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MUNICIPAL ANNEXATION

I

Annexation represents one of the oldest methods of dealing with the problems of urban and metropolitan growth. Up until about 1900, the device proved quite satisfactory for providing for the expansion of city boundaries to adjacent areas that were urban or about to become urban. Around the turn of the century, state legislatures began to alter annexation laws quite drastically. Complaints from rural and suburban residents about the rapid expansion of cities led legislatures to shift the burden of approval of annexations from cities to the areas to be annexed.

Municipal annexation in Nevada was a matter dealt with in individual city charters until 1965. Annexation in general law cities and most charter provisions were very restrictive. The 1911 Las Vegas charter as well as the provisions for general law cities allowed for annexation only upon petition of a majority of landowners in the area to be annexed. Reno had no charter annexation provisions until 1945 and then the residents of an area to be annexed had to approve the annexation in an election.

In 1965, a general annexation law was passed and all charter provisions on annexation were repealed. That 1965 law liberalized annexation procedures and eliminated the necessity for majority approval in the area to be annexed. Instead, if an annexation was initiated by a city and approved by a local government annexation commission, it required a majority of the property owners or owners of a majority of the value of property in an area to stop the annexation.

Currently there are two annexation laws, NRS 268.570-268.608 for cities in counties of 200,000 or more population and

NRS 268.610-268.670 for all other cities. Both of these provisions date from 1967. The latter provisions, applying everywhere except in Clark County, are very similar to the 1965 annexation law. The former provisions, applying to cities in Clark County are distinctive and different from those in the rest of the state. The annexation law for Clark County requires that the territory proposed for annexation meet specific criteria for population, use and contiguity. It further requires a service plan to insure that annexed areas will receive all municipal services by a certain date. Finally, initiation of an annexation must be by petition of residents or the board of county commissioners. From this point on, the law for Clark County is substantially the same as for the rest of the state. The territory can be annexed by ordinance barring a petition of protest signed by a majority of the property owners who are to be annexed.

This review of current Nevada annexation law and its history is intended to provide a frame of reference for an examination of the types of annexation laws in effect elsewhere. This entire research effort is based upon heightened interest in the subject occasioned by potential annexation attempts in the near future by the city of Las Vegas.

II

Methods of municipal annexation currently used have been variously denominated but the most generally accepted categories are those found in Adjusting Municipal Boundaries: Law and Practice, published by the National League of Cities in 1966. That publication has five categories:

1. Legislative Determination - Some states, especially in New England, lack any general law provisions for annexation. This was true in Nevada until 1965. All annexations are by special acts of the legislature. In other states, there are general law provisions but annexation may also be by special act. Nevada would be such a state. The Urban Action Committee in 1974 recommended that the legislature vastly expand boundaries of Las Vegas by special act. The special act method was used extensively in almost all states in the last century.

In several states, the special act is the only viable annexation method because the general law methods are so complex or stringent as to be unusable. In this respect, legislative determination is valuable. On the other hand, the method is subject to all the abuses associated with special and local legislation. There can be legislative interference in local affairs or deals that would be to the detriment of local residents. There are very few states where the special act approach is not allowed. Special act annexations have been held to some standards of contiguity, compactness and service delivery by the courts in several states.

2. Popular Determination - There are several variables possible in this method. In all cases, however, this method involves a vote of the people or a petition from a majority of the people to be affected. The vote may be just in the area proposed for annexation or in that area and the existing city. The vote may be a simple majority or an extraordinary majority. The initiation of an annexation under this method may be by city ordinance or by a petition of residents desiring annexation. In Tennessee, annexation may not be initiated except by residents of the area to be annexed. It is not widely known that in a number of areas, residents sometimes want to be annexed but a city will not want to annex. This usually involves poor and minority areas that would cost more in services than they will produce in taxes. There is also the possibility that the residents of an area wanting to be annexed would upset the political balance of a city. The situation far more often consists of adjacent prosperous areas that resist annexation because of higher taxes that would result.

A variation of the popular method is voluntary annexation by a 100 percent petition of property owners. This has been used widely in Florida by developers. A developer may have 500 acres ready for residential development. In exchange for water and sewer from a city, the developer annexes to the city before the area has any residents. The 100 percent petition was also used for a time in Clark County.

Some version of popular determination is found in most states. The general effect of popular determination is to stifle annexations. Voters have a natural resistance to changing the status quo, especially when higher taxes accompany change. Such resistance has resulted in the suburban cities and unincorporated urban areas that surround most American cities.

3. Municipal Determination - There is a range of options in this category from simple passage of an annexation ordinance not subject to any veto to annexation by ordinance only for city owned property. The more general case in this category is the North Carolina approach adopted in 1959. There, the law establishes specific criteria for land to be annexed including the requirement that all city services be provided within a set period. If all the requirements of the law are met, the city annexes by ordinance. The action is subject to a court review but no other form of veto. A variation of the North Carolina law is to add a fail-safe provision. Nevada has a version of this. In such cases, the annexation ordinance becomes effective unless a petition from the affected area causes an election. The number of petitioners can vary. In Nevada, a majority must protest to stop annexation. In other states, a lesser number by petition may cause a referendum to be held to approve the annexation.

4. Judicial Determination - In every state, there may be recourse to the courts in annexation proceedings but only in Virginia is annexation a matter for the courts from the start. This is the difference between judicial review which is common and judicial determination which is unique. Annexation courts in Virginia are composed of a circuit court judge from the county involved and two other circuit court judges from other areas in other parts of the state. Proponents of the Virginia method claim that leaving annexation to the courts minimizes the political factor and is more objective.

Opponents of judicial determination make two points. First, they claim that changing a city's boundaries is properly a political decision. The second and related point is that the Virginia plan puts the court in a quasi-legislative role that contravenes the separation of powers doctrine. A Florida annexation law in effect until 1974 gave to the courts certain discretionary decisions in annexation matters. The Florida Supreme Court ruled that this was an unconstitutional attempt to impose a legislative role for the courts.

5. Boundary Review Commission - There are nine states with some form of commission or review agency with a role in

annexation. Minnesota pioneered this approach in 1959. These commissions may operate at the state level as in Minnesota, a regional level as in Oregon or at the county level as in Washoe County in our own state. This approach has an intent similar to that in judicial determination, which is to minimize political influences and maximize the objectivity of annexation decisions. Proponents say that this method is better than judicial determination because boundary commissions become expert in the questions involved. It is debatable as to how objective a review commission composed of local officials, the majority of whom have a vested interest in annexation questions, can be.

III

In order to understand the application of these several approaches, several state annexation laws are described. Emphasis is on other western states.

Arizona - Annexation is initiated solely by petition of residents. A successful petition must represent one-half or more of the value of real and personal property in the proposed area. When presented with such a petition, the city governing body may annex the area by ordinance. As with Utah (see below), no election is required.

California - Annexation is initiated by a petition that must represent 25 percent of the registered voters of the area to be annexed. If the petition is successful, the city shall call a special election in the area. A hearing must precede the election. If there is protest by owners of property representing one-half of the value of the property to be annexed, the proceedings are stopped.

If the proceedings continue, there is an election in the area to be annexed. If the area is equal in value or population to one-half that of the city, the election must be held in the city as well.

California has local agency formation commissions at the county level analogous to the Oregon boundary commissions (see below).

A commission must approve or approve as modified an annexation proposal before an election can be held.

Florida - A city governing body proposes an annexation by ordinance. The area proposed must meet several criteria: (1) the area must be contiguous; (2) a majority of the area must be developed for urban purposes (meaning either two persons per acre, 60 percent or more of area subdivided into lots of one acre or less with an average of one person per acre or 60 percent of the area is subdivided into lots of five acres or less); (3) intervening areas to those meeting the first two criteria. In addition, the city must propose a service plan for an area to be annexed to insure full services by a set date.

After the above conditions are met, separate votes are held in the city and in the area to be annexed. A majority vote in both places will result in annexation.

Florida also has voluntary annexation under which a city may annex by ordinance upon a written petition of 100 percent of the affected property owners.

Idaho - City governing bodies may annex contiguous areas by ordinance only if those areas are subdivided into parcels of less than five acres. An owner who subdivides his land is immediately subject to annexation by municipal determination. An owner of unplatted land may petition to be annexed also.

Montana - City governing bodies may annex contiguous areas by ordinance only if those areas are subdivided. In addition, a petition of one-third of the residents of any proposed area shall cause a governing body to call an election in the area affected.

North Carolina - Cities may annex by ordinance, without a referendum if certain conditions are met. The conditions concerning character of the land and provision of services are the same as Florida's described above. There must be notice and a hearing but if the conditions of the law are met, the city may

annex the proposed area with no election. The Nevada law applying to Clark County borrowed from North Carolina the criteria on character of the land and service extension. The Nevada law does allow a majority petition to stop an annexation. Even this possibility, difficult as it may be, does not exist in the North Carolina law.

Oregon - As noted above, Oregon has boundary commissions in the three urbanized parts of the state. There is also a general annexation law. That law will be described here. At the time of initiating an annexation, cities in the jurisdiction of a boundary commission must submit the proposed annexation to the commission. After the commission has approved or amended the proposal, the general law procedure commences.

A city may choose to hold elections in both the city and the area to be annexed or it may hold a hearing in lieu of the election in the city. A proposed annexation must then be submitted to the voters of the area to be annexed. A majority vote results in annexation.

An alternative method is the written consent of a majority of landowners in an area representing over half the assessed value of the area. In such an instance, the city may annex by ordinance with no vote.

A third method in Oregon is to annex by ordinance where the state board of health determines that annexation is necessary to protect public health.

Utah - Annexation is initiated solely by petition of residents. A successful petition must represent a majority of property owners representing at least one-third of the value of the proposed area. By a two-thirds vote, the city governing body may annex by ordinance the area proposed by the petition. The extraordinary petition requirement leaves little need for an election.

Washington - Annexation may be initiated by a resolution of a city governing body or by a petition from the residents of an

area proposed for annexation. The petition must contain signatures of registered voters equal to 20 percent of the votes cast at the last election in that area. However initiated, an annexation proposal goes to an annexation review board. This board is much like the one in Washoe County. It includes the mayor of the city involved, chairman of the county commission, a state representative and the chairman of the school board, plus an additional member selected by the others. The review board must approve or modify and approve the proposal before an election in the area affected can be held.

A city may also annex by ordinance upon receipt of a petition representing 75 percent of the property value of a proposed area.

These nine state laws, plus those of Nevada and Virginia, described above represent the major approaches to annexation. In almost all states, there is also the special act option for annexation. Certainly these states represent the complete range of annexation procedures. Few laws could be more stringent than Utah's. Few could be more flexible than Idaho's. Few could give more power to cities than North Carolina's. Nevada's general laws on annexation represent a middle ground compared to other states.

SUGGESTED READING

(Available in the Research Library)

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