ALAN WILSON
ATTORNEY GENERAL

February 28, 2014

The Honorable Paul Campbell
Senator, District No. 44
P.O. Box 142
Columbia, SC 29202

The Honorable Larry Grooms
Senator, District No. 37
P.O. Box 142
Columbia, SC 29202

Dear Senators Campbell and Grooms:

We are in receipt of your letters dated September 12th and 18th of 2013 as well as your letter from January 29th of 2014. In your September 12th letter you explain:

> As you may be aware, residents of Daniel Island, currently located in Berkeley County, have begun to explore the possibility of merging with Charleston County. Resident meetings on this issue are scheduled to begin this week. One of the primary concerns that has arisen at this point is the effect that a merger with Charleston County would have on the Berkeley County School District. Furthermore, we anticipate a number of questions concerning the merger's effect on infrastructure provided by Berkeley County on Daniel Island, including any debt obligations that Berkeley County has incurred related to that infrastructure.
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> Accordingly, your first letter asked the following questions:

1. How would the proposed merger effect the Berkeley County School District's boundary lines?

2. Would the children on Daniel Island continue to attend school in Berkeley County or would they be absorbed into the Charleston County School District? If the children on Daniel Island are absorbed into the Charleston County School District, is it possible that children currently living in Charleston County would be

rezoned to attend school at the school located on Daniel Island? Would children living in Berkeley County, but not on Daniel Island, that attend school on Daniel Island be required to attend a different school as a result of the merger?

3. How would a merger affect any outstanding debt obligations incurred by the Berkeley County School District used to finance school construction to alleviate crowding at the school on Daniel Island?

4. How would a merger effect county services provided to the residents on Daniel Island and county infrastructure provided to the residents of Daniel Island?

5. How would the merger effect any outstanding debt obligations incurred by Berkeley County to finance infrastructure provided to Daniel Island by Berkeley County?

Subsequently, we received a second letter dated September 18, 2013 explaining that following an annexation meeting, additional questions arose regarding "the overall effect of annexation and potential legal challenges to the annexation process itself." Additionally, your letter explained that "the proposed annexation plan will result in the transfer of three and a half precincts from Berkeley County to Charleston County" and further stated that the "transferred precincts have an extremely low minority population." Specifically, you mentioned the composition of both county council and school board districts in both counties would change. Therefore, in your second letter you asked:

1. Whether the transfer of the precincts triggers reapportionment for the two affected counties? Will new elections need to be held for the county council and school district seats affected by the proposed plan?

2. Given the recent Supreme Court ruling concerning the Voting Rights Act, and given the impact on minority communities resulting from the proposed annexation, does the United States Department of Justice (USDOJ) have grounds upon which to intervene in this process? What is the likelihood of intervention if the USDOJ does have grounds to intervene? Who would be the defendant in such an action – the local governing bodies, the school districts, the Daniel Island organization advancing the annexation movement, or some other entity? Are school desegregation issues implicated by the annexation?

3. Would the transfer of the residents of Daniel Island to Charleston County change the index of taxpaying ability for EFA funding purposes? What effect would that have on the two school districts?

We then received a third letter on January 29th of this year. There you asked:

1. Does S.C. Code 4-5-130 allow for the Commission to direct the named surveyors to compile a plat of the area proposed to be annexed and may the Commission waive the requirement that "such surveyors shall clearly mark the proposed change of the line upon the land?"

2. What effect does Article VII, Section 14 of the State Constitution have on the proposed Daniel Island annexation in light of the location of the present corporate limits of the City of Charleston?

As will be seen below in our responses to your questions, many of your inquiries contain novel questions of law as well as mixed question of law and fact. Thus, while some of your questions may have specific answers, others may depend on a host of factors that may be better addressed by a declaratory judgment, since courts, which have the ability to take testimony and subpoena witnesses, may be better suited to answering some of the inquiries contained within your letters.

Facts

As you are aware, Daniel Island is part of the City of Charleston, is located within Berkeley County and, as you mentioned above, is the subject of a proposed annexation with Charleston County. Daniel Island is currently part of the second school board district in the Berkeley County School District ("BCSD") and is represented in Berkeley County's second county council district. As we understand it, the City of Charleston provides Daniel Island with police and fire services, trash pickup, road maintenance and traffic signals, while Berkeley County provides the Island with emergency medical services. See www.danielisland.com/resource/fact-sheet/ (last visited February 25, 2014).

1. Annexation and the Berkeley County School District's Boundary Lines

In your September 12, 2013 letter you asked how the proposed merger or annexation of Daniel Island by Charleston County could affect BCSD's boundary lines. While it is arguable that the consolidation of the BCSD had the effect of rendering the district coextensive with the boundaries of Berkeley County at all times, we believe that because a school district represents a separate body politic from a county, if Charleston County were to annex Daniel Island, doing so would not necessarily affect BCSD's boundary lines unless changes were made to the boundaries pursuant to Section 59-17-20 of the South Carolina Code.[1] However, because this is a novel

[1] We note that while Charleston County's proposed annexation of Daniel Island may not necessarily affect BCSD's or CCSD's boundary lines, in the event that Daniel Island is annexed into Charleston County, Section 59-17-40 would still require action by both school districts. See S.C. Code Ann. § 59-17-40 (2004) ("[W]henever territory embraced in two or more counties is proposed to be formed into one school district, such district may be formed by the joint action of the boards of education of the respective counties as provided in § 59-17-20 for the formation of school districts in a county."); Powers v. State Edu. Fin. Comm'n., 222 S.C. 433, 444, 73 S.E.2d 456, 461 (1952)

question of law and in the interest of obtaining both certainty and finality, it may be advisable to seek a declaratory judgment on this matter.

Background

In 1952, the Berkeley County Board of Education consolidated the several school districts within the county into one district, known as the BCSD. See Order of Consolidation from Berkeley County Bd. of Edu., dated March 1, 1952. Consistent with current South Carolina law, notably Section 59-17-50 of the Code, the consolidation order indicates the purpose of consolidation was to "promote the best interests of the cause of education" of the county. Id. see also S.C. Code Ann. § 59-17-40 (2004) ("A county board of education may consolidate schools and school districts, in whole or in part, whenever, in its judgment, such consolidation will promote the best interests of the cause of education in the county."). Specifically, the consolidation order stated in relevant part, "all of the school district in Berkeley County be, and the same are hereby, consolidated into one district, same to be known as the [BCSD]." Id. Subsequently, the General Assembly, in 1956, validated the 1952 order, added that "the county board of education shall, *ex officio*, "be the Trustees of the School District of Berkeley County," further explained that the functions and powers vested in school trustees would be vested in the county board of education, and repealed all acts inconsistent with the act. S.C. Act No. 761 of the Acts and Joint Resolutions of the General Assembly of South Carolina (1956).

Later, in 1982, the General Assembly enacted additional legislation related to the BCSD. See S.C. Act No. 518 of the Acts and Joint Resolutions of the General Assembly of South Carolina (1982). For example, Act 518 provided, *inter alia*, that the governing body of the BCSD would be known as the Berkeley County Board of Education. Id. The Act further stated that the membership on the BCSD's governing board would consist of eight members elected from single member districts within the BCSD. Id. This was later expanded to nine single member districts in 2002. S.C. Act No. 408 of the Acts and Joint Resolutions of the General Assembly of South Carolina (2002). Act 408 further stated, consistent with the 1982 Act, that the County Board of Education was the name of the governing board of the BCSD. Id. These Acts were most recently amended in 2012, where the legislature again provided that the Berkeley County Board of Education would serve as the governing body of the BCSD and further explained the district would continue to consist of nine single member districts. S.C. Act No. 296 of the Acts and Joint Resolutions of the General Assembly of South Carolina (2012). With respect to boundaries of the BCSD, Act 296 stated, "[t]he boundaries of the school district of Berkeley County are not altered by the provisions of this act." Id.

("It will be observed that in all of the statutes which we have reviewed, the formation of a school district comprising parts of two counties or the consolidation of school districts lying in different counties must be approved by both county boards of education.").

Law/Analysis

Article XI, Section Three of the South Carolina Constitution explains that the General Assembly "shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable." S.C. Const. Art. XI, § 3 (2009). This responsibility includes the authority to create school districts, identify the membership of their governing bodies, establish boundaries and provide for local and state funding. S.C. Code Ann. § 59-17-20 (2004); S.C. Code Ann. § 59-17-30 (2004); S.C. Code Ann. § 59-17-40 (2004); S.C. Code Ann. § 59-17-50 (2004).

As detailed above, a school district is a separate body politic, "corporate under the laws of the state with limited powers confined generally to those expressly enumerated and those necessarily implied." Carter v. Lake City Baseball Club, 218 S.C. at 262, 62 S.E.2d at 473; see also S.C. Code Ann. § 59-17-10 ("Every school district is and shall be a body politic."). Accordingly, as we have explained in previous opinions, a school district's boundary lines may be changed pursuant to statutory authority, in this case, Section 59-17-20 of the Code. Op. S.C. Atty. Gen., 1983 WL 142706 (July 8, 1983) (explaining a school district composed of territory from two counties may alter its boundary lines pursuant to Section 59-17-20 of the Code); Op. S.C. Atty. Gen., 1993 WL 720122 (June 2, 1993) (stating Section 59-17-20 of the Code provides for the alteration or division of school districts).

Section 59-17-20, titled the "[a]lteration or division of school districts" provides that:

> *Unless otherwise expressly provided*, the school districts of the various counties shall not be altered or divided except:
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> (1) By act of the General Assembly relating to one or more counties; or
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> (2) By authorization of the county boards of education under the following conditions:
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> > (a) With the written approval of the Senator and the entire house legislative delegation from the county involved;
> >
> > (b) Upon a written petition, signed by at least four fifths of the qualified electors embraced within the limits of each of the school districts involved, which shall state plainly to the county board of education the action petitioned and shall also bear the signed certificate of the members of the county board of registration that the number of electors who signed

> the petition represent at least four fifths of the qualified electors embraced within the limits of each of the school districts involved; or
>
> (c) Upon the written petition, signed by at least one third of the qualified electors embraced within the limits of each of the school districts involved.

S.C. Code Ann. § 59-17-20(1)-(2)(a)-(c) (2004) (emphasis added). Thus, under the plain language of Section 59-17-20, in the absence of an express provision to the contrary, "the school districts of the various counties" will not be "altered or divided" unless it is by an act of the General Assembly; or by authorization of the county board of education when it has satisfied the conditions mentioned in subsections (2)(a), (2)(b), or (2)(c). See Williams v. Marion Cty. Bd. of Edu., 234 S.C. 273, 277-78, 107 S.E.2d 640, 642 (1959) (interpreting a previous version of Section 59-17-20 and finding that subsections (2)(a), (2)(b) and (2)(c) are each separate methods of altering or dividing a school district).

Here, we acknowledge one could plausibly and credibly argue that the Berkeley County Board of Education's 1952 consolidation resolution operates as a provision requiring the BCSD to be coexistent with Berkeley County at all times because the intent in consolidating the district was for Berkeley County to be its own school district and as such, Section 59-17-20 is inapplicable. However, our review of the enabling legislation for BCSD does not support this conclusion in that none of the language contained within the 1952 resolution, or in the subsequent legislation regarding the BCSD, has ever expressly provided that the BCSD's boundaries be coextensive with Berkeley County *at all times*. In other words, any argument that the BCSD, as consolidated, would require that the boundaries of the District must, at all times, remain coextensive with Berkeley County, would be based upon implication.

Specifically, the 1952 resolution makes no reference regarding the boundaries of prior districts or mentions the boundaries of the consolidated district other than generally mentioning Berkeley County. See Order of Consolidation from Berkeley County Bd. of Edu., dated March 1, 1952. Likewise, Act No. 761 of the Acts and Joint Resolution of the General Assembly of South Carolina (1956), which validated the BCSD's consolidation, is silent as to the boundaries of prior districts or boundaries of the consolidated district with the exception of a reference to Berkeley County. This is also true with respect to the 1982, 2002 and 2012 acts as well.[2] In fact, the 2012 Act, as mentioned above, expressly states that "[t]he boundaries of the school district of Berkeley County are not altered by the provisions of this act." S.C. Act No. 296 of the Acts and Joint Resolutions of the General Assembly of South Carolina (2012). Thus, it seems the 2012 Act implicitly recognizes that the BCSD's boundaries are in fact subject to change and were not previously set so as to require that the district be coextensive with the county at all times.

[2] We further note that in the event legislation prior to the 1952 resolution did require that the BCSD be coextensive with county lines at all times, the 1956 adoption of the resolution repealed all acts inconsistent with the act. S.C. Act No. 761 of the Acts and Joint Resolutions of the General Assembly of South Carolina (1956).

Similarly, the Act consolidating the Charleston County School District ("CCSD"), other than its obvious mention of the county, is silent as to the boundaries of the consolidated district. S.C. Act No. 310 of the Acts and Joint Resolution of the General Assembly of South Carolina (1967).[3] Thus, the only arguable "express provision to the contrary" for purposes of Section 59-17-20, would be the reference to the county in which the districts at issue are located.

Understanding this, we believe we must address whether the mere reference to a county in a school district's enabling legislation constitutes "an express provision to the contrary" such that Section 59-17-20's provisions regarding alteration or division of school districts would not apply. In other words, where a school district's enabling legislation is otherwise silent as to the boundaries of the district, but does reference the name of the county, must the school district's boundaries be confined, at all times, to that county?

This question was addressed in Cline v. Martin, 94 Ohio St. 420, 428-29, 115 N.E. 37, 39 (1915) where the Supreme Court of Ohio found that because school districts in Ohio, like school districts in this State, are separate bodies politic, the usage of a particular county in the name of the school district does not require the school district boundaries to be identical with those of the county. The Court explained that the mention of a county, rather than functioning in a manner to require a school district to be coextensive with county boundaries at all times, instead serves as a mere reference to the general territory located within the district at that time. Cline, 94 Ohio St. at 428, 115 N.E. at 39 ("The territorial limits of a county school district are not identical with those of the county. It is true, however, that in some instances they are identical, but that is merely accidental, and not because the statute creating a county school district requires that they shall be the same in any case."). As the Ohio Supreme Court explained, school districts may be coextensive with county lines today, but may be different tomorrow. Cline, 94 Ohio St. at 429, 115 N.E. at 39 ("[C]ounty school districts are not necessarily coextensive with county lines, although it may happen in many cases that they are the same to-day, but different tomorrow.").

While Cline is not a South Carolina case, we find its logic persuasive. South Carolina, like Ohio, defines a school district as a separate body politic, governed by its own set of laws, operating independent of the county. As detailed above, one of the powers a school district possesses is the ability to alter its' boundary lines. S.C. Code Ann. § 59-17-20. Therefore, we think it follows that a school district's enabling legislation, which merely mentions a county, should not be construed as an express provision requiring the boundaries of the school district to be coextensive with the county lines at all times, but should instead be seen as a mere geographic reference to the district's boundaries at the time the legislation was passed. Accordingly, where a school district's enabling legislation merely references a county, but does not expressly require the school district to be coextensive with the county line at all times, we believe such a reference

[3] In contrast, the consolidated Colleton County School District, created pursuant to Act 117 of the Acts and Joint Resolution of the General Assembly of South Carolina (1961) requires the school district to "at all times be co-extensive in area with Colleton County."

should not be construed as an "express provision to the contrary" such that Section 59-17-20's terms regarding alteration should not apply. As a result, Section 59-17-20 applies in the present case meaning each district can only be altered or divided pursuant to the requirements of either Section 59-17-20(1), or Section 59-17-20(2).

Recognizing that the respective school district consolidation orders do not seem to expressly require their boundaries to be coextensive at all times with county lines and thus alteration of the districts must be accomplished through Section 59-17-20, we now turn back to your original question, whether the proposed annexation would affect BCSD's boundary lines. Strictly speaking, while there is authority on both sides of the issue, we believe a court is most likely to find that, in the event Charleston County annexes Daniel Island, such an annexation would not affect either school district's boundaries absent an attempt to alter or divide the lines pursuant to Section 59-17-20 of the Code. See e.g. Thompson v. Rapides Parish Sch. Bd., 637 So.2d 680, 683 (La. Ct. App., 3rd Cir. 1994) (finding the alteration of a political subdivision of the State, in this case a ward, did not change the school district's boundaries as Louisiana law, like South Carolina law, gives school districts the power to change their boundaries). Indeed, South Carolina makes clear that a school district may encompass territory in more than one county.[4] See Powers v. State Edu. Fin. Comm'n., 222 S.C. at 442, 73 S.E.2d at 459 ("[I]t is our conclusion that the General Assembly may authorize the formation of a school district embracing territory situated in two or more counties."). That said, we recognize this conclusion is based upon the proposition that neither district's enabling legislation appears to limit the boundaries of the respective districts and, while the 1956 adoption of the BCSD's consolidation order repeals all prior acts inconsistent with the 1952 consolidation resolution, the possibility remains that a court could find otherwise. As a result, while we believe BCSD's *boundary lines* would be unaffected in the event Charleston County annexes Daniel Island and no attempt is made to alter the boundary lines to conform to the respective counties pursuant to Section 59-17-20, it would be advisable to seek a declaratory judgment on this issue.

2. Annexation and School Attendance

Your September 12, 2013 letter further inquired about school attendance. Specifically you have asked: (a) "[w]ould the children on Daniel Island continue to attend school in Berkeley County or would they be absorbed into the Charleston County School District?" (b) "If the children on Daniel Island are absorbed into the Charleston County School District, is it possible

[4] Nevertheless, as detailed in footnote one above, this does not mean that in the event Charleston County annexes Daniel Island, doing so would not require action by the respective districts. To the contrary, both Section 59-17-40 and Powers clearly require the respective county boards of education (or perhaps their equivalent) to approve of a district which encompasses territory in two or more counties. See S.C. Code Ann. § 59-17-40 ("[W]henever territory embraced in two or more counties is proposed to be formed into one school district, such district may be formed by the joint action of the boards of education of the respective counties as provided in § 59-17-20 for the formation of school districts in a county."); Powers, 222 S.C. at 444, 73 S.E.2d at 461 ("It will be observed that in all of the statutes which we have reviewed, the formation of a school district comprising parts of two counties or the consolidation of school districts lying in different counties must be approved by both county boards of education.").

that children currently living in Charleston County would be rezoned to attend school at the school located on Daniel Island?" and (c) "Would children living in Berkeley County, but not on Daniel Island, that attend school on Daniel Island be required to attend a different school as a result of the merger?" Again, because a school district represents a separate body politic from a county, we believe the annexation of Daniel Island by Charleston County would not affect school attendance unless changes were made to BCSD's boundaries pursuant to Section 59-17-20 of the South Carolina Code.

a. Would Children on Daniel Island Continue to Attend School in Berkeley County or would they be Absorbed into the CCSD?

As detailed above, the district for the children would be determined by the district's boundary lines. This of course means that if the BCSD's boundary lines are not changed, children on Daniel Island would continue to attend school in the BCSD.

b. If the Children on Daniel Island are absorbed into the CCSD, is it Possible that Children Currently Living in Charleston County would be Rezoned to Attend School at the School Located on Daniel Island?

Assuming for purposes of this question that school district boundaries are altered or divided pursuant to the terms of either Section 59-17-20(1) or Section 59-17-20(2), and, as a result, Daniel Island becomes part of the CCSD, it seems possible that children currently living in Charleston County could be rezoned to attend the school located on Daniel Island. However, this issue would ultimately be up to the Charleston County Board of Trustees ("the School Board"). See Storm M.H. ex rel. McSwain v. Charleston County Bd. of Trustees, 400 S.C. 478, 489, 735 S.E.2d 492, 498 (2012) (interpreting Section 59-19-90(9) of the South Carolina Code as conferring discretionary authority on school boards to, among other things, determine which school in a district a student may attend); S.C Code Ann. § 59-19-90(9) ("The board of trustees shall also: Transfer and assign pupils. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll."). Accordingly, in the event Daniel Island is annexed into Charleston County and then becomes part of the CCSD, the issue of whether children currently living in Charleston County could be rezoned to attend school on Daniel Island would be a decision for the School Board to determine pursuant to Section 59-19-90(9) of the Code.

c. Would Children Living in Berkeley County, but not on Daniel Island who Attend School on Daniel Island be Required to Attend a Different School as a Result of the Annexation?

As mentioned previously, were Daniel Island to become part of Charleston County as part of an annexation, this would not necessarily affect BCSD's boundary lines since a school district is a separate body politic. Rather, as detailed above, because Section 59-17-20's "unless

otherwise provided" language does not apply, a change in the boundary lines must be made pursuant to Section 59-17-20(1) or Section 59-17-20(2) of the Code. Thus, the annexation would not affect children who, although being Berkeley County residents, do not live on Daniel Island but attend Daniel Island schools, unless BCSD's boundary lines are changed.

Assuming Daniel Island is annexed into Charleston County and, for purposes of this question, school district boundaries are altered or divided pursuant to the terms of either Section 59-17-20(1) or Section 59-17-20(2) to include Daniel Island as part of the CCSD, we believe children who would still be part of the BCSD, by virtue of the fact they live within the BCSD as opposed to the CCSD, would likely be required to attend a different school. As detailed above, Section 59-19-90(9) of the Code explains that the School Board of each school district determines the school that children *within the district* will attend. Therefore, students who do not live on Daniel Island and live within the BCSD would generally be assigned to schools within BCSD, while students who live on Daniel Island and, as a result, live within CCSD would be assigned to schools within CCSD.[5]

3. Annexation and School District Debt Obligations

You have also asked how an annexation would "affect any outstanding debt obligations incurred by the Berkeley County School District used to finance school construction to alleviate crowding at the school on Daniel Island?" Again, Charleston County's annexation of Daniel Island would not necessarily affect debt obligations unless the BCSD's boundaries are altered or divided pursuant to the terms of either Section 59-17-20(1) or Section 59-17-20(2) to include Daniel Island as part of CCSD. However, assuming Daniel Island is annexed into Charleston County and, for purposes of this question, school district boundaries are altered or divided pursuant to the terms of either Section 59-17-20(1) or Section 59-17-20(2) to include Daniel Island as part of the CCSD, we believe any outstanding debt obligations incurred by BCSD in Daniel Island would be resolved pursuant to the terms of Section 59-17-30 of the South Carolina Code.

Initially, we note that under the authority of Section 59-17-70 of the Code[6] once each district's boundary lines are changed all property, real and personal, in the consolidated district

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[5] But see Storm M.H. ex rel. McSwain v. Charleston County Bd. of Trustees, 400 S.C. at 489-90, 735 S.E.2d at 498 ("By its plain terms, section 59–63–30 entitles a child to attend the public schools of any school district if the child: (1) resides with his or her parent or legal guardian, and that parent or legal guardian is a resident of the school district **or** the child owns real estate in the district having an assessed value of at least three hundred dollars; and (2) the child has maintained a satisfactory scholastic record and not been guilty of infraction of the rules of conduct.") (emphasis in original).

[6] Section 59-17-70 of the South Carolina Code states:

> Upon consolidation of any two or more school districts, all property, real and personal, and all assets of the districts forming the consolidated school district shall become the property of the consolidated district and all liabilities of the consolidating districts shall become the obligations of

shall be the property of that district and shall be controlled by the board of trustees of the consolidated district. Op. S.C. Atty. Gen., 1981 WL 158059 (November 30, 1981). In a previous opinion from this Office, we acknowledged that while the language used in this section refers to a consolidated district, "it is inferable that the intent of the legislature was for property in districts where lines are altered to belong to the newly established district." Op. S.C. Atty. Gen., 1981 WL 158059 (November 30, 1981). Thus, upon alteration of the boundary lines, CCSD would own "all property, real and personal" that was the subject of the alteration and was previously BCSD's.

The same is true with respect to outstanding debt obligations. Specifically, Section 59-17-30 of the Code, titled "[e]ffect of alteration or division of school districts on bonds or payment for buildings of existing districts," provides:

> When any school district laid out under § 59-17-20 shall embrace cities or towns already organized into special school districts in which graded school buildings have been erected by the issue of bonds, by special taxation or by donation, all the territory included in such school district shall bear its just proportion of any tax that may be levied to liquidate such bonds or support the public schools therein.

S.C. Code Ann. § 59-17-30 (2004). This Office has explained this section "provides for retirement of existing bonds by special taxation or by donation." Op. S.C. Atty. Gen., 1981 WL 158059 (November 30, 1981). Continuing, we further opined Section 59-17-30, "provides that the entire territory comprising the newly formed district shall bear its just proportion of any tax that may be levied to liquidate such bonds." Op. S.C. Atty. Gen., 1981 WL 158059 (November 30, 1981). Thus, under the plain language of Section 59-17-30, CCSD would bear "its just proportion" of any debt obligations incurred by BCSD in the area acquired by CCSD.

4. Annexation, County Services and Infrastructure

In the fourth question contained within your September 12, 2013 letter, you ask how an annexation would affect "county services provided to the residents on Daniel Island and county infrastructure provided to the residents of Daniel Island?"

a. County Services

With respect to the question of how county services provided to the residents of Daniel Island would be affected by a Charleston County annexation, we believe this to be a local issue. As noted in the background portion of this opinion, Daniel Island is part of both the City of Charleston and Berkeley County with the city providing Daniel Island police services, fire services, trash pickup, road maintenance and traffic signals and with Berkeley County providing

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such consolidated district. Each such consolidated district shall be a body politic and corporate and its board of trustees shall have such powers as are provided by law.

emergency medical services. See www.danielisland.com/resource/fact-sheet/ (last visited February 25, 2014).

With this in mind, we believe that in the event Daniel Island is annexed into Charleston County, the City of Charleston would likely continue to provide inhabitants of Daniel Island with the same services they have provided in the past, since inhabitants of Daniel Island would remain Charleston residents. However, with respect to those county services that were previously provided to Daniel Island by Berkeley County, it is our opinion that the effect of annexation into Charleston County would mean Berkeley County would no longer be required to provide such services to Daniel Island and instead, Charleston County would bear such a responsibility. See e.g. Knight v. Salisbury, 262 S.C. 565, 574-75, 206 S.E.2d 875, 879 (1974) (explaining that Article VIII, Section 7 of the South Carolina Constitution empowers county government to function at the county level to provide all necessary governmental services to its residents). That said, other than who would be responsible for providing county services, issues such as how a transition of services would occur, and when such a transition would happen, appear to be a local issue to be worked out amongst those who are, and who will be, providing such services.

b. County Infrastructure

You have also inquired about the potential effect of annexation on county infrastructure provided to the residents of Daniel Island. Because our research reveals that there are no specific South Carolina constitutional or statutory provisions dealing with the apportionment of infrastructure when one county annexes a portion of another, we believe, consistent with the general rule detailed below, that infrastructure provided to residents of Daniel Island becomes property of Charleston County upon annexation.

When a portion of one county is annexed into another county, the legislature typically has the power to apportion the common property in such a manner as it may seem reasonable and equitable and may compel taxation for that purpose. 20 C.J.S. § 49 (2013) (citing Yazoo County v. Humphreys County, 120 Miss. 861, 83 So. 275 (1919); Comm'rs. Of Cumberland County v. Comm'rs. of Harnett County, 157 N.C. 514, 73 S.E. 195 (1911)). A state constitutional provision may also provide for such apportionment. 20 C.J.S. § 49 (citing State v. Board of Public Instruction, 129 Fla. 235, 131 Fla. 272, 176 So. 96 (1937)).

Article VII, Section 7 of the South Carolina Constitution, along with Chapter 5 of Title 4 of the South Carolina Code deal with the procedures for changing the boundaries of a county, but are both silent as to the appropriation of county property and infrastructure. In the absence of express legislative or constitutional provisions, the general rule, as it relates to property or infrastructure is that, "the [acquiring] county. . . shares in the property of the county to which it is attached." 20 C.J.S. Counties § 48 (2013) (citing Houston County v. Henry County, 157 Ala. 246, 47 So. 710 (1908)). Thus, as detailed above, we believe that infrastructure provided to residents of Daniel Island would become property of Charleston County upon annexation.

5. Annexation and County Debt Obligations on Infrastructure

In the fifth question contained within your September 12th letter you ask how the annexation would affect "any outstanding debt obligations incurred by Berkeley County to finance infrastructure provided to Daniel Island by Berkeley County?" As detailed below, we believe that because Article VII, Section 7 of the South Carolina Constitution merely requires that "the proper proportion" of existing county indebtedness be assumed by the county to which the territory is transferred, the effect of the annexation would obviously be based upon the method of apportionment utilized by the counties, which is discretionary so long as it is just and reasonable. See Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007) (opining that when altering county lines for purposes of Article VII, Section 7, the method of apportioning debts is discretionary). Accordingly, we are unable to determine the effect of annexation on "any outstanding debt obligations" since such an analysis would necessarily require us to know the method of apportionment utilized by the counties.

In a 2007 opinion from this Office, we addressed "the proper method for apportioning indebtedness upon the annexation of property from one county to another." Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007). There, we explained "the requirement that debt be apportioned upon annexation originates from article VII, section 7 of the South Carolina Constitution" which "governs alterations of county lines and allows the Legislature to make such alterations upon the satisfaction of certain conditions including: '[t]hat the proper proportion of the existing County indebtedness of the section so transferred [from one county to another] shall be assumed by the County to which the territory is transferred.'" Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007) (quoting S.C. Const. Art. VII, § 7). However, as we explained in our 2007 opinion, despite the fact the Legislature, pursuant to Article VII, Section 7 was empowered to apportion county debts, South Carolina law does not provide "guidance as to how apportionment shall be conducted under article VII, section 7." Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007). In other words, while Article VII, Section 7 conditions alteration of county lines based upon, among other things, "the proper proportion of the existing County indebtedness of the section so transferred," neither the South Carolina Code, nor South Carolina common law provide a method to apportion debts so as to reach "the proper proportion." Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007).

In light of the lack of guidance regarding the appropriate method for apportioning existing county debts, our 2007 opinion relied upon State v. McMillian, 52 S.C. 60, 29 S.E. 540 (1898), a case interpreting Article VII, Section 6 of the South Carolina Constitution. Article VII, Section 6 of the Constitution deals with the apportionment of debt when a new county is created from an existing county or counties, as opposed to the apportionment of debt when a section of one county is annexed into another, which of course is the focus of Article VII, Section 7. Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007). In our 2007 opinion, we noted the McMillian Court did not "endorse or shed light on what method or methods of apportionment are

acceptable" but instead found the method for apportionment of debts was discretionary so long as it does not "work an injustice." Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007). While our opinion acknowledged that McMillian applied to Article VII, Section 6, the Office elected to apply the rationale from McMillian to Article VII, Section 7 as well. Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007). In doing so, we said, "we believe . . . the method of apportionment to be discretionary so long as it is just and reasonable." Op. S.C. Atty. Gen., 2007 WL 4284635 (September 14, 2007).

Applying our 2007 opinion to your question leads us to the conclusion that we are unable to determine the effect of annexation on "any outstanding debt obligations" incurred by Berkeley County since such an analysis would require us to know the method of apportionment utilized by the counties. Thus, the only guidance we can offer in this circumstance is that: (1) Article VII, Section 7 of the South Carolina Constitution requires that "the proper proportion" of outstanding debt of the section of the county being annexed, in this case Daniel Island, be assumed by the county acquiring the section of the county, Charleston County; and (2) the method utilized by the counties in apportioning such debt must be just and reasonable.

6. Annexation and Reapportionment

In your September 18, 2013 letter you explain that "the proposed annexation plan will result in the transfer of three and a half precincts from Berkeley County to Charleston County." You add, "the transferred precincts have an extremely low minority population and would change the composition of county council and school board districts in both counties." In light of this you ask "whether the transfer of the precincts triggers reapportionment for the two affected counties?" and further inquire, "[w]ill new elections need to be held for the county council and school district seats affected by the proposed plan?"

a. Whether Transfer of the Daniel Island Precincts Triggers Reapportionment

Strictly speaking, reapportionment is not triggered by an event such as an annexation, but is instead required by the United States and South Carolina Constitutions in addition to South Carolina statutory law. See Colleton County Council v. McConnell, 201 F. Supp. 2d 618, 623 (D.S.C. 2002) ("The United States Constitution requires the governing officials of the State of South Carolina to enact new districting plans for the South Carolina Senate, the South Carolina House of Representatives, and the United States Congressional districts within the state on an equipopulous basis every ten years, in accordance with population changes revealed by the decennial census."); S.C. Const., Art. III, § 3 (explaining the General Assembly must reapportion the House of Representatives every tenth year starting in the year 1901 and may use the United States Census in order to do so); S.C. Code Ann. § 4-9-90 (Supp. 2013) (stating county council members must be elected from single-member districts reapportioned as to population by the county council within a reasonable time prior to the next scheduled general election following the adoption by the State of each federal decennial census). In accordance with federal and state

law, reapportionment occurs every ten years and must comply with federal requirements such as "one-person, one-vote," Equal Protection and the Voting Rights Act. See Colleton County Council v. McConnell, 201 F. Supp. 2d at 626; Id. at 630 (explaining that reapportionment efforts must comply with Article I, § 2's directive that one man's vote must, as nearly as is practicable, be worth as much as another man's vote); Id. at 631 (stating reapportionment efforts must also comply with the Equal Protection Clause and the Voting Rights Act).

Keeping these principles in mind, we believe that while the narrow answer to your question is that reapportionment would not, as a matter of law, be "triggered" by the annexation and transfer of voters from one county to another, the effect of such an annexation and transfer could, based upon how new boundary lines are drawn, create a situation in which the newly drawn districts within each respective county could violate "one-person, one vote," the Equal Protection Clause, or the Voting Rights Act. However, because these issues would be dependent upon the amount of individuals within the respective districts in relation to other districts as well as the racial makeup of each district following the transfer of individuals, we are unable to opine on whether reapportionment would be advisable at this point in time.

b. Whether New Elections Would Need to Be Held

As noted above, you have also inquired whether new elections would need to be held for the county council and school district seats affected by the proposed annexation. As is the case with subsection 6(a) above, we believe this would depend upon the specifics of any given annexation plan, but that such a possibility certainly exists. With respect to the county council seats for the affected districts within each respective county, it is our opinion that, since Charleston County's annexation of Daniel Island would clearly change the boundaries of both Charleston County and Berkeley County, elections would likely need to be held. With regard to whether a new election would need to be held for school district seats, this would depend upon whether the school district boundary lines were redrawn. For example, if, as mentioned above in question one, BCSD's boundary lines were not changed and thus Daniel Island remained part of BCSD, we believe there would be no need to conduct new elections for seats on the respective school districts at issue since there would be no change in each district's constituency.[7] Thus, we believe the need to conduct new elections would be largely dependent on the specifics of any given annexation plan.

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[7] While there would appear to be no need to conduct an election *for seats on the BCSD* where there is no change in the district's boundaries, we believe, as noted in footnote one and four *supra*, that South Carolina law would still require action by the respective county boards of education if Charleston County were to annex Daniel Island. See S.C. Code Ann. § 59-17-40 ("[W]henever territory embraced in two or more counties is proposed to be formed into one school district, such district may be formed by the joint action of the boards of education of the respective counties as provided in § 59-17-20 for the formation of school districts in a county."); Powers v. State Edu. Fin. Comm'n., 222 S.C. 433, 444, 73 S.E.2d 456, 461 (1952) ("It will be observed that in all of the statutes which we have reviewed, the formation of a school district comprising parts of two counties or the consolidation of school districts lying in different counties must be approved by both county boards of education.").

7. The Department of Justice and Intervention under the Voting Rights Act

Your September 18, 2013 letter also asks whether: (a) "the United States Department of Justice (USDOJ) [would] have grounds upon which to intervene in the process?" (b) "What is the likelihood of intervention if USDOJ does have grounds to intervene? (c) "Who would be the defendant in such an action" and (d) "Are school desegregation issues implicated by the annexation?" Our responses to these questions are as follows.

a. Whether USDOJ Can Intervene

We believe that narrowly speaking, USDOJ does not have authority to intervene in the annexation process itself since the process of altering county lines is strictly a state law issue[8] and, as a result of the Supreme Court of the United States' ruling in Shelby County v. Holder, -- U.S. --, 133 S.Ct 2612 (2013), the Voting Rights Act does not currently require preclearance of voting districts. See Shelby County v. Holder, -- U.S. at --, 133 S.Ct at 2631 (striking down the coverage formula supporting the Voting Rights Act's preclearance requirement). That said, this does not mean that USDOJ is unable to challenge new voting districts formed as a result of the annexation of Daniel Island, nor does it mean that USDOJ is prohibited from seeking injunctive relief in the event it seeks to institute such a challenge. To the contrary, USDOJ, under the authority of the Voting Rights Act, may either join an ongoing lawsuit or bring its own lawsuit to challenge alleged violations of the Act, and may further seek injunctive relief where it deems it appropriate. See Shelby County v. Holder, -- U.S. at --, 133 S.Ct. at 2619 (noting that both the federal government and individuals may sue to enforce current provisions of the Voting Rights Act and may seek injunctive relief where appropriate).

b. The Likelihood of USDOJ Intervention

As mentioned above, you also asked about the likelihood of intervention by USDOJ. Quite simply, we cannot opine on this matter as we believe the likelihood of intervention by USDOJ would be based upon a variety of factors, including, but not limited to, the specifics of any given redistricting plan and the effect that such a plan has on federal requirements such as "one-person, one-vote," Equal Protection, the 15th Amendment and the Voting Rights Act.

c. Defendants in a Potential Challenge

Moving to your next question—who would be the defendants in the event USDOJ elected to institute a challenge to the voting districts formed as a result of the annexation of Daniel Island—this would be dependent upon the specifics of any given redistricting plan and the districts (i.e. county council districts or school districts) that would be the subject of any

[8] See e.g. Op. S.C. Atty. Gen., 1990 WL 482454 (November 21, 1990) (detailing that the authority to alter county lines rests with the General Assembly provided it acts consistent with the requirements in Article VII, § 7 of the South Carolina Constitution and § 4-5-120 of the South Carolina Code).

potential allegations along with the allegations themselves and the type of relief sought. However, generally speaking, the potential defendants would be the governmental bodies that are alleged to be in violation of the law as well as those that would need to be enjoined in terms of a potential remedy in the event injunctive relief is in fact sought. For example, if an individual or USDOJ believes a newly-formed county council district created in Charleston County as a result of the Daniel Island annexation violates portions of the Voting Rights Act, one could expect Charleston County, the Charleston County Council, the Charleston County Election Commission and potentially the State to be named defendants in such an action, especially if the plaintiff, be it an individual, USDOJ, or both, is seeking injunctive relief. Similarly, if the school district boundary lines are changed, a newly-formed school board district is created in Berkeley County and is alleged to violate a provision of the Voting Rights Act, one might expect the Berkeley County School District, the Berkeley County Board of Education, the Berkeley County Election Commission, the State Board of Education and perhaps the State to be named defendants depending upon the type of action and the relief requested. However, since this would be dependent upon the specifics of any given redistricting plan, the districts that would be the subject of any potential allegations, the allegations themselves and the type of relief requested, we cannot, with any certainty provide you with a concrete answer to your question.

d. School Desegregation Issues

You have also asked whether school desegregation issues are implicated by the Daniel Island annexation. We believe they are not. Initially, as we stated above in question one, because a school district represents a separate body politic from a county, the annexation of Daniel Island would not require a change in each district's boundary lines. Therefore, absent a change in boundary lines, there would be no transfer of students between districts and thus nothing to challenge from a segregation standpoint. Moreover, even if school district boundary lines were changed to reflect a change in county lines, it is our understanding that both the CCSD and BCSD have been determined to be unitary, or desegregated, meaning a desegregation decree is no longer in place in either county. Richard Ganaway, II v. Charleston County Sch. Dist., 856 F. Supp. 1060, 1066 (D.S.C. 1994) (affirming prior ruling that CCSD operates as a unitary school system); U.S. v. Berkeley County Sch. Dist. et. al., C/A No. 2:00-MC-138-18 (D.S.C. 2004) (concluding BCSD is a unitary school district). Thus, absent evidence showing there was a discriminatory intent in transferring students from one district to another, we believe there are no school desegregation issues raised by the annexation of Daniel Island.

8. Annexation and Taxpaying Ability for Education Finance Act Purposes

In the final question within your September 18th letter, you ask if annexing the residents of Daniel Island into Charleston County would change the index of taxpaying ability for

Education Finance Act[9] ("EFA") purposes and further ask what effect such a change would have on the school districts. Quite simply, the answer to these questions depends upon whether the school districts at issue elect to change their boundaries.

a. Would the Annexation Change the Index of Taxpaying Ability

i. If Boundaries are Changed

If the districts change their boundaries to reflect a change in county lines, then the annexation would likely change the index of taxpaying ability for EFA purposes in both BCSD and CCSD since, under the terms of Section 59-20-20 of the Code, the index is based upon the full market value of all taxable property *in the district* and is determined annually. See S.C. Code Ann. § 59-20-20 (2004) (stating the index of taxpaying ability is "based on the full market value of all taxable property of the district" and "must be determined annually[.]"). Thus, because a change in district boundaries would result in BCSD losing taxable property and CCSD gaining taxable property, one would expect at least some sort of a change to the index of tax paying ability for each district.

ii. If Boundaries are not Changed

On the other hand, if the districts do not change their boundary lines then the Daniel Island annexation, despite changing county lines, would not affect the taxable property located within either school district since there would be no change in the taxable property located *within each school district*. Accordingly, we believe the annexation itself would not change the index of tax paying ability for either district.

b. The Effect of a Change in the Index of Taxpaying Ability

In the second part of your question, you have inquired about the effect that a potential change to the index of taxpaying ability would have on the school districts. As mentioned above, this depends. Assuming Daniel Island is annexed into Charleston County and each district changes its boundaries to reflect the alteration of county lines leading to a change in the amount of taxable property within each district, one would still need to know how the addition of more taxable property to CCSD, and the subtraction of property from BCSD, specifically affects each district's index of taxpaying ability. Stated differently, without knowing the specifics of how the index of taxpaying ability would be changed by the alterations to each district, such as whether each district's taxpaying ability increases or decreases, we cannot opine on how each district would be affected by such changes other than to repeat the general rule from Abbeville County School District v. State, 335 S.C. 58, 515 S.E.2d 535 (1999). That is, if a school district's

[9] The EFA, one of the primary funding sources for state educational funding, distributes educational funds using a wealth-sensitive index, which results in poorer school districts receiving proportionately more state money than their wealthier counterparts. Abbeville County Sch. Dist. v. State, 335 S.C. 58, 64, 515 S.E.2d 535, 538 (1999).

taxpaying ability decreases, one might expect more funding under the EFA, and conversely, if a school district's taxpaying ability increases, one might expect less funding under the EFA. See Abbeville County Sch. Dist. v. State, 335 S.C. at 64, 515 S.E.2d at 538 (explaining that poorer school districts receive proportionately more state funding under the EFA than their wealthier counterparts). Therefore, outside of the general rule from Abbeville County School District, we are unable to provide you with a specific answer as to how either BCSD or CCSD would be affected by a change in their respective indices of taxpaying ability.

9. Section 4-5-140 of the Code and Compiling and Marking the Proposed Annexation

In your third letter, dated January 29, 2014, you have asked if Section 4-5-140[10] of the Code allows the annexation commission to "direct the named surveyors to compile a plat of the area proposed to be annexed" and have further asked "may the Commission waive the requirement that 'such surveyors shall clearly mark the proposed change of the line upon the land?'"

Section 4-5-140 of the South Carolina Code, entitled, "[e]mployment of surveyors to survey line; making line on land" states:

> The commission may contract for the survey and location of the proposed change of line and for such purpose may employ three competent disinterested surveyors, who are nonresidents of the counties affected, two to be selected by the commission and the third by the two selected by the commission. Such surveyors shall clearly mark the proposed change of line upon the land with due regard to all legal provisions and limitations and certify plats showing such line.

S.C. Code Ann. § 4-5-140 (2006).

In previous opinions of this Office, Section 4-5-140 was interpreted as expressly requiring "that the proposed change of line be surveyed, located, and marked upon the land." Op. S.C. Atty. Gen., 1980 WL 120699 (March 6, 1980). We further explained the statute mandates that "an actual ground survey be conducted of a proposed change in boundary line between counties" but noted, the statute, "does not require that the survey be made of the boundary of the entire area proposed for annexation." Id. Later, in 1983, we summarized our 1980 opinion saying, "[a] prior opinion of this office interpreted [Section 4-5-140] to require the

[10] While your letter actually mentions Section 4-5-130 of the Code, the language quoted in your letter, "such surveyors shall clearly mark the proposed charge of the line upon the land" comes from Section 4-5-140 of the Code. In light of this, we interpret your question as relating to Section 4-5-140 of the Code rather than Section 4-5-130. However, in the event your question is restricted to Section 4-5-130, the statute clearly does not allow for the commission to direct the named surveyors to compile a plat of the area proposed to be annexed, nor does it allow the commission to waive Section 4-5-140's marking requirement.

Annexation Commission to employ a team of three surveyors to prepare a plat of a proposed change in a county annexation petition." Op. S.C. Atty. Gen., 1983 WL 182045 (November 2, 1983). Thereafter, in 1985, we reiterated the conclusion from our 1980 opinion and explained that the terms of Section 4-5-140 actually requires "marking the land where boundary changes are proposed." Op. S.C. Atty. Gen., 1985 WL 259179 (May 21, 1985).

a. Section 4-5-140, the Commission and Directing the Surveyors to Compile a Plat

To address your first question, whether Section 4-5-140 allows the annexation commission to direct the named surveyors to compile a plat of the area proposed to be annexed, we believe that it does. Specifically, Section 4-5-140 says that the surveyors employed by the annexation commission, in addition to "marking the proposed change upon the land," must also "certify plats showing such line." S.C. Code Ann. § 4-5-140. Additionally, Section 4-5-150 requires, *inter alia*, that "[c]ertified plats shall be filed with the Secretary of State and with the respective clerks of court of each county[.]" S.C. Code Ann. § 4-5-150 (2006). Finally, as noted above, our 1983 opinion understood Section 4-5-140 as requiring the commission to, "employ a team of three surveyors to *prepare a plat* of a proposed change in a county annexation petition." Op. S.C. Atty. Gen., 1983 WL 182045 (November 2, 1983) (emphasis added). Therefore, since plats must be certified by the surveyors and subsequently filed with the appropriate authorities under Sections 4-5-140 and 4-5-150 of the Code, we believe, consistent with our 1983 opinion on this issue, that the team of surveyors must prepare a plat of the proposed change. As a result, it is the opinion of this office that the annexation commission can direct the surveyors to compile plat of the area proposed to be annexed.

b. May the Commission Waive the Requirement that "such surveyors shall clearly marked the proposed change of the line upon the land"

Moving to the second part of your question, we believe the annexation commission cannot simply waive Section 4-5-140's *requirement* that the surveyors employed by the commission "mark the proposed change of the line upon the land." S.C. Code Ann. § 4-5-140. As alluded to above, this Office, consistent with the terms of the statute, has previously explained that Section 4-5-140 *requires* "actually marking the land where boundary changes are proposed[.]" Op. S.C. Atty. Gen., 1985 WL 259179 (May 21, 1985). Indeed, as we stated in our 1980 opinion, "[Section] 4-5-140 mandates that the change of line be clearly marked upon the land." Op. S.C. Atty. Gen., 1980 WL 120699 (March 6, 1980). Accordingly, it is the opinion of this Office that since Section 4-5-140 has been interpreted as mandating the surveyors employed by the commission to, "mark the proposed change of the line upon the land" the annexation commission cannot waive such a requirement.

10. Annexation and the Effect of Article VII, Section 14 of the South Carolina Constitution

Your January 29th letter has also asked us to address the effect Article VII, Section 14 of the South Constitution has on the proposed annexation. Because we have previously opined that Article VII, Section 14 only applies to the initial formation of counties and does not apply to annexations, we believe, consistent with our prior opinions on this issue, that Article VII, Section 14 of the South Carolina Constitution has no effect on the proposed annexation here.

Article VII, Section 14 states, "[h]ereafter no County lines shall be so established as to pass through any incorporated city or town of this State." S.C. Const. Art. VII, § 14 (2009). We believe this provision came about as a result of the addition of ten new counties in the twenty year period following the adoption of the 1895 Constitution. See Edgar, Walter, South Carolina: A History, pp. 446-47. The interpretation of this provision was first addressed by this Office in 1962. Op. S.C. Atty. Gen., 1962 WL 12533 (February 13, 1962). There we explained, "Article VII, Section 14 clearly evidences the framers' intentions that municipalities are best not divided by county lines." Id. Continuing, we noted the provision, "applies to the formation of new counties" and, relying on the Supreme Court of South Carolina's interpretation of an analogous constitutional provision related to the organization of towns in Paris Mountain Water Co. v. City of Greenville, 110 S.C. 36, 96 S.E. 545 (1918), concluded "the same reasoning would apply to Article VII, Section 14" meaning the provision did not apply to annexations.[11] Id.

Subsequently our Office, in a 1983 opinion, revisited this provision and reaffirmed the conclusion from our 1962 opinion—that Article VII, Section 14 only applies to the initial formation of a county and does not apply to annexations. Op. S.C. Atty. Gen., 1983 WL 182035 (October 21, 1983). We further explained that while "a municipality should not be formed that would cross a county line . . . the same result could be accomplished by [an area] . . .merging into one of the counties" which, "is expressly authorized by constitution and statute" namely Article VIII, Section Five[12] and Section 4-5-120, et. al. Id. A year later we reiterated this conclusion a third time, again noting the limited effect of Article VII, Section 14 and explaining that the provision did not extend to annexations.[13] Op. S.C. Atty. Gen., 1984 WL 249912 (June 22, 1984).

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[11] See also Paris Mountain Water Co. v. City of Greenville, 105 S.C. 180, 89 S.E. 669 (1916).

[12] Article VIII, Section Five of the South Carolina Constitution grants the General Assembly power to provide "for the merger of a part or parts of a county with one or more adjoining counties upon request by governing body of the county in which such part or parts are located, or upon petition by ten percent of the registered voters in the area desiring to transfer to another county." S.C. Const. Art. VIII, § 5 (2009).

[13] In support of the limited application of Article VII, Section 14 we note that the terms of the provision only mention the *establishment* of county lines rather than the *annexation, merger or change* of county lines, which is of course governed by Article VIII, Sections Four and Five as well as Section 4-5-120, et. al. See S.C. Const. Art. VIII, § 4 (2009) (stating the General Assembly shall provide laws for the merger of adjoining counties); S.C. Const. Art. VIII, § 5 (requiring the General Assembly to provide for the merger of a part or parts of a county with one or more adjoining counties); S.C. Code Ann. § 4-5-120, et. al. (2006) (providing methods for annexation). We further

In the present case, we note that while it is true Daniel Island is part of the City of Charleston and, if annexed into Charleston County, the county lines would of course change and result in a county line passing through a city, we believe, consistent with our prior opinions, that Article VII, Section 14 does not apply to annexation. Rather, as we have said in our prior opinions, since both the South Carolina Constitution and the South Carolina Code explicitly allow for such a process, Article VII, Section 14 should not be read as a limitation on such authority, but should instead be construed narrowly. Moreover, "[t]his Office recognizes a longstanding rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law." Op. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); see also Op. S.C. Atty. Gen., 2013 WL 3762706 (July 1, 2013) ("[W]e stand by our previous opinion regarding this issue since this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law."); Op. S.C. Atty. Gen., 2006 WL 2849807 (September 29, 2006) (same); Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (same); Op. S.C. Atty. Gen., 1986 WL 289899 (October 3, 1986) (same); Op. S.C. Atty. Gen., 1984 WL 249796 (April 9, 1984) (same). Here, our review of the law reveals nothing to indicate our previous opinions on this matter are clearly erroneous. Likewise, the provision at issue has not undergone any changes since we last interpreted it in our 1984 opinion. As a result, we stand by our previous opinions on this matter and conclude that Article VII, Section 14 only addresses "the formation of new counties" and has no effect on the current annexation that is the subjection of this opinion.

Conclusion

In conclusion, we note that many of your questions, notably questions one through three as well as question eight, hinge upon the penultimate issue—whether the legislature intended that the boundary lines of the BCSD must, at all times, be coextensive with the county lines of Berkeley County, and thus, in the event the proposed annexation occurs, whether Daniel Island would now be part of the CCSD. Although not free from doubt, it is our opinion that, if Charleston County were to annex Daniel Island, its doing so would not necessarily affect BCSD's boundary lines. With respect to the continuing inclusion of Daniel Island within the BCSD, in our best judgment, we believe a court would likely conclude that the Island remains a part of BCSD. We caution, however, that this is a novel issue and plausible legal arguments may be made that Daniel Island could, with annexation, become part of the CCSD. Thus, in order to ensure certainty and finality with respect to the impact of any such annexation, we believe a declaratory judgment is advisable.

Keeping this advice in mind, it is the opinion of this Office that if Charleston County were to annex Daniel Island, the answer to your first question is that BCSD's boundary lines

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note that each of these provisions, without qualification, permit a county to annex, or merge with, a county or portions of county so long as the appropriate constitutional and statutory requirements mentioned in the respective sections are fulfilled.

would not change unless alterations were made to the boundaries pursuant to Section 59-17-20 of the South Carolina Code. However, as stated above, we simultaneously recognize that this conclusion hinges on our interpretation on the language contained within the respective consolidation orders and while we believe a court is more likely to conclude the annexation does not affect boundary lines, it would still be advisable to seek a declaratory judgment on this issue. Moreover, as we previously mentioned, while we believe the *boundary lines* of the respective districts would not change, South Carolina law would still require action by both school districts in order to effectuate a district with territory in more than one county.

Your second question, regarding the effect of annexation on school attendance is, as noted above, also dependent upon our conclusion in Question One. As a result, while not free from doubt, it is our opinion that since a school district represents a separate body politic from a county, the annexation of Daniel Island by Charleston County would not affect school attendance unless changes were made to BCSD's boundaries pursuant to Section 59-17-20.

Like your first and second issue, the third issue mentioned in your letter, how annexation of Daniel Island could potentially affect outstanding debt obligations incurred by the BCSD, this conclusion is also based upon BCSD's boundary lines and whether they would change as a result of annexation. In light of our conclusion on this issue, we believe that unless BCSD's boundaries are altered or divided pursuant to the terms of Section 59-17-20, the annexation of Daniel Island would have no effect on any outstanding debt obligations incurred by BCSD. However, assuming Daniel Island is annexed into Charleston County and, for purposes of this question, school district boundaries are altered or divided pursuant to the terms of Section 59-17-20, we believe any outstanding debt obligations incurred by BCSD in Daniel Island would be resolved pursuant to the terms of Section 59-17-30 of the South Carolina Code.

Moving to your fourth question, how an annexation would affect county services and infrastructure provided to the residents of Daniel Island, it is our opinion that the annexation of Daniel Island would mean Berkeley County would no longer be required to provide county services to Daniel Island and instead, Charleston County would bear such a responsibility. As to annexation and its effect on county infrastructure, we believe that since there are no specific South Carolina constitutional or statutory provisions dealing with the apportionment of infrastructure, when one county annexes a portion of another, the general rule applies meaning infrastructure provided to residents of Daniel Island becomes property of Charleston County upon annexation.

With respect to your fifth question, how annexation would affect outstanding debt obligations incurred by Berkeley County to finance infrastructure provided to Daniel Island by Berkeley County, we believe that because Article VII, Section 7 of the South Carolina Constitution merely requires that "the proper proportion" of existing county indebtedness be assumed by the county to which the territory is transferred, the effect of the annexation would obviously be based upon the method of apportionment utilized by the counties. Since the

method for proportioning debt is discretionary and must only be just and reasonable, we cannot specifically advise you on the effect annexation might have on outstanding debt obligations.

In regards to your sixth question, whether the transfer of precincts triggers reapportionment and whether new elections need to be held for the county council and school district seats affected by the proposed plan, we believe, strictly speaking, that the transfer of precincts does not trigger reapportionment since it is only mandated pursuant to the terms of federal and state law, but the effect of annexation could, based upon how boundary lines are drawn, create potential legal issues. That said, we believe that these issues would be dependent upon the amount of individuals within the respective districts in relation to other districts as well as the racial makeup of each district following the transfer of individuals and, as it relates to elections, the need to conduct new elections would be largely dependent on the specifics of any given annexation plan.

Moving to your seventh question, relating to USDOJ intervention, we think that narrowly speaking, USDOJ does not have authority to intervene in the annexation process itself since the process of altering county lines is strictly a state law issue and, as of this writing, there is no preclearance requirement, but that USDOJ could, under the authority of the Voting Rights Act, either join an ongoing lawsuit or bring its own lawsuit to challenge alleged violations of the Act, and may further seek injunctive relief where it deems it appropriate. However, we are unable to determine the likelihood of USDOJ intervention since this would depend upon a host of factors. As for potential defendants if USDOJ were to intervene, we believe this would be dependent upon the specifics of any given redistricting plan and the districts (i.e. county council districts or school districts) that would be the subject of any potential allegations along with the allegations themselves and the type of relief sought. As to whether desegregation issues would be triggered by the annexation, it is our opinion that since both districts have been found to be unitary, absent evidence showing there was a discriminatory intent in transferring students from one district to another, there are no school desegregation issues raised by the annexation of Daniel Island.

Addressing your eighth question regarding the index of taxpaying ability for EFA purposes and whether annexation would change each district's respective index we believe the answer to this question is dependent on a host of factors. Specifically, we believe that the answer to these questions depends upon the school district boundaries, whether they can elect to change their boundaries and, in the event that they can and do, whether the index reflects a higher or lower taxpaying ability.

Moving to your ninth question, regarding Section 4-5-140, we believe the statute requires: (a) that the surveyors employed by the commission prepare a plat; and (b) that such surveyors actually mark the proposed change in the line on the ground.

As to your tenth question, the effect of Article VII, Section 14 on annexation, we believe, in light of our previous opinions interpreting Article VII, Section 14, that the proposed

annexation at issue here is not affected by the terms of this constitutional provision since we have found that it does not apply to annexations. Instead, we reaffirm our previous conclusions, that Article VII, Section 14 is only applicable to the formation of new counties.

Finally, we close with noting that while we have done our best to provide you with answers to the questions posed in your letters, many of your inquiries contain novel questions of law as well as mixed question of law and fact. No South Carolina court has yet addressed these questions. Accordingly, while some of your questions may have specific answers, others may depend on a host of factors that might be better addressed by a declaratory judgment, since courts, which have the ability to take testimony and subpoena witnesses, may be better suited to answering some of the inquiries contained within your letters.

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General