

## The State of South Carolina



## Office of the Attorney General

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February 19, 1985

John P. Stokes, Deputy  
Secretary of State  
Office of the Secretary of State  
Post Office Box 11350  
Columbia, South Carolina 29211

Dear Mr. Stokes:

You have inquired if a charter should be issued to the Town of St. Andrews in that there is some question as to the boundaries of the Town due to annexations in this area by the City of Columbia following the petition for incorporation being filed in your Office. Of course, this Office cannot make the decision as to whether or not a charter should be issued in a given situation, because such decision rests solely with the Secretary of State under applicable law, Section 5-1-10 et seq. See, opinion letter of December 12, 1984 to John Campbell from C. Havird Jones, Jr. It should also be noted that there exists in the circuit courts litigation regarding this very question, i.e., the boundaries of the City of Columbia and St. Andrews. Therefore, only a court of competent jurisdiction can ultimately make the decision as to the exact boundary lines between these two cities.

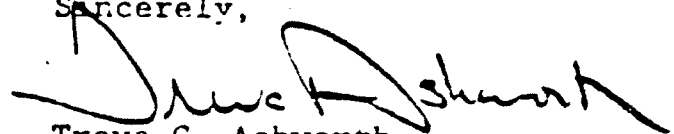
However, I am enclosing a 1964 opinion of this Office issued to the then Secretary of State which appears to give guidance to this question. In the opinion it is stated that once a petition for incorporation is filed in your Office, you cannot look to other requests concerning this area, such as a second petition for incorporation or annexation, until that incorporation petition is either voted on or otherwise disposed of by law. This opinion would, therefore, appear to provide guidance for the proposition that the Secretary of State should disregard other activities regarding this same area of land once a petition is filed with your Office for incorporation. See Jay v. Kreigh, 518 P. 2d 122 (1974); In Re Incorporation of Village of Capital

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Heights, 242 N.E. 2d 247 (1968); cf Rose v. Barrand, 305 NYS 2d.  
721 (1969).

Additionally, it should be pointed out that this same question would have already arisen as to whether or not the Secretary of State should have authorized any election for incorporation in this area. By calling this election, the Secretary of State has apparently made a determination previously regarding this same area that the boundary lines were not sufficiently vague as to invalidate an election.

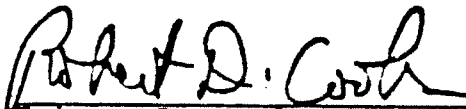
Sincerely,



Treva G. Ashworth  
Senior Assistant Attorney General

TGA/bm

REVIEWED AND APPROVED BY:



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