

1975 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4096, 1975 WL 22392

Office of the Attorney General

State of South Carolina

Opinion No. 4096

August 25, 1975

*1 1. When a statute provided until 1971 for the rescission of municipal charters when the municipalities' population fell below 100, and a municipality's population fell below that level prior to 1971, the charter is automatically rescinded.

2. A portion of a special purpose district may not, by means of a special election vote to secede from the district.

TO: Attorney
Center Fire District

QUESTIONS PRESENTED:

1) Does a municipal charter expire automatically when the population drops below the level established by statute?

2) May a portion of a special purpose district by special election vote to secede from the district?

AUTHORITIES INVOLVED:

Sections 49–107, 59–601 et seq. and 59–599.91 et seq., 1962 Code of Laws.

DISCUSSION:

The Center Fire District in Aiken County was recently formed pursuant an election. At the time, no one suspected that an incorporated municipality lay within the district (under Section 59–601 of the 1962 Code of Laws, incorporated municipalities may not be included within special purpose districts). However, it later became apparent that the Town of Windsor was an incorporated town within the district and that a number of persons within the town opposed being included within the district. For at least forty years, the Town of Windsor has exercised no municipal functions; it has collected no taxes, held no elections, and performed no services.

At some time prior to 1971, the population of Windsor fell below 100, and it currently remains below that level. Section 47–107 of the Code, prior to 1971, provided that:

Whenever it shall appear that a town of less than one thousand inhabitants has decreased in population since its incorporation to less than one hundred inhabitants, the charter of such town shall thereby become forfeited.

A 1971 amendment changed ‘one hundred’ to ‘fifty.’ Since Windsor now has about ninety inhabitants, the question has arisen as to whether the town can be deemed to have forfeited its charter by reason of its population having been below one hundred persons prior to 1971.

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