

1979 WL 43022 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 25, 1979

*1 Honorable John T. Campbell
Secretary of State
Wade Hampton Office Building
Columbia, South Carolina

Dear Secretary Campbell:

Mr. McLeod has referred your recent letter to me for reply. You have stated that South Carolina Code of Laws (1976), Section 5-1-30 requires the Secretary of State to make certain determinations prior to issuing a certificate of incorporation. You have inquired what basis the Secretary of State shall use for determining whether or not an area seeking incorporation exceeds 15,000 persons.

Section 5-1-30 states in part that:

prior to the issuance of a corporate certificate to any municipality, the Secretary of State shall first determine that the area seeking to be incorporated has a population density of at least three hundred persons per square mile according to the latest official United States Census; that no part of such area is within five miles of the boundary of any active incorporated municipality; and that an approved service feasibility study for the proposed municipality has been filed with and approved by the Secretary of State; provided, however . . . when the population of the area seeking to be incorporated exceeds fifteen thousand persons, then the provision of the five mile limitation of this section shall not apply to such area . . .

The statute speaks in terms of the latest official United States Census being used to determine the population density of the area seeking incorporation. The statute later states the five mile limitation shall not apply when the population of the area exceeds fifteen thousand persons. The area to be determined in both of these provisions is one and the same. It would be illogical to require areas seeking incorporation to utilize the latest census to determine the population density and not to also require the area seeking incorporation to utilize the latest census to determine if the area exceeds fifteen thousand. By application, it could also foreseeably create inequitable situations.

The census represents the most reliable representation of the persons living in a specific area. Any other method of determining population may be subject to litigation as to the methodology used and the reliability of the results. This is not to say that any proposed area is restricted for ten years to the last official census. Any area may request a special census be conducted in that area by the Bureau of Census, and these new figures may be used for the basis for incorporation. 1975-76 Op. Att'y. Gen. 157. See also [Forde v. Owens](#), 160 S.C. 168, 158 S.E. 147 (1931).

Therefore, it is the opinion of this Office that in determining whether or not a proposed area of incorporation exceeds fifteen thousand persons, the determination must be based on either the latest United States Census or a special census of the proposed area.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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