CHAPTER 3

Change of Corporate Limits

**SECTION 5‑3‑10.** Power to extend corporate limits.

 Any city or town council may extend the corporate limits of the municipality in the manner set forth in this chapter.

HISTORY: 1962 Code Section 47‑11; 1952 Code Section 47‑11; 1942 Code Section 7230; 1932 Code Section 7230; Civ. C. ‘22 Section 4385; Civ. C. ‘12 Section 2991; Civ. C. ‘02 Section 1997; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 1948 (45) 1974; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Annexation by counties, see Sections 4‑5‑120 et seq.

Readjustment of municipal boundaries, generally, see SC Const, Art 8, Section 8.

Reduction of corporate limits, see Section 5‑3‑280.

LIBRARY REFERENCES

Municipal Corporations 27.

Westlaw Key Number Search: 268k27.

C.J.S. Municipal Corporations Sections 44, 55.

LAW REVIEW AND JOURNAL COMMENTARIES

Annexation and the Law in South Carolina. 13 SC LQ 258.

Attorney General’s Opinions

A county’s governing body is responsible for conducting and paying for municipal annexation elections; state law does not provide for what authority is responsible for funding special purpose district elections. 1989 Op Atty Gen, No. 89‑59, p 147.

NOTES OF DECISIONS

In general 1

Character of area annexed 6

Cities and towns 5

Judicial function 4

Legislative function 3

Standing to challenge 7

Validity 2

1. In general

Applied in Forest Acres v. Seigler, 224 S.C. 166, 77 S.E.2d 900 (1953). Creamer v. Anderson, 240 S.C. 118, 124 S.E.2d 788 (1962).

Where citizens attempting annexation of surrounding territory executed petition citing alternate authorities, to be invoked based upon the number of signatures obtained, and there was a clear mandate of a majority of the freeholders residing within the area, municipality could proceed under the applicable Code section. General Battery Corp. v. City of Greer (S.C. 1975) 263 S.C. 533, 211 S.E.2d 659.

Statutory law fixing the procedure for extending the corporate limits of municipalities is contained in this article. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192.

Stated in Truesdale v. Jones (S.C. 1953) 224 S.C. 237, 78 S.E.2d 274.

Annexation is governed by this article. SC Const., Art 8, Section 2 (now Art 8, Section 8) has no application. Whitmire v. Cass (S.C. 1948) 213 S.C. 230, 49 S.E.2d 1.

Cited in Davis v. Town of Cayce (S.C. 1932) 166 S.C. 372, 164 S.E. 883.

2. Validity

There was no deprivation of property without due process, as asserted, although plaintiff corporation owned a majority of the assessed value of real estate sought to be annexed by a municipality, where there was no evidence or law to support this conclusion, and to the contrary, evidence showed compliance with statutory laws relative to annexation by majority petition. General Battery Corp. v. City of Greer (S.C. 1975) 263 S.C. 533, 211 S.E.2d 659.

Method of annexation reasonable and democratic. Provisions of this article afford a reasonable and democratic means for exercise of the legislative power to provide for annexation. Hollingsworth v. City of Greenville (S.C. 1962) 241 S.C. 378, 128 S.E.2d 704.

ARTICLE does not violate due process of law. The extension of the boundaries of a municipal corporation is not unconstitutional because depriving the people of the annexed territory of their property without due process of law, especially by reason of additional taxation arising out of the existing indebtedness of the municipal corporation. Harrell v. City of Columbia (S.C. 1950) 216 S.C. 346, 58 S.E.2d 91.

Or constitutional form of taxation. This section [Code 1962 Section 47‑11] does not violate SC Const, Art 1, Section 7, relating to constitutional protection against taxation without representation. Harrell v. City of Columbia (S.C. 1950) 216 S.C. 346, 58 S.E.2d 91.

A statute providing for the annexation of territory to an existing municipality is not objectionable because it may result in the taxation of property within the annexed territory to pay a pre‑existing indebtedness of the municipality to which it has been added. Harrell v. City of Columbia (S.C. 1950) 216 S.C. 346, 58 S.E.2d 91. Municipal Corporations 29(1)

And is within public policy. The consolidation by annexation of contiguous urban areas under one municipal government has been encouraged by legislative enactment of this section [Code 1962 Section 47‑11] and Code 1962 Section 47‑13 as a public policy. Whitmire v. Cass (S.C. 1948) 213 S.C. 230, 49 S.E.2d 1.

3. Legislative function

Annexation is legislative function. Annexation of territory is a legislative function and courts will rarely interfere with it on ground that it is unnecessary, unreasonable or without benefit. Hollingsworth v. City of Greenville (S.C. 1962) 241 S.C. 378, 128 S.E.2d 704. Municipal Corporations 33(8)

In the absence of constitutional limitations, the legislature has plenary power over municipalities, including the right to regulate the manner in which the boundaries of such governmental units may be extended or diminished. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192. Municipal Corporations 27

4. Judicial function

Rarely will a court intervene in an annexation proceeding on the ground it is unnecessary, unreasonable and without benefit. Bellamy v. Johnson (S.C. 1959) 234 S.C. 172, 107 S.E.2d 33. Municipal Corporations 33(8)

5. Cities and towns

It applies only to incorporated cities and towns. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

“City or town council” referred to in this article means the corporate authorities of an incorporated town or city. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

6. Character of area annexed

Character of area without effect on validity of annexation. Fact that owner’s land to be included in area to be annexed is largely undeveloped and rather thinly populated in comparison with rest of such area is not sufficient ground for invalidating the annexation. Hollingsworth v. City of Greenville (S.C. 1962) 241 S.C. 378, 128 S.E.2d 704. Municipal Corporations 29(4)

There is no limitation in this article as to the extent or shape of the territory which may be annexed and there is nothing from which any such limitation may be implied. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872. Municipal Corporations 29(4); Municipal Corporations 34

The establishment of a special purpose district does not prevent an adjacent city from later annexing a part thereof. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

7. Standing to challenge

Residents of a subdivision which was annexed pursuant to Section 5‑3‑150(3) did not have standing under Section 5‑3‑150(3) or Section 15‑53‑30 to challenge the annexation, where none of the residents owned real property in the annexed portion of the subdivision. Additionally, the matter was not of such public importance as to confer standing where, though the residents challenged the method of annexation in seeking to have it declared void, they raised no claim that it was unauthorized by law. Quinn v. City of Columbia (S.C. 1991) 303 S.C. 405, 401 S.E.2d 165.

**SECTION 5‑3‑15.** Municipality may not annex certain property.

 No municipality may annex, under the provisions of this chapter, any real property owned by an airport district composed of more than one county without prior written approval of the governing body of the district.

HISTORY: 1995 Act No. 99, Section 1; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 29(4).

Westlaw Key Number Search: 268k29(4).

C.J.S. Municipal Corporations Sections 48 to 51.

**SECTION 5‑3‑30.** Consolidation of two or more municipal corporations without petition.

 When two or more municipal corporations propose to consolidate, no petition shall be required and each municipal corporation desiring to consolidate may call for the election hereinafter provided by ordinance.

HISTORY: 1962 Code Section 47‑12.1; 1971 (57) 413; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Consolidation of counties with municipalities and other political subdivisions, see SC Const, Art 8, Section 12.

Consolidation of two or more counties, see Section 4‑7‑160.

LIBRARY REFERENCES

Municipal Corporations 31.

Westlaw Key Number Search: 268k31.

C.J.S. Municipal Corporations Section 52.

Attorney General’s Opinions

The constitutional provision by the General Assembly for a referendum on consolidation of counties with municipalities and other political subdivisions (Article VIII, Section 12) is not self‑executing; a county council would not be bound to honor a petition containing the requisite number of signatures and calling for a referendum on consolidation (Section 5‑3‑30 Code of Laws, 1976, as amended). 1981 Op Atty Gen, No 81‑58, p 86.

**SECTION 5‑3‑40.** Agreement upon terms of consolidation.

 Whenever it is proposed to extend the corporate limits of any municipality by inclusion of territory of another adjacent municipality in whole or in part, the governing bodies of the municipalities may, after public hearing, stipulate and agree upon terms of consolidation or boundary adjustment by ordinance adopted by each municipality, which shall be binding upon the enlarged municipality, and the consolidation or adjustment shall be effective on the date of adoption of the final ordinance.

HISTORY: 1962 Code Section 47‑13; 1952 Code Section 47‑13; 1942 Code Section 7231; 1932 Code Section 7231; Civ. C. ‘22 Section 4386; Civ. C. ‘12 Section 2992; 1911 (27) 22; 1996 Act No. 412, Section 1; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Merger of municipalities, generally, see SC Const, Art 8, Section 8.

LIBRARY REFERENCES

Municipal Corporations 31.

Westlaw Key Number Search: 268k31.

C.J.S. Municipal Corporations Section 52.

Attorney General’s Opinions

If the North Charleston Public Service District issues $300,000.00 in bonds and if the District is then annexed by an incorporated municipality, the municipality incorporating the North Charleston District can agree to become liable for the District’s debts. In the absence of an agreement to the contrary, the District remains liable for its debts after incorporation. 1975‑76 Op Atty Gen, No 4419, p 271.

NOTES OF DECISIONS

In general 1

Adjacent areas 3

Property, contracts and debts 4

Stipulations 2

1. In general

Section authorizes annexation of entire municipality. While the primary purpose of this section [Code 1962 Section 47‑13] was to authorize a municipality and the area proposed to be annexed to “agree upon terms of consolidation” which are given the effect of a binding contract, it would seem that the section also by implication authorizes the annexation of an entire municipality, or an area consisting in part of a municipality and in part of unincorporated territory. Town of Forest Acres v. Seigler (S.C. 1953) 224 S.C. 166, 77 S.E.2d 900. Municipal Corporations 29(4)

But part of municipality cannot be annexed without complying with Code 1962 Section 47‑23. This section [Code 1962 Section 47‑13] does not enable one municipality to annex a portion of another without complying with Code 1962 Section 47‑23 relating to detachment. Town of Forest Acres v. Seigler (S.C. 1953) 224 S.C. 166, 77 S.E.2d 900.

Annexation is within public policy. The consolidation by annexation of contiguous urban areas under one municipal government has been encouraged as public policy by legislative enactment of this section [Code 1962 Section 47‑13[ and Code 1962 Section 47‑11. Whitmire v. Cass (S.C. 1948) 213 S.C. 230, 49 S.E.2d 1.

2. Stipulations

Only valid stipulations are within the contemplation of this section [Code 1962 Section 47‑13]. Bellamy v. Johnson (S.C. 1959) 234 S.C. 172, 107 S.E.2d 33.

Stipulation as to exemption from municipal taxation of area proposed to be annexed. Bellamy v. Johnson (S.C. 1959) 234 S.C. 172, 107 S.E.2d 33.

3. Adjacent areas

Area must be adjacent. Area to be annexed must be adjacent to city to be eligible for annexation. Hollingsworth v. City of Greenville (S.C. 1962) 241 S.C. 378, 128 S.E.2d 704.

And there must be contiguity even in the absence of a statutory requirement to that effect. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

Which is not prevented by navigable stream. The fact that the municipality and the territory it sought to annex were separated by a navigable stream was held not to destroy the contiguity impliedly required by the words “adjacent territory.” Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

Several tracts may be annexed if they are contiguous and one adjoins city. Contiguity does not require that each of the several tracts annexed be individually contiguous to the city, so long as the several tracts are themselves contiguous and one of them adjoins the city boundaries. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

And both tracts simultaneously vote for annexation. Where there were two areas sought to be annexed, the second separated from the city by the first, had the voters of the first decided against annexation the second could not have been annexed because it would not then have been “adjacent territory,” within the meaning of this section [Code 1962 Section 47‑13]. Where, however, the elections were held simultaneously, and both areas approved annexation, there was nothing to prevent the second area’s annexation. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

4. Property, contracts and debts

New or enlarged corporation takes over contracts and debts to constituents. Upon consolidation of two municipal corporations or the annexation of the entire territory of one municipal corporation to another, the new or enlarged corporation, in the absence of contrary legislative provision or agreement takes all the property of its constituents and the contracts and indebtedness of the corporations which are consolidated or annexed become the contracts and indebtedness of the consolidated or annexing corporation. The identity of the component elements is lost and becomes absorbed into the new creation. City of Columbia v. Sanders (S.C. 1957) 231 S.C. 61, 97 S.E.2d 210. Municipal Corporations 36(2); Municipal Corporations 36(3)

In merger of town of Eau Claire and city of Columbia, the utility systems of the two municipalities became merged. City of Columbia v. Sanders (S.C. 1957) 231 S.C. 61, 97 S.E.2d 210.

**SECTION 5‑3‑90.** Filing notice with Secretary of State, Department of Transportation, and Department of Public Safety.

 Any municipality increasing its territory shall file a notice with the Secretary of State, Department of Transportation, and the Department of Public Safety describing its new boundaries. The notice shall include a written description of the boundary, along with a map or plat which clearly defines the new territory added.

HISTORY: 1962 Code Section 47‑18; 1952 Code Section 47‑18; 1942 Code Section 7230; 1932 Code Section 7230; Civ. C. ‘22 Section 4385; Civ. C. ‘12 Section 2991; Civ. C. ‘02 Section 1997; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 1948 (45) 1974; 1968 (55) 2590; 1993 Act No. 181, Section 59; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Transportation Network Company Act, local assessment fee, records, confidentiality of information, GIS file available for public use, see Section 58‑23‑1700.

LIBRARY REFERENCES

Municipal Corporations 28.

Westlaw Key Number Search: 268k28.

C.J.S. Municipal Corporations Section 44.

Attorney General’s Opinions

Privately owned roads do not become dedicated to the public automatically by incorporation into a city. 1975‑76 Op Atty Gen, No 4352, p 183.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Truesdale v. Jones (S.C. 1953) 224 S.C. 237, 78 S.E.2d 274.

**SECTION 5‑3‑100.** Alternate method when entire area owned by annexing municipality or county.

 If the territory proposed to be annexed belongs entirely to the municipality seeking its annexation and is adjacent thereto, the territory may be annexed by resolution of the governing body of the municipality. When the territory proposed to be annexed to the municipality belongs entirely to the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of the governing body of the municipality and the governing body of the county. Upon the adoption of the resolutions required by this section and the passage of an ordinance to that effect by the municipality, the annexation is complete.

HISTORY: 1962 Code Section 47‑18.1; 1955 (49) 270; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(2).

Westlaw Key Number Search: 268k33(2).

C.J.S. Municipal Corporations Sections 55, 57.

LAW REVIEW AND JOURNAL COMMENTARIES

Annexation and the Law in South Carolina. 13 SC LQ 258.

**SECTION 5‑3‑110.** Annexation of right‑of‑way area of street lying beyond but abutting on corporate limits.

 Whenever the whole or any part of any street, roadway, or highway has been accepted for and is under permanent public maintenance by a city, a county, or the Department of Transportation, that portion of any right‑of‑way area not exceeding the width thereof lying beyond but abutting on the corporate limits of the city may be annexed to and incorporated within the city by adoption of an ordinance so declaring, without necessity for election of any sort, upon prior consent in writing of any public agency other than the city engaged in maintenance of the right‑of‑way area to be annexed. Consent on behalf of the Department of Transportation may be given by the director. Consent on behalf of any county may be given by its county commissioners, county board of directors, or other local county agency or governing body having jurisdiction over county roads.

HISTORY: 1962 Code Section 47‑18.2; 1971 (57) 299; 1993 Act No. 181, Section 60; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(2).

Westlaw Key Number Search: 268k33(2).

C.J.S. Municipal Corporations Sections 55, 57.

NOTES OF DECISIONS

In general 1

1. In general

City that sought to annex parcels of property across roadway could establish contiguity with that property, even though the parcels would not be contiguous to city’s borders without annexation of the roadways; by annexing the roadways, all the challenged properties touched property already within limits of the city and, thus, shared a common boundary sufficient to establish contiguity. St. Andrews Public Service Dist. v. City Council of City of Charleston (S.C. 2002) 349 S.C. 602, 564 S.E.2d 647. Municipal Corporations 29(4)

**SECTION 5‑3‑115.** Annexation of property within a multicounty park.

 Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under Section 4‑1‑170 and title to which is held by the State of South Carolina, may be annexed only upon approval by the State Fiscal Accountability Authority.

HISTORY: 1995 Act No. 4, Section 2; 2000 Act No. 250, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

CROSS REFERENCES

Requirement that all multicounty parks must consist of contiguous counties, see Section 4‑1‑172.

LIBRARY REFERENCES

Municipal Corporations 29(4).

Westlaw Key Number Search: 268k29(4).

C.J.S. Municipal Corporations Sections 48 to 51.

**SECTION 5‑3‑120.** Alternate method when entire area proposed to be annexed owned by corporation.

 If the entire area proposed to be annexed belongs to a corporation only, it may be annexed on the petition of the stockholders of the corporation. Upon agreement of the governing body of the municipality to accept the petition and the passage of an ordinance to that effect by the municipality, the annexation is complete.

HISTORY: 1962 Code Section 47‑19; 1952 Code Section 47‑19; 1942 Code Section 7230; 1932 Code Section 7230; Civ. C. ‘22 Section 4385; Civ. C. ‘12 Section 2991; Civ. C. ‘02 Section 1997; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 1948 (45) 1974; 1964 (53) 1810; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(3).

Westlaw Key Number Search: 268k33(3).

C.J.S. Municipal Corporations Section 58.

NOTES OF DECISIONS

In general 1

1. In general

Section does not change requirement that voters must consent to detachment from their city. Although this section [Code 1962 Section 47‑19] authorizes a somewhat different procedure where the entire area proposed to be annexed belongs to a corporation, no part of a municipality may be detached and annexed to another without submitting the question of said detachment to the voters of the municipality being reduced in area, and it is immaterial whether the area to be eliminated from its corporate limits is owned wholly by a corporation or individually held. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192.

**SECTION 5‑3‑130.** Alternate method when entire area proposed to be annexed owned by school district.

 If the area proposed to be annexed belongs entirely to a school district, it may be annexed upon the petition of the board of trustees of the school district to the city or town council. Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation is complete.

HISTORY: 1962 Code Section 47‑19.1; 1953 (48) 221; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(3).

Westlaw Key Number Search: 268k33(3).

C.J.S. Municipal Corporations Section 58.

**SECTION 5‑3‑140.** Alternate method when entire area proposed to be annexed owned by Federal or State Government.

 If the territory proposed to be annexed belongs entirely to the federal government or to the State of South Carolina and is adjacent to a municipality, it may be annexed upon the petition of the federal government or of the State to the city or town council thereof. As used in this section, a petition by the State shall mean a petition executed by the State Fiscal Accountability Authority. Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation is complete.

HISTORY: 1962 Code Section 47‑19.2; 1967 (55) 952; 1971 (57) 798; 2000 Act No. 250, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Municipal Corporations 33(3).

Westlaw Key Number Search: 268k33(3).

C.J.S. Municipal Corporations Section 58.

Attorney General’s Opinions

There appears to be no prohibition against including state property within boundaries of incorporated area. 1984 Op Atty Gen, No. 84‑123, p. 278.

Municipal corporation may annex territory under exclusive jurisdiction of Federal Government. 1967‑68 Op Atty Gen, No 2474, p 143.

**SECTION 5‑3‑150.** Alternate methods where petition signed by all or seventy‑five percent of landowners.

 (1) 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 seventy‑five percent or more of the freeholders, as defined in Section 5‑3‑240, owning at least seventy‑five percent of the assessed valuation of the real property 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; however, this property may not be annexed unless the following has been complied with: (1) the petition must be dated before the first signature is affixed to it and all necessary signatures must be obtained within six months from the date of the petition; (2) the petition and all signatures to it are open for public inspection at any time on demand of any resident of the municipality or area affected by the proposed annexation or by anyone owning property in the area to be annexed; (3) the petition must state the act or code section pursuant to which the proposed annexation is to be accomplished; (4) the petition must contain a description of the area to be annexed and there must be attached to the petition a plat of the area to be annexed; (5) the municipality or any resident of it and any person residing in the area to be annexed or owning real property of it may institute and maintain a suit in the court of common pleas, and in that suit the person may challenge and have adjudicated any issue raised in connection with the proposed or completed annexation; (6) not less than thirty days before acting on an annexation petition, the annexing municipality must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal bulletin board, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time. This public hearing must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement as to what public services are to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for the provision or assumption of these services.

 (2) The conditions relating to petitions set forth in this section apply only to the alternate method of annexation as defined in subsection (1) of this section.

 (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.

 (4) For purposes of this section any real property owned by a governmental entity and leased to any other entity pursuant to a fee in lieu of taxes transaction under Section 4‑29‑67 or 4‑29‑69 is considered to have an assessed valuation equal to the original cost of the real property as determined under Section 4‑29‑67(D). For purposes of this section, the lessee of real property pursuant to a fee in lieu of taxes transaction under Section 4‑29‑67 or 4‑29‑69 is the freeholder with respect to the property.

 (5) For purposes of this section, any real property included within a multicounty park under Section 4‑1‑170 is considered to have the same assessed valuation that it would have if the multicounty park did not exist. Notwithstanding any other provision of law, any real property which is or has been included within a multicounty park under Section 4‑1‑170 and title to which is held by the State of South Carolina, only may be annexed with prior written consent of the State of South Carolina, and when title to real property in the park is held by a political subdivision of the State, the property may be annexed only with prior written consent of the governing body of the political subdivision holding title.

HISTORY: 1962 Code Section 47‑19.5; 1964 (53) 2081; 1967 (55) 619; 1994 Act No. 497, Part II, Section 142C; 1995 Act No. 45, Section 1; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(5).

Westlaw Key Number Search: 268k33(5).

C.J.S. Municipal Corporations Sections 56, 58, 60.

RESEARCH REFERENCES

ALR Library

17 ALR 5th 195 , Right of One Governmental Subdivision to Challenge Annexation Proceedings by Another Such Subdivision.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

The procedure for a city to annex property, as provided in Section 47‑19.5 [1976 Code Section 5‑3‑150] allows annexation without an election when the governing body agrees to accept a petition from 75% of the free‑holders owning 75% of the assessed real property in the area to be acquired. Upon receipt by the City Council of the petition, an ordinance must be enacted declaring the area annexed to the City. 1976‑77 Op Atty Gen, No 77‑188, p 145.

(1) Section 5‑3‑150(3) empowers a city council to annex an area without a referendum or election if all real estate owners in the area request annexation by filing a petition; (2) Property which is partly within the city is to be annexed the same way as property wholely without the city limits; (3) Property abutting a city street which forms part of the city limits is considered contiguous to the city limits for the purpose of annexation. 1976‑77 Op Atty Gen, No 77‑365, p 288.

Consent of eleemosynary corporation required. In an annexation under this section [Code 1962 Section 47‑19.5], the consent of an eleemosynary corporation owning property lying within territory sought to be annexed by municipality is required. 1965‑66 Op Atty Gen, No 2001 p 62.

NOTES OF DECISIONS

In general 2

Constitutionality 1

Contiguity 4

Standing to challenge 5

Sufficiency of petition 3

Time for hearing 6

1. Constitutionality

Code 1976 Section 5‑3‑150, which authorizes governing body of any city, upon filing of petition signed by 75 percent or more of freeholders in any area contiguous to city requesting annexation, to annex such area by adoption of appropriate resolution, does not violate rights of registered voters under equal protection clause by denying them right to vote on annexation. Berry v. Bourne (C.A.4 (S.C.) 1978) 588 F.2d 422. Constitutional Law 3483; Municipal Corporations 29(1)

The fact that registered voters are denied the right to vote on a proposed annexation under this section does not violate equal protection since annexation depends wholly on the favorable vote of the governing body of the annexing city and on that action neither freeholders nor electors have a vote. Berry v. Bourne (C.A.4 (S.C.) 1978) 588 F.2d 422.

2. In general

Trial judge was not required to impute some value to school district property, which is specifically exempt from assessment because it is exempt from taxation and therefore has assessed value of zero, for purposes of determining total ownership in area to be annexed. St. Andrews Public Service Dist. v. City of Charleston (S.C. 1987) 294 S.C. 92, 362 S.E.2d 877. Municipal Corporations 33(5)

There was no deprivation of property without due process, as asserted, although plaintiff corporation owned a majority of the assessed value of real estate sought to be annexed by a municipality where there was no evidence or law to support this conclusion, and to the contrary, evidence showed compliance with statutory laws relative to annexation by majority petition. General Battery Corp. v. City of Greer (S.C. 1975) 263 S.C. 533, 211 S.E.2d 659.

3. Sufficiency of petition

The omission of dates from 2 of 3 petitions filed in support of the annexation of certain property to a city did not constitute a substantive defect in the ordinance adopted in completion of the annexation, but rather was a mere procedural or technical deficiency which was properly corrected by a subsequent ordinance. Bostick v. City of Beaufort (S.C. 1992) 307 S.C. 347, 415 S.E.2d 389.

The omission of the description of a certain tract of property from petitions filed in support of the annexation of other property to a city, and the failure to show the tract on the plat of the proposed annexation, constituted a substantive defect in the ordinance adopted in completion of the annexation, and thus fatally flawed the ordinance as to the annexation of the tract such that subsequent action to correct the flaw was void; however, the annexation of the properly described property was valid. Bostick v. City of Beaufort (S.C. 1992) 307 S.C. 347, 415 S.E.2d 389.

Where citizens attempting annexation of surrounding territory executed petition citing alternate authorities, to be invoked based upon the number of signatures obtained, and there was a clear mandate of a majority of the freeholders residing within the area, municipality could proceed under the applicable Code section. General Battery Corp. v. City of Greer (S.C. 1975) 263 S.C. 533, 211 S.E.2d 659.

4. Contiguity

In order to challenge a municipality’s annexation of contiguous property by the 100% annexation method of annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights. St. Andrews Public Service Dist. v. City Council of City of Charleston (S.C. 2002) 349 S.C. 602, 564 S.E.2d 647. Municipal Corporations 33(9)

City had contiguity with annexed property, although a state‑owned river lay between the city limits and the annexed property; contiguity was not destroyed by water. Beaufort County v. Trask (S.C.App. 2002) 349 S.C. 522, 563 S.E.2d 660. Municipal Corporations 29(4)

Annexation of property by city was only voidable, not void, where state owned river between property and city limits, but state was not joined as a plaintiff. Beaufort County v. Trask (S.C.App. 2002) 349 S.C. 522, 563 S.E.2d 660. Municipal Corporations 33(3)

Since annexation pursuant to Section 5‑3‑150 requires only that the annexed area be contiguous, the fact that it shares a common boundary with the annexing municipality is sufficient. Thus, a court erred in invalidating annexation on the basis of additional requirements of unity, a substantial physical touching, a common boundary, ready access, and contribution to the homogeneity, unity and compactness of the city. Additionally, contiguity is not destroyed by water or marsh land within either the annexing municipality’s existing boundaries or those of the property to be annexed merely because it separates the parcels of high land involved. Bryant v. City of Charleston (S.C. 1988) 295 S.C. 408, 368 S.E.2d 899.

5. Standing to challenge

Town residents failed to show any infringement of their own proprietary interests or statutory rights through town’s annexation, under the 100% petition method, of ten‑foot wide strip of land over a mile long, and therefore, lacked standing to challenge the annexation, despite residents’ contention that the annexation was carried out through deception; the state, acting in the public interest, was the only non‑statutory party which could challenge the annexation. Vicary v. Town of Awendaw (S.C.App. 2016) 417 S.C. 631, 790 S.E.2d 787, rehearing denied. Action 13

Where the State holds title to real property in the area to be annexed, it is a person owning real estate within the meaning of statute outlining procedure for 100% method, which allowed a municipality to annex property upon signature of all persons who owned real estate in the annexed area, and its signature is required to accomplish an annexation by 100% petition. Ex parte State ex rel. Wilson (S.C. 2011) 391 S.C. 565, 707 S.E.2d 402, rehearing denied. Municipal Corporations 34

State, as presumptive owner of marshland, was person owing real estate with meaning of statute outlining procedure for 100% method, which allowed a municipality to annex property upon signature of all persons who owned real estate in the annexed area, and therefore municipality was required to present annexation petition concerning marshland to State for signature; by its plain language, statute required signatures of all persons owning real estate in the area requesting annexation, and “persons owing real estate” was not synonymous with word “freeholder” as used in statute governing 75% method. Ex parte State ex rel. Wilson (S.C. 2011) 391 S.C. 565, 707 S.E.2d 402, rehearing denied. Municipal Corporations 34

Private parties who consisted of neighboring landowners and residents of city lacked standing to challenge annexation of marshland pursuant to the 100% method, which allowed a municipality to annex property upon signature of all persons who owned real estate in the annexed area; although municipality arguably did not comply with requirements of 100% method, procedure could only be challenged by party with standing, public trust doctrine did expand standing regarding marshland, of which State was presumptive owner, to every member of the public, and annexation by 100% method could only be challenged by person who asserted infringement of proprietary or statutory rights. Ex parte State ex rel. Wilson (S.C. 2011) 391 S.C. 565, 707 S.E.2d 402, rehearing denied. Municipal Corporations 33(9)

In order to challenge an annexation pursuant to the 100% method, which allowed a municipality to annex property upon signature of all persons who owned real estate in the annexed area, the challenger must assert an infringement of its own proprietary interests or statutory rights. Ex parte State ex rel. Wilson (S.C. 2011) 391 S.C. 565, 707 S.E.2d 402, rehearing denied. Municipal Corporations 33(9)

A municipality’s annexation of contiguous property under the 75% method of annexation can be challenged by a municipality or a resident, or a person residing in or owning property in the area to be annexed. St. Andrews Public Service Dist. v. City Council of City of Charleston (S.C. 2002) 349 S.C. 602, 564 S.E.2d 647. Municipal Corporations 33(9)

A party who does not reside or own property in an annexed area, and whose proprietary interests or statutory rights are not infringed upon by the annexation, has no standing to challenge a municipal annexation; the only non‑statutory party which may challenge a municipal annexation is the State, through a quo warranto action; overruling Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165. St. Andrews Public Service Dist. v. City Council of City of Charleston (S.C. 2002) 349 S.C. 602, 564 S.E.2d 647. Municipal Corporations 33(9)

County asserting that its rights were infringed by city’s annexation of property had to prove, not merely plead, standing; standing was indispensable part of county’s case, not merely a pleading requirement. Beaufort County v. Trask (S.C.App. 2002) 349 S.C. 522, 563 S.E.2d 660. Municipal Corporations 33(9)

Citizen did not have standing to bring declaratory judgment action against city to challenge annexation of property; citizen showed no individual injury. Beaufort County v. Trask (S.C.App. 2002) 349 S.C. 522, 563 S.E.2d 660. Declaratory Judgment 300

Allegations of public service district (PSD) that city’s annexation ordinances were unauthorized by law because properties being annexed were not contiguous were sufficient to afford PSD standing to maintain suit. St. Andrews Public Service Dist. v. City Council of City of Charleston (S.C.App. 2000) 339 S.C. 320, 529 S.E.2d 64, rehearing denied, certiorari granted, reversed 349 S.C. 602, 564 S.E.2d 647. Municipal Corporations 33(9)

Residents of a subdivision which was annexed pursuant to Section 5‑3‑150(3) did not have standing under Section 5‑3‑150(3) or Section 15‑53‑30 to challenge the annexation, where none of the residents owned real property in the annexed portion of the subdivision. Additionally, the matter was not of such public importance as to confer standing where, though the residents challenged the method of annexation in seeking to have it declared void, they raised no claim that it was unauthorized by law. Quinn v. City of Columbia (S.C. 1991) 303 S.C. 405, 401 S.E.2d 165.

While a county generally has the power to sue and be sued as a political body pursuant to Section 4‑1‑10, as a political subdivision of the State it lacks the sovereignty to maintain a suit under the doctrine of parens patriae. Absent an issue of overriding public concern, a political subdivision must establish that it is a real party in interest in order to maintain a suit; it must allege an infringement of its own proprietary interest or statutory rights to establish standing. County of Lexington, S.C. v. City of Columbia (S.C. 1991) 303 S.C. 300, 400 S.E.2d 146.

A county lacked standing to maintain a declaratory judgment action alleging that a city’s annexation of property located within the county was invalid, where the county failed to allege an infringement of its own proprietary interest or statutory rights and there was no issue of overriding public concern. County of Lexington, S.C. v. City of Columbia (S.C. 1991) 303 S.C. 300, 400 S.E.2d 146. Declaratory Judgment 302.1

Public Service District did not have standing to contest annexation based on its ownership of underground sewer lines running to homes within annexed area, because protest standing under statute required ownership of “real property”, not merely property, and giving “real property” its plain and ordinary meaning it was evident that Public Service District did not own real property. St. Andrews Public Service Dist. v. City of Charleston (S.C. 1987) 294 S.C. 92, 362 S.E.2d 877. Municipal Corporations 33(9)

6. Time for hearing

Municipality failed to wait until 30 days had lapsed, between date it published notice of hearing on annexation and date of enactment of annexation ordinance, as required by statute, when it published its notice on April 28 and enacted ordinance on May 27. Town of Summerville v. City of North Charleston (S.C. 2008) 378 S.C. 107, 662 S.E.2d 40. Municipal Corporations 33(2)

**SECTION 5‑3‑155.** Rules for annexation of certain properties by municipalities.

 An area in this State located more than twelve miles from the Atlantic Ocean, which is a peninsula being predominately industrial in character, separating a freshwater reservoir from a body of brackish water subject to tidal influences, and created by the construction of a manmade canal and manmade dam, may be annexed by a municipality only under the provisions of Section 5‑3‑150.

HISTORY: 1979 Act No. 194, Part III, Section 2; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 29(4).

Westlaw Key Number Search: 268k29(4).

C.J.S. Municipal Corporations Sections 48 to 51.

**SECTION 5‑3‑210.** Subsequent election after defeat of annexation election.

 When an annexation election is defeated either by the voters inside the municipality concerned or within the territory proposed to be annexed, or both, another annexation election within the territory proposed to be annexed shall not be initiated within a period of twenty‑four months from the date upon which the voting took place.

HISTORY: 1962 Code Section 47‑19.16; 1963 (53) 264; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 34.

Westlaw Key Number Search: 268k34.

C.J.S. Municipal Corporations Section 62.

Attorney General’s Opinions

Section is applicable if referendum by freeholders results in defeat of proposed annexation. 1963‑64 Op Atty Gen, No 1625, p 48.

NOTES OF DECISIONS

In general 1

1. In general

Sections 5‑3‑160 to 5‑3‑230, inclusive, of the 1976 Code are unconstitutional; constitutional portions of these statutes are not severable from unconstitutional portions. Fairway Ford, Inc. v. Timmons (S.C. 1984) 281 S.C. 57, 314 S.E.2d 322.

**SECTION 5‑3‑235.** Assessed value of any single freeholder’s real property not to exceed twenty‑five percent of assessed value of existing municipality; exceptions.

 Except when the procedures for an annexation provided for in Sections 5‑3‑100, 5‑3‑110, 5‑3‑120, 5‑3‑130, 5‑3‑140, and 5‑3‑150 are followed, the assessed value of real property of any single freeholder to be annexed, as defined in Section 5‑3‑240, shall not at the time of a proposed annexation exceed twenty‑five percent of the assessed value of real property of the existing area of a municipality.

HISTORY: 1980 Act No. 464; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Responsibility for assessment of property, see Section 12‑37‑90.

LIBRARY REFERENCES

Municipal Corporations 29(4).

Westlaw Key Number Search: 268k29(4).

C.J.S. Municipal Corporations Sections 48 to 51.

**SECTION 5‑3‑240.** “Freeholder” defined for purposes of pertinent provisions.

 For the purposes of Sections 5‑3‑150, 5‑3‑280, and 5‑3‑300 , a “freeholder” is defined as any person eighteen years of age, or older, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one‑tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate.

HISTORY: 1962 Code Section 47‑19.19; 1963 (53) 264; 1976 Act No. 695, Section 1; 2000 Act No. 250, Section 3.

CROSS REFERENCES

Application of definition of “freeholder”, defined in this section, to method by which special tax district is created, see Section 4‑9‑30.

Canvassing, see Section 4‑5‑170.

LIBRARY REFERENCES

Municipal Corporations 34.

Westlaw Key Number Search: 268k34.

C.J.S. Municipal Corporations Section 62.

**SECTION 5‑3‑250.** Extension of corporate limits to include cemeteries.

 Any municipality may extend its corporate limits so as to include any or all cemeteries adjoining the municipality, for the purposes only of police and sanitary measures, by the passage of an ordinance declaring them to be a portion of the municipality. But the inclusion of these cemeteries shall not give to the municipality the right to tax them in any manner.

HISTORY: 1962 Code Section 47‑20; 1952 Code Section 47‑20; 1942 Code Section 7232; 1932 Code Section 7232; Civ. C. ‘22 Section 4387; Civ. C. ‘12 Section 2993; Civ. C. ‘02 Section 1998; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(2).

Westlaw Key Number Search: 268k33(2).

C.J.S. Municipal Corporations Sections 55, 57.

**SECTION 5‑3‑260.** Annexation of church property.

 Any area owned entirely by an established church or religious group which is contiguous to a municipality may be annexed to the municipality upon the petition of the governing body of the church or religious group being submitted to the governing body of a municipality. Upon agreement of the governing body of the municipality to accept the petition, and the passage of an ordinance to that effect, the annexation is complete.

HISTORY: 1962 Code Section 47‑21; 1962 (52) 2145; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(3).

Westlaw Key Number Search: 268k33(3).

C.J.S. Municipal Corporations Section 58.

Attorney General’s Opinions

An election conducted pursuant to Code 1962 Section 47‑21 [Code 1976 Section 5‑3‑260] under a properly certified petition should be conducted between 30 and 90 days after receipt of the petition. 1974‑75 Op Atty Gen, No 4219, p 262.

**SECTION 5‑3‑270.** Time within which contest on extension of municipal limits must be instituted.

 When the limits of a municipality are ordered extended, no contest thereabout shall be allowed unless the person interested therein files, within sixty days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the extension, nor unless, within ninety days from the time the result has been published or declared an action is begun and the original summons and complaint filed with the clerk of court of the county in which the municipality is located.

HISTORY: 1962 Code Section 47‑22; 1952 Code Section 47‑22; 1946 (44) 1376; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(9).

Westlaw Key Number Search: 268k33(9).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 19, Parties Against Whom Defense May be Asserted.

NOTES OF DECISIONS

In general 2

Accrual of action 4

Notice of intent to contest 3

Standing 5

Sufficiency of petition 6

Validity 1

1. Validity

This section [Code 1962 Section 47‑22] is inapplicable to a suit brought by a municipality in the original jurisdiction of the Supreme Court to have declared unconstitutional a statute under which a second municipality acted in purporting to annex an area within the first municipality. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192.

2. In general

Ninety‑day deadline for contesting extension of municipal limits is the statute of limitations that usually applies in annexation matters because a more specific statute of limitations prevails over any general one. State ex rel. Condon v. City of Columbia (S.C. 2000) 339 S.C. 8, 528 S.E.2d 408. Municipal Corporations 33(9)

Legislature did not intend for nullum tempus doctrine, which provides that statute of limitations does not run against sovereign, to survive with regard to annexation statute of limitations. State ex rel. Condon v. City of Columbia (S.C. 2000) 339 S.C. 8, 528 S.E.2d 408. Limitation Of Actions 11(1)

State, like any private individual, must strictly comply with time limits set forth in annexation statute of limitations. State ex rel. Condon v. City of Columbia (S.C. 2000) 339 S.C. 8, 528 S.E.2d 408. Municipal Corporations 33(9)

This section [Code 1962 Section 47‑22] is not confined or restricted to the actual election, that is, the casting and counting of ballots, but refers to and includes the entire annexation procedure. Hite v. Town of West Columbia (S.C. 1951) 220 S.C. 59, 66 S.E.2d 427.

The time limitations are neither unreasonable nor arbitrary. Hite v. Town of West Columbia (S.C. 1951) 220 S.C. 59, 66 S.E.2d 427.

If it be assumed that a suit to determine the validity of annexation is an equitable proceeding to which the statute of limitations does not apply, such a suit brought five months after announcement of the result of the election would be barred by laches. Hite v. Town of West Columbia (S.C. 1951) 220 S.C. 59, 66 S.E.2d 427.

3. Notice of intent to contest

Statutory requirement that notice of intention to contest approval of city annexation ordinance be filed with municipal clerk and clerk of court is condition precedent that aggrieved party must satisfy before filing a summons and complaint contesting validity of annexation ordinance. Moon v. City of Greer (S.C.App. 2002) 348 S.C. 184, 558 S.E.2d 527. Municipal Corporations 33(9)

Objectors’ failure to file statutorily required notice of intention to contest approval of city annexation ordinance with city clerk and clerk of court prior to filing summons and complaint was absolute bar to action contesting validity of annexation ordinance. Moon v. City of Greer (S.C.App. 2002) 348 S.C. 184, 558 S.E.2d 527. Municipal Corporations 33(9)

4. Accrual of action

Statute of limitations began to run after ordinance concerning annexation of marshland of which State was presumptive owner was adopted, and therefore State’s motions to intervene or be substituted as real party in interest in action filed by private parties three years later were untimely; although State lacked actual notice of the annexation, policy of finality of an annexation was of greater importance, and there was no evidence of a nefarious motive on the part of the town, as town believed State’s signature was not required for annexation. Ex parte State ex rel. Wilson (S.C. 2011) 391 S.C. 565, 707 S.E.2d 402, rehearing denied. Municipal Corporations 33(9)

State’s quo warranto action against city challenging city’s annexation of certain property accrued when city annexed property in question. State ex rel. Condon v. City of Columbia (S.C. 2000) 339 S.C. 8, 528 S.E.2d 408. Limitation Of Actions 60(1)

Time does not begin to run until result of election has been published or declared. Dalton v. Town Council of Mt. Pleasant (S.C. 1963) 241 S.C. 546, 129 S.E.2d 523.

5. Standing

Person interested to contest election. Registered qualified election although not a freeholder, is person interested within meaning of this section [Code 1962 Section 47‑22]. Dalton v. Town Council of Mt. Pleasant (S.C. 1963) 241 S.C. 546, 129 S.E.2d 523.

6. Sufficiency of petition

A registered qualified elector is not limited to a contest of election, but may also contest sufficiency of petition. Dalton v. Town Council of Mt. Pleasant (S.C. 1963) 241 S.C. 546, 129 S.E.2d 523.

As the allegation as to the number of votes certified by the commissioners of election as having been cast for and against annexation in the area sought to be annexed was evidentiary in character and not essential to the statement of the plaintiffs’ cause of action, amendment to correctly state the number of votes so certified would not have stated a different cause of action; hence, the limitation prescribed by this section [Code 1962 Section 47‑22] was not applicable. Creamer v. City of Anderson (S.C. 1962) 240 S.C. 118, 124 S.E.2d 788.

Freeholders in an area annexed by a municipality may not contest the validity of the annexation upon the ground that less than a majority of the freeholders signed the election petition, without complying with the provisions of this section [Code 1962 Section 47‑22]. Hite v. Town of West Columbia (S.C. 1951) 220 S.C. 59, 66 S.E.2d 427.

**SECTION 5‑3‑280.** Reduction of corporate limits.

 Whenever a petition is presented to a city or town council signed by a majority of the resident freeholders of the municipality asking for a reduction of the corporate limits of the city or town, the council shall order an election after not less than ten days’ public advertisement. This advertisement shall describe the territory that is proposed to be cut off. If a majority of the qualified electors vote at the election in favor of the release of the territory, the council must issue an ordinance declaring the territory no longer a portion of the municipality and must notify the Secretary of State of the new boundaries of the municipality.

HISTORY: 1962 Code Section 47‑23; 1952 Code Section 47‑23; 1942 Code Section 7232; 1932 Code Section 7232; Civ. C. ‘22 Section 4387; Civ. C. ‘12 Section 2993; Civ. C. ‘02 Section 1998; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 34.

Westlaw Key Number Search: 268k34.

C.J.S. Municipal Corporations Section 62.

NOTES OF DECISIONS

In general 1

Submission to voters 2

1. In general

Special purpose districts are not municipalities or municipal corporations within the meaning of this section [Code 1962 Section 47‑23], so that part of such a district may be annexed to a municipality without submitting the issue to all of the electors of such district. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

Annexation of an incorporated municipality is authorized under this article. Williams v. Jacobs (S.C. 1960) 237 S.C. 183, 116 S.E.2d 157. Municipal Corporations 29(4)

Unless forbidden by the organic law, the legislature may authorize the annexation to one municipality of all or part of another municipality adjacent to it, and this may be done without the consent of the inhabitants of the territory annexed or the municipality to which it is annexed. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192. Municipal Corporations 27

Procedure for reduction. In order to reduce the corporate limits of a municipality, a petition asking for such reduction must be signed by a majority of the resident freeholders of the town, after which a majority of the qualified electors must vote in favor of releasing the territory involved. Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192.

This article does not authorize the annexation by a municipality of a portion of another municipality unless such portion is detached in the manner provided by this section [Code 1962 Section 47‑23]. Town of Forest Acres v. Seigler (S.C. 1953) 224 S.C. 166, 77 S.E.2d 900.

Inclusion of prayer for reduction in annexation petition. The inclusion in an annexation petition and in the subsequent proceedings of an abortive attempt to contract the area of the town by a small area did not invalidate the whole annexation proceeding, but the result of the election would be deemed to be limited to the annexation of additional territory, and the attempted exclusion was ineffectual. Teal v. Town of Chesterfield (S.C. 1951) 220 S.C. 1, 66 S.E.2d 318.

2. Submission to voters

A portion of one municipality may not be annexed to another without submitting the question of such detachment to the voters of the municipality whose area is to be reduced. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

It was the intention of the legislature that the voters of the entire town should have a voice in determining the question of whether any portion of its area should be detached. Forest Acres v Seigler, 224 SC 166, 77 SE2d 900 (1953). Town of Forest Acres v. Town of Forest Lake (S.C. 1954) 226 S.C. 349, 85 S.E.2d 192.

**SECTION 5‑3‑285.** Removal of territory from within corporate limits of municipality.

 Territory proposed to be removed from within the corporate limits of a municipality which is owned entirely by that municipality may be removed from within the corporate limits by ordinance of the governing body of the municipality. Territory proposed to be removed from within the corporate limits of a municipality which is owned entirely by a county or jointly by a county and a municipality may be removed from within the corporate limits by ordinance of the governing body of the municipality upon receipt of a resolution from the county governing body requesting the removal.

HISTORY: 1997 Act No. 9, Section 1; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 30.

Westlaw Key Number Search: 268k30.

C.J.S. Municipal Corporations Sections 53, 61.

**SECTION 5‑3‑290.** “Municipality” defined.

 The word “municipality” as used in this chapter shall be construed to mean any incorporated city or town located within this State.

HISTORY: 1962 Code Section 47‑24; 1952 Code Section 47‑24; 1942 Code Section 7230; 1932 Code Section 7230; Civ. C. ‘22 Section 4385; Civ. C. ‘12 Section 2991; Civ. C. ‘02 Section 1997; 1896 (22) 82; 1897 (22) 459; 1901 (23) 658; 1948 (45) 1974; 2000 Act No. 250, Section 3.

NOTES OF DECISIONS

In general 1

1. In general

Special purpose districts are not municipalities or municipal corporations within the meaning of this section [Code 1962 Section 47‑24], so that part of such a district may be annexed to a municipality without submitting the issue to all of the electors of such district. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

Although special purpose districts have been referred to in some cases as municipal corporations with limited functions and have been held to be municipal corporations within the meaning of certain sections of the Constitution, it does not follow that such districts are to be regarded as municipal corporations in the primary sense of the term so as to bring them within all statutory and constitutional provisions pertaining to incorporated towns and cities. Tovey v. City of Charleston (S.C. 1961) 237 S.C. 475, 117 S.E.2d 872.

**SECTION 5‑3‑300.** Annexation procedure.

 (A) In addition to other methods of annexation authorized by this chapter, any area which is contiguous to a municipality may be annexed to the municipality by the filing of a petition with the council signed by twenty‑five percent or more of the qualified electors who are residents within the area proposed to be annexed.

 (B) The petition must contain a description of the area to be annexed, the signature of the qualified elector, the address of residence, and the act or code section pursuant to which the proposed annexation is to be accomplished.

 (C) If the municipal council finds that the petition has been signed by twenty‑five percent or more of the qualified electors resident within the area proposed to be annexed, the council may certify that fact to the county election commission of the county in which the area is situated. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, the county election commission shall order an election to be held within the area proposed to be annexed to the municipality on the question of extension of the corporate limits of the municipality by annexation of the area proposed to be annexed.

 (D) The election ordered pursuant to this section is a special election and not a municipal election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. The county election commission shall give at least thirty days’ notice in a newspaper of general circulation within the area proposed to be annexed to the municipality. Registered qualified electors residing within the area proposed to be annexed to the municipality shall have the same qualifications to vote in this election as are required of registered qualified electors to vote in state and county general elections. At the election, the registered qualified electors residing within the area proposed to be annexed shall vote in a box or boxes to be provided for the purpose within the area proposed to be annexed by the county election commission. The county election commission shall certify the result of the election to the municipal council of the municipality. If a majority of the votes cast by the qualified electors of the area proposed to be annexed are in favor of the annexation, the council by written resolution must publish the result of the election.

 (E) After publishing the result of the election, the municipal council shall publish in a newspaper of general circulation within the municipality a notice which must contain:

 (1) a description of the area to be annexed;

 (2) the act or code section pursuant to which the proposed annexation is to be accomplished;

 (3) a statement that the qualified electors of the area to be annexed voted to be annexed to the municipality; and

 (4) a statement that the municipal council will approve the annexation of the area unless a petition signed by five percent or more of the qualified electors within the municipality is presented to the municipal council within thirty days from the date of the notice requesting that the municipal council order an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed.

 (F) The municipal council may give final reading approval to an ordinance declaring the area annexed not less than thirty days from the date of the publication of the notice required by subsection (E). However, if within thirty days from the date of the publication of the notice required by subsection (E), a petition signed by five percent or more of the qualified electors within the municipality is presented to the municipal council requesting an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed, the municipal council shall delay final reading approval of the ordinance declaring the area annexed until the results of the election within the municipality are published.

 (G) If within thirty days from the date of the publication of the notice required by subsection (E), a petition is presented to the municipal council requesting an election to be held within the municipality on the question of extension of the corporate limits by annexation of the area proposed to be annexed, the municipal council, after verifying that at least five percent of the qualified electors within the municipality have signed the petition, shall certify that fact to the municipal election commission and order an election. The election ordered pursuant to this subsection is a municipal election and must be held, regulated, and conducted by the municipal election commission pursuant to provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this subsection. The municipal election commission shall give at least thirty days’ notice prior to the date set for the election by publishing the notice in a newspaper of general circulation within the municipality. Registered qualified electors residing within the municipality shall have the same qualifications to vote in this election as are required of registered qualified electors to vote in the state and county general elections. The municipal election commission shall certify the result of the election to the municipal council.

 (H) If a majority of the votes cast by the qualified electors of the municipality are in favor of the annexation, the council shall give final reading approval to the ordinance declaring the area annexed. If a majority of the votes cast by the qualified electors of the municipality are in opposition to the annexation, the municipal council shall publish the result of the election and table the proposed ordinance.

 (I) When the procedure for annexation provided for in this section is followed, any freeholder owning real property in the area to be annexed equal to twenty‑five percent or more of the total assessed value of all real property of the area proposed to be annexed and any freeholder owning agricultural real property in the area to be annexed shall receive written notice of the proposed annexation by certified mail, return receipt requested, from the municipal clerk. Unless the freeholder files written notice with the municipal clerk at least ten days before the election provided for in subsection (D), the freeholder’s property must be considered as part of the area proposed to be annexed for the purposes of the annexation election. If the freeholder files written notice objecting to the inclusion of his property in the area to be annexed with the municipal clerk at least ten days before the election provided for in subsection (D), the freeholder’s property must be excluded from the area to be annexed. For purposes of this section, “agricultural real property” means:

 (1) land used to grow timber, if the size of the tract is ten acres or more. Tracts of timberland of less than ten acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of timberland of less than ten acres are agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For purposes of this item, tracts of timberland must be actively devoted to growing trees for commercial use;

 (2) all other agricultural real property, if the size of the tract is ten acres or more. Tracts of other than timberland of less than ten acres which are contiguous to a tract which meets the minimum acreage requirement are treated as part of the qualifying tract;

 (3) tracts of other than timberland not meeting the acreage requirement qualify if the freeholder reported at least one thousand dollars of gross farm income on his federal income tax return Schedule E or F for at least three of the five taxable years preceding the year of the annexation. The municipal clerk may require the freeholder (a) to give written authorization consistent with privacy laws allowing the clerk to verify farm income from the South Carolina Department of Revenue or the Internal Revenue Service and (b) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office.

HISTORY: 1988 Act No. 626, Section 1; 1993 Act No. 181, Section 613; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(4, 5), 34.

Westlaw Key Number Searches: 268k33(4); 268k33(5); 268k34.

C.J.S. Municipal Corporations Sections 56, 58 to 60, 62.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 5‑3‑305.** Contiguous property defined.

 For purposes of this chapter, “contiguous” means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right‑of‑way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

HISTORY: 2000 Act No. 250, Section 3.

RESEARCH REFERENCES

Encyclopedias

81 Am. Jur. Proof of Facts 3d 285, Proof of Lack of Contiguity of Land Annexed by Municipality.

Attorney General’s Opinions

Based upon the circumstances described, the intervention of a road or roads or rights of way would not itself render the property non‑contiguous. S.C. Op.Atty.Gen. (April 11, 2012) 2012 WL 1371025.

**SECTION 5‑3‑310.** Annexation of special purpose district.

 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.

HISTORY: 1988 Act No. 626, Section 2; 2000 Act No. 250, Section 3.

CROSS REFERENCES

West Florence Fire District, indebtedness of district, controlling provisions, transfer of property, see Section 4‑23‑1025.

LIBRARY REFERENCES

Municipal Corporations 35.

Westlaw Key Number Search: 268k35.

C.J.S. Municipal Corporations Sections 63 to 66, 75.

Attorney General’s Opinions

Overlapping boundaries of special purpose districts and adjoining municipalities. 2014 S.C. Op.Atty.Gen. (February 12, 2015) 2015 WL 992701.

Sections 5‑3‑310 and 5‑3‑311(7) confer a right upon the Ashley River and Old Fort Fire Districts to continue to receive taxes for the annexed area until such time as a plan is made or that right is otherwise altered using the procedures in Section 5‑3‑311. The act of assessing general municipal taxes upon newly annexed property cannot be construed as an election by a municipality to assume the functions previously performed by a special purpose district. However, Section 5‑3‑311 requires a plan to be formulated regardless of whether the municipality assumes such functions. Section 5‑3‑311 sets specific deadlines for the formulation of such plan, and the City and the Districts must comply with those deadlines. S.C. Op.Atty.Gen. (March 30, 2012) 2012 WL 1377689.

**SECTION 5‑3‑311.** Committee to formulate plan in absence of agreement.

 The 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.

HISTORY: 1988 Act No. 626, Section 3; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 35.

Westlaw Key Number Search: 268k35.

C.J.S. Municipal Corporations Sections 63 to 66, 75.

Attorney General’s Opinions

Sections 5‑3‑310 and 5‑3‑311(7) confer a right upon the Ashley River and Old Fort Fire Districts to continue to receive taxes for the annexed area until such time as a plan is made or that right is otherwise altered using the procedures in Section 5‑3‑311. The act of assessing general municipal taxes upon newly annexed property cannot be construed as an election by a municipality to assume the functions previously performed by a special purpose district. However, Section 5‑3‑311 requires a plan to be formulated regardless of whether the municipality assumes such functions. Section 5‑3‑311 sets specific deadlines for the formulation of such plan, and the City and the Districts must comply with those deadlines. S.C. Op.Atty.Gen. (March 30, 2012) 2012 WL 1377689.

**SECTION 5‑3‑312.** Plan to balance equities and interest.

 The plan formulated under Sections 5‑3‑300 through 5‑3‑315 shall seek to balance the equities and interests of the residents and taxpayers of the annexed area and of the area of the district not annexed. The plan may be formulated with regard to any factors bearing on such balance of equities and interests in accordance with the following:

 (1) The plan may provide for certain service contracts to be entered into between the municipality and the district. The municipality has the right, in its sole discretion, to determine whether the municipality will provide service to the area annexed directly or by contract with the district. At the option of the district, the plan may provide for service contracts by which the municipality will provide service to residents of unannexed areas of the district.

 (2) In any case in which less than the total service area of the district will be annexed by the municipality, the plan shall:

 (a) protect the district’s ability to serve the residents of the district’s unannexed area economically and efficiently and protect the district’s ability to continue to expand or otherwise make service available throughout its unannexed area;

 (b) protect the ability of the municipality to serve residents of the annexed area of the district economically and efficiently;

 (c) protect the rights of the district’s bondholders.

 (3) To carry out the requirements of subitem (a) of item (2) above, the plan shall require the municipality to assume contractually the obligation to pay debt service on an amount of the district’s bonded indebtedness or other obligations including lease purchase obligations adequate to offset the district’s loss of net service revenue or tax revenue from the area annexed, in accordance with the following:

 (a) specifically included within this amount must be revenues, if any, projected under the provisions of any governmentally approved plan promulgated pursuant to federal pollution control legislation;

 (b) as the district retires bonded indebtedness existing at the time of annexation, the municipality’s payment obligation under this provision must be reduced by the proportion which the principal amount of the indebtedness retired bears to the total principal amount of bonded indebtedness of the district at the time of annexation;

 (c) as used herein, net service revenue means revenue from fees, charges, and all other sources, attributable to service provided in the area annexed, less the actual cost of operating and maintaining the system or facilities needed to serve that area; however, debt service or other payments required to finance capital assets may not be considered to be part of such operating and maintenance expenses. Tax revenue means taxes collected from property owners within the annexed area.

 (4) Under any plan whereby the district must disconnect or reintegrate its facilities, the municipality shall bear the reasonable cost of such disconnection or reintegration. In the event that the plan contemplates that the district will continue to provide service by contract within the incorporated limits of the municipality, the municipality shall agree to provide the district with all permits or authority necessary to use municipal streets, alleys, ways, and other public spaces for the provision of such service.

 (5) In no event may any provision be incorporated in any plan which will impair the rights of bondholders, or which will impair the statutory liens created by Section 6‑21‑330 or Title 7 of the United States Code, Section 1926(b), or which will accelerate the requirement to repay bonds, or which would violate the conditions of any grant.

 (6) In no event may any plan require that the residents in the annexed area be taxed or assessed by both the municipality and the district for the provision of the same service, except as provided by the laws of this State.

 (7) Absent consent of the district, neither annexation nor any plan hereunder entitles the municipality to any cash, securities, or other liquid assets of any kind of the district.

 (8) Subject to the provisions of Article VIII, Section 15 of the Constitution of this State, the service provided or made available through any district may not be curtailed or limited by inclusion of the area served by the district within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area in a manner which would impair any of the district revenue bonds.

HISTORY: 1988 Act No. 626, Section 4; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 35.

Westlaw Key Number Search: 268k35.

C.J.S. Municipal Corporations Sections 63 to 66, 75.

**SECTION 5‑3‑313.** Auditor and treasurer to conform to plan.

 The auditor and treasurer of the county or counties in which the annexed area is located shall take such action as is appropriate to conform with the plan finally established pursuant to the terms of Sections 5‑3‑300 through 5‑3‑315, including releasing or adjusting any levy of district taxes within any annexed area. The annexing municipality and the district shall execute and deliver such documents, including any deeds or bills of sale, appropriate to the implementation of such a plan.

HISTORY: 1988 Act No. 626, Section 5; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 35.

Westlaw Key Number Search: 268k35.

C.J.S. Municipal Corporations Sections 63 to 66, 75.

**SECTION 5‑3‑314.** Obligation may not be disturbed.

 In no event under any plan or otherwise may the obligation between the district and its general obligation bondholders or, in the case of a special tax or assessment district, the obligation between the district and the holders of the county bonds issued on its behalf, be disturbed. If adequate provision is not made for the levy of taxes or for payment of the principal and interest on such bonds, it is the duty of the auditor of the county to levy, and of the treasurer of the county to collect, an ad valorem tax, without limit as to rate or amount, upon all taxable property within the district as it was constituted on the dates those bonds were issued sufficient to pay principal and interest as they become due. Only bondholders or agents or trustees acting on their behalf may proceed at law or in equity to enforce this requirement.

HISTORY: 1988 Act No. 626, Section 6; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 36(3).

Westlaw Key Number Search: 268k36(3).

C.J.S. Municipal Corporations Sections 72 to 73, 75.

**SECTION 5‑3‑315.** Public hearing.

 Any district affected by the proposed annexation may conduct a public hearing within sixty days prior to the required election. The district must give at least fourteen days’ notice of the time and place of this public hearing in a newspaper of general circulation within the area proposed to be annexed; however, failure to conduct a public hearing or failure to publish proper notice of the hearing may not delay any election or other proceedings herein.

HISTORY: 1988 Act No. 626, Section 7; 2000 Act No. 250, Section 3.

LIBRARY REFERENCES

Municipal Corporations 33(1).

Westlaw Key Number Search: 268k33(1).

C.J.S. Municipal Corporations Sections 54 to 56.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.