract, voided annexation); and Potvin v. Village of Chubbuck, 284 P.2d 414 (Idaho 1955) (strip 5 feet wide by 3 miles long, nearest

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2/ This opinion would be consistent with the principles in Mobay Chemical Corporation v. City of Goose Creek, supra, decided many years later.

point of annexed territory to the town was three miles away, essentials of contiguity lacking). 3/

Contrary decisions may also be found: City of Safford v. Town of Thatcher, 17 Ariz. App. 25, 495 P.2d 150 (1972) (50 feet wide by 5 miles long, if the land sought to be annexed touches the land to which it is to be annexed, there is sufficient contiguity); Long v. City of Olympia, 431 P.2d 729 (Wash. 1967) (where the annexed area firmly abuts the municipal boundary so that an hourglass-shaped annexation results, contiguity is present); City of Burlingame v. San Mateo County, 90 Cal. App.2d 705, 203 P.2d 807 (1949) (a strip 100 feet wide, brought 730 acres into the city, common boundary of 200 feet at some point was contiguous); Village of Saranac Lake v. Gillispie, 261 App. Div. 854, 24 N.Y.S.2d 403 (1941) (10 feet wide by 1.5 miles long, connected 6 acres to the village, contiguous); and May v. City of McKinney, 479 S.W.2d 114 (Tex. Civ. App. 1972) (10 feet wide by 5280 feet long, was contiguous).

Conclusion

Based on the uncontroverted facts presented in your letter, it is clear that the area proposed to be annexed to the City of Greenville, consisting of two parcels, abuts the City for a length of 51.5 feet. As a matter of law as enunciated in Bryant v. City of Charleston, supra, it appears that the parcel abutting Pleasantburg Drive for 51.5 feet meets the definition of contiguity. A more serious question is raised by the decision in Mobay Chemical Corporation v. City of Goose Creek, supra, however: whether annexing the 0.39 acre parcel which connects the 8.16 acre tract to the City of Greenville is an attempt to annex a strip or corridor by which the 8.16 acre tract may be connected to the City. As suggested by the cases referred to above, it must be decided by the City Council of the City of Greenville or by a judicial determination whether the 0.39 acre parcel is, with the 8.16 acre tract, a unified area, or whether annexation of the 0.39 acre tract would be a strip annexation under the principles of the Mobay Chemical Corporation decision, supra. 4/

3/ In reciting the dimensions considered in these cases, the width of the strip under consideration should be understood as the extent to which the strip and the municipality shared a common boundary.

4/ To reiterate footnote 1, the role of this Office in undertaking opinions is limited to determinations of legal issues. Determination of factual matters, such as whether a part of the proposed annexation amounts to a strip annexation, would be outside the scope of this Office. We further express no opinion herein as to the wisdom, reasonableness, or expediency of the proposed annexation.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions