



ALAN WILSON
ATTORNEY GENERAL

November 12, 2020

David L. Tedder, Esq.
Jasper County Attorney
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Tedder:

We received your request for an opinion as to the necessity and timing of a plan for the transfer of services after an annexation under section 5-3-150 of the South Carolina Code (2004). In your letter, you explain as follows:

In this particular instance, the Cherry Point Fire Protection District (CPFPD) was created by Jasper County pursuant to § 4-19-10 et seq.. It involves a single parcel of land, owned by a single entity, who petitioned the City of Hardeeville (City) for annexation, which occurred in February of 2020. In years past, County had contracted with City to provide fire services in the CPFPD, and that contract provided a methodology for the transfer of services after annexation. That contract was terminated in 2019, and the City had been put on notice that the previous methodology for the transfer of services was no longer in effect. Prior to final adoption of the annexation ordinance, Jasper County notified the City of concerns regarding the annexation and its effect on the CPFPD.

The City advised Jasper County it desired to provide fire services for that area, and submitted a multi-decade contract proposal by which the City would take over services for any area annexed, which Council rejected. There was a 2020 financing of improvements in the CPFPD through a federal Rural Development loan, implicating the provisions and protections of U.S.C. 1926(b) (as detailed in James Island Public Service District v. City of Charleston, 249 F.3d 323 (2001)). There initially was a misunderstanding about the timing of these two events (annexation and loan), which once clarified, resulted in the offering of a proposal regarding this single parcel by the County to the City a couple of months ago, which the City has now rejected. The rejection was accompanied by a demand from the City to the County requesting the formation of a committee pursuant to the provisions of § 5-3-300 et seq., and specifically referencing the time provision of § 5-3-311.

Based upon this information, you ask “whether the obligation to create and the timing requirements for the formation of a committee under 5-3-310 to create a plan are applicable in a 100% annexation by petition rather than election?”

Law/Analysis

Your letter indicates the City of Hardeeville (the “City”) annexed property upon the request of its single landowner. This annexation occurred not through the annexation procedure provided under section 5-3-300 of the South Carolina Code (2004), but through the alternate procedure provided in section 5-3-150 of the South Carolina Code (2004). Section 5-3-150 allows annexation without an election if at least seventy-five percent or, as in this case, all of the landowners petition for annexation. If all of the landowners sign the petition, section 5-3-150(3) provides:

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, any area or property which is contiguous to a municipality may be annexed to the municipality by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation. Upon the agreement of the governing body to accept the petition and annex the area, and the enactment of an ordinance declaring the area annexed to the municipality, the annexation is complete. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. This method of annexation is in addition to any other methods authorized by law.

You also informed us that the area annexed is located entirely within the Cherry Point Fire Protection District (the “CPFPD”), which is a special purpose district created pursuant to section 4-19-10 et seq. Section 5-3-310 of the South Carolina Code (2004) specifies the requirements for annexation of a special purpose district and provides:

When all or part of the area of a special purpose district as defined in Section 6-11-1610 or a special taxing district created pursuant to Section 4-9-30 or Section 4-19-10, et seq. or an assessment district created pursuant to Chapter 15 of Title 6, or any other special purpose district or special taxing or assessment district is annexed into a municipality under the provisions of Section 5-3-150 or 5-3-300, the following provisions apply:

(1) At the time of annexation or at any time thereafter the municipality may elect at its sole option to provide the service formerly provided by the district within the annexed area. The transfer of service rights must be made pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.

(2) Until the municipality upon reasonable written notice elects to displace the district's service, the district must be allowed to continue providing service within the district's annexed area.

(3) Annexation does not divest the district of any property; however, subject to the provisions of item (4) below, real or tangible personal property located within the area annexed must be transferred to the municipality pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315.

(4) In any case in which the municipality annexes less than the total service area of the district, the district may, at its sole discretion, retain ownership and control of any asset, within or without the annexed area, used by or intended to be used by residents within the district's unannexed area or used or intended to be used to provide service to residents in the unannexed area of the district.

(5) Upon annexation of less than the total area of the district, the district's boundaries must be modified, if at all, by the plan formulated pursuant to the provisions of Sections 5-3-300 through 5-3-315. The plan must specify the new boundaries of the district.

(emphasis added).

You question whether an annexation that took place under section 5-3-150(3) must satisfy the committee and timing requirements under section 5-3-310. To answer your question, we must employ the rules of statutory interpretation, the primary of which is to ascertain the intent of the legislature. State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). "The legislature's intent should be ascertained primarily from the plain language of the statute." Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 301 (Ct. App. 2005). "A statute must receive a practical and reasonable interpretation consistent with the 'design' of the legislature. Once the legislature has made a choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." Id. at 622, 611 S.E.2d at 302 (citations omitted) (quotations omitted).

As emphasized above, section 5-3-310 plainly states its requirements apply to annexations occurring under section 5-3-150. Therefore, we believe the legislature clearly intended for section 5-3-310 to apply to this type of annexation. Furthermore, section 5-3-310 prescribes that any transfer of services must be made pursuant to a plan formulated under sections 5-3-300 through 5-3-315. Section 5-3-311 of the South Carolina Code (2004) requires

[t]he plan contemplated by Sections 5-3-300 through 5-3-315 may be formulated by agreement of the district and the annexing municipality. If,

however, the district and municipality do not agree on such a plan within ninety days following a favorable vote at the last referendum election required to be held to authorize the annexation, the district and the municipality must appoint a committee to formulate such a plan in accordance with the following:

- (1) The district and municipality shall each select a member of the committee and the two members so selected shall select a third member.
- (2) If the two members fail to select a third member within thirty days after the second of them is appointed, either member may petition the court of common pleas for the county in which the annexed area or any part thereof lies to appoint a third member.
- (3) Within ten days after appointment of a third member, the three members must select a committee chairman from among themselves.
- (4) Within sixty days after selection of a chairman, the committee must develop a plan and present it to the district and the municipality.
- (5) If either the annexing municipality or the district objects to the plan, it may appeal the plan to the court of common pleas for the county in which the annexed area or any part thereof lies. The appeal must be instituted within thirty days of the date the district or municipality receives the committee's plan.
- (6) The court may modify the plan forwarded by the committee only upon finding an error of law, abuse of discretion, or arbitrary or capricious action by the committee.
- (7) The fact that a plan has not been finalized may not in any way alter or delay the effective date of annexation; however, the district shall retain the right to operate its existing system, collect revenues, and collect taxes from or within the area annexed until such time as the municipality and the district agree on a plan or a plan is presented to the municipality and the district under item (4) above. In the event a plan is appealed to the courts, the court of common pleas for the county in which the annexed area or any part thereof lies may enter such orders under its general equitable powers as are necessary to protect the rights of parties pending final resolution of any appeal.

As we stated in a 2012 opinion, “[t]hough section 5-3-310(1) provides the City with significant discretion, section 5-3-311 imposes a responsibility upon both the City and the Districts to ensure the timely creation of a service plan.” Op. Att’y Gen., 2012 WL 1377689 (S.C.A.G. Mar. 30,

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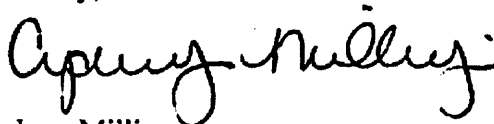
2012). Furthermore, section 5-3-311 requires that if a plan cannot be agreed upon, a committee must be appointed. As such, we are of the opinion that these requirements would apply to special purpose district property annexed pursuant to section 5-3-150.

In your letter, you point out the timing requirements contained in sections 5-3-300 through 5-3-315 are based upon the timing of an election. Because an election did not occur in this instance, as the annexation occurred by petition rather than by election, you question whether these provisions are applicable under these circumstances. We agree these references certainly make complying with the timing requirements confusing when an election did not occur. However, we do not believe the references to the election negate the legislature's clear intent to apply the requirements in sections 5-3-300 through 5-3-315 to annexations pursuant to section 5-3-150. Prior to 2000, section 5-3-310 did not reference annexations occurring pursuant to section 5-3-150, but only referenced those occurring pursuant to section 5-3-300. 1988 S.C. Acts 626. The legislature amended section 5-3-310 in 2000 to add annexations occurring via section 5-3-150. 2000 S.C. Acts 250, § 3. We believe this intentional act by the legislature further supports our understanding that annexations by petition must follow the requirements in section 5-3-310 despite a lack of clarity on the timing of those requirements when an election was not part of the process.

Conclusion

Under the facts you provided, the City annexed CPFPD, a special purpose district, pursuant to the alternate procedure provided in section 5-3-150(3) of the South Carolina Code. Based on the language provided in section 5-3-310 of the South Carolina Code, "[t]he transfer of service rights must be made pursuant to a plan formulated under the provisions of Sections 5-3-300 through 5-3-315." In accordance with section 5-3-311, if the parties cannot agree on a plan, then a committee must be formed to formulate a plan. While the timing of when the committee must be formed is not entirely clear as the statute bases it on the timing of the last referendum, we do not think this reference to an election would make the provisions of section 5-3-310 or 5-3-311 inapplicable to annexations performed under the alternative method. Therefore, we recommend the City and CPFPD follow the statutory mandates provided in sections 5-3-310 and 5-3-311.

Sincerely,

A handwritten signature in black ink, appearing to read "Cydney Milling". The signature is fluid and cursive, with the first name "Cydney" and last name "Milling" clearly distinguishable.

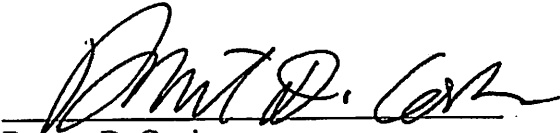
Cydney Milling
Assistant Attorney General

David L. Tedder, Esq.

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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R.D. Cook", is written over a horizontal line.

Robert D. Cook

Solicitor General