

1975 S.C. Op. Atty. Gen. 77 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4006, 1975 WL 22304

Office of the Attorney General

State of South Carolina

Opinion No. 4006

March 26, 1975

*1 The Honorable O. Frank Thornton
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Dear Mr. Thornton:

You have requested the advice of this Office concerning a petition which has been submitted to you seeking the incorporation of the Township of Sullivans Island.

Despite the enactment of a statute in 1974 which provided that all township governments be vested with the powers of municipalities, the petition has been submitted to you seeking the incorporation of the Township of Sullivans Island and, in my opinion, they have such right.

In the opinion of this Office, Section 47-1.1 of the Code of Laws of South Carolina, 1962, controls such petitions. That section provides for a determination by you, in all except areas within two miles of the Atlantic Ocean, of the following: Population density of at least 300 per square mile; and

That no part of the proposed area to be incorporated is within five miles of an incorporated municipality with a population of 90,000 or more; or

Within three miles of a municipality with a population of 50,000 or more; nor

Within two miles of a municipality with a population of 15,000 or more.

The above provisions are not applicable to areas bordering on and being within two miles of the Atlantic Ocean where: There is a minimum of 150 dwelling houses and at least an average of one dwelling house for each three acres of land within the area to be incorporated; and

The petition for incorporation contains the signatures of at least ten percent of the freeholders and 50 of the electors of the area seeking incorporation; and

Where a previous annexation petition has been filed by the area seeking annexation to the nearest municipality, and six months have not expired since the refusal of such annexation.

In my opinion, the petition for incorporation is acceptable, provided you determine:
That the area is not within three miles of a municipality with a population of 50,000 or more; nor

Within two miles of a municipality with a population of 15,000 or more.

For your information, the 1970 census shows the City of Charleston to have a population of 6,945; the City of Mt. Pleasant to have a population of 6,155; and the City of Isle of Palms to have a population of 2,657.

The density requirements set forth in the forepart of Section 47-1.1 are, in my opinion, superseded by the precise requirements imposed upon areas bordering the Atlantic Ocean and referred to above. The proximity to incorporate municipalities, as well as previous annexation efforts, are, however, still applicable, but these apparently do not preclude favorable consideration of the petition. This is a factual determination which you must make.

Very truly yours,

Daniel R. McLeod
Attorney General

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