ALAN WILSON
ATTORNEY GENERAL

December 13, 2018

D. Malloy McEachin, Jr., Esquire
Florence County Attorney
323 S. McQueen Street
Florence, SC 29501

Dear Mr. McEachin:

This Office received your letter dated November 20, 2018 requesting a legal opinion. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issue (as quoted from your letter):
"Florence County Council has asked me to investigate challenging annexation of certain areas in Florence County by the City of Florence. I have researched the issue of standing for Florence County to bring the challenge in State Court. I have read several cases, one of which is St. Andrews Public Service District v. City Council of City of Charleston, 349 S.C. 602, 564 SE2d 647 (2002). Though that case involved a Public Service District, it did address the issue of standing. At page 605, the Court held 'the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action'. I would appreciate your office opinion as to whether or not the County of Florence would qualify as the 'State' for standing purposes."

Law/Analysis:

Depending on the circumstances, the State may have standing to sue pursuant to a *quo warranto* action in the public interest in the name of the State against the corporate standing of an entity. See, e.g., State of Michigan v. Detroit Lumbermen's Assn., Inc. (Mich. Cir. Ct. 1979) 1979-2 Trade Cases ¶ 62,990; State ex rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000); S.C. Code Ann. § 15-63-60 *et seq.* It is well established that a county in South Carolina is a political subdivision of the State. See, e.g., State v. Maryland Casualty Co., 189 S.C. 405, 1 S.E.2d 516 (1839); Op. S.C. Atty. Gen., 1990 WL 599363 (December 11, 1990) (citing Parker v. Bates, 216 S.C. 52, 56 S.E. 2d 723 (1950)). A county would not have standing to bring a suit pursuant to *parens patriae*, as a county lacks the sovereign power to do so. County of Lexington v. Columbia, 303 S.C. 300, 400 S.E.2d 146 (1991). As you reference the St. Andrews case in your question, the Court in the St. Andrews Public Service District case concerning a challenge to a municipal annexation distinguished between the 75% annexation method presented in S.C. Code Ann. § 5-3-150(1) and the 100% petition method set forth in § 5-3-150(3). Quoting from the case, the Court stated that:

> A municipality's annexation of contiguous property under the 75% method can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. In order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. *State by State Budget & Control Bd. v. City of Columbia,* 308 S.C. 487, 419 S.E.2d 229 (1992).

> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An S[pecial]P[urpose]D[istrict] is neither a municipality nor a property owner for purposes of this provision. *Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston,* 294 S.C. 92, 362 S.E.2d 877 (1987). Further, the Court of Appeals held that respondent had "not alleged a sufficient infringement of its proprietary interests or statutory rights" to meet the statutory standing test for challenges to 100% annexations. We agree.

St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 604–05, 564 S.E.2d 647, 648 (2002). Thus, standing to challenge a municipal annexation can depend on the type of annexation.

A *quo warranto* action is codified in South Carolina Code Ann. § 15-63-10 *et seq.* The law authorizes the South Carolina Attorney General to bring a *quo warranto* action "in the name of the State" when a person "shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State or any office in a corporation, created by the authority of this State; [...w]hen any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall make a forfeiture of his office; or [...w]hen any association or number of persons shall act within this State as a corporation without being duly incorporated." South Carolina Code Ann. § 15-63-60. Our South Carolina Supreme Court stated the following regarding the State's bringing a *quo warranto* action challenging a municipal annexation:

> A *quo warranto* action is rooted in the common law writ designed to test whether a person exercising power is legally entitled to do so. It is an ancient prerogative right through which the state acts to protect itself and the good of the public generally, and may be used to test the legality of exercise of powers by municipal corporations. 74 C.J.S. *Quo Warranto* §§ 1–2 (1951); *Black's Law Dictionary* 1256–57 (1990). The attorney general may bring *quo warranto* actions in the name of the State. *See* S.C.Code Ann. §§ 15–63–10 to –210 (1976).
>
> We hold that the State, provided it is acting in the public interest, has standing to bring a *quo warranto* action challenging the annexation of property it does not own. *See Central Realty Corp. v. Allison,* 218 S.C. 435, 449, 63 S.E.2d 153, 159 (1951) (under appropriate circumstances, validity of municipal ordinances may be tested by certiorari, declaratory judgment proceedings, habeas corpus, injunction, mandamus, prohibition, and *quo warranto*); *State v. City Council of Charleston,* 8 S.C.L. (1 Mill Const.) 36 (1817) (concluding attorney general may bring *quo warranto* action against City of Charleston on behalf of the State); 1 *Antieau on Local Government Law* § 3.10[2] (validity of municipal annexation may be attacked by state, which usually does so by *quo warranto* action, absent statute providing otherwise); 17 *McQuillin Municipal Corporations* § 50.10 (3d ed.1993) (same); 65 Am.Jur.2d *Quo Warranto* § 48 (1972) *15 (same); 74 C.J.S. *Quo Warranto* §§ 26–27 (attorney general usually may bring *quo warranto* action on behalf of state). In fact, some courts have reasoned that a *quo warranto* action brought by the state is a desirable or required method of challenging an annexation in order to avoid numerous individual suits. *State ex rel. Earhart v. City of Bristol,*

970 S.W.2d 948, 952 (Tenn.1998); *Alexander Oil Co. v. City of Seguin,* 825 S.W.2d 434, 437 (Tex.1991).

State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14–15, 528 S.E.2d 408, 411 (2000) (emphasis added). Thus, as you quote in your letter, the Court's ruling in St. Andrews states that "[w]e now overrule *Quinn* [*v. City of Columbia*, 303 S.C. 405, 401 S.E.2d 165 (1991)], and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action." St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002).

Conclusion:

Based on the current case law, statutes, and the information as presented to us, this Office believes that a court will conclude that Florence County would not qualify as "the State" for standing purposes in a *quo warranto* action in this case. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or related issues, please let us know.

Sincerely,

Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General