INSTITUTE OF GOVERNMENT
CHAPEL HILL, N. C.

April 13, 1960

The Honorable H. P. Taylor, Jr.
Taylor, Kitchin and Taylor
Wadesboro, North Carolina

Dear Pat:

It was good to hear from you and I hope that I can summarize the actions of the Municipal Government Study Commission with respect to the annexation legislation in the form that you and Archie Davis need.

You will recall the circumstances under which the Commission was formed in the first place. Certainly the reaction of the General Assembly to the Charlotte and Greensboro special annexation legislative acts were important, and the members of the General Assembly expressed a desire for an act which would make unnecessary requests for special legislation resulting in annexation. Also, in 1957 Frank Wooten introduced a bill adapting to North Carolina the Indiana procedure, and some members of the General Assembly felt that this legislation should be more carefully studied before it was considered on the floor. There was also a general desire for a study of the problems of growing cities in North Carolina, and the Commission was formed with general, rather than specific, instructions.

BACKGROUND ON ANNEXATION IN NORTH CAROLINA

I think it is important, as we have discussed before, to talk about this subject from the background of what has been done in this state, and the constitutional and legal doctrines which govern annexation.

As you will recall, up until the year 1947 there was no general law provision for annexation by municipalities. All annexations were undertaken through special legislative acts. As the attached list shows, from the time the state was formed until 1947, there were 498 special legislative acts concerning changes in the corporate limits of North Carolina municipalities. Of this number 428 extended limits by legislative fiat, without any provision for a vote on the part of the residents of the city or the area to be annexed. Three acts gave the governing board power to

make the change without an election. Three more provided that only the voters of the town could vote. And 44 provided that the annexation should be approved if a total vote of residents of the town and of the residents of the area to be annexed was in the affirmative. Thus, 478 out of 498 legislative acts up to and including the legislative session of 1947 provided for annexation without the residents of the area having the right to express their opinion on the proposed annexation by vote. At the same time, many proposed annexations were no doubt not undertaken because legislators did not introduce the acts desired by cities, and this concern on the part of the cities led to the adoption of the 1947 general law.

In a special analysis for the Commission of annexation actions between 1950 and June 1958, the Institute received replies from 147 of 409 active incorporated municipalities in North Carolina, and these returns included 33 of the 55 cities having a population of 5,000 or more. It is our belief that almost every major annexation during this period is covered by this survey.

From all 147 municipalities replying a total of 497 successful annexations were reported, of which 394 were undertaken in the 33 cities having a population of more than 5,000. Of these 394 annexations, 374 were undertaken under the provisions of the general law. Twenty were undertaken under the provisions of special legislative acts, and of these 20 special legislative acts only 4 provided for an election.

Of the 374 annexations undertaken by the cities of 5,000 or more, 276 were undertaken under G.S. 160-452 which requires all property owners in the area to approve. Most of these annexations involved real estate developments. Of the remaining 98 annexations, only 38 excited 15% of the registered voters to the point where they demanded an election. And the annexation was approved in 21 of these 38 cases. The concern of the Commission was that as a result of the 17 known unsuccessful elections, and the larger but undetermined number of cases where the council refused to call an election, cities not able to annex were bringing their problems to Raleigh.

As we have discussed at length before, neither the North Carolina State Constitution nor the Federal Constitution establishes a constitutional right on the part of a tax payer to vote on the question of extending municipal boundaries. [Hunter v. Pittsburgh, 207 U.S. 161, 52 L. Ed. 151 (1907); Manly v. Raleigh, 57 N.C. 370 (1859); Lutterloh v. Fayetteville, 149 N.C. 65, 62 S.E. 758 (1908).] The extension of municipal boundaries is within the full discretion of the legislature, and this power can be delegated to municipal governing boards or other agencies.

Thus, in the context of the 1959 law, we are discussing the political question of voting on annexation, a right which has neither been upheld by the courts nor has been a part of the continuing tradition of political questions in North Carolina.

Thus, in determining the boundaries of incorporated municipalities should the General Assembly (1) make decisions itself for particular cities, (2) delegate primary responsibility to the governing board or voters of the city, (3) delegate to the voters of the area to be annexed the right to veto municipal action in an election, or (4) establish state-wide standards defining land which should be incorporated into cities for the better government of urban areas?

APPROACH OF THE MUNICIPAL GOVERNMENT STUDY COMMISSION

The Municipal Government Study Commission began its study of annexation in July, 1958, and its approach can be summarized as follows:

1. Review of the background of annexation in North Carolina to determine the need for a change in annexation laws.

2. Review of annexation procedures in other states to determine the trends in annexation legislation throughout this country. From the very beginning, it was obvious that there were no procedures in other states which fixed definite and specific standards governing annexation, but rather the trends were of two kinds: (a) To submit the questions of annexation to the judgment of a court, subject to general legislative standards e.g. Tennessee, Virginia, Indiana, Kentucky, Missouri; (b) To make annexation dependent upon a vote of the people, e.g. or a petition from outside residents. In its instructions to me in July and again in October, members of the Commission laid stress on the necessity for a procedure which would insure the ability of North Carolina cities to annex when necessary, without coming to the General Assembly, and a procedure which would be a guide for all cities in terms of standards defining type of land to be annexed. There was general recognition, and so stated, that a vote of the people in the area to be annexed alone would be inadequate, since unsuccessful votes would keep sending cities to the General Assembly for legislative action.

3. Review of probable growth of North Carolina cities, and the usefulness of annexation as a device for insuring sound and orderly growth in this state.

4. Consultation with local officials.

5. Determination of a procedure which would insure sound and orderly development of urban areas and at the same time protect the rightful interests of taxpayers inside and outside cities.

On the basis of the research and a memorandum submitted to the Commission in early January, the Commission called a meeting of municipal officials and representatives of the North Carolina League of Municipalities to

consider different approaches to annexation. While officials of the North Carolina Association of County Commissioners were invited to this meeting, they did not attend on the basis that annexation was not a county question.

In general, the city officials were in favor of a system that would permit cities to annex subject to judicial review, or a system which would make it much more difficult to call an election - such as requiring a petition from 40% of the registered voters in the area to be annexed before an election would be called.

ACTION OF THE COMMISSION

The Commission rejected submitting annexation proposals to a court, to be considered in accordance with general legislative standards (which would be subject to judicial interpretation), and instead chose to recommend a bill involving specific legislative standards defining areas which could be annexed, subject to judicial review to insure that the provisions of the act were followed. This is the only state where the legislature has attempted to define the land that is so urban in character that it should be annexed, according to standards which are based on the character of land already in city limits. The North Carolina act draws a clear distinction between legislative action and judicial review, in contrast to the combined procedures in many other states including our neighbors of Virginia and Tennessee.

North Carolina is also the only state, except Virginia, to require that, as a condition of annexation, the city must provide specific listed services to the area annexed within a given time following the date of annexation. Thus, while under the 1947 law the residents of the area to be annexed may vote on whether or not to be annexed, if they vote against annexation they have no recourse against the city if the city refuses to provide services once the land is annexed. Under the new procedure, they would have some recourse. Furthermore, there is nothing in the 1947 act to prevent a city including a large completely undeveloped area together with a subdivision that wants to be annexed and thus outvoting the land owners of the undeveloped area. Under the new procedure this could not happen.

The suggested legislation, once the idea had been approved by the Commission and a draft had been prepared by me with the assistance of public officials throughout the state, was gone over carefully by members of the Commission, by interested municipal and local officials, and by other members of the General Assembly. It was made clear at all stages that provisions for an election had been eliminated in favor of the standards approach.

CONCLUSION

The problem is one of understanding. Despite the relatively few elections which have been held on annexation in this state, there seems to be an assumption that the constitution requires an election. The constitution does not. And there is some question, which has been raised in many places by many people, as to whether annexation should be a political question. From the point of view of insuring the orderly growth of cities subject to reasonable limitations and subject to requirements that services be provided, the 1959 General Assembly has taken action that attempts, at least, to take into consideration the overall best interest of the entire urban community--and not the interest of either the residents of the city alone or the residents of the outside area alone.

In effect, in the urban area, what does democracy demand? Should the city have unrestricted power to extend its boundaries as in Texas or Kansas City (Kansas City has recently annexed 145 additional square miles of land)? Should areas outside the city, small or large, be able to impose a veto on questions of interest to the entire urban area including the city? Should the state legislature make decisions on every individual annexation? Or should the state legislature seek to provide a system which insures orderly growth of the city for the benefit of the entire urban area but with safeguards for all residents in the area? These are tough questions, and the 1959 legislation, it seems to me, represents an attempt on the part of the Commission and the General Assembly to reach an answer. If there is any reason to reconsider that answer, consideration should again be given to the long-range consequences of a policy that encourages creation of small municipalities and special districts in newly-developing areas rather than orderly extension of city limits.

In summary, the Commission took every step to consult the people of the State short of public hearings. But if public hearings had been held, in the absence of any positive policy statements from county officials, who could have appropriately represented residents of unincorporated urban areas as a class? The approach of the Commission was to try and analyze all aspects of the question and recommend a comprehensive solution taking all points of view into question.

If I can be of further help, please let me know. I am enclosing a copy of my memorandum to the Commission which, on pages 17 ff., discusses procedures in use in other states.

With best wishes,

Cordially yours,

George H. Esser, Jr.
Assistant Director

GHE:ca

Enclosures

cc: Mr. Joe Hunt