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May 31, 1985

Honorable John T. Campbell
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Dear Mr. Campbell:

I am in receipt of your recent letter. You have stated that an area that is seeking incorporation is surrounded by three incorporated municipalities. The area has applied to one of these municipalities requesting that it be annexed to the municipality. The municipality has refused. You have inquired if the area must apply to the other two municipalities for annexation and be rejected before it can be incorporated.

South Carolina Code of Laws, Section 5-1-30, 1976, sets out the prerequisites to incorporation. This section provides in part that

[p]rior to the issuance of a corporate certificate to any proposed municipality, the Secretary of State shall first determine...that no part of such area is within five miles of the boundary of any active incorporated municipality...provided, however, when any such area shall have petitioned pursuant to Chapter 17 to the nearest incorporated municipality to be annexed thereto, and shall have been refused such annexation by such incorporated municipality for a period of six months, or when the population of the area seeking incorporation exceeds fifteen thousand persons, then the provision of the five mile limitation of the section shall not apply to such area. (Emphasis added)

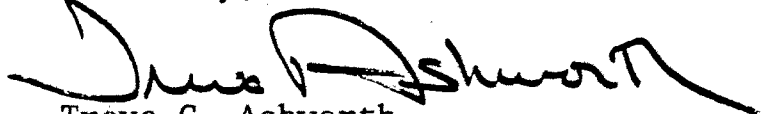
REQUEST LETTER

May 31, 1985

In statutory construction, it is required that words be given their plain and ordinary meaning. McGlohon v. Harlan, 254 S.C. 207, 174 S.E. 2d 753 (1970); Boyd v. State Farm Mutual Automobile Ins. Co., 260 S.C. 316, 195 S.E. 2d 706 (1973). The word "nearest" has been defined as meaning immediately adjacent to or in closest proximity. In Re: Dicks' Will, 66 NYS 2d 264 (1946). Further, the words "next" and "nearest" are synonymous. Bloch v. Woellert, 90 S.W. 2d 653 (Tex. Civ. App. 1936).

From the information you have supplied this Office regarding this question, it is not clear which of the three incorporated municipalities is in the closest proximity to the area seeking incorporation or if the six-month time period has expired since the area seeking incorporation sought annexation to one of the incorporated municipalities. However, the statutory law above-cited provides that an area seeking incorporation may not be within five miles of an active municipality unless the area seeking incorporation has more than fifteen thousand persons or if the area petitioned the nearest municipality for annexation and was refused. The proviso, therefore, excludes from the prohibition that the area seeking incorporation not be within five miles of another municipality those areas that have applied to the nearest (not all) municipality for annexation and been refused. There is no requirement that the area must have sought annexation prior to incorporation, nor that the area seek annexation, from all the active municipalities that surround the area. See State ex rel. City of Perryville v. Pickle, 564 S.W. 2d 905 (Mo. 1978).

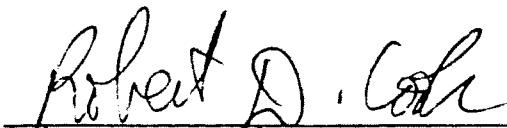
Sincerely,



Treva G. Ashworth
Senior Assistant Attorney General

TGA/bm

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions