

The State of South Carolina



Office of the Attorney General

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Opinion 87-11
P 46

January 28, 1987

Kelly F. Zier, Esquire
City Attorney, City of North Augusta
Post Office Box 6516
North Augusta, South Carolina 29841

Dear Mr. Zier:

By your letter of December 16, 1986, you have asked for the opinion of this Office as to whether voting precinct boundaries as established by the General Assembly are automatically amended by annexation of property into a municipality, where precinct boundaries contain references to city limits. In this instance, based upon prior opinions construing relevant statutes, we concur with your conclusion that the voting precinct boundaries may be changed only by the General Assembly.

Boundaries of voting precincts are to be established by the General Assembly, pursuant to Section 7-7-10, Code of Laws of South Carolina (1976, as amended), which provides that "[f]or the purpose of holding any general, primary or special election in this State the voting precincts and voting places in the several counties of the State shall be designated, fixed and established by the General Assembly." See also Article VII, Section 13 of the State Constitution. Use of the term "shall" connotes mandatory compliance with the statute. South Carolina Department of Highways and Public Transportation v. Phillips, 288 S.C. 189, 341 S.E.2d 134 (1986). The boundaries of the precincts of Aiken County have been established within Section 7-7-40 of the Code, some of which precincts contain references to city limits as geographic landmarks in establishing the boundaries. The City of North Augusta has annexed property into the city, and the effect of such annexation upon the precinct boundaries has been questioned, since by annexation the city limits have changed in some areas.

Before Act No. 503 of 1976 amended Section 7-7-10 of the Code, apparently a municipality had authority to alter precinct lines. Opinion No. 77-251 construed Act No. 503 and Section 5-15-50 of the Code to the effect that "those provisions of Section 5-15-50 which authorize the municipal governing body to establish precinct lines have been superseded by the provisions of Act No. 503 of 1976 which vest that authority in the General Assembly."

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Prior to amendment in 1978, Section 5-15-50 gave each municipal governing body the authority to "by ordinance establish municipal ward and precinct lines. ..." By Act No. 435 of 1978, Section 5-15-50 was amended "To Delete That Authority Of Municipal Councils To Establish Precinct Lines..." Upon amendment, Section 5-15-50 authorized municipal councils to establish only ward lines. Opinion No. 78-70, construing the 1978 Act, provides:

It is the opinion of our Office that the General Assembly alone has the power to establish voting precinct boundaries. ...

... A precinct is a geographical area for voting purposes. However, a ward may be a geographical area not only for voting purposes but for police, sewer, or park purposes. ...

This rationale appears to have been adopted in this state. In the original provisions of municipal home rule, the municipal governing body was given the authority to establish ward lines and precinct lines. Section 5-15-50, South Carolina Code of Laws, 1976. In 1978, an act bearing ratification number 476 [Act No. 435] amended this provision to specifically repeal the provisions authorizing a municipality to draw precinct lines. The statute now authorizes a municipality only to establish municipal ward lines.

It has been and it continues to be the opinion of this Office that boundaries of voting precincts may be changed only by the General Assembly. In those instances in which the General Assembly has designated by statute the boundaries of a specific precinct as the city limits of a precinct, without additional qualifying language, then a change in the city limits would effect a change in precinct boundaries. See Ops. Atty. Gen. dated December 18, 1985 and September 21, 1979 (enclosed). Where, as is the case with precincts in and around the City of North Augusta, the General Assembly has used city limits to establish geographic landmarks, reference must be had to the city limits in existence when the boundaries were established to determine precinct boundaries. In that instance, only the General Assembly could alter the precinct boundaries.

You have advised that members of the municipal election commission of North Augusta are taking the position that the precinct lines are altered by municipal annexation, in reliance upon Section 7-7-960 of the Code. The relevant portion of that statute is part (b), which provides in part that "[a]ny area in the county annexed to a municipality which is divided into wards shall be made part of a ward to which it is contiguous by the county board of registration." This statute is not applicable to the City of

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North Augusta, since the City is not divided into wards; in any event, the statute presupposes ward or precinct changes and does not confer independent authority on a municipality to effect precinct changes. Furthermore, Section 7-7-960 must be read in any case as in pari materia with Section 5-15-50, Hartford Accident and Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979), which reading would therefore preclude municipal officials from altering the boundaries of voting precincts as established by the General Assembly. To reiterate our conclusion, we would advise that the authority to alter voting precinct boundaries must remain with the General Assembly.

With kindest regards, I am

Sincerely,

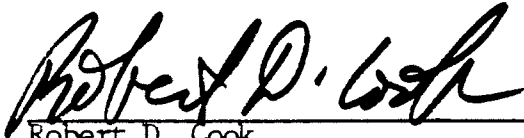
Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: The Honorable Thomas E. Huff