The State of South Carolina

Office of the Attorney General

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William W. Dreyfoos, Esquire
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Dear Mr. Dreyfoos:

Your letter addressed to Attorney General Medlock has been referred to me for reply. You have stated that you are the attorney for the Town of Seabrook Island and that the Town has been requested to annex an area on Kiawah. You have raised several questions regarding the annexation petition that was received.

You have stated that the area proposed to be annexed appears to be not contiguous to the Town of Seabrook in that it is situated across the Kiawah River and further you have stated in your letter that there is no access to the Town across a common border. To reach the area proposed to be incorporated from Seabrook one would have to go to

> ... a point approximately two miles away from this common boundary, via Seabrook Island Road and Kiawah Island Parkway. In transversing this route, travellers would pass out of the Town and into unincorporated Charleston County for a distance of 0.3 miles along Seabrook Island Road, and then an additional 0.5 miles along Kiawah Island Parkway, before reaching the to-be-annexed portion of the Town. The petitioners have included the right-of-way from this 0.5 mile stretch of Kiawah Island Parkway (but no adjoining property) in the area covered by the annexation request.

You have concluded that the area proposed to be annexed is, therefore, not contiguous.

In the memorandum that you have attached you cite many prior opinions of this Office on contiguity so I will not re-cite them in the body of this letter. You also cite the case of Tovey v. City of Charleston, 117 S.E.2d 872 (1961). At pages 876 and 878 of that opinion the court stated that contiguity of an area proposed to be annexed was not broken by virtue of an intervening navigable stream in that the river was spanned by a bridge and, therefore, there was every reason to believe the area would be homogeneous. They distinguish the case of Ocean Beach Heights v. Brown-Crummer Investment Co., 302 U.S. 614, 58 S.Ct. 385, 82 L.Ed. 478, which appears to be more the situation with which you are confronted. The Court in Tovey said about Ocean Beach that it was

> ... distinguishable on the facts. There [in Ocean Beach] it was sought to incorporate two areas separated by a bay about a half-mile in width which was not spanned by a bridge. The distance between the two areas by land was about ten miles, and to go by land from one to another, it was necessary to pass through another municipality. It was held that the two areas were not contiguous.

This office can not make factual determinations and would, therefore, be unable to say in this specific case, having not seen the petition or maps of the area, whether or not this specific area is or is not contiguous. However, the memorandum you have sent us on the law of contiguity reflect the conclusions that prior opinions of this Office and also apparently the decisions of two Charleston County cases. We do not disagree with your memorandum as to the law in this area. However, you as town attorney, would be in the best position of knowledge of the facts and actual location of the land proposed to be annexed, to apply the general law to this specific fact situation.

Secondly, you have inquired if the annexation petition which was "signed by a large number of freeholders and submitted to the Town by an ad hoc organization purporting to represent all such freeholders" can be either withdrawn or the geographical area for the proposed annexation modified by the ad hoc organization.

Research has failed to disclose a distinct answer to these questions. In McQuillin on Municipal Corporations, Section 7.30 it is stated that

> [u]nder proper conditions, petitions for annexation ...may be amended, within the limits of the jurisdiction before which it is pending, but amendments should be allowed on terms which permit those protesting against the proceeding to be heard on the petition as amended.

The cases cited in support of this proposition allowed amendments either because the statutes governing the annexation procedure specifically allowed it or because the annexation petition was filed by a city seeking the annexation with a court and under the court's rules the court could allow the change of boundaries under its general powers to allow amendments to pleadings. Dabkowski v. Baumann, 191 N.E.2d 809 (1963); Wilcox v. City of Tipten, 42 N.E. 614 (1896); McCoy v. Board of Trustees of Town of Cloverdale, Ind., 67 N.E. 1007 (1903); Hopperton v. City of Covington, 415 S.W.2d 381 (1967); Woodruff v. City of Eureka Springs, 19 S.W. 15 (1892). See also Section 7.31 of McQuillin where it is stated that a city has no authority on its own motion to delete portions of an area described in an annexation petition.

The South Carolina statutes on annexation do not provide for amendments of the petition, it should be noted that it does not expressly prohibit them either. See South Carolina Code of Laws, 1976, Section 5-3-10 et seq. However, the petition for annexation authorized by Section 5-3-20, 5-3-5 and 5-3-150 is not a petition by a city but a petition of individual freeholders. To change the geographical description of an area after individuals have already signed the petition presents an interesting question of whether the individuals would have signed the annexation petition with the amended geographical boundaries. Even a slight variation may have been sufficient to have changed an individual's mind about signing the petition. It is possible the committee could have gotten sufficient signatures for the altered lines but not necessarily the same signatures. In that any alteration to the description would alter the petition that induced persons to sign the petition, it would not appear that the petition could be altered at this time.

There is a vast and somewhat contradictory body of law on the withdrawal of signatures to a petition once it is filed but no general law that research disclosed on withdrawing a complete petition once it has been filed. 1/ The South Carolina annexation statutes are silent on this subject. Generally signatures may not be withdrawn after a petition has been filed without a showing of fraud or duress. McQuillin on Municipal Corporations §§7.33, 3.30. See also, Hawkins v. Carroll, 15 E.2d 898 (1939); Poole v. Tiner, 38 S.E.2d 651 (1946). However, that general law does not necessarily answer the question of if an entire petition can be withdrawn. At a minimum it would certainly appear questionable, given the law of withdrawal of signatures, that an entire petition could be withdrawn on the word of a committee without verifying with each signator that they consented to the withdrawal of the petition.

Given the apparent dirth of guidance on these issues, the questions you raised in the second part of your letter could only be definitely answered by a court of competent jurisdiction.

Sincerely yours,

Treva G. Ashworth
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:

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1/ One case was found regarding withdrawing a candidate's nominating petition after it was filed but the statutes governing the election process, specifically authorized the withdrawal of a petition any time within a specified number of days after it was filed. Packrall v. Quail, 192 A.2d 704 (1963).