

Executive Subcommittee Meeting
Thursday, June 25, 2020

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AGENDA

South Carolina
House of Representatives



Legislative Oversight Committee

EXECUTIVE SUBCOMMITTEE

Chairman Gary E. Clary

The Honorable Chandra E. Dillard

The Honorable Laurie Slade Funderburk

The Honorable Wm. Weston J. Newton

Thursday, June 25, 2020

9:00 a.m.

Via Microsoft Teams

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Subcommittee Meeting Minutes**
- II. Discussion of the study of the Secretary of State's Office**
- III. Adjournment**

MEETING MINUTES

Chair Wm. Weston J. Newton

*First Vice-Chair:
Laurie Slade Funderburk*

Legislative Oversight Committee

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Neal A. Collins
Patricia Moore (Pat) Henegan
William M. (Bill) Hixon
Jeffrey E. (Jeff) Johnson
Marvin R. Pendarvis
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South Carolina House of Representatives

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Executive Subcommittee

Monday, December 9, 2019

10:30 a.m.

Blatt Room 321

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

Attendance

- I. Subcommittee Chairman Gary E. Clary calls the Executive Subcommittee meeting to order on Monday, December 9, 2019, in Room 321 of the Blatt Building. The following members of the Subcommittee are present during all or part of the meeting: Subcommittee Chairman Clary, Representative Chandra E. Dillard, and Representative Wm. Weston J. Newton.

Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.
- II. Representative Newton moves to approve the minutes from the December 5, 2019 Subcommittee meeting. A roll call vote is held, and the motion passes.

Rep. Funderburk moves to approve the minutes from the Subcommittee's December 5, 2019, meeting:	Yea	Nay	Not Voting (Not present)
Rep. Clary	✓		
Rep. Dillard			✓ (not present during December 5 meeting)
Rep. Funderburk			✓
Rep. Newton	✓		

Discussion of the Secretary of State's Office

- I. Subcommittee Chairman Clary explains the purpose of today's meeting is for the S.C. Secretary of State's Office (SoS) to present information on its municipalities deliverables.
- II. Subcommittee Chairman Clary explains that all testimony given to this subcommittee, which is an investigating committee, must be under oath. He places Ms. Allyson Green, SoS Municipal Coordinator under oath. Also, he reminds all personnel placed under oath during a prior Subcommittee or Committee meeting that they remain under oath.
- III. Ms. Shannon Wiley, General Counsel for the Secretary of State's Office, presents information about the agency's municipalities and remaining legal deliverables, which includes the following:

Overview of Municipalities and remaining Legal Deliverables

- a. Divisions included
- b. Organizational chart

Municipalities

- c. Overview
Division responsibilities

Flow chart of division components

d. Deliverables

(Note: Below, D with a number after it stands for deliverable number from the agency's Program Evaluation Report)

Service of Process

Overview

Acceptance of service of process for other entities (D164)

Rejection of service of process request (D165)

Service of process requests accepted and rejected bar graph

Special Registered Agent Filings

Overview

Discount medical plan organization registered agent designation (D166)

Non-resident prescription drug distributor registered agent designation (D167)

Municipal and Annexation Filings

Overview

Application for municipal incorporation (D168)

Recommendation on municipal incorporation and issuance of commission to hold election (D169-170)

Issuance of certificate of incorporation to municipality (D171)

Cancellation of municipal incorporation certificate (D172)

Change of form of government filing (D173)

Notice of annexation (D174)

Certification of incorporation for redevelopment commission (D175)

Special Purpose Districts

Overview

Special purpose district notification form (D176)

Failure to file notification form by special purpose district (D177)

Special purpose district directory (D178)

Special purpose district required production of information (D179)

Notice of review of petition to dissolve a special purpose district (D180)

Special purpose district order of dissolution (D181)

Special purpose district notice of dissolution (D182)

Joint Agencies and Joint Systems

Overview

Joint agency filings (D183-184)

Joint authority water and sewer system filings (D185-186)

Cable Franchise Authority

Overview

Certificate of cable franchise authority application notice to local governments (D187)

Notice of denial of application for certificate of cable franchise authority (D188-189)

Certificate of cable franchise authority - termination by cable provider (D190)

Certificate of cable franchise authority – notice of transfer (D191)

Termination of county or municipal cable franchise authority (D192)

Notice of change of franchise fee (D193)

Certificate of cable franchise authority publication (D194)

Private Personnel Placement Services

Overview

Examples of what is and is not included within term “private personnel placement service”

Private personnel placement service license (D195)

Private personnel placement services – license revocation and renewal (D196-197)

Private personnel placement services – license denial of renewal and investigations (D198 and 48)

Private personnel placement services initial license and license renewal bar graph

Suggested law changes related to private personnel placement services

Business Opportunities

Overview

Business opportunities (D199-200)

Business opportunity initial registrations and renewal registrations bar graph

e. Performance measures

Measures #5 - Protect data and records and provide staff additional tools to fulfill statutory duties. (Create database and applications for municipal incorporations, railroads, landlord-tenants, business opportunities and special purpose districts.)

f. Revenue and costs

Fee revenue sources

Fees collected for service of process bar graph

Fees collected for certificates of cable franchise authority bar graph

Fees collected for private personnel placement services licenses bar graph
Fees collected for business opportunities registrations bar graph
Comparison of fee revenue collected by municipalities division with costs (excluding agency operations), by year, bar graph.

Legal

g. Overview

Division responsibilities

h. Deliverables

Escheatment of Real Property

Overview

Escheatment (D201, 202, and 203)

Escheatment (D204)

Escheatment (D205, 206, and 207)

i. Performance measures - No performance measures

j. Revenue and costs - None, since no escheatments over last three years

k. *Freedom of Information Act Requests*

Overview

Freedom of Information Act (D208)

Number of FOIA requests received bar graph

l. Performance measures - No performance measures

m. Revenue and costs - None calculated

Comparison of fee revenue collected for FOIA requests with costs (excluding agency operations), by year, bar graph.

Members ask questions, which Ms. Wiley answers.

IV. There being no further business, the meeting is adjourned.

STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Secretary of State's Office (agency or Office) includes actions by the full Committee; Executive Subcommittee (Subcommittee); the agency; and the public. Key dates and actions are listed below.

Legislative Oversight Committee Actions

- December 5, 2018 - Holds **Meeting #1** to prioritize the agency for study
- January 9, 2019 - Provides the agency notice about the oversight process
- February 27 - April 1, 2019 - Solicits input about the agency in the form of an online public survey
- August 13, 2019 - Holds **Meeting #2** to obtain public input about the agency

Executive Subcommittee Actions

- September 27, 2019 - Holds **Meeting #3** to discuss the agency's history and mission; qualifications and duties of the agency head; overview of divisions, finances, and employees; federal and local counterparts; compliance with records management, regulations and reporting; audit and risk mitigation practices; and successes, challenges, and emerging issues
- October 28, 2019 - Holds **Meeting #4** to discuss the agency's public charities unit and related deliverables
- December 5, 2019 - Holds **Meeting #5** to discuss the agency's business filings, information technology, and administration units and related deliverables; and notaries, boards and commissions, authentications, and apostilles related deliverables
- December 9, 2019 - Holds **Meeting #6** to discuss the agency's municipalities deliverables
- June 25, 2020 - (TODAY) Holds **Meeting #7** to discuss Subcommittee study findings and recommendations

Secretary of State's Office

- March 31, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 12, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- September 2018 - Submits its **2017-18 Accountability Report**
- May 3, 2019 - Submits its **Program Evaluation Report**

Public's Actions

- February 27 - April 1, 2019 - Provides input about the agency via an **online public survey**
- Ongoing - Submits written comments on the Committee's webpage on the General Assembly's website (www.scstatehouse.gov)

Figure 1. Key dates in the study process, December 2018 to present

AGENCY SNAPSHOT

Secretary of State's Office

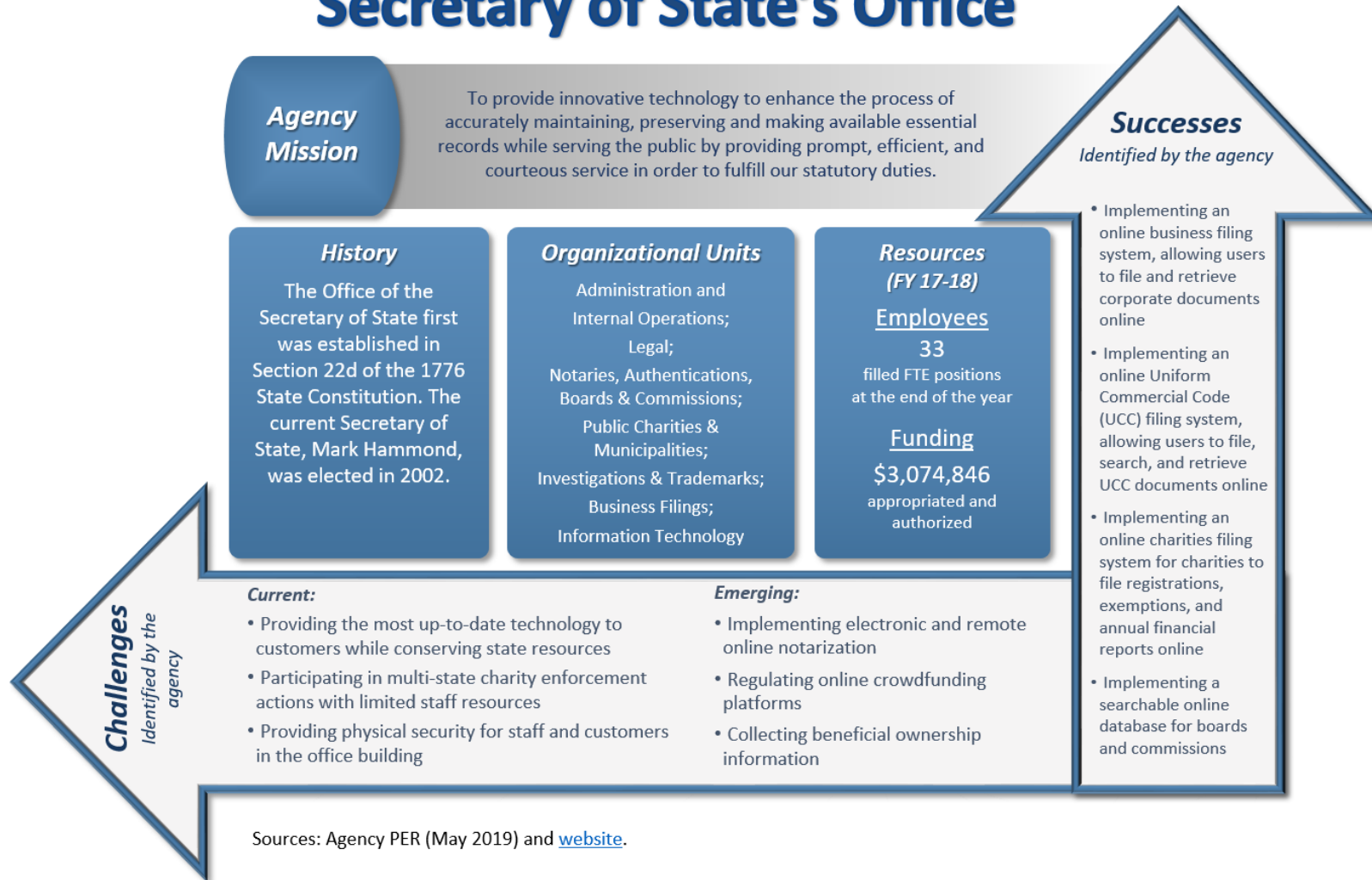


Figure 2. Snapshot of the agency's history, mission, organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges¹

RECOMMENDATIONS FROM OTHER STUDIES

There is no record of the Legislative Audit Council performing an audit of the Secretary of State's Office in the last ten years. Below are recommendations from the September 2019 Senate Oversight Study Report of SCAC.²

Business Filings

- Legislative Recommendation
 - S. C. Code of Laws §33-1-220(c)(1) and (2) should be amended to allow the Secretary of State's Office to provide either certified or uncertified copies of business filings to consumers.
- Agency Recommendations
 - The Secretary of State's Office should ensure they are in compliance with §1-5-50 of the S.C. Code of Laws regarding fees charged to persons requesting records.
 - The Secretary of State's Office should explore the feasibility of providing free access to business filings to consumers using the online system recently implemented.

Boards and Commissions

- Agency Recommendations
 - The Secretary of State's Office should contact agencies, preferably by email, related to boards or commissions with vacancies or members serving in expired terms. These agencies can, in turn, request the appointing authority to appoint, reappoint or elect appropriate persons to those seats.
 - Any boards or commissions determined by the Secretary of State's Office to be non-operational or defunct, should be removed from the database.

Investigations

- Agency Recommendation
 - The Office of the Secretary of State should implement a tracking system for the caseload of its investigations division.

POTENTIAL FINDINGS AND RECOMMENDATIONS

Study of Secretary of State's Office - Potential Findings and Recommendations from Members
(As of June 17, 2020)

Findings

The Subcommittee may or may not have specific recommendations to address these findings. However, the Subcommittee makes the findings to note particular information that a member of the public, or General Assembly, may seek to know or on which they may desire to take action.

Agency Duties

1. For two centuries, the primary duties of the Secretary of State were to maintain and certify official-state government records. Over the past four decades, these duties were expanded by the General Assembly to include: licensing and regulating private employment agencies, handling business filings, regulating charitable organizations, and monitoring state boards and commission.
2. There are deliverables (e.g., services or products) the Secretary of State's Office is statutorily required to provide for which there were zero customers in the last four years.

Agency Resources

3. The Secretary of State's Office generates monies that are not utilized by the agency, but instead are directed to the state's general fund, which enables operation of agencies that primarily rely on the general fund (e.g., Department of Corrections and Commission on Indigent Defense).
4. Some of the fees (e.g., business filings, solicitation of charitable funds act, and notary public) charged by the Secretary of State's Office have not increased in decades.

Board, Commission, Councils, and Committees (Collectively "Boards")

5. The General Assembly directs numerous boards, commissions, councils, and committees (hereinafter collectively "boards") to fulfill diverse responsibilities relating to issues affecting state operations and the lives of the people of South Carolina, including, but not limited to, the economy, healthcare, personal information, and culture. The Secretary of State's Office is tasked with monitoring state boards.
6. Information available during the study indicates 40% of all seats on the more than 150 boards monitored by the Secretary of State's Office were vacant or included individuals serving in expired terms (i.e., over 800 individuals serving in expired terms on boards and over 450 vacant seats). Additionally, there were 48 boards with no current appointments on file with the Secretary of State's Office, other than ex officio or legislative members.

Note: The figures were similar two years prior when the Senate Oversight Committee performed its study of the agency and found as of June 9, 2017, there were 424 vacancies and 880 serving in expired terms.

7. Mechanisms are lacking to ensure written notification of up to date appointments, elections, resignations, vacancies, and board status (e.g., active, inactive, or defunct) are provided to the Secretary of State's Office.

Note: The law states boards are to notify the Secretary of State's Office of appointments, elections, resignations, and vacancies but provides no enforcement mechanism to ensure the board is aware of the duty and meets it. Also, state law does not address responsibility for notifying the Secretary of State's Office when a board goes inactive or defunct, nor how the Secretary of State's Office would handle those situations.

8. Overall, the selection process for boards is complex due to the different methods of selection (at least 16), the number of seats (more than 3,000), and unrelated times of year in which selections are necessary.
9. Additional analysis of state boards is necessary in order to address issues surrounding the high percentage of vacant and expired board positions.

Note: Request for audit by Legislative Audit Council. See potential topics for audit request at the end of this document.

Progress Made, But More Needed

10. The Secretary of State's Office continues to gain efficiencies and transparency for the public using online services and databases.
11. The Secretary of State's Office is utilizing data sharing technology to gain efficiencies in state operations.
12. The Secretary of State's Office has taken proactive measures regarding an emerging issue, crowdfunding, by forming a taskforce to discuss the various issues surrounding it (e.g., determine whether regulation is needed, review model legislation that becomes available and consider how it would work in South Carolina).
13. In addition to the recommendations made in this report, there are other issues the Secretary of State's Office and General Assembly may wish to consider in the future.

- **Secretary of State**

- *Updating its board database as follows:*
 - *List the dates applicable to vacancies,*
 - *Add links to, and identification of, all laws applicable to a board position in the board member search,*
 - *Enable users to search board seats by name of elected officials to see which seats each has responsibility in appointing/electing,*
 - *Enable automatic notifications to appointing authorities to provide reminders of current vacant/expired board positions, and board positions expiring within the next year, and*
 - *Create a web form which appointing authorities complete to submit all required information,*
- *Investigating the feasibility of creating a way for the public to contact the agency with complaints and questions about charity solicitations via their mobile phone,*

- *Revising the annual angel charity selection process by replacing agency discretion in certain phases with additional objective criteria or listing all charities that meet the existing objective criteria as angels,*
- *Communicating with the Prosecution Coordination Commission regularly about which cases from the Secretary of State's Office the solicitors prosecute and why,*
- **General Assembly**
 - *Improving communication and accountability related to boards (e.g., clarification of how to address inactive/defunct boards; enforcement mechanisms related to providing up to date and accurate notification of appointments, elections, resignations, and vacancies),*
 - *Reviewing statutes related to railroad filings as many have not been updated in more than 60 years,*
 - *Reviewing statutes related to trademark and livestock brands as fees related to livestock brands have not increased in more than 60 years and fees related to state trademarks have not increased in more than 25 years, and*
 - *Evaluating the state's objectives in regulating employment agencies as there have been no significant updates to the Private Personnel Placement Services Act in more than 30 years.*

Recommendations

Recommendations to Secretary of State

Effectiveness

In General

1. Conduct, internally or in conjunction with the Department of Administration's State Division of Human Resources, an employee engagement/climate survey and adopt a policy requiring one occur on a regular basis in the future (e.g., every three years). Further, the agency should share the results of the surveys with its employees, and results of the first survey with the Committee.

Corporate and Nonprofit Filings

2. Adopt an applicable policy and perform regular reviews of registered nonprofits to ascertain which ones may need administratively dissolution (e.g., those for which the agency cannot determine has a registered agency or office.)
3. Collect and utilize information on business and Uniform Commercial Code filing rejections, including the number of times each rejection reason was used, to regularly revise trainings and webinars the agency creates.
4. Post online a statistical summary of rejection reasons for business and Uniform Commercial Code filings.

Municipalities and Special Purpose Districts

5. Adopt an applicable policy and perform regular reviews (e.g., with every census) to determine which municipalities, if any, are not performing municipal services as required in statute.
6. Work with the Municipal Association and other stakeholders to propose statutory changes that may provide a clear and efficient way to handle issues that may arise during a municipality's dissolution (e.g., disposition of municipalities' assets).

Note: Code Section 4-9-80 provides that a county assume ownership of assets of dissolved entities within its boundaries. However, there is no statutory process for disposition of the town's assets if a county is unprepared or unwilling to accept those assets. As an example, in 1995 the Town of City View in Greenville County dissolved. City View owned firetrucks, sanitation trucks and a water/sewer system. However, at that time Greenville County operated none of those types of services and was unwilling to accept the town's assets. Instead, three separate special purpose districts agreed to assume ownership and operation of the town assets, but only after a series of circuit court orders was secured to bless the process.

Efficiency

Notaries

7. Research and compare current costs, processing times, and potential privacy/fiscal implications (e.g., multiple transfers of checks) of notary applications with other options for online methods through which applicants may apply, pay applicable fees, and complete a new required training.

Elections

8. Provide the Committee suggested revisions to law, after collaborating with stakeholders, which may increase efficiency related to the filing of bonds for special state constables.

Note: S.C. Code Section 8-3-140, which has not changed since at least 1902 (see Civ. C. '02 Section 591), has three separate constitutional officers involved in the filing of bonds for special state constables.

General

9. Track the amount of time it takes to process and turn-around corporate paper filings submitted by mail and walk-in customers and add this as a performance measure the agency tracks in its annual Accountability Report.

Transparency

Boards and Commissions

10. Revise the existing search function to include an option to see a list of all boards.

Note: Currently, an individual must enter a board name or words the board name begins with as there is no option to see "all."

11. Make historical information available to the public, and retain it in agency files, by posting on the agency's website a link for the public to download an Excel document with all data the agency maintains on boards and board membership, from the first of the month for each of the most recent five years; and save this information in agency files for the most recent fifteen years.

Note: Information about boards on the agency's website is updated daily and prior information is not stored.

12. Report to the Committee, at the end of three years, information including, but not limited to, (a) number of vacancies each month by board and appointing authority (including circuit if applicable); (b) ten boards with the highest number of expired terms/vacancies each year; and (c) ten appointing authorities with the highest number of expired terms/vacancies each year.

Charities

13. Resume publication of a charities scrooges list and consider publication at a different time of the year than the angels list to afford an opportunity to focus on both lists separately.

General

14. Continue annually tracking information on agency deliverables (e.g., costs, customers served, etc.), as provided in the Program Evaluation Report, for discussion during the next oversight cycle.

Interagency Collaboration

Physical Security

15. Continue efforts with others in the Brown building and the Bureau of Protective Services (BPS), to obtain security personnel and a metal detector in the building.

Information Applicable to Multiple Agencies

16. Convene stakeholders (e.g., State Ethics Commission and State Election Commission) to *determine potential opportunities* to gain efficiencies in recording and sending information applicable to multiple agencies (e.g., board member names, candidates for elections, etc.). Provide the Committee an update in the next twenty-four months.

Note: All three entities utilize information about elected officials for posting certified results (State Election Commission); informing the officials of application of the Ethics Act (State Ethics Commission); and in addressing oaths of office (Secretary of State's Office). As for appointed officials, both the Secretary of State's Office and the State Ethics Commission need current and accurate information on the officials as the Secretary of State's Office makes information available to the public and the State Ethics Commission sends the officials letters describing the jurisdiction and application of the Ethics Act as well as information on training regarding the act.

17. Convene stakeholders (e.g., Department of Motor Vehicles and State Election Commission) to *determine potential opportunities* to gain efficiencies for individuals who must update their address with multiple state agencies (e.g., providing an individual the option, when they update their address with one agency, for it to automatically update their address with other applicable agencies). Provide the Committee an update in the next twenty-four months.

Note: When an individual changes their address, there may be multiple state entities needing notification to ensure proper continuation of the individual's rights. For example, if Jane Doe is a registered voter and changes her address, she must notify the State Election Commission so they can make updates to ensure she can vote for candidates that represent her new address. If she is a notary, she must also notify the Secretary of State's Office. If she has a driver's license, she must also notify the Department of Motor Vehicles.

Municipalities, Special Purpose Districts, etc.

18. Work with stakeholders (e.g., Municipal Association of South Carolina; Revenue and Fiscal Affairs Office and others) who may have geographic information system mapping to determine opportunities for linking information each has available about municipalities, special purpose districts, and other areas to assist the public in locating this type of information. Provide the Committee an update on the status of the efforts in the next twelve months.

Modernization of Laws

19. Request the General Assembly repeal provisos 96.2 and 96.3 as part of the agency's budget requests next year

Note: These provisos relate to charitable funds act disclosure and misrepresentation violations. According to the Secretary of State's Office, there was only one referral that met the specific criteria of the proviso, which occurred the same year the provisos were first included in the budget (2014-15), and the Attorney General did not take further action following its investigation. However, the Secretary of State's Office and Attorney General's Office regularly communicate regarding persons engaged in charitable solicitation whose alleged misconduct would fall under the jurisdiction of the Attorney General.

Recommendation to the General Assembly

Efficiency

Notaries

20. Allow electronic notarization.

Note: The following pending bills would allow electronic notarization: S.447; S.487; H.3917.

21. Allow remote online notarization.

Note: The following pending bills would allow remote online notarization: S.486; H.3917.

22. Remove requirement that notaries enroll their notary commissions with the clerk of court in the county in which they reside by repealing S.C. Code Section 26-1-50.

Elections

23. Remove requirement that certain information related to political parties be filed with the Secretary of State's Office as the information is already filed with another state entity or county clerk of court by amending S.C. Code Section 7-9-10, Section 7-9-80, and Section 7-9-100, as recommended by the Secretary of State's Office.
24. Remove requirement that the Secretary of State's Office publish certified election results in various newspapers as the State Election Commission publishes this information on its website, by repealing S.C. Code Section 7-17-320, as recommended by the Secretary of State's Office.
25. Remove requirement that the Secretary of State's Office send certified election results to elected individuals by repealing S.C. Code Section 7-17-310.

Modernization of Laws

26. Lift the sunset provision on Title 33, Chapter 57, Nonprofit Raffles for Charitable Purposes, which automatically repeals on July 1, 2020 if not reauthorized, with revisions recommended by the Secretary of State's Office including, but not limited to, removing the prohibition that no part of an organizations' activities involve the provision of athletic facilities or equipment and allowing organizations with multiple chapters to file simplified annual raffle financial reports.
Note: The following pending bills would implement the recommendation: S.719; H.4937. S.719 has been recalled to the House floor.
27. Ensure statute reflects the Public Charities Division remained with the Secretary of State's Office, instead of devolving to the Attorney General's Office, by repealing S.C Code Section 1-7-117.
28. Remove references to nonresident taxpayers registering with the Secretary of State's Office by amending S.C. Code Section 12-8-540 and Section 12-8-550.

29. Remove the requirement that the Department of Natural Resources file a description of uniforms, emblems, and vehicles with the Secretary of State's Office for publication in the State Register by repealing or amending S.C Code Section 50-3-140.

Note: DNR would still file the information, they would just file it solely with Legislative Council as opposed to both the Legislative Council and the Secretary of State's Office.

Recommendation to the Attorney General's Office

30. Avoid conflicts with state law by starting proceedings to remove agency regulation 102-1.

Note: After being made aware of the applicable information, on June 12, 2020, the Attorney General's Office sent a Notice of Drafting to Legislative Council to begin the process of removing agency Regulation 102-1.

Topics for Potential LAC Audit

Topics the Committee may request the Legislative Audit Council (LAC) further analyze for the Committee include, but are not limited to, the following:

- For inactive/duplicate boards
 - Number (e.g., which ones appear inactive or replaced by another board)
 - Detection and resolution options (current versus recommendations for future)
- For active boards:
 - Board member selection
 - (e.g., what are major challenges/potential causes for number of vacancies and expired terms - appointing authorities' knowledge of all positions they are responsible for appointing/electing; methods utilized to advertise available positions; number of individuals applying for positions; number of individuals qualified for position; multitude of dates throughout the year in which different positions expire and new selections are required; methods utilized to make selections)
 - Statutory qualifications
 - (e.g. who confirms those selected meet statutory qualifications and how)
 - Transmission and publication of board and board member information
 - (e.g., is it accurate, provided in timely manner, and what other options may improve efficiency - information appointing authorities provide boards, boards provide the Secretary of State's Office, and the Secretary of State's Office publishes online for the General Assembly and public)
 - Terms
 - (e.g., are all specified in statute - start and end date, what to do upon expiration)
 - Board member participation
 - (e.g., in general and of different groups such as members automatically selected by statute, members selected by Governor's Office, members selected by other appointing authorities, members paid salary, members paid per diem, members not paid, number currently serving that have missed the number of meetings in statute that would automatically remove them from the board)
 - Duties and board member knowledge thereof
 - (e.g., range of board duties/responsibilities and methods to ensure members' have knowledge of)
 - Board costs
 - (e.g., each of last five years versus if all board seats were filled and if all boards were meeting the minimum number of times required in statute)

The LAC audit should obtain information from sources including, but not limited to, appointing authorities (e.g., members of the General Assembly, Governor), entities from whom appointing authorities statutorily receive recommendations and must make selections, delegation staff, Secretary of State's Office staff, South Carolina Interactive, etc.

Strike Through and Underline Wording for Oversight Committee Statute Recommendations

Recommendation #19: Secretary of State's office request the General Assembly repeal provisos 96.2 (Charitable Funds Act Disclosure Violations) and 96.3 (Charitable Funds Act Misrepresentation Violations) in the 2019-20 General Appropriations Act as part of the agency's budget requests next year.

~~96.2.—(SS: Charitable Funds Act Disclosure Violations) The Secretary of State shall refer to the Attorney General for investigation under Section 33-56-145 of the Solicitation of Charitable Funds Act any person who is alleged to have violated the mandatory disclosure requirements of Section 33-56-90 of the Act, and who has been fined \$10,000 or more for those violations.~~

~~96.3.—(SS: Charitable Funds Act Misrepresentation Violations) The Secretary of State shall refer to the Attorney General for investigation under Section 33-56-145 of the Solicitation of Charitable Funds Act any person who is alleged to have violated the misrepresentation provisions of Section 33-56-120 of the Act, and who has been fined \$10,000 or more for those violations.~~

Recommendation #22: Remove the requirement that notaries enroll their notary commissions with the clerk of court in the county in which they reside by repealing S.C. Code Section 26-1-50 (Enrollment of commission).

Recommended revision	SECTION 26-1-50. Enrollment of commission. Within fifteen days after he has been commissioned, a notary public must exhibit his commission to the clerk of the court of the county in which he resides and be enrolled by the clerk.
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Recommendation #23: Remove the requirement that certain information related to political parties be filed with the Secretary of State’s Office as the information is already field with another state entity or county clerk of court by amending S.C. Code Section 7-9-10 (Certification and decertification of political parties), Section 7-9-80 (County conventions; organization and conduct of business), and Section 7-9-100 (State convention), as recommended by the Secretary of State’s Office.

<p>Recommended revision</p>	<p>SECTION 7-9-10. Certification and decertification of political parties.</p> <p>Political parties desiring to nominate candidates for offices to be voted on in a general or special election shall, before doing so, have applied to the State Election Commission (Commission) for certification as such. Parties shall nominate candidates of that party on a regular basis, as provided in this title, in order to remain certified. Any certified political party that fails to organize on the precinct level as provided by law, hold county conventions as provided by Sections 7-9-70 and 7-9-80, and hold a state convention as provided by Section 7-9-100; that fails to nominate candidates for national, state, multi-county district, countywide, or less than countywide office by convention or party primary as provided by Sections 7-11-20, 7-11-30, and 7-13-40; and that fails to certify the candidates as provided by Section 7-13-350 in at least one of two consecutive general elections held on the first Tuesday following the first Monday in November of an even-numbered year, or that fails to nominate and certify candidates in any other election which might be held within the period of time intervening between the two general elections, must be decertified by the State Election Commission. The party must be notified in writing of its decertification at the last address of record. If the notification of decertification is returned as undeliverable, it must be placed on file in the office of the State Election Commission and with the Secretary of State.</p> <p>Any decertified party or any noncertified party, organization, or association may obtain certification as a political party at any time by filing with the Commission a petition for the certification signed by ten thousand or more registered electors residing in this State, giving the name of the party, which must be substantially different from the name of any other party previously certified.</p> <p>No petition for certification may be submitted to the Commission later than six months prior to any election in which the political party seeking certification wishes to nominate candidates for public office.</p> <p>At the time a petition is submitted to the Commission for certification, the Commission shall issue a receipt to the person submitting the petition which reflects the date the petition was submitted and the total number of signatures contained therein. Once the petition is received by the Commission, the person submitting the petition shall not submit or add additional signatures.</p> <p>If the Commission determines, after checking the validity of the signatures in the petition, that it does not contain the required signatures of registered electors, the person submitting the petition must be notified and shall not submit any new petition seeking certification as a political party under the same name for one year from the date the petition was rejected.</p>
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Once a petition for certification has been submitted and rejected by the Commission, the same signatures may not be submitted in any subsequent petition to certify a new political party.

Once submitted for verification, a petition for certification may not be returned to the political party, organization, or association seeking certification, but shall become a part of the permanent records of the Commission.

SECTION 7-9-80. County conventions; organization and conduct of business. Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing. When organized, it shall elect a permanent president, a secretary and treasurer. It shall also elect the county chairman, the county vice-chairman and a member of the state committee from the county and as many delegates to the state convention as triple the number of members from the county in the House of Representatives, plus one. But county conventions at their discretion may elect double the number of delegates in which case each delegate shall have one-half vote. The secretary of the convention shall keep a record of the proceedings in the minute book.

All officers except delegates shall be reported to the clerk of court of the county and to the Secretary of State State Election Commission prior to the state convention. The reports shall be public record.

SECTION 7-9-100. State convention.

The state convention shall meet at a location in this state determined by the state committee to have adequate facilities during a thirteen-month period ending May fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting. The state committee shall notify the delegates to the state convention of the accommodations that are available for the delegates during the convention. This listing must be as complete as practicable and must include the accommodations in close proximity to the convention site as well as any other accommodations that are chosen by the state committee. This notice must include the name and location of the accommodations, the cost per day, and any discounts or surcharges that are applicable during the period of the convention. Should the state committee fix the date for the state convention in a nongeneral election year, it must be held for the purpose of reorganization only. The convention to be held for the purpose of nominating candidates for public office to be filled in the general election must be held in the general election year. At the time that the state committee sets the date for the state convention it shall set what month during the twelve-month period ending March thirty-first of every general election year that the county convention must be held. If it sets a month in a nongeneral election year for the county conventions to be held for the purpose of reorganization, it must set a month during the general election year for the county convention to be reconvened for the purpose of nominating candidates for public office to be filled in the general election. Sufficient advance notice of the month set for county conventions must be given to county executive committees so that the public notices

	<p>required by law may be met. The convention must be composed of delegates elected by the county conventions. Each county is entitled to one delegate for each six thousand residents of the county, according to the latest official United States Census, plus two additional members. If a county has a fractional portion of population of at least three thousand residents above its last six thousand resident figure it is entitled to an additional delegate. When the state convention assembles, it must be called to order by the chairman of the state committee. A temporary president must be nominated and elected by the convention, and after its organization the convention shall proceed immediately to the election of permanent officers and to the transaction of business. When the business has concluded it shall adjourn sine die, or may recess. The state chairman may recall the state convention into special session at any time he determines appropriate.</p> <p>The officers of the state convention must be a president, vice president, two secretaries, and a treasurer. Each county delegation to a state convention may fill any vacancies therein. Any county failing or refusing to organize under the provisions of this title may not have representation in the state convention. The state officers must be reported to the Secretary of State and to the State Election Commission within fifteen days of their election and the reports must be public record.</p>
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Recommendation #24: Remove the requirement that the Secretary of State publish certified election results in newspapers within the state as the State Election Commission publishes this information on its website, by repealing S.C. Code Section 7-17-320 (Statements printed in public newspapers), as recommended by the Secretary of State's Office.

Recommended revision	SECTION 7-17-320. Statements printed in public newspapers. The Secretary of State shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.
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Recommendation #25: Remove the requirement that the Secretary of State send certified election results to elected individuals by repealing S.C. Code Ann. Section 7-17-310 (Copies of determinations transmitted to persons elected and Governor).

Recommended revision	<p>Section 7-17-310. Copies of determinations transmitted to persons elected and Governor.</p> <p>The Secretary of State shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected and a like copy to the Governor.</p>
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Recommendation #27: Ensure statute reflects the Public Charities Division remained with the Secretary of State’s Office, instead of devolving to the Attorney General’s Office, by repealing S.C Code Section 1-7-117 (Duties of Division of Public Charities devolved upon Attorney General), as recommended by the Secretary of State’s Office.

Recommended revision	<p>SECTION 1-7-117. Duties of Division of Public Charities devolved upon Attorney General.</p> <p>(A) The duties, functions, and responsibilities of the Division of Public Charities of the office of the Secretary of State are devolved upon the Attorney General’s office on July 1, 1996. All personnel, appropriations, and full-time equivalent positions of the Division of Public Charities also are transferred to the Attorney General’s office on July 1, 1996.</p> <p>(B) The Attorney General shall administer the “South Carolina Solicitation of Charitable Funds Act” as contained in Chapter 56 of Title 33 of the 1976 Code.</p>
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Recommendation #28: Remove references to nonresident taxpayers registering with the Secretary of State's Office by amending S.C. Code Section 12-8-540 (Withholding for rent or royalty payments to nonresident; exemptions; revocation of exemption) and Section 12-8-550 (Withholding for nonresident temporarily conducting business or performing personal services; exemption; revocation of exemption), as recommended by the Secretary of State's Office.

<p>Recommended revision</p>	<p>SECTION 12-8-540. Withholding for rent or royalty payments to nonresident; exemptions; revocation of exemption.</p> <p>(A) A person making rent or royalty payments to a nonresident of twelve hundred dollars in any calendar year or more annually for the use or privilege of using property in this State shall withhold seven percent of each payment to a nonresident individual, partnership, trust, or estate and five percent of each payment to a nonresident corporation or any other nonresident entity.</p> <p>(B) This section does not apply:</p> <p>(1) to a person for the rental of residential housing units, including short-term rentals, when four or fewer units are owned by the nonresident;</p> <p>(2) to an individual who pays rent directly to a nonresident solely for a residential housing unit which is his legal residence;</p> <p>(3) to a nonresident which has registered with the Secretary of State or the Department of Revenue and by that registration has agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties, if any. Registering with the Secretary of State or the department is not an admission of tax liability. If the person renting from or having a royalty contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.</p> <p>The department may revoke the exemption granted by the registration provided in this item if it determines that the nonresident taxpayer is not cooperating with the department in the determination of the nonresident taxpayer's correct South Carolina tax liability. The revocation does not revive the duty of a person renting from or having a royalty contract with a nonresident to withhold until the person receives notice of the revocation.</p> <p>SECTION 12-8-550. Withholding for nonresident temporarily conducting business or performing personal services; exemption; revocation of exemption.</p> <p>(A) A person hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall withhold two percent of each payment in which the South Carolina portion of the contract exceeds or could reasonably be expected to exceed ten thousand dollars. This section does not apply to a nonresident which registered with the Secretary of State or the Department of Revenue and by that registration agreed to be subject to the jurisdiction of the department and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties. Registering with the Secretary of State or the department is not an admission of tax liability nor does it require the filing of an income tax or franchise (license) tax return. If</p>
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	<p>the person hiring, contracting, or having a contract with a nonresident obtains an affidavit from the nonresident stating that the nonresident is registered with the department or with the Secretary of State, the person is not responsible for the withholding.</p> <p>(B) The department may revoke the exemption granted by registering with the Secretary of State or the department if it determines that the nonresident taxpayer is not cooperating with the department in the determination of the nonresident taxpayer's correct South Carolina tax liability. This revocation does not revive the duty of a person hiring, contracting, or having a contract with a nonresident to withhold, until the person receives notice of the revocation.</p> <p>(C) This section does not apply to payments on purchase orders for tangible personal property when those payments are not accompanied by services to be performed in this State.</p>
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Recommendation #29: Remove the requirement that the Department of Natural Resources (DNR) file a description of uniforms, emblems, and vehicles with the Secretary of State’s Office for publication in the State Register by repealing or amending S.C Code Section 50-3-140 (Publication of description of uniforms and emblems), as recommended by the Secretary of State’s Office.

Recommended revision	SECTION 50-3-140. Publication of description of uniforms and emblems. The department shall file with the Secretary of State and Legislative Council for publication in the State Register a description and illustration of the uniform and emblems of the official enforcement officers’ uniforms and motor vehicles and a description of the color of such uniforms and vehicles.
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Recommendation #30: Attorney General’s Office avoid conflicts with state law by starting proceedings to remove agency regulation 102-1 (Fees to Accompany Request for Confirmation of Solicitation Exemption).

Recommended revision	<p>CHAPTER 102 Attorney General—Division of Public Charities Statutory Authority: 1976 Code Chapter 55 of Title 33 Code</p> <p>102-1 Fees to Accompany Request for Confirmation of Solicitation Exemption: A fee of five dollars shall accompany the filing of a request for confirmation of the availability of an exemption under Section Section [sic] 33-55-50 or 33-55-60 of the 1976 Code. This rule will become effective January 7, 1976.</p>
Applicable state law	<p>SECTION 33-56-50. Organizations exempt from registration provisions; alternate filings; fundraising activities.</p> <p>(A) The following are not required to file registration statements with the Secretary of State if their fundraising activities are not conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:</p> <ul style="list-style-type: none"> (1) an educational institution which solicits contributions from only its students and their families, alumni, faculty, friends, and other constituencies, trustees, corporations, foundations, and individuals who are interested in and supportive of the programs of the institution; (2) a person requesting contributions for the relief of an individual specified by name at the time of the solicitation when all of the contributions collected, without deductions of any kind, are turned over to the named beneficiary for his use, as long as the person soliciting the contributions is not a named beneficiary; (3) a charitable organization which (a) does not intend to solicit or receive contributions from the public in excess of twenty thousand dollars in a calendar year and (b) has received a letter of tax exemption from the Internal Revenue Service, if all functions, including fundraising activities, of the organization exempted pursuant to this item are conducted by persons who are compensated no more than five hundred dollars in a year for their services and no part of their assets or income inures to the benefit of or is paid to an officer or a member. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, within thirty days after the date the contributions exceed these amounts, the organization must register with and report to the Secretary of State as required by this chapter; (4) an organization which solicits exclusively from its membership, including a utility cooperative; (5) a veterans' organization which has a congressional charter; and (6) the State, its political subdivisions, and an agency or a department of the State which are subject to the disclosure provisions of the Freedom of Information Act. <p>(B) The following are not required to file registration statements with the Secretary of State regardless of whether or not their fundraising activities are</p>

	<p>conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:</p> <p>(1) a public school district located in the State and any public school teaching pre-K through grade twelve located within the public school district. For purposes of this chapter, the term "public school" includes any student organization within the school that does not maintain separate financial accounts or a separate federal Employer's Identification Number (EIN) from the school and whose fundraising revenues are deposited in the school's student activity fund; and</p> <p>(2) a charitable organization that does not intend to solicit or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, the organization shall register and report to the Secretary of State as required by this chapter within thirty days after the date the contributions exceed these amounts.</p> <p>(C) A charitable organization claiming to be exempt from the registration provisions of this chapter and which solicits charitable contributions must submit annually to the Secretary of State, on forms prescribed by the Secretary of State, the name, address, and purpose of the organization and a statement setting forth the reason for the claim for exemption. If appropriate, the Secretary of State or his appropriate division shall issue a letter of exemption that may be exhibited to the public. A filing fee is not required of an exempt organization.</p> <p>(D) A professional solicitor, professional fundraising counsel, or commercial coventurer conducting fundraising activities on behalf of an exempt organization must comply with the registration and filing requirements of this chapter.</p> <p>HISTORY: 1994 Act No. 461, Section 1; 1996 Act No. 294, Section 1; 1996 Act No. 458, Part II, Section 28F; 1998 Act No. 368, Section 7; 2000 Act No. 336, Section 1; 2007 Act No. 69, Section 2, eff June 13, 2007; 2013 Act No. 43, Section 1, eff June 7, 2013.</p>
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LETTER FROM MUNICIPAL ASSOCIATION

June 17, 2020

Hon. Gary Clary
Chair
Executive Subcommittee
House Legislative Oversight Committee

VIA EMAIL

Dear Rep. Clary:

Please accept this as the Municipal Association of SC's recommendations pursuant to your subcommittee's request below:

Potential Recommendations to Secretary of State's Office (which may include participation by, or impact, your organization)

Municipalities, Special Purpose Districts, etc.

1. Determine a method to perform regular reviews (e.g., with every census) to determine which municipalities, if any, are not performing municipal services that justify cancelling a municipality's certificate of incorporation.

As you know, SC Code of Laws Section 5-1-100 lays out the circumstances under which an incorporated municipality in the state may cease to exist. Loss of population, failure to provide services, failure to hold elections or a successful vote for dissolution by residents are among the reasons a city or town could lose its certificate of incorporation.

It is our understanding that the SC Secretary of State is interested in conducting reviews of the state's cities and towns to ensure they are compliant with the provisions of Section 5-1-100. The Municipal Association does not object to the Secretary's review of the state's municipalities with each decennial Census.

A review of each city's population and whether or not they are providing services and holding elections in compliance with Section 5-1-100 is a seemingly uncomplicated task. We envision such a review could be accomplished with a survey of towns' services and a review of data provided by municipalities to the Revenue and Fiscal Affairs Office, the SC Office of the State Treasurer and the SC State Election Commission.

However, if the Secretary were to find a municipality that does not comply with Section 5-1-100, we recommend that city or town be provided with formal notice of its non-compliance and then be given a period of up to three years to attempt to correct its deficiency.

We will note though, that there are a number statutory obstacles that prevent potentially non-compliant municipalities from becoming compliant. For example, a city without property tax millage or not enough millage would be unable to fund services to become compliant due to the limits on levying property taxes codified in SC Code of Laws Section 6-1-320. The state's restrictive annexation laws prevent a town from growing its population, thereby jeopardizing its existence. These are but a few examples where improvement is needed to ensure non-compliant cities are given a chance to comply and compliant cities remain that way.

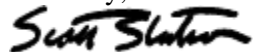
We would also note that while the circumstances for dissolution of a town are codified, there is no process anywhere in statute for how to execute the end a city's **existence. Therefore, we would** make several recommendations to consider if, in fact, a town were to potentially lose its certificate of incorporation.

Our primary concern involves the lack of a statutory process for the disposition of a dissolved town's assets. Absent a statutory process, the Secretary of State, or perhaps a circuit court, would have to decide how to dispose of a town's rolling stock, buildings and infrastructure like water and sewer systems. While SC Code of Laws Section 4-9-80 provides that a county assume ownership of assets of dissolved entities within its boundaries, a county may be unprepared or unwilling to accept those assets. This was the case in 1995 when the Town of City View in Greenville County dissolved. City View owned firetrucks, sanitation trucks and a water/sewer system. However, at that time Greenville County operated none of those types of services and was unwilling to accept the town's assets. Instead, three separate special purpose districts agreed to assume ownership and operation of the town assets, but only after a series of circuit court orders was secured to bless the process. A copy of those orders is attached.

To avoid potential delays or adversarial court actions, the Municipal Association recommends the General Assembly amend Section 5-1-100 with procedures for how to wind down a town's operations and dispose of its assets in the event it dissolves. The Association has several recommendations to make for such an amendment should you or another legislator express interest in one.

As always, we stand ready to assist the Oversight Committee and its staff in any way we can. On behalf of the Association's board of directors and its executive director, thank you for your hard work on this issue and that of the members of the subcommittee.

Sincerely,



Scott Slatton
Director of Advocacy and Communications

Sharepoint Document Library

File Name: Dissolving a City

Title: Dissolving a City

Department: Adm / Powers

Topic: City View & Reidville

Kind of Document: Memos & Opinions

Notes: _____



September 13, 1995

To: Debra H.
942-8470
From: M. [Signature] [Signature]

Howard,

FYI, attached are two documents for your file on City View and its unincorporation:

- 1) A copy of a court order involving *City View Vs Greenville County* (a friendly legal action).
- 2) A plan that the COG drafted to close out City View

The court action was to buy a little extra protection for the City View Council in the absence of any unincorporation precedent. All parties have been cooperative and friendly, and we hope that they will stay that way. Note that I have added comments emphasizing that City View in no way relinquishes any Constitutional authority or responsibilities under Home Rule. I'll alert you to any "encroachment" by the County, but it is not a problem at this time.

The City View situation has become complex because of the transfer of services to a CPW, SPD, and at least one new tax district. The Town really does not have any money problems and we have imposed tax millage for tax year 1995 which we believe can be at least obligated before it is collected by the County. Interesting stuff...

A handwritten signature in cursive script, appearing to read "Joe Newton".

Joe Newton

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
95-CP-23-2353

The Town of City View; AND
Joan Andrews, Betty Jackson,
Joy Little, Zimmie Mason,
Floyd McCall, Sammy McGaha, and
Charles Morgan, and Frank Waltz,
Councilpersons of the Town of
City View,

Plaintiffs,

v.

The County of Greenville,

Defendant.

ORDER

THIS MATTER came before this Court upon a Motion for injunctive relief which is more fully described below. At the inception of this hearing, it was announced to the Court that the parties were in agreement that a final Order on the merits could be issued after the evidentiary presentation at this hearing. This matter was initiated by the filing of a Summons and Complaint and a Motion for injunctive relief on August 23, 1995 with the Clerk of Court for Greenville County. Service of both the Motion and Summons and Complaint was affected as is evidenced by an Acceptance of Service by the Attorney for the County of Greenville with the authority to do so. The Complaint prayed for certain relief of this Court including the granting of an Order giving the Town Council the authority to take certain steps for the winding down and dissolution of the Town of City View as more fully described below.

At this hearing, the Town of City View was represented by H.W. Pat Paschal, Jr. of the Greenville County Bar, and the County of Greenville was represented by Judith Burk, County Attorney for the County of Greenville. Also present was Mr. Joe Newton of the Appalachian

Council of Governments. An affidavit of Joe Newton was presented to the Court as well as certain facts stipulated to between the parties.

This matter involves the dissolution of the Town of City View and the surrender of its municipal charter pursuant to referendum which was passed by two-thirds majority on June 13, 1995.

Based on the evidence presented at this hearing, I make the following findings of fact:

1. This Court has jurisdiction of this matter.
2. The parties have consented to this hearing as being the final hearing in this matter.
3. That on June 13, 1995, a referendum dissolving the Town of City View pursuant to S.C. Code Ann. Section 5-1-100 was passed by two-thirds majority of those voting. On July 6, 1995, that vote certified by the County of Greenville.
4. That pursuant to S.C. Code Ann. Section 4-9-80, upon the dissolution of a political subdivision, the liabilities and assets must be transferred to the county and, in this case, the County of Greenville. As a result, the County of Greenville is the proper party.
5. That the Town of City View has requested of the South Carolina Attorney General's Office, the South Carolina Secretary of State's Office, and the South Carolina County Association their opinions as to what is the legal existence of this Town upon the vote. The Town received inconsistent answers as to the exact legal status of the Town of City View until the surrender of its charter.
6. That the Town of City View, with the cooperation of the Appalachian Council of Governments, has developed certain plans for the dissolution and in winding down the affairs of the Town of City View. That in such plan, the Town of City View will surrender its city charter on December 31, 1995, and in the meantime, it will take certain steps including the

transfer of assets and entering into contracts all for the purposes of winding down the affairs of the Town of City View and to effect the dissolution in such a way to limit existing liabilities at the time the assets of the Town of City View are assumed by the County of Greenville.

7. Lastly, I find that, as a matter of fact, the winding down of the Town of City View is necessary for the protection of the office-holders, the citizens of City View as well as the citizens and tax payers of the County of Greenville. Further, it is in the best interests of all involved that the winding down be accomplished in a reasonable order and that those involved in the winding down and any actions taken for the purpose of this winding down should have protection from any alleged personal liability.

CONCLUSIONS OF LAW

The only matter of municipal dissolution is provided in S.C. Code Ann. Section 5-1-100, and that further, upon the dissolution of a political subdivision, its assets and liability are transferred to the county in which the political subdivision is located pursuant to S.C. Code Ann. Section 4-9-80. However, I make a specific conclusion of law that there is no state statute or case law dealing with how such a city is to accomplish dissolution. I further find, as a matter of law and fact, that the state statute and case law of South Carolina is silent on the question of how a city is to accomplish dissolution. That further, this is a novel question and has specifically resulted in inconsistent opinions from the Attorney General's Office, the Secretary of State's Office, and the County Association.

Therefore, it is

ORDERED, ADJUDGED, AND DECREED as follows:

1. That an Order of injunction is hereby granted prohibiting the surrender of the charter by the Town of City View until December 31, 1995.

2. That until December 31, 1995, the Town Council of the Town of City View shall continue to be empowered and authorized to take those steps including the entry of contracts, transfer of assets, and including, among other things, the power to enter a contract, transfer assets, collect revenue, and dispose of liabilities, and take all other steps necessary for the winding down and dissolution of the Town of City View and surrender of the charter.

3. That the Town Council is directed to submit to the Court within ten (10) days of the signing of this Order a proposed schedule and plan for winding down. That further, this plan and schedule shall be served by U.S. mail upon the County Attorney for the County of Greenville, Secretary of State, and the South Carolina Attorney General's Office. That further, within ten (10) days of service of this plan, the South Carolina Attorney General's Office, Secretary of State, and the County of Greenville shall have leave of this Court to petition this Court for the appointment of a receiver for the purposes of affecting a reasonable Court-approved dissolution. That further, application of such a receiver must be made within ten (10) days of service of the plan.

4. That upon receipt of the scheduling plan as described above, this Court will issue an Order either approving or disapproving the plan.

IT IS SO ORDERED.

Henry Floyd, Presiding Judge
Court of Common Pleas
Thirteenth Judicial Circuit

Greenville, South Carolina

Dated: _____

Town of City View

General Plan for the Dissolution of the Town of City View

As initiated by the Town of City View, and as ordered by the Greenville County Court of Common Pleas, the Town of City View has drafted the following plan for the dissolution of its municipal government and for the disposition of its assets and obligations.

Purpose:

- 1) To transfer all existing public services currently provided by the Municipality of the Town of City View to the appropriate political subdivision, special purpose district, or other service provider prior to the dissolution of the municipality.**
- 2) To properly and equitably dispose of certain property, equipment and assets of the municipality and to ensure that those assets will be used to the best advantage of its citizens.**

The intent of this plan is to provide strict guidelines to facilitate the dissolution of the municipality, and to approximate a timeline for the completion of essential activities. However, until the Secretary of State of South Carolina accepts or withdraws the Municipal Charter of the Town of City View, as is planned, the elected municipal government of City View is bound and obligated to exercise its legitimate authority and responsibilities, and to act in the best interest of its citizens as required by the South Carolina Constitution and Code of Laws of South Carolina, specifically Title V.

Background:

Earlier this year, citizens of the Town of City View circulated a petition to initiate a referendum to dissolve the municipality of City View. On June 13, 1995, the Question *"Should the Town of City View surrender its Municipal Charter and cease to be a town"* was voted upon. A two thirds majority of the votes cast voted "Yes" to dissolve the municipal government.

Title 5-1-100 of the 1976 Code of Laws of South Carolina, provides that, at some unspecified date, the Town shall certify the results of the election to the South Carolina Secretary of State and shall surrender its Municipal Charter. Current plans call for the Town Council to pass an ordinance during the month of December requesting that the Secretary of State accept its Municipal Charter effective December 31, 1995. If necessary, and only if necessary, the Town Council is prepared to set a date thirty days later in order to address any essential unresolved problems or services.

Actions:

Fire Service

1. Sign a short term fire protection contract with Parker Sewer and Fire District for a reasonable fee. The contract will provide for fire protection for the Town of City View until the Town dissolves or until the Parker District is expanded to permanently include the former municipal service area. *Note: A tentative contract has been negotiated with the Parker District to provide fire protection for the period from September 15 - December 31, 1995, for a fee of \$21,000. (Sept.)*
2. Turn in and inventory all *personal* (municipal property) equipment. Inventory all other equipment and reconcile with previous equipment records. (Sept.)
3. As soon as a fire protection agreement has been signed with the Parker District, (or shortly afterwards) dissolve the municipal fire department by ordinance (two readings, SC 5-7-260.) (Sept.)
4. Pass a resolution to sell all three fire vehicles and equipment (5-7-40). Reconcile equipment inventory with sale records. *Note: The approximate total value of the vehicles and equipment is \$50,000 - \$65,000. Bids have already been requested and received (Sept.)*

Water System

5. Request by Council Resolution that the Greenville Water System (Greenville Commission of Public Works) begin the process to provide water service to the City View service area. (Completed)
6. Inventory all water and sewer equipment, lines, and assets. Separate assets between the Water and Sewer systems. Coordinate with the Greenville Water System for the inspection of City View Water financial and operational records. Continue meetings with the staff of the Greenville Water System. (Ongoing)
7. Negotiate for the transfer of lines and water delivery equipment to the Greenville Water System. Review draft deed transfer documents being prepared by the Greenville Water System. (Nov.)
8. Pass an ordinance (two readings, SC 5-7-260 and 5-7-40) to transfer property (lines, equipment, and rights of way) to the Greenville Water System. Sign transfer documents. (Dec.)
9. The last billing of the City View Water/Sewer System is currently scheduled for January 1996. Conduct the last water and sewer billing either in December (early) or

arrange with the Greenville Water system for the proceeds of the billing to be paid to the Town of City View, its assignee (potentially, as part of an agreement with the Parker District), or to the Treasurer of the County of Greenville. (Dec.- Jan.)

Sewer System

10. Request, by Council Resolution, that Parker Sewer and Fire Subdistrict act to manage DHEC required testing of City View Sewer lines. Authorize reimbursement for any expenses incurred by Parker District for engineering. Provide Parker District any requested information and records. *Note: The purpose of this mutually beneficial request is to provide City View with valuable expertise and experience during the testing phase, and to ensure that Parker District is provided some oversight on work and lines that it will eventually acquire.* (Ongoing)

11. City View is included in an area scheduled for extensive and costly Court ordered testing and sewer line renovation. City View is participating in negotiations with Parker Sewer and Fire Subdistrict, Greenville County, Western Carolina Regional Sewer Authority, and SCDHEC to facilitate the repair and upgrade of those sewer lines.

City View will pay a share of the expenses on Phase I of the project. *The exact amount of this payment will be negotiated by agreement of the parties above, tentatively based upon the projected cost of line renovation that City View would have otherwise initiated in 1995-1996. In any case, City View will not be expected to pay scheduled future costs as those costs will eventually be covered by the District's normal taxes and fees when City View has become a part of that tax district. Note: Based upon available figures, City View's estimated share of Phase I is roughly \$50,000 - \$85,000 including testing and construction. Tests are ongoing, and those fees will be due within the next two months.* (Ongoing)

12. City View Town Council will enact an ordinance setting municipal tax millage (SC 5-7-30, 5-7-260, 12-39-180) to be levied against property on County tax records as of January 1, 1995. Technically, taxes are collected against property on County tax records at the beginning of the year. Revenues are generally collected at the beginning of the *next year*. In practice, funds collected in January of 1996 would normally be used in 1996 for municipal operations. City View will not be in existence in 1996. All collected revenues will become an asset of Greenville County (SC 4-9-80) unless previously obligated.

13. In the next three months Parker Sewer and Fire Subdistrict is expected to be enlarged to encompass the current municipality of City View. Parker District cannot impose tax millage on City View until 1997 and unless otherwise provided for, *will be required to provide services for an entire year without compensation.* It is in City View's interest, as well as Parker District's interest that City View negotiate a fee, or

arrange for the obligation of 1995 City View taxes to Parker District to equal Parker's current 59.6 mills. *Note: See Council/Administration*

Sanitation System

14. Petitions are being circulated to request admission to the Greater Greenville Sanitation District. If City View can be included in the Greater Greenville District, City View will negotiate a fee or will arrange for the obligation of 1995 City View taxes to the district to operate in City View until the Greater Greenville District can impose its own tax millage in 1997. As the district also operates from a per household fee in addition to regular millage, City View will negotiate any additional fee, and may sell or transfer its sanitation truck as part of a settlement.

In order to facilitate the transfer of services, City View may also 1) contract with the district to provide an initial pickup to rid the Town of accumulated refuse and debris, and 2) transfer Town owned trash carts to City View's residents. *Note: If efforts fail to gain admission to the Greenville Sanitation District, citizens will be required to contract with private contractors for the pickup and hauling of garbage and yard waste. (Ongoing)*

15. At a date to be determined, City View will notify its citizens and discontinue the municipal sanitation service. (Nov. -Dec.)

Streetlights

16. In accordance with SC Code 4-9-30 (b)(c), City View citizens may circulate a petition (signed by 75% of freeholders) to create a special streetlight district (*tax district*) or circulate a petition (signed by 15%) to call for a referendum to vote on the creation of a streetlight district. If efforts are successful to create this district, City View will transfer approximately \$12,000 or obligate approximately 6 mills of 1995 City View Taxes to operate the district until its own tax millage can be imposed in 1997. (Sept.-Oct.)

Council/ Administration

17. City View will pay off an existing bank note (BBT, approx. \$55,000) on the sanitation truck and the public works building. (Oct.)
18. City View Town Council will enact an ordinance setting municipal tax millage (SC 5-7-30, 5-7-260, 12-39-180) to be levied against property on the County tax records as of January 1, 1995. Technically, taxes are collected against property on County tax records at the beginning of the year. Revenues are generally collected at the beginning

of the *next year* . In practice, funds collected in January of 1996 would normally be used in 1996 for municipal operations. City View will not be in existence in 1996. All collected revenues will become an asset of Greenville County (SC 4-9-80) unless previously obligated.

City View will pass an ordinance (two readings) to set a tax millage to cover expected services to City View citizens for 1996. The millage will include provision for Fire, Sewer, Sanitation, and Streetlights. Tax collections will be obligated to pay for those services until the transfer of services is completed and the millage of the respective Tax and Special Purpose districts is imposed in late 1996. City View will set an approximate rate of 81.5 mills (*59.6 mills - Fire and Sewer + 15.9 mills - Sanitation + 6 mills - Streetlight*) and shall notify the County Auditor before September 20, 1995. *Note: Additional millage may be calculated and added before final reading of the ordinance, to cover specific obligations projected for 1996. Previous millage for the Town of City View was set at 96.1 mills. (Sept.)*

19. City View will pass an ordinance (two readings, SC 5-7-260 and 5-7-40) authorizing Council to sale or transfer of property including equipment, buildings and land to cover obligations of the City. The Town Hall/ Fire Department building will not be sold. *Note: In addition to fire equipment and fire trucks, the Town owns a sanitation truck valued at approximately \$30,000, a flatbed sanitation truck valued at \$5,000, a home valued at approximately \$20,000, the water/Sewer office building (est. \$50,000), a water/sewer utility truck, some small vacant lots, and a lot with a \$15,000 aluminum vehicle storage building. Only the home should be sold or auctioned as soon as possible. The Water/Sewer truck and buildings will most likely be needed until the last day of service in late December. The Sanitation truck could possibly be negotiated or sold as part of an arrangement to provide sanitation service for the Town and should not be sold unless or until sanitation service is negotiated. (Sept.)*
20. Council will pass a resolution formally requesting that Greenville County Council enlarge the Parker Sewer and Fire Subdistrict to include the area of the Town of city View. (Sept.)
21. City View will contact all State and Federal departments and agencies notifying them of the imminent dissolution of the municipality (SC Retirement, IRS, etc). (Nov. - Dec.)
22. Pass an ordinance (two readings) in accordance with SC Code 5-1-100 certifying the results of the June referendum and request that the Secretary of State withdraw the Municipal Charter. (Dec.)

ROY D. BATES
ATTORNEY AT LAW
25 LAKECREST DRIVE
COLUMBIA, SOUTH CAROLINA 29206-1334

TEL/FAX (803) 790-8333

January 2, 1996

Mr. Howard E. Duvall, Jr.
Municipal Association of South Carolina
1529 Washington Street
P. O. Box 12109
Columbia, Sc 29211

Re: City View Dissolution

Dear Howard:

It appears that City View will be able to dissolve in an orderly fashion pursuant to the enclosed plan which was approved by the order of Judge Floyd.

Yours very truly,


Roy D. Bates

rdb/encl.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

The Town of City View, and)
Joan Andrews, Betty Jackson,)
Joy Little, Zimmie Mason,)
Floyd McCall, Sammy McGaha,)
and Charles Morgan, and Frank)
Waltz, Councilperson of the)
Town of City View,)

C. A. No. 95-CP-23-2353

**RETURN TO PETITION FOR
APPOINTMENT OF RECEIVER**

Plaintiffs,)

v.)

The County of Greenville,)

Defendant.)

The Plaintiffs, making return to the Defendant's Petition for Appointment of a Receiver, would respectfully show:

1. Pursuant to Order of this Court issued on September 19, 1995, Plaintiffs served upon the Greenville County Attorney, the Secretary of State, and the Attorney General a proposed scheduling plan for effecting dissolution of the Town of City View.
2. No objection to the proposed plan has been filed by any party.
3. The plan presented by the Plaintiffs is reasonable and provides for concluding the affairs of the Town in the best interests of the citizens affected thereby.
4. All provisions of the proposed plan can be implemented by Town Council, except the collection and disbursement of 1995 ad valorem taxes levied pursuant to a Town ordinance adopted on September 19, 1995.
5. On October 30, 1995, as permitted by the Order of Honorable Larry R. Patterson

dated October 4, 1995, Greenville County petitioned for appointment of Gerald Seals, Greenville County Administrator, as receiver for the purposes of effecting a reasonable Court-approved dissolution.

6. Town property taxes are currently collected by the Treasurer of Greenville County pursuant to S. C. Code §5-7-300, and no other official is authorized by law to collect property taxes.

7. The most efficient method of dissolution of the town would be for the Court to approve the plan filed by Plaintiffs and to appoint the Treasurer of Greenville County as receiver for collection and disbursement of 1995 Town property taxes in accordance with the approved plan.

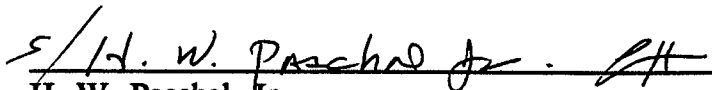
8. Plaintiffs object to the appointment of the Greenville County Administrator as receiver on the grounds that he has no statutory authority to collect or disburse taxes, and all other affairs of the Town can be concluded by Town Council with the continued assistance of the Appalachian Council of Governments prior to surrender of the corporate charter.

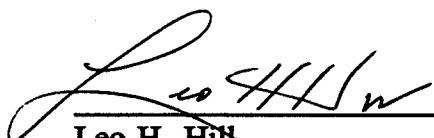
9. An Updated Report and Modification of the General Plan for the Dissolution of the Town of City View is being presented to the Court to assure compliance with the Court's Order and with the necessary procedures prior to surrender of the charter.

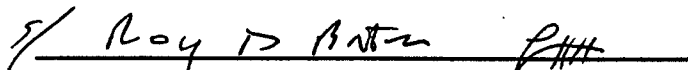
10. This Updated Report and Modification of the General Plan for the Dissolution of the Town of City View is a report on the status of steps already taken and the remaining steps for dissolution of the Town and is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs pray: (1) that the Petition of Defendant be denied; (2) that the Court issue an amended order approving the plan filed by Plaintiffs for dissolution of the Town,

with appropriate reporting requirements; and (3) that the Treasurer of Greenville County be appointed as receiver for collection and disbursement of 1995 Town taxes for Town purposes pursuant to the Order.


H. W. Paschal, Jr.
Miller & Paschal
P. O. Box 10345
Greenville, SC 29603


Leo H. Hill
Hill, Wyatt, Bannister & Brown, L.L.P.
P. O. Box 2585
Greenville, SC 29602
(803) 242-5133


Roy D. Bates
25 Lakecrest Drive
Columbia, SC 29206

ATTORNEYS FOR PLAINTIFFS

**City View
Issues / Questions**

- **When does (did) City View cease being a municipal government ? Did City View cease to exist on the day the referendum votes were certified (June 14), or is it still a fully functional municipal government until it surrenders its municipal charter on December 31 ?**
- **Did City View cease to exist as a fully functional municipal government in June and devolve into a defunct corporation with few if any powers and what powers did it retain ? Did it only have the power to sell off assets and pay debt ? Did it have the authority to provide municipal services (water, fire, sewer, and sanitation) until it could arrange for the transfer of services and request its annexation into Parker and GGSC district.**

The Town has already negotiated and signed short term fire and sanitation contracts, is selling its property, has paid its debts, has dissolved its fire department and sanitation service, set a tax millage for 1995, and has sent a resolution to the Greenville County Council requesting annexation into the Parker and GGSC districts. The Town is finalizing arrangements with the Greenville Commission of Public Works to take over water service effective January 1, 1996. The Town has also agreed to pay \$84,000 to Parker district to pay the cost of the first year of court ordered construction in City View for sewer upgrades.
- **As a fully functional municipal government (an assumption), does City View have the right to levy a municipal tax for the tax year 1995 and obligate the use of some of those collections for services in 1996 when it is no longer in existence ?**
- **If City View agrees to pay Parker and GGSC districts sums (obligated taxes) to offset the impact of its annexation into those districts, is this a form of "double taxation" ?** The City View Town Council agreed to obligate 1995 tax money to those two districts to provide services in 1996. The Council was informed that: (1) it was not required to do so, (2) City View would be taxed by those districts in 1996 at the uniform rate of those districts. After some discussion, the Council agreed to set a tax millage of 81.5 mills (passed by ordinance) and to obligate some of that millage to the districts to be paid by the County Treasurer when the collections are received in 1996.
- **If City View has levied taxes for specific purposes in 1995 when it was a municipal government, can the County government redirect the use of those funds in 1996 after the Town has unincorporated ?**
- **Can the Court appoint a receiver to act on behalf of a functioning municipal government ?**

As an additional safeguard during its "wind down " period, City View sought an injunction against Greenville County in order to provide the City View Town Council with an additional source of authority to act on behalf of City View. The Town holds that this was prudent, but redundant. The Court ordered the Town to produce a plan for its dissolution and the plan was to be approved by Greenville County. The Court proposed that if the County did not approve the plan, that Court would appoint a "receiver" to manage City View's affairs for an unspecified period. At this time, it appears that the County may ask for the appointment of the receiver.

LAW OFFICES
HILL, WYATT, BANNISTER & BROWN, L.L.P.

ATTORNEYS AT LAW
100 WILLIAMS STREET AT PETTIGRU
P.O. BOX 2585
GREENVILLE, SOUTH CAROLINA 29602

LEO H. HILL
JOHN F. WYATT
O. W. BANNISTER, JR.
STEPHEN H. BROWN†
D. GARRISON HILL*

†CERTIFIED SPECIALIST
EMPLOYMENT AND LABOR LAW
*ALSO ADMITTED IN D.C.

TELEPHONE (803) 242-5133
TELECOPIER (803) 235-0199

COUNSEL
SCHAEFER B. KENDRICK
(1916 - 1994)
MARY G. DANIEL WYATT

December 28, 1995

Mr. Howard Duvall
Municipal Association of South Carolina
P. O. Box 12109
Columbia, South Carolina 29211

Re: The Town of City View, et al. v. The County of Greenville
C. A. No. 95-CP-23-2353

Dear Howard:

Enclosed please find a copy of Judge Floyd's Amended Order dated December 19, 1995, together with a copy of a letter dated December 20, 1995 from the Justice Department.

Sincerely yours,

HILL, WYATT, BANNISTER & BROWN, L.L.P.

By: 
Leo H. Hill

LHH/je



County of Greenville

"... At Your Service"

Judith S. Burk
County Attorney
Greenville County Square
301 University Ridge, Suite 100
Greenville, SC 29601-3660
(864) 467-7110 Fax (864) 467-7201

December 27, 1995

RECEIVED

DEC 28 1995

Hill, Robert. 02/11/2001. 12:00 PM. 12/28/95

Mr. Leo Hill, Esquire
Post Office Box 2585
Greenville, South Carolina 29602

Mr. H. W. Pat Paschal, Jr., Esquire
644 East Washington Street
Greenville, South Carolina 29601


Re: The Town of City View

Gentlemen:

Attached please find the Justice Department's preclearance of the dissolution of the Town of City View.

Please contact me if you have any questions. With best regards for a Happy New Year, I am

Sincerely yours,


Judith S. Burk

JSB/bs

Attachment

cc: Joe Newton, Appalachian Council of Governments



U.S. Department of Justice

Civil Rights Division

DLP:ZJB:NG:jdp
DJ 166-012-3
95-3749

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

December 20, 1995

Judith S. Burk, Esq.
County Attorney
301 University Ridge, Suite 100
Greenville, South Carolina 29601-3660

Dear Ms. Burk:

This refers to the dissolution of the Town of City View in Greenville County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 10, 1995; supplemental information was received on December 11, 1995.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Elizabeth Johnson
Acting Chief, Voting Section

RECEIVED
DEC 27 1995

TO: GREENVILLE COUNTY
ATTORNEY GENERAL'S OFFICE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

The Town of City View, and)
Joan Andrews, Betty Jackson,)
Joy Little, Zimmie Mason,)
Floyd McCall, Sammy McGaha,)
and Charles Morgan, and Frank)
Waltz, Councilperson of the)
Town of City View,)

C. A. No. 95-CP-23-2353

Plaintiffs,)

v.)

The County of Greenville,)

Defendant.)

AMENDED ORDER

DEC 20 12:43 PM '95

This comes before me on motion of the County to have a receiver appointed and upon motion of the Town to reconsider and modify the previous Order of the Court dated September 19, 1995. That prior Order is revised and amended by this Order.

Dissolution of a municipality is a rare event in South Carolina. No precedence has been found and there is no statutory guidance. When the Home Rule Act was passed it contained S. C. Code, Ann. § 5-1-100 which provided for a dissolution but little else. The same Home Rule act contained § 4-9-80 which it was earlier thought gave some additional direction for dissolution. However, it appears § 4-9-80 is not applicable to this situation since it was adopted at the same time as a part of the Home Rule Act, and it contemplates some future additional act of the legislature will set forth a method of dissolution. No such general law has been enacted. It also appears that the section itself may not be applicable to dissolution of a municipality.

Nevertheless, the Court has jurisdiction and may provide for an orderly dissolution and

HFF
#1

conclusion of Town business and transfer of assets.

A submission was made to the Department of Justice prior to the election of the question to be presented to the electors as is required by the Voting Rights Act of 1965, as amended. No objection was made by the Justice Department. After the election, as requested, a second submission was made concerning the vote of dissolution itself which is still pending. The Town fully expects no objection will be made. It appears also, the Department of Justice reviews inquiries as to whether changes "have the potential for discrimination". If changes are determined to be "ministerial", the Department will have no objection. Here with the vote being affirmative to dissolve only ministerial duties remain to wind down the Town's affairs. There appears to be nothing in the general plan that is discriminatory toward voting rights. Nevertheless, until the Department of Justice gives a letter indicating no objection, there will be a question about the validity of any action taken by the Town. This Order and the approvals and confirmation herein or hereafter are subject to that final clearance under the Voting Rights Act. NAACP, et al. v. Hampton County Election Commission, et al., 470 US 166, 84 L.Ed. 2d 124, 105 S. Ct. Rep. 1128.

The City View City Council on September 19, 1995 enacted an ordinance reducing the tax levy of the prior year from 96 to 81.5 mills and setting that millage for the current year. Taxes are levied and paid in the same year and are not prospective. Current budgets must operate on current year's revenues. Here, taxes levied and raised in 1995 are for 1995 municipal purposes.

I find and conclude funds to be spent here will be expended for such purposes and that this levy was duly and legally imposed. The fact monies were or will be paid over in

consideration of the contracts mentioned in the general plan and that those funds may be used by another political subdivision in another year does not prevent the use of these funds for current municipal purposes.

The Court must be concerned about the citizens of City View and how to wind down the City's business. There are immediate problems of public health, safety and welfare at risk here which must be resolved. The County government cannot under the law provide water and sewer service, and does not provide fire protection, garbage service or streetlights. There were no other jurisdictions having City View within their territory to provide these services. The residents of City View are also tax-paying residents of the County, and as such, are fully entitled to all county government services, police protection, etc. without the payment of additional taxes.

I find and conclude that the County has no additional rights, liabilities or responsibilities because of the dissolution and is not required to provide any services to Town residents other than the services it must provide all county residents.

The Plan submitted by City View is a fair and reasonable method to wind matters down. The Plan needs to be updated and modified, but it provides a good system to close out the Town. The Court has reviewed the updated modified Plan and a copy is attached to this Order.

I find the action taken pursuant to the prior order of this Court and those proposed are found to be reasonable, proper and lawful.

The Plan of course must have sufficient money available to assure it may be accomplished.

I find and conclude the Town Council has a continuing fiduciary duty to take action to wind down the Town's affairs and has de facto powers to take reasonable steps to complete City View's affairs, subject to the approval of this Court, including the power to levy and tax for the current 1995 year. I understand that the County Auditor has in fact mailed out notices including the levy of 81.5 mills, and that the taxes are now due and payable. It is anticipated the levy will raise approximately One Hundred Fifty-Five Thousand (\$155,000.00) Dollars.

I find and conclude any necessary part of these funds, as approved by this Court, may be used for purposes of making an orderly transition of municipality responsibility to other entities, taking into account these entities will suffer a new and immediate financial burden. Portions of these funds may be used to provide reasonable consideration and incentive for these entities to contract with the Town and enable them to immediately gear up their operations so that there will be no disruption of services.

I find and conclude that the power and authority of the Town Council is continued. The present Council acting as fiduciaries of public trust are to act, subject to the approval of this Court, to effect sales or transfers, including transfer of water and sewer lines or facilities and act to otherwise liquidate Town assets. The General Plan sets out details of proposed contracts and transfers involving Parker District Sewer and Fire District, Greater Greenville Sanitation Commission, the City of Greenville Commission of Public Works and the County of Greenville.

With regard to all transfers to other political subdivisions, it should be remembered that these public properties were in place serving a public use for the Town's constituency. In essence, although there will be a transfer to some other entity, the same facilities would still be in place for public use and to a large extent would still be serving in one fashion or the other

the same constituency. One of the primary purposes of this Court is to assure public safety and good public health and for that reason this Court has no problem approving the contracts providing for these transfers.

I find and conclude the Treasurer of Greenville County is a proper official to hold the funds derived from this current tax levy until further Order of this Court. I find and conclude there is no need for a Receiver to be appointed. The County Tax Collector can collect the taxes, and the Treasurer can hold the funds derived from taxes. Little else needs to be done under the General Plan for the dissolution of the Town of City View as can be seen by the "Updated Report."

I find in order to assure an orderly conclusion of affairs that Town Council should designate the Mayor Pro Tempore, Mr. Sammy McGaha to represent the Town and to facilitate the implementation of this Plan. In addition, the Mayor Pro Tempore should be authorized by the Town to:

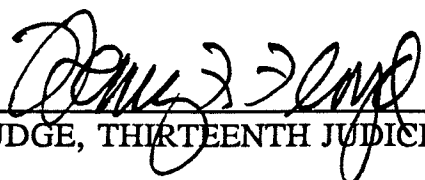
1. To authorize payments and sign checks to pay any outstanding expenses incurred in 1995, subject to the approval of the Court;
2. To hire part time clerical help, if necessary, to assist in the completion of the fiscal audit or audit procedures;
3. To arrange with the Greenville County Tax Collector for taxes, when received, to be paid over to the County Treasurer. The County Treasurer shall pay over and disburse the funds as may be approved by the Court, to specified financial accounts established in the name of City View; and
4. To report to the Court the progress being made in the final dissolution of the Town and the disposition of its assets and to seek the Court's approval of the various steps of dissolution and disposition.

The Court also requests the Appalachian Council of Governments to permit Mr. Joe Newton to remain accessible to this Court to assist and facilitate this transaction.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the Updated Report and Modification of the General Plan for the Dissolution of the Town of City View dated 12/5/95 is approved and the actions taken pursuant to the prior Order of this Court and under the General Plan are approved and confirmed. This "Updated Report and Modification of the General Plan for Dissolution" is incorporated into and is a part of this Order.
2. That Mr. Sammy McGaha be designated by the Town to represent the Town to facilitate implementation of this plan.
3. That the Greenville County Tax Collector shall pay over taxes received for the current year, 1995, to the County Treasurer. The County Treasurer shall pay over and disburse these funds, when approved by this Court, to specified accounts established in the name of City View.
4. That the Town proceed with the execution of general plan as modified and revised and periodically report back to this Court by letter.
5. That the Town, with the assistance of Joe Newton, Manager, Governmental Services of the Appalachian Council of Governments, report periodically to this Court as to the progress.
6. Let a copy of this Order be served upon the County Tax Collector and the County Treasurer.
7. This Court retains jurisdiction for such purposes as are necessary.


IT IS SO ORDERED.



JUDGE, THIRTEENTH JUDICIAL CIRCUIT

Greenville, South Carolina

Date December 19, 1995

A Certified Copy


Clerk of Court C.P. & G.S.
Clotacio Clerk County Court
Greenville County, S.C.
DEC 20 1995
Dated _____

#6

**TOWN OF CITY VIEW
UPDATED REPORT AND MODIFICATION
OF THE
General Plan for the Dissolution
of the Town of City View
December 5, 1995**

As initiated by the Town of City View, and as ordered by the Greenville County Court of Common Pleas, the Town of City View has drafted the following plan for the dissolution of its municipal government and for the disposition of its assets and obligations. The original Plan is attached to the Order to the Honorable Henry F. Floyd dated September 19, 1995. This is an updated Report of that Plan.

Purpose:

- 1) To transfer all existing public services currently provided by the Municipality of the Town of City View to the appropriate political subdivision, special purpose district, or other service provider prior to the dissolution of the municipality.
- 2) To properly and equitably dispose of certain property, equipment and assets of the municipality and to ensure that those assets will be used to the best advantage of its citizens.

The intent of this plan is to provide strict guidelines to facilitate the dissolution of the municipality, and to approximate a timeframe for the completion of essential activities. However, until the Secretary of State of South Carolina accepts or withdraws the Municipal Charter of the Town of City View, as is planned, the elected municipal government of City View is bound and obligated to exercise its legitimate authority and responsibilities, and to act in the best interest of its citizens as required by the South Carolina Constitution and Code of Laws of South Carolina, specifically Title V.

Background:

Earlier this year, citizens of the Town of City View circulated a petition to initiate a referendum to dissolve the municipality of City View. On June 13, 1995, the Question "Should the Town of City View surrender its Municipal Charter and cease to be a town" was voted upon. A two thirds majority of the votes cast voted "Yes" to dissolve the municipal government.

Title 5-1-100 of the 1976 Code of Laws of South Carolina, provides that, at some unspecified date, the Town shall certify the results of the election to the South Carolina Secretary of State and shall surrender its Municipal Charter. Current plans call for the Town Council to pass an ordinance during the month of December

requesting that the Secretary of State accept its Municipal Charter effective March 1, 1996. At this point it is not clear what if anything remains to be done for compliance with the Federal Voting Rights Act of 1965. The Town believes all such submissions have been made and that approval will be forthcoming. However, it must be noted that until a final letter is received from the U. S. Department of Justice, the validity of any action is open to objection by the U. S. Department of Justice.

Actions:

Fire Service

1. The Town signed a short term fire protection contract with Parker Sewer and Fire District. The contract provided for fire protection for the Town of City View until the Town dissolves or until the Parker District is able to provide permanent services. The contract negotiated with the Parker District provides fire protection for the period from September 15 - December 31, 1995, for a fee of \$21,000. The money was paid. The Resolution by Town Council was enacted on September 12, 1995.
2. All personal fire equipment (municipal property) was returned and reconciled against inventory records.
3. Shortly after the fire protection agreement was signed with the Parker District, the municipal fire department was dissolved by ordinance.
4. All three fire vehicles and major equipment have been sold and reconciled to equipment inventory. Note: The total value received from the vehicles and equipment is \$52,000
5. Greenville County Council by its own initiative expanded the boundary of the Parker District to include the Town limits by County Ordinance No. 2783 on Nov. 7, 1995.

Water System

6. The Town Council by Resolution (Town Resolution dated August 29, 1995) requested that the Greenville Water System (Greenville Commission of Public Works) assume the responsibility for providing water service to the City View service area.
7. An inventory is currently being conducted by the Town and the Greenville Water System to identify the assets of the Water System. Meetings are continuing with the Greenville Water System to work out details of the transfer.
8. The Town has negotiated for the transfer of lines and water delivery equipment to the Greenville Water System. Drafts of deed transfer documents are being

prepared by the Greenville Water System to complete the transfer of the water system. Final deed documents and agreements are expected to be completed in December 1995. Attached to this Plan are terms and conditions for the acquisition. (See "Exhibit A").

9. The Town Council has passed an ordinance to transfer property (lines, equipment, and rights of way) to the Greenville Water System and has authorized the transfer once the documents are completed and approved.
10. Town water customers are presently being billed for September, October and November and payable to the Town at the Town Offices. Thereafter, all billing will be done by Greenville Commission of Public Works (GCPW) and GCPW will receive and keep all such water revenues.

Sewer System

11. By Town Council Resolution the Town requested that Parker Sewer and Fire Subdistrict act to manage DHEC required testing of City View Sewer lines. The Town is paying for any expenses incurred by Parker District for engineering and will provide Parker District any requested information and records. *Note: The purpose of this mutually beneficial request is to provide City View with valuable expertise and experience during the testing phase, and to ensure that Parker District is provided some knowledge about the work and lines that it will eventually acquire.* The County Council has passed an ordinance to annex City View into the Parker District effective January 1, 1996. The Town Council has passed an ordinance to convey and transfer all sewer lines, distribution facilities, and any rights of way to the Parker District. The transfer documents and deeds are expected to be completed and signed in December, 1995.
12. City View is a party-defendant in The Department of Health and Environmental Control v. Western Carolina Regional Sewer Authority, et al., C. A. No. 88-CP-23-374, and is currently under a court order to make extensive repairs of its collection lines to remove excess infiltration and inflow. This is a current Court Order and an existing obligation of the Town. This project is called the Subdistrict Sewer Rehabilitation Project ("Project"). City View is participating in negotiations with Parker Sewer and Fire Subdistrict, Western Carolina Regional Sewer Authority, to continue to facilitate the repair and upgrade of those sewer lines.

City View must pay a share of the expenses on Phase I of the project based upon the projected cost of line renovation and rehabilitation that City View would have otherwise undertaken in 1995-1996. In any case, City View will *not* be expected to pay all scheduled *future* costs as some of these may eventually be covered by the Parker District's normal taxes and fees. *Note: Based upon available figures, City View's share of Phase I is \$84,000.00 including testing and construction.*

Tests are ongoing, and those fees will be due within the next two months.

Approximately \$10,000.00 of this has already been paid in engineering fees as mentioned in paragraph 10 above. The Town is also negotiating with Parker District on the total consideration.

13. City View Town Council enacted an ordinance setting municipal tax millage to be levied against property on County tax records as of January 1, 1995. Taxes levied as of January 1 are now due and payable, and are being collected by the County Treasurer. These funds are to be held pending approval by this court before disbursement, and must be used for municipal purposes including the winding down of Town responsibilities and the impact of the assumption of these responsibilities by others. This court recognized in a true sense there is a "forced annexation" of this Town area into Parker District's and Greater Greenville Sanitation Commission's jurisdiction. Some 1,600 people live in this area. Neither the District nor the Commission could have anticipated the fiscal impact of their new responsibilities of providing rather immediate services to these citizens. Both would have their cash reserves reduced as they provide new routes, and new personnel to meet these needs. Tax revenues for 1996 will not be generated at the end of that year. The court is mindful that the Town has had to liquidate its assets to pay outstanding debts. Neither Parker District nor the Greater Greenville Sanitation Commission are receiving any of service equipment.
14. It is in the interest of the Town residents that neither Parker District nor the Greater Greenville Sanitary Commission is unduly harmed or burdened with these forced circumstances. It is in the interest of the Town residents that contracts be negotiated with both Parker District and Greater Greenville Sanitation Commission to take into account the impact of the transfer of these responsibilities. These negotiated contracts must receive final approval of the Court.

Sanitation System

15. The Greater Greenville Sanitation District and City View have negotiated a contract for the Greater Greenville Sanitation Commission to provide sanitation services operate in City View until the Greater Greenville District can receive the benefit of its own tax millage. This contract is subject to approval of the Court but was negotiated pursuant to this Court's prior Order. City View has sold its sanitation truck as part of the liquidation.
16. The County Council has already taken appropriate steps as requested to enlarge the Greater Greenville Sanitary Commission to include the Town limits. (County Ordinance No. 2783 dated Nov. 7, 1995).

Streetlights

17. No nearby political subdivision provides streetlights or is enabled to take over the

City View streetlights. City View citizens are circulating a petition calling for a referendum to vote on the establishment of a streetlight district pursuant to S. C. Code Ann. § 4-9-30. City View has arranged an advance payment to Duke Power to continue streetlight service for a period of four months or until a district can be formed. Another \$7,000 shall be paid over to the new district once it has been formed for immediate start-up expenses to avoid any lapse in service

County/Transfer of Town Hall Building

18. The County has indicated interest in acquiring title to the Town Hall building to be used for county purposes; for example, as a police substation or some other county public purpose. It is proposed that this building be deeded over to the county for such use and purposes as the Court may deem proper, in consideration of the fact that the county itself will suffer an adverse financial impact, like other political jurisdictions, is being called on to immediately provide services which the Town formerly provided, especially police protection.

Council/ Administration

19. City View has paid off an existing bank note (BBT, approx. \$55,000) on the sanitation truck and the public works building.
20. City View Town Council enacted an ordinance setting municipal tax millage to be levied against property on the County tax records as of January 1, 1995. These taxes are being collected now. These funds will be used to cover municipal purposes and obligations existing or incurred in this dissolution process, including payments made under contracts entered into by the Town pursuant to this court's order.
21. It is proposed that an accounting firm(s) will perform an audit of the General Fund and an audit of the Enterprise Audit (water and sewer services). The proposed General Fund audit would be of a liquidation-type audit rather than a full audit including certain upon agreed-upon accounting procedures. The Enterprise Fund would likely be a full and final audit. It is proposed that the firm of Cherry, Bekaert and Holland be engaged to do the liquidation audit and to oversee the Enterprise Fund audit.
22. City View is contacting all State and Federal departments and agencies notifying them of the imminent dissolution of the municipality

23. The Town Council is in the process of enacting an ordinance to authorize Councilmember Sammy McGaha to sign documents and to make payments on behalf of the Town Council in accordance with the Dissolution Plan.
24. At various stages, as necessary, the Town will seek approval of actions to be taken or conformation of action taken pursuant to the prior Order of the Court and the General Plan of Dissolution. The following is a listing of tasks not yet completed:
 1. Deeding of water lines to the Greenville Commission of Public Works (GCPW).
 2. Deeding of sewer lines to Parker Sewer and Fire Subdistrict.
 3. December water/sewer billing by City View. Billing and Collection by City View.
 4. Payment of sewer construction (cash) settlement to Parker District (\$84,000 less payments already made) for City View phase I construction.
 5. Payment of negotiated cash settlement to the Greater Greenville Sanitation (as per agreement) for establishment of sanitation services in City View: (1) Payment of November and December contract short term sanitation charges (\$4,500 per month for November and December); (2) \$24,000 to be paid in December; and (3) Approximately \$30,000 after the collection of the 1995 taxes.
 6. Negotiation and payment of a fee to enable Parker District to establish services for City View. The fee will provide for the initial equipment and personnel costs to lessen the impact of City View's forced annexation into the Parker District. Payments will be made from collected 1995 taxes.
 7. Sale of water/sewer equipment, building and 2 lots (Enterprise Fund). Sale of former sanitation building and lot (General Fund).
 8. Circulation of petition calling for a referendum on a proposed streetlight district.
 9. Initiation of financial audits of the General Fund and the enterprise Fund (water/sewer).
 10. Notification of State agencies of the town's impending dissolution.

11. Provision for the final payment of bills (utility, audit fees, etc.) for both town Hall and the Water/Sewer Department.
12. Dismissal of Town's three remaining employees: Town Clerk, two water/sewer employees.
13. Letter to the Secretary of State surrendering the Municipal Charter upon settlement of the Town's affairs (estimated to be March 31, ~~1995~~ 1996). (HFF)
14. Transfer of funds in town bank accounts to the Office of the County Treasurer to be placed in specified accounts established in the name of City View for Town purposes.

Exhibit A

Terms and Conditions

For the Acquisition of

City View Water Distribution System

October 9, 1995

As a consideration for assuming ownership and operation of the water distribution system in City View, the Commissioners of Public Works of the City of Greenville, South Carolina propose the following:

- (a) To assume responsibility for providing the statutory water requirements of the Town. This responsibility will begin immediately upon the conveyance by the Town to the Commission of the Town's existing water distribution system facilities including pipes, valves, mains, fire hydrants and the usual appurtenances of a water system including lands and easements and rights of way.
- (b) Where needed and as soon as circumstances will reasonably permit, the water system will be improved to maintain sufficient pressure and volume to permit continued qualification of the Town for a Class Seven (7) rating for Fire Insurance rates under the current standards of the South Carolina Inspection and Rating Bureau.
- (c) The Commission shall have no duty or obligation to install water lines in undeveloped areas or prospective subdivisions in the Town, but that, if such lines are installed therein by private developers in accordance with the specifications, policies, rules and regulations of the Commission, such lines will be accepted in accordance with the then prevailing Commission policy concerning such.
- (d) To charge to all customers within the Town the prevailing rates of the Commission made to its customers under similar conditions in other areas outside the City of Greenville except that an appropriate surcharge may be applied by the Commission to customers within the Town to cover the cost of improvements to the existing water distribution system to make it equivalent to other areas similarly situated.
- (e) To consider offering employment in accordance with the prevailing policies and practices of the commission to the tow (2) existing employees of the Town presently engaged in the operation of the water system and not needed by the Town in capacities as nearly similar as will be available at the time of the conveyance to the Commission of all properties and interests covered by the transfer of title to the water distribution system.
- (f) The Commission will assume no undisclosed claims or obligations of the Town for the construction, operation or maintenance of the water distribution system and the Commission will assume no obligations of the Town related to the construction, operation or maintenance of the sewer system.
- (g) To accept title from the Town of all usable water system inventory that the Town has on hand at the time of acquisition.

It is understood that the water system to be transferred to the commission by the Town will thereafter be owned by the Commissioners of Public Works of the City of Greenville, S.C., and will be controlled, maintained and served by the Commission as part of its water system. The Commission shall have full rights to adjust its rates and to change its rules and regulations as they apply to the Town or any other facilities operated by the Commission as it may deem proper from time to time within its sole discretion, so long as any such changes do not discriminate against users in the Town as compared to other users similarly situated.

This proposal is made with the understanding that the Town through its Clerk/Treasurer will furnish the following certificate:

I certify in my official capacity as Clerk/Treasurer of the Town of City

View:

- (a) That there exists no outstanding bonded indebtedness attributable to the Town's existing water distribution system or its operation.
- (b) That all contracts for water services have been disclosed to the Commission and will be assigned to the Commission at the same time that other property and interests covered herein are conveyed to the Commission.
- (c) That all debts, expenses, and charges incurred in connection with the installation, construction, purchase, and/or operation of the water system of the Town have been paid and discharged in full. No new agreements with developers or subdividers of real estate concerning water or water lines will be entered into except upon the approval and written consent of the Commission and then in accordance with the prevailing policies, rules, regulations, and practices of the Commission.
- (d) That from the date of the conveyance by the Town to the Commission, the Commission shall have the sole, exclusive and only right to sell, distribute and/or supply water within the bounds of said Town, and so long as the Commission complies with this agreement said Town, its successors and assigns, so long as the Town remains in existence, shall forever refrain from engaging in or permitting within the limits of its lawful authority, any other person, corporation or agency, governmental or otherwise, to engage in the sale, distribution and/or supply of water within said Town.
- (e) So long as the Town remains in existence, it will do all things reasonable and necessary to have the right of the Town to operate or in any way engage in or deal with the sales, distribution or supply of water removed from the powers and authority of the Town.

THE TOWN OF CITY VIEW

CLERK/TREASURER

ATTEST:

F
#3



Appalachian

COUNCIL OF GOVERNMENTS

50 Grand Avenue - P. O. Drawer 6668

Greenville, SC, 29606 (864) 242-9733

FAX - (864) 242-6957

E-mail - info@acog.greenville.sc.us

DATE: 3/3 TIME: 2:10

TO: Howard Duvall

FAX NUMBER: 799-9520

FROM: Joe Newton

TOTAL NUMBER OF PAGES: _____
(INCLUDES COVER SHEET)

SUBJECT: Reidville

MESSAGE: What can I say?

5-5-10

* Informal opinion

* Justice letter

* 2 News Items

UNTIL we clear this up, we would appreciate
any Horse Rule era paperwork. Thanks, Joe

elections set for March

By ANDY PETERS

Greer Bureau

REIDVILLE - This tiny western Spartanburg County community will elect its first mayor and town council on March 4.

Walter "Gene" Snow was the first and only person Thursday night to announce intentions to run for office. Snow was on the committee that helped organized the town's incorporation effort.

About 50 people attended a town meeting Thursday at the Reidville Fire Station.

Reidville is resurrecting its town charter in order to defend against the expanding city limits of Greer and Duncan.

"Reidville wants to be Reidville. It doesn't want to be a suburb of another town," said John Campbell, an organizer of the incorporation effort. "We don't want a six-lane highway going through the center of town. We want to keep it like it is."

There are five offices up for grabs: mayor, who will serve a four-year term, and four council members. The two council candidates receiving the most votes will serve for four years and the other two council members will serve two-year terms.

The race will be nonpartisan. Because of Reidville's small size, all candidates will be elected at-large.

Candidates can file for election from Dec. 20 through Jan. 2. The deadline for registering to vote in Reidville is Jan. 31. A voter application can be obtained at the Reidville Fire Station or at the county voter registration offices, 142 S. Dean St., Spartanburg.

The new mayor and council will select a town hall, hire a town clerk, determine a tax rate and approve a budget.

Gov. David Beasley issued an executive order in October that allowed Reidville to resurrect its town charter.

The town charter was created about 100 years ago. But at some point in the last century, no one knows how or when, the city government disappeared.

Reidville was founded as a school town in the 1850s, intended to support the Reidville Male Academy and Reidville Female College.

Reidville residents heard more good news Thursday night. The Reidville Fire District learned this week that its ISO rating has been dropped to Class 4 from Class 7. Homeowner insurance premiums can drop because of a fire department's improved rating.

66 SPARTANBURG HERALD-JOURNAL / FRIDAY, DECEMBER 13, 1996

10/16/96

Reidville preparing groundwork to be town

By ANDY PETERS

Greer Bureau

Once it becomes a town again, Reidville does not plan to raise enough tax money to hire its own police officer.

"If we could have a town with no tax millage, we'd do that," said John Campbell, a leader of the reincorporation effort in this tiny western Spartanburg County community.

Reidville will contract with the Spartanburg County Sheriff's Department for police protection, Campbell said. Fire protection will be provided by the Reidville Area Fire District, and water will be handled by the SJWD Water District.

The town likely will have a tax rate of 10 mills, Campbell said. Although not enough for a police department, it should suffice for a town hall, a town clerk and a nominal payment to council members.

There are no plans for a city swimming pool, library or municipi-

REIDVILLE continued on B3

REIDVILLE

Continued from B1

pal bus system, Campbell joked.

After gaining approval from the state Legislature earlier this summer to resurrect the town's charter, Reidville organizers are waiting for Gov. David Beasley to call an election for the town council, according to attorney Roger Couch, who has helped in the reorganization effort.

Beasley's election call is expected any day now, Campbell said. Reidville would like to hold council elections before the end of the year.

Located in between Greer, Duncan and Woodruff, the town was first established in 1887 to support the Reidville male and female educational academies, Campbell said.

A predominantly rural community with no industry, Reidville was hit hard by the Great Depression. Unable to afford police officers or a city council, the town simply ceased to exist in the 1930s.

In what turned out to be a stroke of good luck, however, Reidville's town charter was never abolished.

With a charter still on the books, the reincorporation effort sidestepped an obscure state law that says no town may be established within five miles of another town.

Reidville is located within five miles of Greer's ever-expanding city limits.

The reincorporation process has been more arduous than Campbell first thought it would be. But preserving the integrity of the Reidville community will be worth it, he said.

"This is a historic area and we like it. We don't want to become a neighborhood of a larger town," Campbell said. "We know expansion and progress is coming through our area, and we'd like a little say in how it occurs."

The growth has placed demands on Reidville Elementary School, which is still in the middle of a \$3.5 million expansion. The renovation, which will include a new kindergarten wing and library, should be completed by August 1997.

Principal Dwight Hettinger said he has not heard anyone who is opposed to Reidville reincorporating.

"I think the people here need it. You have a very close community with close, strong family ties. They need to have their own town," Hettinger said.

Reidville's population will total about 200. The city limits will be defined by a half-mile radius centered at the intersection of Main and Poplar streets.

Campbell said he won't run for mayor or town council because he will live outside Reidville's city limits.

10/15/96

SPARTAN

Duncan revives zoning study

By ANDY PETERS

Greer Bureau

DUNCAN — At the request of several council members, Duncan Mayor Greg Bridges said Monday night he will revive a 5-year-old study on zoning the town.

Duncan might try to implement zoning despite the upcoming referendum vote to consolidate the town with neighboring Lyman and Wellford, Bridges said.

Lyman has zoning and Wellford does not.

Bridges will consult with the town attorney, John Mann Sr., about the validity of the previous zoning study. Because it was conducted more than five years ago, it may no longer be valid. Bridges will report his findings to the council at its November meeting.

The city might need to convene a zoning board to consider any issues related to zoning, Bridges said.

Also Monday night:

■ The council agreed to annex the Waffle House located on Highway 290, on the north side of I-85.

■ The council agreed to transfer all financial holdings to The Palmetto Bank when its current notes expire.

To: Joe Newton
From: S. Geddis



Civil Rights Division

JAN 28 1997

IKP:CKD:NT:tlb:jdp
DJ 166-012-3
96-3065

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

January 21, 1997

Roger L. Couch, Esq.
Lister, Couch & Courtney
P.O. Box 2229
Spartanburg, South Carolina 29304-2229

Dear Mr. Couch:

This refers to Executive Order 96-30 which requires the state election commission to designate a county election commission to hold a special municipal election to reactivate the town and the procedures adopted by Spartanburg County for the conduct of the March 4, 1997, special municipal election, including the candidate filing schedule, the designation of a polling place, the voting method, the temporary method of electing the town's mayor and councilmembers at large by plurality vote in a non-partisan election to four-year, staggered terms, and the implementation schedule for the Town of Reidville in Spartanburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 20, 1996; supplemental information was received on January 15 and 16, 1997.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

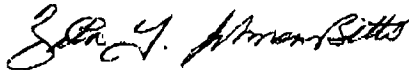
- 2 -

We note that in a January 17, 1997, conversation with Colleen Kane-Dabu of our staff, you indicated that the Town of Reidville is required to adopt an ordinance selecting the method by which its town officials will be elected in all future municipal elections. When the ordinance is finally enacted, any portion of that ordinance and/or any other changes in practice or procedure that affect voting (e.g., the number of officials, the method of election, the staggering of terms of office, the selection of a general election date, the designation of polling places, etc.) will be subject to Section 5 review. See 28 C.F.R. 51.13.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

By:



for

Elizabeth Johnson
Chief, Voting Section



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 12, 1996

The Honorable C. Tyrone Courtney
Senator, District No. 13
Post Office Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Courtney:

By your letter of October 3, 1995, to Attorney General Condon, you sought an opinion as to the status of the Town of Reidville. You have been approached by several members of the community of Reidville, in western Spartanburg County, who are interested in reviving the Town of Reidville as an incorporated or chartered town and holding elections to fill all the vacant town offices.

Because it is not in the province of this Office to make factual determinations, this Office accepts as true, for purposes of this opinion, the facts which you have presented with your request letter. Following a summary of the relevant facts, the applicable law will be discussed.

Facts

The Town of Reidville was incorporated by an act of the General Assembly dated December 19, 1887. The act was to take effect immediately upon its passage and was to "continue in force for thirty years from the date of its passage, and until the final adjournment of the General Assembly next thereafter." Section 3 of the act. The Town of Reidville was to be governed by statutory provisions applicable to towns of less than one thousand inhabitants.

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An election was held on February 12, 1918, to determine whether the Town of Reidville would surrender the present charter and be issued a new charter according to Article I, Chapter XLVIII, Volume 1, Code of 1912. The vote was unanimous; the old charter was surrendered; and a new charter was issued on February 15, 1918. According to the law in existence at that time, the charter or certificate of incorporation would continue in existence for thirty years. See §2913, Civil Code of 1912. Thus, the charter would have expired on February 15, 1948.

Section 2913 and its successor statutes were amended by Act No. 576 of 1946, so that the thirty-year limitation on the existence of municipal charters was removed. (Since no time limitation was thereafter specified, I would be of the opinion that such charter or incorporation would be perpetual, unless steps should be taken to surrender, cancel, forfeit, or otherwise give up the charter.¹)

You have advised that the current population approaches two hundred inhabitants; that while no exact figures or records can be found, the people of the area are confident that the population has not dropped below one hundred inhabitants this century; and that apparently steps have never been taken to have the charter revoked, forfeited, surrendered, or cancelled.

Applicable Law

As to surrender or forfeiture of the charter of a municipal corporation, 56 Am.Jur.2d Municipal Corporations, etc. §91 provides in part:

When the legislature has decreed that a certain community shall constitute a municipal corporation, such corporation continues in existence until the legislature otherwise orders. It consequently follows that dissolution will not result from a nonuser of corporate powers, mere failure to function, or from a failure to organize and elect officers. Even where it is provided by statute that upon its default in certain particulars the charter of a municipal corporation shall be forfeited, such forfeiture cannot be enforced or taken advantage of in any legal proceeding, collaterally or incidentally; it must be declared in a direct way. The state alone can enforce such forfeiture, since it alone has the right to waive or enforce it, and even the forfeiture should be enforced by legislative enactment rather than by quo warranto or other judicial proceeding. ... [Emphasis added.]

¹See also the discussion as to §5-1-10 and predecessor statutes, infra.

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Judicial decisions have emphasized that relative to surrender or forfeiture of municipal charters, public policy "is against the forfeiture of the charter of a municipal corporation if it can be sustained within the law and a presumption will be indulged in its behalf... ." Chadwick v. Town of Hammondville, 120 So.2d 899, 902 (Ala. 1960). Further, "[p]ublic policy opposes forfeiture of the charter of municipal corporations; if the same can be sustained within the law and presumptions that obtain in that behalf [.]" State ex rel. Kinney v. Town of Steppville, 232 Ala. 407, 168 So. 433, 435 (1936). Finally, "once a town has been incorporated and has not been dissolved in the manner prescribed by law, any subsequent attempt to reincorporate the town is void." Baber v. City of Rosser, 770 S.W.2d 629, 630 (Tex. Ct. App.-Dallas 1989).

A proviso in Act No. 576 of 1946, referenced above, stated:

PROVIDED that, whenever it shall appear that a town of less than 1000 inhabitants has decreased in population since its incorporation to less than 100 inhabitants, then the charter of such town shall thereby become forfeited; and secondly, that whenever a majority of the registered electors of any town of less than 1000 inhabitants shall file with the intendant or wardens of such town a petition asking for an election on the question of surrendering the charter of such town, such intendant or wardens shall order an election to determine the question, at which all qualified voters of such town be permitted to vote, and if two-thirds of those voting shall vote in favor of the surrendering of such charter, that the intendant or wardens shall certify the result to the Secretary of State, who shall immediately thereupon cancel the charter theretofore issued to such town.

This proviso was codified as §47-107 in the 1952 Code of Laws. In 1971 this Code section was amended so that a charter might be automatically revoked if the number of inhabitants of a municipality should drop below fifty.

In Act No. 929, 1968 Acts and Joint Resolutions, was the following in section 1 relative to the procedure for incorporation of municipalities:

Whenever the Secretary of State shall determine that a previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues and holding regular elections as prescribed

The Honorable C. Tyrone Courtney
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for active municipalities in Sections 65-740² and 65-1256³, he shall cancel the charter of such municipality.

Forfeiture, surrender or cancellation of a charter or certificate of municipal incorporation is presently addressed by §5-1-100, as follows:

Whenever it shall appear that a municipality has decreased in population since its incorporation to less than fifty inhabitants, the certificate of such municipality shall be automatically forfeited and void. Whenever a majority of the registered electors of any municipality shall file with the municipal council of such municipality a petition requesting the municipal certificate be surrendered, the council shall order an election to determine the question, at which election all qualified electors of the municipality shall be permitted to vote, and if two-thirds of those voting shall vote in favor of surrendering the certificate, the council shall certify the result to the Secretary of State, who shall thereupon cancel the certificate theretofore issued to such municipality.

If the Secretary of State shall determine that any previously incorporated municipality is neither performing municipal services nor collecting taxes or other revenues and has not held an election during the past four years, he shall cancel the certificate of such municipality.

Two previously issued opinions of this Office (copies enclosed) are helpful in interpreting these statutes. The first is Op. Att'y Gen. No. 2437, issued March 18, 1968. In relevant part former Attorney General Daniel McLeod stated:

²Section 65-740 was §12-21-1120 of the 1976 Code and read in part until an amendment in 1991:

For the purposes of calculating the proper distribution of this tax to the municipalities of the State, a list of the municipalities, certified to be active by the Municipal Association of South Carolina, shall be used, and the word "active," as used for the purpose of distributing this tax, shall mean a municipality which has a regularly elected mayor or intendant, a town council and a police officer or officers and which is collecting property or other taxes for municipal purposes.

³Section 65-1256 of the 1962 Code was codified as §12-33-40 in the 1976 Code and reads virtually identically to old §12-21-1120 as cited in footnote 2.

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I do not believe that the mere certification by the Municipal Association that a town is not active is sufficient for the Secretary of State to act in [cancellation] of charters pursuant to the provisions of Section 47-1.1 [now §5-1-1], as amended during the current session of the Legislature.

The Secretary of State is required to determine whether a town is performing municipal services, etc., and the reference to Section 65-740 and 65-1256 appears to be for definitive purposes only. Under the latter sections, the distribution of taxes involved is clearly to be based upon a list of municipalities certified to be active by the municipal association. In the new act (Section 47-1.1), the determination is to be made by the Secretary of State.

Normally, if a town is not on the list of active members as compiled by the municipal association, this would be a clear indication that its charter can be cancelled, but the determination of the fact of inactivity should then be ascertained by the Secretary of State himself. Additionally, a constitutional issue could be raised if the determination of inactivity is delegated to the agency of the municipal association. ...

Then, by Op. Att'y Gen. No. 4096, issued August 25, 1975, construing the 1971 amendment to §49-107, supra, the situation of a town whose population had fallen below 100 was examined; specifically, whether the town could be deemed to have forfeited its charter by reason of its population having been below one hundred persons prior to 1971 was addressed. In pertinent part, that opinion stated:

The operative words of Section 47-107 are "thereby" and "become." According to Webster's Third New International Dictionary, "thereby" means "by that, by that means in consequence of that" and "become" means "to come to exist or occur" or "to emerge as an entity." Taken together, the two words clearly imply that forfeiture of the charter automatically occurs, regardless of whether or not someone formally notifies the Secretary of State of the decrease in population and requests the forfeiture.

It is doubtful that this statute (now §5-1-100), and hence this previously issued opinion, would be applicable to the situation with respect to the Town of Reidville, as you have advised us that the population does not appear to have fallen below the requisite number, depending upon which version of the statute may have been in effect, so as to have the charter automatically forfeited.

Another statute which should be considered is current §5-1-10, which provides in pertinent part:

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All municipalities which have a certificate of incorporation issued by the Secretary of State ... are hereby declared to be perpetual bodies, politic and corporate and are entitled to exercise all the powers and privileges and are subject to all the limitations and liabilities provided for municipal corporations in this State. [Emphasis added.]

This statute originated as Act No. 285 of 1904:

Be it enacted by the General Assembly of the State of South Carolina, That all municipal charters heretofore or hereafter issued by the Secretary of State shall be, and are hereby, declared to be perpetual; Provided, That nothing herein contained shall be deemed or taken to prevent the General Assembly from amending or repealing said charters.

The original act was amended by Act No. 440 of 1918 to read:

Section 2986. All municipal charters heretofore or hereafter issued by the Secretary of State, and also all municipal corporations heretofore created by Acts of the General Assembly of this State, shall be, and are hereby, declared to be perpetual: Provided, That nothing contained in this section shall be deemed or taken to prevent the General Assembly from amending or repealing said charters.

These enactments would support the position that the charter or certificate of incorporation issued to the Town of Reidville would still be extant, as such would be perpetual in the absence of actions of the General Assembly or appropriate state or local actions (as in §5-1-100, for example).

Conclusion

Construing all of the foregoing statutes and indications of public policy and presumptions to be indulged in light of the facts accepted as true for purposes of this informal opinion, particularly the facts that the population of the Town of Reidville has not dropped below the statutorily indicated level and that no steps have apparently been taken by the State of South Carolina (i.e., through the General Assembly or the Secretary of State) to cancel the charter or certificate of incorporation, I am of the opinion that the charter of the Town of Reidville would have perpetual existence by virtue of the various applicable statutes. Due to the lack of judicial guidance on this issue and novelty of the question in this State, I must advise that my conclusion is not completely free from doubt,

The Honorable C. Tyrone Courtney
Page 7
February 12, 1996

however; to remove that doubt, the concerned residents may wish to consider seeking a declaratory judgment in the courts of this State.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it satisfactorily responds to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures

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Bill 1395

Current Status

Bill Number:	1395
Ratification Number:	375
Act Number	338
Type of Legislation:	General Bill GB
Introducing Body:	Senate
Introduced Date:	19960425
Primary Sponsor:	Courtney
All Sponsors:	Courtney
Drafted Document Number:	JUD6079.CTC
Date Bill Passed both Bodies:	19960509
Governor's Action:	S
Date of Governor's Action:	19960520
Subject:	Municipal corporation, articles of incorporation, adoption

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History

Body	Date	Action Description	Com	Leg Involved
-----	19960530	Act No. A338		
-----	19960520	Signed by Governor		
-----	19960514	Ratified R375		
House	19960509	Read third time, enrolled for ratification		
House	19960508	Read second time		
House	19960507	Debate adjourned until Wednesday, 19960508		
House	19960501	Recalled from Committee	25 HJ	
House	19960430	Introduced, read first time, referred to Committee	25 HJ	
Senate	19960429	Read third time, sent to House		
Senate	19960426	Read second time		
Senate	19960425	Unanimous consent for second and third reading on the next two consecutive Legislative days		
Senate	19960425	Introduced, read first time, placed on Calendar without reference		

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(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(R375, S1395)

AN ACT TO AMEND SECTION 5-5-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FORMS AND SELECTION OF MUNICIPAL GOVERNMENT, SO AS TO PROVIDE THAT A MUNICIPALITY WHICH FAILED TO ADOPT ONE OF THE SPECIFIED FORMS OF GOVERNMENT WITHIN FIFTEEN MONTHS OF DECEMBER 31, 1977, IS CONSIDERED TO HAVE FORFEITED ITS ARTICLES OF INCORPORATION UNTIL IT CERTIFIES THE ADOPTION OF ONE OF THE FORMS TO THE SECRETARY OF STATE, AND TO FURTHER PROVIDE THAT THE ARTICLES OF INCORPORATION MUST BE REINSTATED UPON THE CERTIFICATION OF THE ADOPTION.

Be it enacted by the General Assembly of the State of South Carolina:

Reinstatement of articles of incorporation

SECTION 1. Section 5-5-10 of the 1976 Code is amended by adding at the end:

"If a municipality failed to adopt one of the above forms of government within fifteen months of December 31, 1977, it shall be considered to have forfeited its articles of incorporation, until such time as the municipality adopts one of these forms of government and certifies the adoption to the office of the Secretary of State. Upon certification by the governing body of the municipality of the adoption of one of the forms of government to the office of the Secretary of State, the articles of incorporation for the municipality shall be reinstated. All actions taken by the governing body municipality during the period of forfeiture shall be deemed to have been ratified by the governing body of the municipality upon reinstatement of the articles of incorporation. The reinstating municipality must not be contiguous to any existing municipality."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

In the Senate House May 14, 1996.

Robert L. Peeler,

President of the Senate

David H. Wilkins,

Speaker of the House of

Representatives

Approved the 20th day of May, 1996.

David M. Beasley,

Governor

Printer's Date -- May 29, 1996 -- S.

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General Assembly Home Page

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Bill 1395

Current Status

Bill Number: 1395
 Ratification Number: 375
 Type of Legislation: General Bill GB
 Introducing Body: Senate
 Introduced Date: 19960425
 Primary Sponsor: Courtney
 All Sponsors: Courtney
 Drafted Document Number: JUD6079.CTC
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COMMITTEE CONTACT INFORMATION AND UPCOMING MEETINGS

Legislative Oversight Committee



South Carolina House of Representatives

Committee Mission

Determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed or eliminated. Inform the public about state agencies.

Website: <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>

Phone Number: 803-212-6810

Email Address: HCommLegOv@schouse.gov

Location: Blatt Building, Room 228

END NOTES

¹ Visual Summary Figure 1 is compiled from information in the agency's study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Secretary of State, Office of the," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/SecretaryofState.php> (accessed August 28, 2019); and information available on the agency's website, <https://sos.sc.gov/> (accessed August 28, 2019).

² S.C. Senate, Legislative Oversight Committee, "SC Secretary of State's Office Report and Summary," under "Committee Postings and Reports," and under "Senate Oversight Reports adopted September 18, 2019," <https://www.scstatehouse.gov/CommitteeInfo/SenateLegislativeOversightCommittee/September2019/SC%20Secretary%20of%20State's%20Office%20-%20Report.pdf> (Accessed November 14, 2019).