

1980 WL 120617 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 21, 1980

*1 Honorable Alex Harvin, III
Member
House of Representatives
432-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

In response to your request for an opinion from this Office as to the procedure for forming a new county in South Carolina, I am enclosing herewith copies of the pertinent constitutional and statutory provisions governing the formation of a new county as well as a change of territory from one county to another. As you will note, the steps include:

1. In the case of a proposed merger of adjoining counties, the South Carolina Constitution allows it only upon either the request of the governing bodies of the counties concerned or a petition by ten percent of the registered voters in each of the counties. A majority of the electors voting on the question in each county must then approve it and such an election cannot be held in the same counties more often than once in four years. [S.C. CONST. art. VIII, § 4](#); art. VII, § 10. In the case of a proposed merger of part of a county with an adjoining county, the South Carolina Constitution allows it only upon either the request of the county governing body where the part is located or a petition by ten percent of the registered voters in that part. Then, two-thirds of the electors voting on the question in the area to be transferred and a majority of the electors voting in the county to which the area is to be transferred must approve it. [S.C. CONST. art. VIII, § 5](#).

2. A new county or a part of a county merging with an adjoining county must also meet the following requirements of Article VII of the State Constitution:

a. If a new county is proposed to be formed not by the merger of adjoining counties but, instead, by a part of an existing county proposing to be cut off therefrom in order to form a new county, then one-third of the electors within that area must petition the Governor for the creation of a new county, setting forth the proposed boundaries and showing compliance with the other requirements of Article VII. The Governor then orders an election 'within a reasonable time thereafter' by the electors in the proposed area to vote on whether or not to create a new county, the name of the new county and its county seat. Two-thirds of the electors voting must vote in favor of the creation and an election on the question of forming the same proposed new county cannot be held more often than once in four years. [S.C. CONST. art. VII, §§ 1 and 2](#).

b. A new county cannot contain less than one one-hundred and twenty-fourth ($\frac{1}{124}$) of the State population, it cannot have less assessed taxable property than one and one-half million dollars (\$1,500,000.00) and it cannot contain less than four hundred (400) square miles. [S.C. CONST. art. VII, § 3](#).

c. A new county cannot result in an old county being reduced to less than five hundred (500) square miles, to less than two million dollars' (\$2,000,000.00) assessed taxable property nor to a population smaller than fifteen thousand (15,000) inhabitants. [S.C. CONST. art. VII, § 4](#).

*2 d. A new county cannot result in an old county's lines being cut within eight miles of its courthouse building. [S.C. CONST. art. VII, § 5](#).

e. A new county must bear a just apportionment of the valid indebtedness of the old county and no new county line can pass through an incorporated city or town. [S.C. CONST. art. VII, § 6](#) and [§ 14](#).

3. [Sections 4-5-120 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Cum.Supp.) prescribe the procedures for changing county boundaries which do not result in new counties. Those procedures include the deposit with the county clerk of court of sufficient funds to cover the expenses of surveys, plats, the annexation commission and of the election to be held on the question, the appointment of a four-member annexation commission by the Governor within thirty days after he receives a petition for a change in boundaries, the employment of surveyors to survey the proposed change of line, mark that proposed change and certify the plats, the reporting of the annexation commission to the Governor, the ordering of an election by the Governor, the certification of the returns to the Secretary of State who transmits the information to the General Assembly and the alteration of the county lines by the General Assembly.

4. [Sections 4-7-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), as amended, prescribe the procedures for creating new counties and consolidating two or more counties. Those procedures include ones similar to those prescribed for the alteration of county lines which do not result in the formation of new counties. Note that Section 4-7-10 provides:

The General Assembly shall not establish any new county the greatest length of which shall be more than four times as long as the least central width thereof or which will leave the county or counties from which the territory is taken of a length more than four times as long as the least central width thereof. And the Governor shall not order an election upon a petition for the formation of a new county when the result of the establishment of a county pursuant to such election would be to create a new county of or reduce an old county to such an area.

The term central width shall be construed to mean any width not entirely within eight miles of one of the ends of the greatest length of the county.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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