

The State of South Carolina



Office of the Attorney General

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January 16, 1986

The Honorable Timothy F. Rogers
Member, House of Representatives
519A Blatt Building
Columbia, South Carolina 29211

Dear Representative Rogers:

You have asked this Office to advise you as to the various procedures which may be used to annex property to municipalities. The Code of Laws of South Carolina, in Chapter 3 of Title 5, specifies the procedures which may be used to achieve annexation. The following ways, and no other, have been provided by the legislature for municipal annexation:

1. Section 5-3-20: a petition is submitted to the appropriate city council by a majority of the freeholders in the area desiring annexation, along with a description of the area to be annexed. A favorable referendum in both the city and the area to be annexed is required. Sections 5-3-50 through 5-3-90 specify procedures to be followed and include notice of election, election, publication of results, and so forth. Section 5-3-20, as to sufficiency of the petition, was recently interpreted in Mobay Chemical Corporation v. City of Goose Creek, 278 S.C. 563, 299 S.E.2d 486 (1984), a copy of which is enclosed.

2. Section 5-3-150 (1) provides an alternate method whereby seventy-five percent or more of the freeholders owning at least seventy-five percent of the assessed valuation of the real property in the area desiring annexation may petition a city. Upon acceptance of the petition by ordinance of the city council, annexation is complete. See Op. Atty. Gen. dated June 17, 1977. No referendum is required. The area must be contiguous to the city to which it proposes to be annexed.

3. Section 5-3-150 (3) provides another method by which all real property owners of land contiguous to a city may

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petition the city for annexation. Upon acceptance of the petition by ordinance of the city council, annexation is complete and no referendum is required. See Op. Atty. Gen. No. 77-365 dated November 14, 1977.

4. Sections 5-3-100 through 5-3-140, 5-3-250, and 5-3-260 provide specific means of annexation when property is wholly owned by a single entity, these being: the annexing municipality or the county (Section 5-3-100); a corporation (Section 5-3-120); a school district (Section 5-3-130); or the state or federal government (Section 5-3-140). Procedures for annexing a right-of-way area of a street lying beyond but abutting on the city's corporate limits are found in Section 5-3-110. Section 5-3-250 covers annexation of cemeteries, and Section 5-3-260, annexation of church property. Because these statutes are so clear and specific, further interpretation is unnecessary; reference should be had to the language of each statute for the procedure to be used in each instance.

5. A final alternate method is found at Sections 5-3-160 through 5-3-230, whereby fifteen percent of the freeholders would petition for annexation, following which a favorable referendum of both freeholders and registered voters must be had. These Code sections were declared unconstitutional in Fairway Ford, Inc. v. Timmons, 281 S.C. 57, 314 S.E.2d 322 (1984), enclosed. This procedure would not be an acceptable alternative due to its being declared unconstitutional.

The only permissible procedures to be used to annex property into a city are set forth in paragraphs numbered one through four, above. Opinions, cases, and Code sections, which clearly specify the procedures to be followed, are enclosed herewith for your convenience. If you need additional information or clarification, please let us know.


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



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