

1979 WL 43232 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 14, 1979

**\*1 RE: Opinion Concerning Amendments to Articles of Incorporation**

The Honorable John T. Campbell

Secretary of State

P.O. Box 11350

Columbia, S. C. 29211

Dear Mr. Campbell:

You have asked whether articles submitted by a corporation to amend its original Articles of Incorporation with respect to the number of directors constituting the corporation's board must designate a specific number of directors. It is the opinion of this Office that such amending articles should specify a definite number of directors.

The statutes are clear in requiring that the original Articles of Incorporation specifically set forth the number of directors constituting the board of directors. See, §§ 33-7-30(a)(5), 33-13-30(a) South Carolina Code (1976). South Carolina Code § 33-15-10(a) provides as follows:

A corporation may amend its Articles of Incorporation, from time to time, in any and as many respects as may be desired if such amendment, on the filing date of the articles of amendment incorporating the amendment, contains only such provisions as might then lawfully be contained in the original Articles of Incorporation.

The foregoing statute clearly requires that amendments to a corporation's Articles of Incorporation can only contain those provisions which could have been contained in the original Articles of Incorporation. Since the original Articles of Incorporation may not contain an unspecified number of directors, it follows that, pursuant to § 33-15-10, amendments to Articles of Incorporation may not contain an unspecified number of directors.

It is therefore the opinion of this Office that an amendment to a corporation's Articles of Incorporation which purports to change the number of directors serving on the corporation's board must set forth a specific number of directors.

Very truly yours,

L. Kennedy Boggs

Assistant Attorney General

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