

1984 S.C. Op. Att'y. Gen. 78 (S.C.A.G.), 1984 S.C. Op. Att'y. Gen. No. 84-35, 1984 WL 159842

Office of the Attorney General

State of South Carolina

Opinion No. 84-35

April 3, 1984

*1 Honorable John T. Campbell

Secretary of State

Post Office Box 11350

Columbia, South Carolina 29211

Dear Secretary Campbell:

You have requested our Office to advise you as to the extent of your duties in regard to the filing of articles of incorporation for domestic corporations. It is the opinion of this Office that your powers and duties in regard to the filing of articles of incorporation for domestic corporation are ministerial in nature.

Statutes governing the issuance by the Secretary of State of articles of incorporation are gathered in § 33-7-40, Code of Laws, South Carolina, 1976, as amended. Pursuant to that section after persons desiring to file articles of incorporation have fulfilled their preliminary statutory requirements, they deliver the articles of incorporation to the Secretary of State for filing. The duty of the Secretary of State relative to the filing of the articles of incorporation is clearly set forth in § 33-7-40. Section 33-7-40 states that:

Determinations required by Secretary of State before filing articles of incorporation.

(a) When the articles of incorporation are delivered for filing by the Secretary of State, as provided by § 33-1-60 (Filing of documents), he shall, before filing them, determine that the articles:

(1) comply with the requirements of §§ 33-1-40, 33-1-50 and 33-1-60;

(2) set forth the information required by § 33-7-30 (Contents of articles of incorporation);

(3) do not adopt as the name of the corporation a name which is in violation of §§ 33-5-10 (Corporate name);

(4) are accompanied by the attorney's certificate required by subsection (d) of § 33-7-30 (Contents of articles of incorporation);

(5) are accompanied by the initial report and license fee as required by § 12-19-130. The remittance for the license fee required shall be made payable to the South Carolina Tax Commission. The report and remittance shall be submitted to the Tax Commission by the Secretary of State.

(b) Upon making such determination the Secretary of State shall file the articles of incorporation.

(Emphasis Added)

The above-cited section does not leave the filing of the articles of incorporation to the discretion of the Secretary of State once the above-referenced preliminary statutory requirements have been met. If all of the requirements have been satisfied, the statute provides that the Secretary of State shall file the articles of incorporation. See [Commonwealth Investment Co. of Columbia vs. Thornton](#), 244 S.C. 146, 135 S.E.2d 762 (1964); cf. [Green vs. Thornton](#), 265 S.C. 436, 219 S.E.2d 827 (1975). Such a conclusion is also in harmony with the general law where it is stated in 18 Am.Jur.2d Corporation, Section 40, that:

When a statement of incorporation conforming to the provisions of the general corporation laws is presented to such an officer [Secretary of State], he must file it, and if it is not in conformity therewith he must refuse to file it.

*2 Therefore, it is the opinion of this Office that the statutory requirements of the Secretary of State in filing articles of incorporation for domestic corporations as set forth in § 33–7–40 are ministerial in nature.

Very truly yours,

C. Havird Jones, Jr.
Assistant Attorney General

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