

1982 WL 189486 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1982

*1 Honorable D. L. Aydlette, Jr.
Member
House of Representatives
608-B Harborview Road
Charleston, South Carolina 29412

Dear Representative Aydlette:

In response to your request for an opinion from this Office as to whether or not an area which is separated into two parts by a creek nevertheless remains contiguous for the purpose of incorporation, my opinion is that it most probably does.

My understanding is that James Island is divided by a creek so that there are, in effect, two distinct areas of land on the Island. I understand further that the creek and a portion of the Island have heretofore been annexed by the City of Charleston. The general rule seems to be that an area is considered contiguous for the purpose of incorporation (or annexation) notwithstanding the fact that a body of water separates the two halves of the proposed municipality. See generally, 1 McQUILLIN MUNICIPAL CORPORATIONS § 3.15f at 242 ('[t]erritory may be contiguous though divided into two parts separated by a body of water'); see also, 49 A.L.R.3d 589 and 56 AM.JUR. Municipal Corporations, Counties and Other Political Subdivisions § 69. This general rule has been followed in South Carolina. Tovey v. City of Charleston, 237 S.C. 475, 117 S.E.2d 872 (1961). The fact that the creek is part of the City of Charleston apparently does not affect the contiguity of the two parts of James Island for the purpose of incorporation. Id., see, Hall v. State (Fla.), 46 S.2d 878 ('[a] state park, 1000 by 300 feet, lying between the north and south sides of an otherwise single, unified community, has been held not to impair contiguity'); but see, Ocean Beach Heights v. Brown-Crummer Investment Co., 302 U.S. 614 (1938).

As to the statutory prerequisites for incorporation, Section 5-1-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, requires that:

1. an approved service feasibility study for the proposed municipality must be filed with and approved by the Secretary of State;
2. the population of the area seeking incorporation must exceed fifteen thousand persons (otherwise the proposed municipality must be at least five miles from the boundary of any active incorporated municipality); and
3. a minimum of 150 dwelling units and at least an average of one dwelling unit for each three acres of land within the area and for which petitions for incorporation contain the signatures of at least 15% of the freeholders and 50 of the electors of the area seeking incorporation (otherwise a population density of at least 300 persons per square mile is required).

I am enclosing copies of the statutory provisions relating to incorporation in South Carolina for your review.

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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