ARTICLE 2

Incorporation, Abolition, and Annexation

by David M. Lawrence

IN NORTH CAROLINA, incorporation and abolition of cities are actions that only the General Assembly may take. The legislature has, however, delegated to cities broad authority to expand their boundaries through annexation.

Incorporation

In North Carolina a city may be established—that is, incorporated—in only one way: by an act of the General Assembly. Such an act establishes the initial borders of the city and enacts its charter. No standards restrict the legislature's discretion in incorporation. It may incorporate an area with very few people or with a largely rural character; it may even incorporate an area in anticipation of development, before any city in fact exists. The single constitutional restriction on the General Assembly's power of incorporation is found in Article VII, Section 1, of the state constitution. That provision stipulates that if a community lies within 1 mile of the limits of an existing city of 5,000 people or more, within 3 miles of a city of 10,000 or more, within 4 miles of a city of 25,000 or more, or within 5 miles of a city of 50,000 or more, then the General Assembly may incorporate that community only on approval of three-fifths of the members of each house. This provision reflects a state policy that favors annexation by existing cities of urban areas near their borders, over incorporation of new cities. As a practical matter, unless the nearby city objects to the incorporation of the new city, achieving a three-fifths vote is not difficult; if the existing city does object, however, it may well be impossible to secure the three-fifths vote.

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When a legislator agrees to assist a community in securing incorporation legislation, the legislator may proceed in either of two ways. The simpler way, although probably the less-used, is to introduce a bill incorporating the community, then to shepherd that bill through the General Assembly. Alternatively the legislator may ask that incorporation proponents first refer their proposal to the Joint Legislative Commission on Municipal Incorporations, a legislative agency established under G.S. 120-158 through -174. The commission, which acts after receiving a petition signed by at least 15 percent of the registered voters in the area proposed for incorporation, reviews the proposal and makes a recommendation to the General Assembly on whether or not the community should be incorporated. The statute contains a number of standards—pertaining, for example, to proximity to existing cities, size, urban character, and economic resources—and if a community fails to meet all the standards, the commission is required to make a negative recommendation. In addition, in order to obtain a positive recommendation from the commission, the petition must propose that the new city levy a property tax of at least five cents and provide at least four of eight listed services. Those eight services are police protection, fire protection, solid waste collection or disposal, water distribution, street maintenance, street construction or right-of-way acquisition, street lighting, and zoning. Even if a negative recommendation is made, however, the General Assembly may still incorporate the community; the commission's recommendation in no way binds the legislature.

When the General Assembly incorporates an area, it may immediately do so or it may first require the approval of the area's residents. The decision of whether or not to require residents' approval rests with the General Assembly; local voters have no inherent constitutional right to approve an incorporation.

North Carolina has been an actively growing state in recent years, and the growth is reflected in the number of requests to the General Assembly to incorporate communities as cities. From the 1981 session through the 1994 session, the General Assembly enacted incorporation legislation for forty-nine communities. Of these, thirty-nine have become active cities, while voters in ten communities voted incorporation down. Similarly, from the 1995 session through the 2005 session, the General Assembly enacted incorporation legislation for an additional thirty-eight communities, twenty-nine of which in fact became active cities.

Since 2000, newly incorporated cities have been subject to a tax levy and service requirement that conditions their eligibility for various shared revenues. In order for a city incorporated after January 1, 2000, to receive local government sales tax proceeds, state street assistance, state beer and wine tax proceeds, state utility tax proceeds or other state-shared revenues, it must levy a property tax of at least five cents per $100 of valuation and it must provide at least four of the following eight services: police protection, fire protection, solid waste collection or disposal, water distribution, street maintenance, street construction or right-of-way acquisition, street lighting, and zoning. In addition, such a city must open at least a majority of its street mileage to the general public. These changes were intended to discourage the incorporation of paper towns (cities that did not provide city services), and the incorporation as cities of gated communities.

Abolition

Just as only the General Assembly may incorporate a community, so too only the General Assembly may abolish, or unincorporate, a legally established city. It does so by repealing the city's charter. In practice the General Assembly takes such an action only on the request of the affected community, normally because the city government has ceased to operate. A 1971 omnibus act repealed the charters of ninety-five inactive towns,[1] but numerous others are technically still in existence. Since 1971 the General Assembly has only abolished one additional city, a very small resort community that was incorporated in 1996 and abolished just two years later.

Annexation

North Carolina's annexation laws are a central part of the state's policies for providing government services in urban areas, policies that favor the expansion of existing cities over other ways of providing those services. Only cities are authorized by law to provide the full range of basic urban services: water supply and distribution, sewage collection and treatment, law enforcement, fire protection, solid waste collection and disposal, and street maintenance and improvement. Counties are not authorized to provide street maintenance and improvement, and no types of special districts are authorized to provide either law enforcement or street maintenance and improvement. Furthermore, as is noted in the

1. 1971 N.C. Sess. Laws ch. 740.

discussion on incorporation, the law favors expansion of existing cities over incorporation of new ones. Not only does the state constitution restrict the General Assembly's ability to incorporate new cities in the proximity of existing ones, but the state's annexation statutes facilitate the orderly expansion of the state's cities.

Methods of Annexation

There are four methods by which a city may annex nearby territory: annexation by legislative act, voluntary annexation of areas contiguous to the city, voluntary annexation of areas not contiguous to the city but nearby, and annexation at the city's initiative of contiguous areas that are developed for urban purposes. With only very minor exceptions,[2] these methods are available to all the state's 500-plus cities. In general, a city may annex any territory qualifying under the various procedures as long as that territory is not part of another, active city. [Under G.S. 160A-1(2), which defines city and incorporated municipality for purposes of G.S. Chapter 160A, to be considered active in this context, the other city must have held its most recent election for council.] A city may annex territory that is within a sanitary district or another special district,[3] or territory that is within another city's extraterritorial jurisdiction for land use planning. County boundaries are not a bar to annexation; some thirty-five cities lie within two or more counties.

Most annexations in North Carolina are voluntary, under one of the two voluntary procedures. Nearly all these annexations are relatively small, however, often comprising the property of only one person or very few persons. The greatest number of persons and the greatest amount of property are annexed under the involuntary, city-initiated procedures.

Annexation by Legislative Act

The General Assembly may at any time enlarge the boundaries of a city by local act. This approach, which is available to all cities, was the original method used to effect annexations and before 1947 was the only method available. Although the legislature has essentially complete discretion in annexing territory to existing cities and no standards guide its decision making, in practice it almost never does so except at the request of the city involved. At present, legislative annexation is especially useful for areas that need annexation but for some reason cannot be annexed under any of the other procedures. Annexation of public facilities surrounded by areas of limited development, annexation of areas involving lakes or rivers, annexation of unincorporated "doughnut holes" in the middle of a city, and realignment of existing boundaries to match service areas all fall into this class.

Voluntary Annexation of Contiguous Areas

G.S. 160A-31 authorizes a city to annex any area contiguous to its borders on receipt of a petition signed by all the owners of real property within the area proposed for annexation. The procedure is simple. Once a petition is presented and certified by the city clerk as sufficient, the council holds a public hearing on whether or not the statutory requirements—contiguity and signatures by all the owners of the subject property—have been met. If the council determines that the requirements have been met, it may adopt an ordinance annexing the property. This method is especially suited to annexations of small areas, new subdivisions (before lots have been sold), and tracts with a limited number of property owners.

Two points should be made about the procedure. First, the petition must contain the signature of all the owners of each lot or tract included in the petition. If a married couple own a property, for example, both must sign. Second, the supreme court has held that a property owner may withdraw his or her signature at any time before the council has adopted the annexation ordinance.[4] If that happens, the council may not simply annex the remaining property listed in the petition. Rather, because the council no longer has before it a petition signed by all the owners of the property listed in the petition, such a withdrawal invalidates that petition, and a new petition must be submitted including only property whose owners still desire annexation. The same is true if ownership of some of the property changes between the time the petition is signed and the time the city seeks to act. Again the council no longer has before it a petition signed by all the owners of the property listed in the petition, and submission of a new petition is necessary.

Voluntary Annexation of Noncontiguous Areas

Areas near an existing city often develop in an urban manner, but are separated from the city by undeveloped territory, so they are not subject to annexation by methods that limit annexation to contiguous areas. Frequently these areas are in the normal path for city growth, and property owners in the area desire the advantages of city

2. A few small towns are subject to exceptions to the general annexation laws.
3. *See* State *ex rel*. East Lenoir San. Dist. v. City of Lenoir, 249 N.C. 96, 105 S.E.2d 411 (1958).
4. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

services—water and sewer systems, police and fire protection, solid waste collection, and street maintenance. Also, early annexation of the areas is an advantage to the city because it enables the city to plan for the orderly expansion of basic facilities to serve both these areas and the intervening areas that will develop in time.

North Carolina has responded to this situation by permitting voluntary annexation of such noncontiguous, or satellite, areas. The procedure was first developed and authorized for Raleigh by local act in 1967. Over the next several years eleven other cities secured similar local act authority from the legislature. In 1974, in response to the likelihood of further requests for local acts, the General Assembly enacted general enabling authority for satellite annexation (G.S. 160A-58 through -58.8), repealing the various local acts.

The procedure for satellite annexation is comparable to that for voluntary annexation of contiguous areas. Once a petition signed by all the owners of the listed property has been received and certified by the city clerk, the council holds a public hearing on the petition's sufficiency and the annexation's desirability. [G.S. 160A-58.1(a) provides that the petition need not be signed by owners of property exempt from property taxation, by railroad companies, by public utilities, or by electric or telephone membership corporations.] If the council determines that the petition is adequate and the property involved qualifies under the statutory standards, it may adopt an ordinance annexing the property. The statute sets out the following four standards that the property must meet:

1. The nearest point on the proposed satellite area must be no more than three miles from the city's primary limits.
2. No point within the proposed satellite area may be closer to another city than to the annexing city. (This standard does not apply if the property in question is subject to an annexation agreement between the two cities and is within the exclusive annexing authority of the city that received the petition.)
3. The total satellite area or areas of the city may not exceed 10 percent of the area of the city within its primary limits. (More than seventy-five cities have obtained local legislation from the General Assembly waiving this standard.)
4. The city must be able to provide the full range of city services to the satellite area.

The fourth standard deserves elaboration. One situation in which satellite annexation is sometimes sought is when the annexing city allows the sale of beer and wine or mixed drinks and the surrounding county does not. Owners of restaurants or grocery or convenience stores then seek annexation of their single lot or tract in order to sell beer or wine or mixed drinks. Sometimes these owners will assure the annexing city that they do not care about receiving city services and indeed will sign a waiver of such services. City officials need to understand that such a waiver probably does not obviate the statutory responsibility of the city to be able to provide services and actually to provide them, and such a waiver most certainly does not bind subsequent owners of the property.

Involuntary Annexation

North Carolina's principal annexation statute, enacted in 1959 and codified as G.S. 160A-33 through -56, seeks to balance the state's interest in the orderly expansion of city boundaries to include developed and developing urban territory against residents' and property owners' interest in receiving services equitably. The balance effected permits a city to annex an area if the area is developed in an urban manner and if the city can and has plans to provide services to the area on the same basis as it provides services within the existing city. The North Carolina procedure was recommended by the former United States Advisory Commission on Intergovernmental Relations as a model for the nation.

To be subject to involuntary annexation, an area must meet three general conditions:

1. It must be contiguous to the existing city. Satellite annexations are not permitted under this procedure.
2. One-eighth of the external boundary of the area must coincide with the existing city boundary. This requirement is intended to avoid "shoestring" or "balloon" annexations, in which a large developed area is connected to the city by only a thin string of land, such as a road right-of-way.[5]
3. The area may not be part of an existing, active city.

5. Even meeting the one-eighth requirement may not be enough if a court considers the resulting annexation to be shoestring in nature. In Amick v. Town of Stallings, 95 N.C. App. 64, 381 S.E.2d 221 (1989), the court invalidated an annexation that did meet the one-eighth requirement by proposing to annex a thin strip (50 to 150 feet wide) along more than 7,400 feet of existing city boundary, then extending a shoestring to annex two outlying subdivisions. The court held that the resulting annexation would have contravened the contiguity requirements of the annexation law. Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, aff'd 357 N.C. 653, 588 S.E.2d 467 (2003) is a similar case.

In addition to these general standards, the area must be developed for "urban purposes" as defined in the statute. The statute sets out four standards under which an area meets the requirement that it be developed for urban purposes:

1. The first applies to all cities, regardless of size, and measures urban character by the uses to which land is put and the degree to which land has been subdivided. The *use test* requires that at least 60 percent of all *lots and tracts* be in urban uses: residential, commercial, industrial, institutional, or governmental. The *subdivision test* requires that at least 60 percent of the total *acreage* of land that is vacant or in agricultural, forest, or residential use be subdivided into lots or tracts of three acres or less in size.
2. The second also applies to all cities, regardless of size, and focuses on urban uses of land. It requires that *every lot or tract* in the annexation area be in one of four urban uses: commercial, industrial, institutional, or governmental.
3. The third standard applies only to cities with populations in excess of 5,000. It looks solely to population and defines as urban any area with a population density of at least 2.3 persons per acre.
4. The fourth standard, also applicable only to cities with populations greater than 5,000, measures urban character by a combination of population and degree of land subdivision. It first requires a population of at least one person per acre. It then requires that at least 60 percent of the *acreage* be subdivided into lots and tracts of three acres or less in size, and that at least 65 percent of the *lots and tracts* be no more than one acre in size.

Cities over 5,000 may also include nonurban areas in their annexation areas, either because these nonurban areas are necessary bridges for providing services to the urban portions of the annexation area or because the nonurban area meets this numerical test: at least 60 percent of the circumference of the nonurban area must coincide with some combination of the borders of the existing city and the remainder of the annexation area. These nonurban areas may not exceed 25 percent of the total annexation area.

Finally, the city must be able to provide "major" services to the annexation area on the same basis as it provides these services to the existing city. The statute defines major services as police protection, fire protection, street maintenance, solid waste collection, water distribution, and sewerage collection and treatment. The city must extend the first four services—police, fire, solid waste, and street maintenance—into the annexation area immediately when the annexation becomes effective. For water and sewer, however, the city's responsibilities are somewhat different. First the city must extend major water and sewer lines into (or near to) the annexation area, and the statute sets out timetables for this work to be done. In smaller cities, the necessary contracts must be let and the work begun within one year of annexation; in larger cities, the work must be completed within two years. Second, once the major lines are in place, the city must make water and sewer services available to properties within the annexation area "according to the [extension] policies in effect" in the city.

When a city proposes to annex an area under these procedures, it begins by preparing a report that shows the character of the area and its plans for extending and financing major services to the area. After notice to the residents and the property owners of the area, the city council holds a public information meeting on the proposal, at which citizens may ask questions about the annexation, and a public hearing, at which the council listens to public comment. If the statutory standards are met, if the city can extend and finance the necessary services, and if the procedures have been followed, the city may annex the area by ordinance.

The Effect of Annexation on Existing Public Services

When a city annexes an area, in the absence of a statute protecting private service providers, the city becomes entitled to be the primary provider of municipal services in the annexation area. A case several years ago involving a Winston-Salem annexation illustrates this point. Forsyth County had franchised a number of private solid waste collectors to collect residential and commercial solid wastes in the area annexed. On annexation, and in conformity to its duties under the annexation statutes, Winston-Salem itself began to collect solid wastes in the area. Because the city service was financed from taxes, which the residents had to pay in any event, the effect was to put the private haulers out of business in the annexation area. When they sued the city, the North Carolina Supreme Court held that the county franchises expired on annexation and that the city had no duty to cooperate with the private collectors or to compensate them for lost business.[6] In the absence of a statute, the same rules would apply for other privately provided services.

A number of statutes have been adopted that modify this basic principle. These statutes protect volunteer fire departments and private solid waste collectors. They do not apply evenly to all annexation procedures, however.

6. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Contracts with Fire Departments

If an area being annexed under the involuntary procedure is being served by a volunteer fire department, the annexing city must make a good-faith effort to negotiate a contract with the fire department for the latter to continue to provide fire protection in the annexation area for five years. The statute defines what constitutes a good-faith effort and permits the fire department, if its officials think it has not received a good-faith offer, to appeal the matter to the state's Local Government Commission. If the commission agrees with the fire department, it must delay the annexation until the city makes the necessary offer.

If a city annexes property on petition, however, or if the annexation is effected by legislative act, there is no statutory requirement to contract with a volunteer fire department.

Fire Department Debt

If a city has annexed territory under any of the *statutory* procedures, voluntary or involuntary, and has not contracted with a volunteer fire department or has done so and the contract has expired, then the city may be responsible for a portion of the outstanding indebtedness of the volunteer department. The city's responsibility extends to any fire department debt that existed when the city began the annexation proceeding. The city's share of the debt repayment obligation is determined by the assessed valuation of the area annexed and served by the fire department in relation to the assessed valuation of the total area served by the fire department. Thus if the city's annexation area represents 5 percent of the valuation of the fire district served by the fire department, then the city must pay 5 percent of the department's debt obligation. This requirement does not apply to legislative annexations.

Contracts with Solid Waste Collectors

The result of the Winston-Salem case, described earlier, has been reversed by statute, but only in legislative annexations and in involuntary annexations. If a private solid waste collector has been doing a substantial amount of business—at least fifty customers in the county in which the city is located—in an area annexed by a city, then the collector is entitled either to have the city contract with it to continue collecting solid wastes on the city's behalf for two years, or to have the city make good the losses occasioned by the annexation (defined as 15 times the firm's average monthly revenues in the annexation area). As with fire departments, the private firm enjoys a right to appeal to the state's Local Government Commission if the city does not offer a contract or compensation. This requirement does not apply to any voluntary annexations.

Taxation of Newly Annexed Property

G.S. 160A-58.10 sets out the rules to be followed in extending property taxes to areas annexed under any of the statutory methods. (Annexations effected by legislative act are frequently made subject to G.S. 160A-58.10 as well.) These rules apply to taxes for the fiscal year during which the annexation becomes effective.

Basically, owners of annexed property are liable for city taxes for that fiscal year on a prorated basis. The city determines what each property owner's tax liability would have been had the property been in the city for the entire fiscal year, then prorates that amount based on the number of full months remaining in the fiscal year on the effective date of annexation. For example, an annexation becomes effective on March 17. At that time there are three full months remaining in the fiscal year: April, May, and June. Therefore an owner who would have been liable for $600 of city taxes had his or her property been in the city the entire year, will be liable for three-twelfths of an entire year's taxes, or $150. After that first year, property in the annexation area is taxed in the same manner as all other property in the city.

The preceding paragraph sets out the rules for determining the *amount* of tax owed by property owners in the annexation area. There are additional rules about the *date* on which those taxes are due. If the annexation occurs on or after July 1 and before September 1, the taxes are due on September 1, in the same manner as all other property taxes in the city. But if the annexation occurs on September 1 or later in the fiscal year, then the prorated taxes are not due until the next September 1.

Annexation Disputes between Cities

Sometimes more than one city is interested in annexing the same parcel or parcels of property, and sometimes the owners of property in the area much prefer annexation by one city over annexation by another. The courts have looked to the doctrine of *prior jurisdiction* to determine which of two such cities is entitled to carry out the annexation. Under this doctrine, the city that takes the first formal statutory step toward annexation is entitled to complete its procedure without interference by the other. If this results in a valid annexation, then the other city no longer has any rights of annexation over the disputed area.

The first formal step differs depending on the nature of the annexation. If it is an involuntary annexation, the first formal step is the city's adoption of the *resolution of intent*. If it is a voluntary annexation, the first formal step is when the annexation petitions are presented to the city's governing board.[7]

The statutes also permit cities that would rather avoid annexation fights of this sort to enter into agreements under which each city is granted a zone of territory that it has exclusive authority to annex (G.S. 160A-58.21 through -58.28). These agreements may extend for up to twenty years, and a city must give five years' notice to withdraw from one. If a city attempts to annex territory in violation of such an agreement, any other city party to the agreement may bring an action to enforce it and thereby invalidate the annexation. (These agreements between cities are the only kind of contract authorized by law by which a city may agree in advance not to annex a particular parcel of property.)

De-annexation

There are no statutory procedures under which a city may de-annex territory. Rather, if a city wants to subtract some part of its existing territory, the only way it may do so is to seek a local act of the General Assembly effecting the de-annexation. Such acts are quite rare and as a practical matter are only enacted at the request of the affected city. The General Assembly is subject to no standards when it decides to de-annex territory, in the same way that no standards condition its ability to incorporate an area or annex territory to an existing city.

Additional Resources

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7. *See*, *e.g.*, City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).