

1984 WL 249912 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1984

*1 John T. Campbell
Secretary of State
Wade Hampton Office Building
P. O. Box 11350
Columbia, South Carolina 29211

Dear Mr. Campbell:

Your letter to Mr. Medlock has been referred to me for reply. You have stated that you have received a petition for incorporation of an area known as St. Andrews in Richland County with a portion of the area overlapping the Lexington County line. You have inquired if it would be feasible for these two areas to incorporate.

It has been the prior opinion of this Office that there is no statute which authorizes a municipality annexing land in another county and that, therefore, there would be great doubt as to whether or not this procedure would be valid; October 21, 1983 Atty. Gen. Op. to Representative Thraillkill; 1973 Atty. Gen. Ops. 79; see also, 62 C.J.S. Municipal Corporations, § 46; Town of Elsmere v. Tanner, 245 Ky. 376, 53 S.W.2d 522 (1932); County of San Mateo v. City Council of Palo Alto, 335 P. 2d 1013 (Calif. 1959); In re Conewago Township, Adams County, 209 Pa. Super. 426, 228 A.2d 212 (1967).

These cited authorities deal with annexations across county lines; however, the same principle would be applicable to incorporations. See, for example, Chesapeake & Ohio Railway Co. v. City of Silver Grove, 249 S.W.2d 520 (Ky. Ct. App. 1952) and Larkin v. Bontatibus, 145 Conn. 570, 145 A.2d 133 (1958). In Article VII, § 14 of the South Carolina Constitution it is stated that

. . . no County lines shall be so established as to pass through may incorporated city or town of this state.

It would, therefore, appear that a municipality should not be formed that would cross a county line. However, the same result could be accomplished by one of these areas merging into one of the counties, i.e., either St. Andrews merging with Lexington County or the entire area merging with Lexington County. This procedure is expressly authorized by constitution and statute. South Carolina Constitution, Article VIII, § 5; South Carolina Code of Laws, 1976, as amended, Section 4-5-120, et. seq. Once the area is merged, it could then be incorporated as one city within the boundaries of one county.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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