

1984 WL 249864 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1984

\*1 Charles W. Whetstone, Jr., Esquire  
Felder and Whetstone  
Attorneys-at-Law  
P. O. Box 437  
U. S. 601 North  
St. Matthews, South Carolina 29135

Dear Mr. Whetstone:

Your letter and accompanying enclosures addressed to Robert Cook, Executive Assistant for Opinions, has been referred to me for reply. You have enclosed a copy of your letter to Mayor Clement of St. Matthews in which you advised him that your research does not show that the 1937 ordinance which made the boundaries of the Town circular complied with the existing law in that the records do not show that an election was held to approve the release of the area nor was the Secretary of State notified of the change. You conclude that you believe these lines would be the proper boundary lines in that the boundary has gone unchallenged for 47 years and the Town has relied upon and conducted its business based on this boundary for all of these years.

The irregularities, especially the possible lack of an election, concern me as I am sure they do you. However, the records apparently do not state definitively that an election was not held, only that they do not indicate an election was conducted.

Research indicates when there has been long acquiescence in the boundary lines they are deemed to be correct even if there have been some defects in their original creation. In § 7.09 of McQuillin on Municipal Corporations, it is stated in part that . . . long acquiescence in the location of municipal boundaries by the corporation and the inhabitants thereof where all municipal action and improvements have been done under the assumption that such are the boundaries will support the conclusion that such are the true boundaries . . . Particularly is this true where there is doubt as to what the true boundaries were in fact, or as to the legality of their establishment, or where personal, civil and political rights have become fixed according to the boundaries established by usage . . . It has been held that the exercise of corporate powers over a place with knowledge of the public is a waiver of irregularities . . .

In State ex rel Bridge Co. v. Columbia, 27 S.C. 137, 149, 3 S.E. 55 (1887), the court stated that

. . . where the boundaries are vague and indefinite, the practical interpretation which had been given by the citizens of the disputed territory, in exercising municipal privileges, such as voting, may be adopted by the court, and that boundaries may be defined by long use, confirmed by legislative recognition . . .

See also Marsha v. Richland County, 81 S.C. 135, 62 S.E. 4 (1907); 62 C.J.S. Municipal Corporations, § 40; 56 Am.Jur.2d Municipal Corporations, § 80; Cf McQuillen on Municipal Corporations, § 7.42.

Therefore, based on your letter, it would appear that there has been 47 years of acquiescence in these boundaries which may or may not have been properly constituted and it is highly probable that a court of competent jurisdiction would uphold the boundaries of the town.

Sincerely,

\*2 Treva G. Ashworth

Senior Assistant Attorney General

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