Report
of the
Joint City/County Annexation Committee

December 1996

North Carolina Association of County Commissioners
North Carolina League of Municipalities

Raleigh, North Carolina

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TO: Executive Committee, North Carolina Association of County Commissioners
Executive Committee, North Carolina League of Municipalities

FROM: Joint City/County Annexation Committee

DATE: December 3, 1996

SUBJECT: Final Report of the Committee

We are pleased to present to you our final report. On November 13, 1996 we shared with you a draft of this report. Since then we have corrected the typographical errors in that draft and clarified the language in a few places. There are no substantive changes from the draft you have reviewed.

In response to your charge, the Committee reviewed the personal experiences with annexation of its members and their views as to how North Carolina's annexation statutes might be improved to better serve their purposes. We also reviewed some 50 suggestions for changes that have been made by various persons and groups in the past few years.

Our report includes 20 recommendations. The first 18 are for actions that we commend to you for your endorsement. The final two cover important issues related to municipal annexation. We note the work of previous committees that considered these issues and agree in principle with their recommendations.

We include here no discussion of most of the issues and suggestions we considered and on which we make no positive recommendation. We considered some of them unnecessary because their substance is adequately covered by existing statutes. Some were inconsistent with the general pattern of government in North Carolina. Still others we considered unworkable. There were two, however, that would make major changes in North Carolina's approach to municipal annexation. Our rejection of them merits an explanation. The first of these proposals calls for boards of county commissioners to review and approve municipal annexations. The second would make municipal annexations subject to a referendum by the voters of the areas proposed for annexation. We rejected both of these proposals because we believe that adopting them would not be in the best interest of the citizens of North Carolina. The Appendix to our report sets forth our reasons for not recommending them to you.

We stand ready, upon your request, to revisit any of the issues or to consider others if you conclude that our advice on them would be helpful to you.

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George Chapman, Planning Director, Raleigh
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Hector Rivera, County Manager, Guilford
Neal Yarborough, County Attorney, Cumberland
John Link, County Manager, Orange (Co-Chair)

The Committee and Its Charge

The Joint City/County Committee was created in July of 1996 at the direction of the executive committees of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities. The two committees directed their executive directors, Ronald Aycock and David Reynolds, to appoint the members of the Committee from the professional staffs of the state's cities and counties. Each appointed 12 members: attorneys, managers, planners, and finance directors.

Bill Stuart, City Manager of Winston-Salem, and John Link, Orange County Manager, were named as co-chairs. Jake Wicker of the Institute of Government was asked to serve as moderator/facilitator and resource person. Staff representatives from the Association and the League attended the meetings of the Committee and provided additional resource assistance. The staff of the League of Municipalities provided general secretarial assistance.

The Committee's charge was to examine North Carolina's municipal annexation statutes and make recommendations for any changes deemed desirable to the executive committees of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities.

The Committee met on the following dates:

August 20, 1996	Raleigh
September 11, 1996	Greensboro
October 2, 1996	Raleigh
October 22, 1996	Raleigh
November 7, 1996	Greensboro

History and Description of Municipal Annexation in North Carolina

The North Carolina Constitution, Art. VII, Sec. 1, provides:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable. [Emphasis added.]

There are currently five separate methods for effecting municipal annexation of territory in North Carolina:

1. Legislative
2. Petition of property owners--contiguous
3. Petition of property owners--satellite
4. Standards and services--cities under 5,000 population
5. Standards and services--cities with populations of 5,000 and above

1. Legislative. Annexation by local act of the General Assembly has been possible since the state's beginning and was the only method available before 1947. In many instances, the local act of the General Assembly simply added described territory to a municipality. In other cases, the local act provided for an annexation subject to a referendum. Sometimes the referendum was in the area proposed for annexation, sometimes within the city, and sometimes in both areas.

The first constitutional challenge to an annexation came just before the Civil War when the General Assembly provided for the annexation of territory to the City of Raleigh [*Manley v. Raleigh*, 57 NC 370 (1859)]. Property owners in the area challenged the annexation on the grounds that they had not voted on the proposal. The North Carolina Supreme Court held that the annexation was constitutional.

The complaint of the property owners, as summarized by the court, is much like those heard today.

> The plaintiffs in their bill complain that they are, with many others, owners of the territory proposed to be added; that they and those under whom they hold had long enjoyed these tracts without any apprehension that they should be brought within the corporate limits of Raleigh against their will, and they deny the authority of the Legislature to pass an act to compel them to submit to the burdens which had accumulated in the shape of a debt, and to the onerous taxes incident to the corporate government. . . .

In upholding the authority of the Legislature under the Constitution to effect an annexation, the court said:

> Ours would be a strange sort of government if the Legislature could not make a new county without the consent of the people residing being first had and obtained, of if when, in the opinion of the Legislature, the population of a particular locality has become so dense that it cannot be well governed by the ordinary county regulations, and requires the special "rules and by-laws" of an incorporated town to secure its good order and management, such locality cannot be incorporated into a town or annexed to one already incorporated without the consent of the inhabitants; and, by a logical deduction, without the consent of every single individual.

Some 90 years later, the burden of hearing controversial requests for annexation led the General Assembly in 1947 to enact the state's first general annexation statutes. One provided authority for cities to annex territory by ordinance. Councils were authorized to call a referendum in the area proposed for annexation and within the city. Councils were required to call a referendum if a petition was received from 15 percent of the qualified voters in the area. The 1947 legislation also authorized cities to annex areas with small populations on the basis of a petition from all of the property owners.

Experience under the 1947 statutes was mixed. Many proposed annexations were defeated by the voters. In many other cases cities failed to attempt an annexation in the belief that the proposals would be rejected in a referendum. Growth around cities continued, often without water and sewer and other municipal services. This situation led the 1957 General Assembly to create the Municipal Government Study Commission and charge it with looking at not only annexation, but also at the financing and regulation of urbanization. The 1959 General Assembly, acting on the recommendation of that Commission, created the general municipal annexation arrangements we have today.

Finally, it should be noted that legislative annexations have continued. Each session of the Legislature produces several. For example, in its two 1996 short sessions the General Assembly passed 11 local annexation acts.

2. Petition by property owners--contiguous. The 1959 legislation also revised the petition method originally enacted in 1947 which had limited such annexations to areas with 25 or fewer voters. The current statute requires a petition from all the owners of real property, but has no limit as to the size or population. It is the most frequently used method. Furthermore, most of these annexations are small in area.

3. Petition by property owners--satellite. Since 1974 North Carolina cities have been authorized to annex satellite areas. A petition of the owners of real property (except for public utilities, railroads, and property not subject to taxation) is required. No part of a satellite may be closer to the primary boundaries of another city than it is to the annexing city, and the area within satellites may not exceed 10 percent of the area within the city's primary boundaries. The city must also find that it can provide services to the satellite. A limited number of these are made each year in the state.

4. and 5. Standards and Services. This method is the principal one enacted in 1959. There is one statute for cities with populations under 5,000 and another for cities with populations of 5,000 and above. Most of the provisions of both statutes are identical.

Each requires the annexing city to make studies and develop a report that shows that the area proposed for annexation meets the statutory standards of being "developed for urban purposes" and that the city will be able to provide to the area substantially the same level of services it is currently providing within its existing boundaries.

Each contains extensive requirements for advance notice of the intent to annex and to hold a public hearing. Specific service requirements are imposed. Special arrangements designed to insure that rural fire companies and private solid waste collectors are protected from significant financial loss are a part of both statutes.

Property owners have access to the courts to challenge the annexation if they believe that the statutory standards have not been met or if the city has failed to follow the required procedures. Those annexed also have access to the courts to force the city to carry through with its plans to provide services should it fail to do so within the time allowed by the statutes.

Specific service requirements are slightly lower for the cities under 5,000 population as compared with those of 5,000 and above. The larger cities, in contrast, have three different rules for establishing that an area is developed for urban purposes while the smaller cities have only one. These differences were recommended by the Municipal Government Study Commission in 1959 because it found that the patterns of development around larger cities differed from those found around smaller cities. The standards use population density, the nature of land use, and the extent of land subdivision as the principal indicators of urban development. Most people who drive through an area that meets the statutory standards would agree that the areas are substantially urban in

character. [Urban uses listed in the statute are residential, commercial, industrial, governmental, and institutional.]

The Setting: Local Government in North Carolina

The state's purpose in providing for the annexation of territory to cities is the same as its purpose in creating cities and towns--to provide an appropriate local governmental arrangement for serving some state citizens. Today, almost half of the state's citizens live in our 525 cities and towns. Most of the other citizens frequently visit our municipalities for work, shopping, banking, recreation, and other purposes. While economic and social activities located in our cities and towns are largely provided by the private sector, the governmental services and infrastructure maintained by municipal governments are critically important to the proper conduct of the larger private sector activities.

The other local government of major significance in North Carolina is the county. County governments cover the entire state. In North Carolina, it is county governments at the local level that are the principal players in three of the four chief domestic functions: education, health, and welfare. Streets and highways, the fourth major function, is a city concern at the local level.

In this century, North Carolina has moved from a society that was rural to one that is largely urban. The state's governmental arrangements have kept pace.

- In 1900 the state collected 23 percent of state and local taxes; local governments, 77 percent. Today, the state collects 72 percent and local governments 28 percent.

- In 1900 we had hundreds of local school and road districts. Today, those districts are gone and city and county governments account for more than 95 percent of local governmental expenditures. In relation to population, North Carolina has many fewer governments than the typical state--we rank 44th on this scale. The state does not have the relatively large number of special districts and authorities that are found in many states.

- The decision, during the Great Depression, to make counties and cities the principal local governments has meant the steady expansion of county government authority to provide urban-type services. For example, all counties today are involved to some extent in providing water, sewer, and solid waste services--services that were still largely city government concerns in 1959 when the current annexation legislation was enacted.

- The state, along with its decision to make both cities and counties broad general purpose local governments, has also, to a very large degree, left with city and county officials the discretion and the responsibility for providing most urban-type services. Counties are required to provide a number of services, especially in the areas of health,

education and welfare, as well as a sheriff, register of deeds, and activities related to the administration of justice. State mandates for city services are few.

- Cities and counties have broad authority to join together to do anything they are authorized to do separately. This flexibility allows responses from city and county officials that are tailored to local circumstances.

There are other important features of the North Carolina system of government and its allocation of functions and responsibilities between the state, the counties, and the cities and towns. But those listed above suggest the general pattern within which the state's policy on municipal annexation must operate.

Principles for Municipal Annexation Arrangements

A. The purpose of city and county governments (and other forms of local government) is to provide services to the state's citizens in an efficient and responsive manner.

B. Because cities and counties have overlapping jurisdictions, statutory provisions affecting their powers and procedures should reflect this arrangement and assist and promote cooperative arrangements between cities and counties when appropriate.

C. It is in the interest of the state and its citizens that urban and urbanizing areas receive urban services from existing general purpose governments where possible rather than create new special districts or new municipalities to provide them.

D. Annexation standards should balance fairly the interests of all persons in and around North Carolina cities who are affected by enlargement (or non-enlargement) of the cities' boundaries.

E. The annexation procedures should be as fair and orderly as possible.

F. The annexation arrangements should not promote or create adversarial relations between city and county governments.

G. The annexation arrangements should assure that the level of fire protection and solid waste services to citizens in areas proposed for annexation are preserved or enhanced, that these services to citizens in the surrounding areas who are not being annexed are not endangered, and that the agencies or individuals providing them are protected from significant financial losses.

The Committee's Recommendations

The Committee's recommendations take into account the changes in the social and economic life in North Carolina since 1959 and the trends in urban development that promise to be with us for the next 10 to 15 years. They fall into four general classes.

A. Statutory support and direction for higher levels of services and improved coordination between cities and counties in meeting the local governmental service needs of the state's citizens.

B. Modification of existing annexation statutes to enhance their openness and responsiveness.

C. Technical corrections to make the annexation process as fair and orderly as possible and remove unnecessary procedural requirements that accomplish no benefit for any interested party.

D. Issues related to annexation.

A. Support for higher levels of services and improved coordination between cities and counties in meeting the needs of the state's citizens for services.

Recommendation No. 1. That cities not be allowed to annex territory under the authority of G.S. 160A-45 through -57 after January 1, 1999, unless there is in place a long-range services plan for extending their chief services to surrounding areas experiencing, or projected to experience, urban growth. These should be joint city-county plans that also cover the chief county services. Where joint plans cannot be developed, cities may develop their own plans.

As noted in the first portion of this report, the Committee believes that the citizens of North Carolina will be best served if almost all local governmental services are provided by existing cities, towns, and counties. Arrangements now vary greatly from one area of the state to another. Moreover, North Carolina has a tradition of leaving much discretion to local officials as to when and how services will be provided. The same service may be provided in one place by a city, in another by a county, and in still others by cities and counties acting jointly. The Committee approves of this tradition and the discretion vested in city and county governments. Only rarely would the Committee favor a mandate, and then only when necessary for the common good of all the state's citizens.

As urbanization continues it may be appropriate for existing cities to annex territory that is urbanizing near their current borders. In some cases, urbanization will take place at some distance from an existing city. In these cases the provision of some local services may be provided by the county government; by joint agreement between the

county and one or more cities in the general area; or, occasionally, by the creation of a new municipality.

If all citizens are to be served efficiently and appropriately, it is essential that counties and the cities therein cooperate in developing long-range services plans that look to the provision of the major local governmental services where they are needed and that it is financially feasible to provide these services.

The Committee recognizes, however, that some counties and cities may think such long-range plans are not needed, or be unwilling to undertake such planning. Nevertheless, because long-range planning is essential if the state's citizens are to be adequately served, the Committee has concluded that the state's "standards and services" annexation statute should be available to cities only in urban growth areas that are covered by a long-range services plan. Cities that do not develop such plans would be able to annex using the contiguous and satellite petition procedures, but not by ordinance under the standards and services procedures.

The Committee recommends that the two Associations support legislation that would restrict any city from exercising the authority to annex under GS 160A, Art. 4A, Part 3, after January 1, 1999, unless its urban growth area is covered by a long-range services plan. A city that has in place a long-range services plan of any one of the following three types would continue to be able to make annexations under GS 160A, Art. 4A, Part 3.

Joint countywide plans. These are 10-year, countywide plans that are jointly developed by the county government(s) and one or more cities and towns therein. They cover at least the following services, if the services are provided by one or more of the units developing the plan: public schools, health and hospitals, streets and highways, public transportation systems, water, sewer, solid wastes, law enforcement, fire protection, parks and recreation, and land use regulation.

Joint plans covering projected urban growth areas around one or more cities of the county(ies). These plans cover areas of the county(ies) near the participating cities where significant urbanization is projected to take place during the next 10 years. The plans are developed jointly by the county government(s) and the participating cities and towns. They cover at least the following services, if the services are provided by one or more of the units developing the plan: public schools, health and hospitals, streets and highways, public transportation systems, water, sewer, solid wastes, law enforcement, fire protection, parks and recreation, and land use regulation.

Plans developed by a single city. Plans of this type cover all areas surrounding cities in which significant urban development is projected to take place in the next 10 years. They are developed by a single city when the county(ies) in which the city is located (or expects to grow) does not take part in developing a joint plan. These plans cover streets and highways, public transportation systems, water, sewer, solid wastes, law enforcement, fire protection, parks and recreation, and land use regulation if they are provided by the city developing the plan.

In addition to projecting the extension of the listed services, each of the three types of plans shall also include, where appropriate, the following:

1. The estimated dates within the next 10 years on which each city covered by the plan expects to annex any sub-areas of its surrounding urban growth area. The urban growth area defined in the long-range services plan replaces the current provision for a "resolution of consideration" that identifies areas in which future annexations may be undertaken. This feature of the long-range services requirement means that the urban growth area is identified well in advance of any annexations, and that areas judged to be subject to annexation within 10 years are specifically identified in advance. The net result is that cities and counties, working together, join in planning for services and designating the areas that are expected to be annexed by the city. Advance notice of where services are to be provided, by which government(s), how they are to be financed, and when is much improved in comparison with the present arrangement.

2. Set forth the annexation agreements, if any, that have been concluded among the cities within the county(ies). The Committee believes that all cities whose boundaries have a prospect of moving within three miles of each other within 10 years should mutually develop annexation agreements in order that the extension of services may be planned with the least cost and the greatest benefit to the citizens who will receive them.

3. The location of any communities whose possible incorporation within the next 10 years might be appropriate and in the public interest. As noted above, the Committee believes that new municipalities should be incorporated only in special situations--where a new incorporation would be preferred over providing the services by existing cities or the county government. Special geographic features, directions of growth, and other circumstances might suggest a new incorporation as the appropriate response to local service needs in some cases. The prospect of incorporations should be noted in the long-range plans and the plans should anticipate the possibility of the incorporations.

4. The plans should provide for their revision and updating not less frequently than every four years.

5. The Committee recommends that the process for developing the plans include the following features:

a) The formal process is started by a request from a city to the board(s) of county commissioners that would be involved. The board(s) of commissioners have 60 days in which to respond and indicate which of the two types of joint plans the county(ies) wants to undertake. If the county(ies) fails to respond, or if the response is negative, the city proceeds to develop its own plan. [A county, of course, may indicate to a city its interest in developing a joint plan either under this arrangement related to municipal annexation authority, or independent of the annexation relationship.]

b) The process for developing the joint plans is especially critical. That process should be open and provide for notice of public hearings and the opportunity for written comments.

c) At any time after 15 months from the start of a joint planning process, any party to the effort may find by resolution that the effort is unsuccessful and withdraw from further attempts at developing a joint plan. Any city involved may then develop its own independent plan.

d) The plans should be adopted by simple resolutions of the participating units. The legislation should also provide that the participating units are the sole judges of the adequacy of the service plans and that their adequacy may not be an issue in any challenge to an annexation ordinance.

The Committee considers the first of the three types of plans listed above as the ideal, but recognizes that its development may not be possible in all cases. The second type listed above is the Committee's second choice because it is a joint city-county plan even if it does not cover the entire county(ies). The third type is the Committee's third choice. It is necessary where the county(ies) does not participate and assures that cities acting alone do so after appropriate long-range planning for the extension of the chief services that they provide.

The Committee believes that enactment of this recommendation will encourage cities and counties to plan jointly for the extension of vital local government services for the benefit of all the state's citizens Under this approach, city and county governments will join in planning for future annexations by cities where such annexations are the appropriate arrangement for extending local government services. County governments should be willing to participate in joint planning because it provides them with a seat at the table in planning for future urban growth. Cities should be willing to participate because the process makes for the orderly extension of services and preserves their annexation authority.

Recommendation No. 2. Repeal the "resolution of consideration" provision set forth in G.S. 160A-49(i).

The planning for urban growth areas that must be in place before annexation under the standards and services method, in effect, replaces the resolution of consideration provision with a much stronger requirement. The resolution of consideration provision only requires the designation of an area, and may be adopted without any public hearing. The long-range services plans required by the Committee's first recommendation would normally cover a larger area, be a joint arrangement with one or more counties, project future annexations for as much as 10 years, and be adopted after open, public participation.

Recommendation No. 3. Amend G.S. 160A-47 to require each city undertaking an annexation under the standards and services procedure to prepare a report showing how the proposed annexation will affect city finances and services, including changes in the city's revenue estimates. This report shall be delivered to the clerk of the board of county commissioners of each county within which the area proposed for annexation lies at least 30 days before the public hearing required by G.S. 160A-49(a).

The information covered by this recommendation is currently prepared by cities in meeting the requirements of G.S. 160A-47. If cities and counties are to cooperate in providing services, counties should be aware of the likely consequences of any proposed municipal annexations. This report to the county will help to make sure that the county government is fully informed.

Recommendation No. 4. The Committee recommends that the statutes providing for contiguous and satellite annexations by petition from property owners be amended to require cities to offer any affected rural fire departments a contract for services on the same basis as now required under G.S. 160A-49.1 when cities annex under the standards and services statutes. Furthermore, the amendments should also require that these contracts be three-party agreements to include the board(s) of county commissioners as well as the city and the rural fire department.

Although rural fire departments are usually affected less by the petition annexations (because they tend to be small in area) than by those under the standards and services provisions, the Committee believes that the need for their protection--and the protection of citizens they serve--applies to all annexations. Moreover, because the board of commissioners is usually the tax-levying authority for the districts that the departments serve, the agreements should involve all three parties.

Recommendation No. 5. Amend G.S. 160A-49 to require that a copy of any resolution of intent adopted under that statute be sent to each board of county commissioners, rural fire department, and solid waste collector with jurisdiction over the area proposed for annexation or that provides services in that area.

The current requirements for public notices and hearing undoubtedly result in almost all of the parties being aware of proposed annexations by cities within their service areas. All have an interest. A specific requirement will assure that all are informed.

B. Modification of existing statutes to make them more open and responsive to citizen concerns.

Recommendation No. 6. Amend G.S. 160A-54 to stipulate that cities must show how population estimates were determined if these are used in meeting the standards for annexation.

This is almost always done by cities currently, but there are reports of some cities not noting the bases for their calculations in a few cases. It should be done in all cases.

Recommendation No. 7. Amend G. S. 160A-49(b) to require that the mailed notice to property owners required by this statute include a notice of the right of property owners to challenge an annexation as provided in G.S. 160A-50.

A few cities do this now. Most citizens undoubtedly know that there is recourse to the courts if they believe that a city's annexation process has not been in accord with statutory procedures of if the area proposed for annexation does not meet the statutory standards. A notice to all affected citizens would assure that all are informed.

Recommendation No. 8. Amend G.S. 160A-47 to make clear that the report required by that section must include specific statements as to how water, sewer, street maintenance, fire protection, police protection, and solid waste collection are proposed to be financed and provided in the area proposed for annexation.

Almost all cities include this level of detail in the annexation reports that they currently prepare. All should do so. Cities need to have planned carefully for the extension of these services and citizens should be informed.

Recommendation No. 9. Amend G.S 160A-48(d) to provide that portions of an area proposed for annexation that qualifies under this section shall not be more than 25 percent of the total area proposed for annexation.

Areas that qualify for annexation under G.S. 160A-48(d) are those that are substantially surrounded by areas that are "developed for urban purposes" or through which services must be extended in order to serve areas developed for urban purposes. The original statutes properly recognized that if new boundaries were to be extended in an orderly manner without leaving unincorporated holes within a city, the annexation of such areas should be permitted. The present statutes, however, set no limit on the size of such areas. The Committee feels that the tail should not wag the dog, and that any such areas should not be larger than 25 percent of the total area to be annexed. It appears that few cities currently exceed this ratio when such areas are annexed, but there are some that have done so. Cities should properly be restrained from annexing areas with ratios of undeveloped to developed territory higher than 25 percent.

Recommendation No. 10. Amend G.S. 160A-49(b) to require that the published notices and mailed notices to property owners in the areas proposed for annexation include, in addition to information about the forthcoming public hearing and the location of the annexation report, information about the right of property owners, after the annexation becomes effective, to seek a court order under the authority of G.S. 160A-49(h) directing the city to provide services as outlined in its services plans prepared as required by G.S. 160A-47(3) and G.S. 160A-49(e).

The Committee, in the interest of full and open procedures, believes that the notices to property owners about the hearings on annexation should also include information about their right, after the annexation becomes effective, to seek assistance through the courts if they believe that the city has not provided services in accord with its plan of services.

Recommendation No. 11. Amend G.S. 160A-49(h) to increase from three months to 12 months the period during which citizens who believe that the city has not provided services as set forth in its plans may seek a court order directing the city to provide the services as outlined in its plan of services.

Under the current statute, citizens may seek assistance from the courts for a three-month period starting one year after the effective date of annexation. The Committee believes that this three-month window is too short. A period of 12 months, starting one year after the effective date of the annexation is more reasonable and should give adequate time for any property owner to seek action.

C. Technical corrections to make the annexation process as clear, fair, and orderly as possible.

Recommendation No. 12. Amend the contiguous and satellite annexation statutes to provide that only cities that are parties to a joint long-range services plan adopted as outlined in Recommendation No. 1 may annex territory under these statutes when the territory is within areas covered by an annexation agreement between the participating cities.

This recommendation should encourage all cities whose boundaries are nearing one another to enter into annexation agreements and would prevent annexation within areas covered by such agreements by a city that declines to participate in the joint planning process. Participation by the board(s) of county commissioners in developing the joint plan will prevent any two or more cities from improperly restricting annexations by a third city that is not a party to the annexation agreement.

Recommendation No. 13. Amend G.S. 160A-58.1(b)(2) to provide that where two or more cities have executed an annexation agreement any of the cities that are a party to the agreement may annex a satellite area within the area reserved for its future annexation even if the satellite area is nearer to the primary boundaries of another city than it is to the primary boundaries of the annexing city.

Once two or more cities have agreed on their future boundaries in light of their ability to provide services for the benefit of citizens in the area, this agreement should take precedence over the limitation in the current law which prevents a city from annexing a satellite if any part of its boundary is closer to the primary boundaries of another city than it is to the primary boundaries of the annexing city. Satellite annexation in these cases is in full accord with their annexation agreements and need not be delayed until other annexations bring the primary boundaries of the annexing city closer to the boundaries of the satellite.

Recommendation No. 14. Repeal G.S. 160A-58.1(b)(4) which seems to say that a petition for a satellite annexation may not be accepted if it includes only part of a subdivision.

There has been much confusion as to what the statute means. The Committee believes that there is no need for the provision. An annexation may be concluded only if there is a petition from the owners of real property (except for railroads, utilities, and tax-exempt property) and if the council agrees. The Committee believes that discretion as to when a petition should be accepted--for part of a subdivision or for all of one--should be left with the parties to decide in light of the circumstances of each particular case. A statewide rule is not needed.

Recommendation No. 15. Repeal the standards and services annexation procedure (G.S. 160A-33 through -42) that applies to cities and towns with populations under 5,000 as of the most recent federal decennial census and make the provisions that now apply to cities with populations of 5,000 and above applicable to all cities and towns.

The Committee finds that the difference in development patterns on which the two methods were distinguished in 1959 is no longer found in the same manner. The development patterns around many small cities are much like those around larger cities. The statutes applying to larger cities include somewhat more stringent service requirements than those for smaller cities while also providing additional standards for determining the level of urban development necessary to support annexation. The Committee believes that providing a uniform procedure for all cities will simplify the statutes and enhance the assurance of services to citizens annexed by our smaller cities and towns. [Conforming amendments will be needed in several sections of the statutes.]

Recommendation No. 16. Amend G.S. 160A-48 to expressly define "developed for urban purposes" to include an area comprised of one or more lots or tracts that are used for residential, commercial, industrial, institutional, or governmental purposes.

The clear intent of the annexation statutes is that property developed for urban purposes--those listed above--should be subject to annexation if a city meets the other requirements of the statute as well. Nevertheless, a 1964 North Carolina Supreme Court decision includes language that suggests that a city may not annex a single tract in urban use. The recommended amendment would remove the cloud over such annexations.

Recommendation No. 17. Repeal G.S. 160A-48(e) which directs that cities, when fixing new municipal boundaries, "shall, wherever practical, use natural topographic features such as ridge lines and streams as boundaries, and may use streets as boundaries."

The Committee believes that this section of the annexation statutes, which has been amended over the years, no longer serves a useful purpose and that clear discretion in the drawing of lines would better serve the state's citizens. The "wherever practical" modification leaves the statutory injunction unclear. Moreover, cities at times include territory in a proposed annexation that would not have been included except for the attempt to reach a ridge line or stream.

Recommendation No. 18. Amend G.S. 160A-48(c) to add a new sub-paragraph to provide that "land included within its boundaries" as used in sub-paragraphs (1) and (2) of the subsection includes all the area within the rights-of-way of streets and highways.

Section 160A-48(c)(1) and (2) include provisions relating to qualifying areas for annexation according to their population density. Most cities, in applying these statutes, have understood the above quoted language as including the rights-of-way of streets and highways within the areas proposed for annexation. A few cities are reported to have excluded land within rights-of-way for streets and highways when calculating the population density. The Committee thinks the understanding used by most cities is the correct one and the one that should be used. The recommended amendment should make the standard clear beyond dispute.

D. Issues related to annexation

The Committee, in the course of its deliberations, considered two issues closely related to the questions about municipal annexation: the procedures for incorporating a city and the failure of cities at times to annex territory that is in desperate need of municipal services. Both of these issues have been studied by other groups in recent

years. The Committee agrees, in concept, with their recommendations and lists them here as deserving special attention by city and county officials and the General Assembly.

Recommendation No. 19. That consideration be given to revising the statutes under which the Joint Legislative Commission on Municipal Incorporation operates to streamline its provisions and thereby encourage its use and influence on new incorporations.

As noted above, the Committee believes that wherever possible, municipal services should be provided by existing cities and counties and that it is in the interest of the state and its citizens that the creation of new municipalities or special districts be viewed as a second choice in serving the state's citizens. The Joint Legislative Commission on Municipal Incorporation was established to provide careful attention to new incorporations and to relieve the General Assembly of the need to study all the requests for incorporations. Since 1986 when the Joint Commission was established, only two communities have used its services. The other incorporations since that time have been handled directly by the General Assembly as a local act.

In 1995 the North Carolina Association of County Commissioners created an Annexation Study Committee that recommended changes in the arrangements under which the Joint Commission operates. The chief changes recommended were:

a. Include in the Commission's membership for each proposed incorporation a member of the board of county commissioners from the county where the proposed incorporation would be located.

b. Permit the petition to be filed with the Commission at any time. (Now, it must be filed 60 days before the start of a legislative session.)

c. Eliminate the various standards of population, land development, and service needs and leave determination of these issues to the Commission.

d. Require the Commission to report on its recommendation within 90 days from the receipt of the petition.

e. Allow the Commission to recommend incorporation, recommend against incorporation, or take no position.

The NCACC Annexation Study Committee concluded that if the use of the Joint Commission were made easier, more communities would use the procedure and decisions on new incorporations would be improved..

Recommendation No. 20. That consideration be given to endorsing legislation that would require cities to annex urbanized areas near their boundaries that are in need of municipal services but are not being annexed because they will require the cities to expend more for services than they will likely recover in taxes for several years after annexation.

The Committee agrees that the basic principal of the North Carolina approach to annexation looks to cities annexing territory that is near existing cities and that are urbanly developed. Cities, of course, must be in a position to serve the areas that are annexed. But they need to make an effort to serve areas that are in need of municipal annexation

and devise approaches to annex those areas--even if doing so might result in net outlays by the city, at least for several years.

The Joint Annexation Study Committee, created by the North Carolina League of Municipalities and the North Carolina Association of County Commissioners, recommended legislation in its 1980 report to address this issue. The NCACC's Annexation Study Committee in its 1995 report endorsed the 1980 proposal. The chief features of the proposal were as follows:

a. The area must meet standards of urban development.

b. The process is started by a petition from 51 percent of the resident voters, or 51 percent of the owners of real property in the area.

c. After determining that it has received a valid petition, the city causes an annexation report to be developed. The report contains a plan for extending all of the cities services to the area and the costs of their extension.

d. If the cost of extending any service would increase the city's budget for that service by 15 percent or more, the city would have three years after annexation to extend the service. Other services would be extended within six months after annexation.

e. A public hearing on the annexation is held.

f. The city adopts an ordinance annexing the area or a resolution denying annexation and giving its reasons for doing so.

g. If the city rejects annexation, the petitioners may appeal to a state agency.

h. The state agency reviews the record and approves the city's rejection if it finds that annexation of the area would impose an unreasonable financial burden on the city. The petitioners have no right of appeal from the decision of the state agency.

i. If the state agency finds that the city can annex the area without undue financial burden, it may issue an order directing the city to annex the area. The order may modify the city's plan of services as set forth in its annexation report to give the city more time to extend all services, or to annex only portions of the area covered by the annexation petition.

Appendix. Proposals Considered and Rejected

The Committee considered more than 50 issues and possible changes to the state's municipal annexation statutes. Most would have made minor changes in the statutes. Many of these we rejected because we concluded that the present statutes covers adequately the substance of the suggested changes. Some were inconsistent with the general pattern of government in North Carolina. A few we considered unworkable.

There were two major proposals whose adoption would significantly change North Carolina's approach to municipal annexation or the relationships between city and county governments. We outline here our reasons for rejecting these two proposals.

A. Approval of municipal annexations by the board(s) of county commissioners.

Those who have proposed this arrangement have suggested various levels of review and approval. Some have suggested that commissioners be able to veto any municipal annexation.

The Committee concluded that these proposals would be contrary to the pattern of government in North Carolina and would have the potential of seriously damaging city-county relationships. On page 5 above we have listed the basic principles that we think should underlie municipal annexation arrangements.

Governmental services in North Carolina, for the most part, are delivered by the state, counties and cities. At the local level it is imperative that city and county governments work closely together in order to provide services to the state's citizens fairly and economically. The principal recommendation we make (No. 1) stresses the need for cities and counties to work together in planning for services in the interest of all the state's citizens.

One of the key principles we cite above is that the municipal annexation arrangements should not "promote or create adversarial relationships between city and county governments." We believe that requiring county governments to review and approve municipal annexations would automatically create an adversarial relationship that could well impair relationships in other areas where the two governments must work together in delivering services.

It is the Committee's view, therefore, that the county government's role should come through the process for joint planning of services that must be extended to urbanizing areas and that will often require joint action by city and county governments. We do not think the interests of the state would be promoted by requiring county governments to review and approve municipal annexation proposals. (Although of secondary importance, we would also note that requiring county commissioners to review municipal annexations would undoubtedly greatly increase the workloads for commissioners and for county staffs who would need to make independent studies of the annexation reports for the commissioners.)

B. Make municipal annexations subject to a referendum of the voters (or property owners) within areas proposed for annexation.

The "right to vote" issue on annexation is a central one for many citizens who object to a proposed municipal annexation. And it is not a new one. As noted above, it was an issue on which the North Carolina Supreme Court delivered an opinion in 1859. As that opinion indicated (and as other opinions have concurred since that time) it is a question of political philosophy--not of constitutional law.

The voting issue is also one that was given extensive consideration by the Municipal Government Study Commission in 1957-59 before it proposed the present standards and services method of annexation. That Commission concluded that its recommended procedure would better serve North Carolina than would a referendum procedure.

The voting issue was revisited at length in 1980 by the Joint Annexation Study Committee created by the North Carolina League of Municipalities and the North Carolina Association of County Commissioners. Members of that Committee were:

Commissioner Edmund Aycock, Wake County
Commissioner Herschel Brown, Onslow County
Commissioner Danny DeVane, Hoke County
Commissioner Jim Gordon, Burke County
Commissioner Gene Wilson, Watauga County

Councilman George L. Bernhardt, Lenoir
Councilman Koka E. Booth, Cary
Alderman Bob Braswell, Goldsboro
Mayor Hope Brogden, Southern Pines
Councilman Joe B. Patterson, High Point

Commissioner Wilson and Mayor Brogden served as Co-Chairmen of the Committee. In its 1980 report, the Committee expressed its own view and quoted the reasoning of the Municipal Government Study Commission on the issue. Quoted here is what the 1980 Committee had to say about the issue:

> Democratic principles are deeply rooted in America. Central among these principles is citizen voting. No other issue surrounding municipal annexation in North Carolina has received more attention than the absence of the vote when cities annex using the standards and services method. [No voting takes place with the two 100 percent petition procedures, since the petitions come from owners of real property rather than qualified voters. Many property owners, of course, will be qualified voters and their number usually represents a majority of the qualified voters.]
>
> The voting issue received extensive attention by the Municipal Government Study Commission in 1957-59 before it recommended the present annexation arrangement. The Commission's conclusion on this issue bears repeating here:
>
> > We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. Therefore, sooner or later his property must become subject to the regulations and services that have been found necessary and indispensable to the health, welfare, safety, convenience and general prosperity of the entire urban area. Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is the proper arena for the exercise of political rights, as

> [North Carolina's] General Assembly has evidenced time and again in passing annexation legislation without recourse to an election.

The Commission expressed well the need for the general interest to prevail over the individual's in the case of annexation.

It is worth noting that in our system of government many actions are taken without direct voting by citizens.

Except in specialized cases, taxes are levied by federal, state, and local governments without direct voting by citizens.

Congress declares war without a national referendum.

County commissioners may decide to operate a landfill without a county-wide referendum.

On the other hand, in North Carolina, the sale of beer, wine, and liquor is permitted within a jurisdiction only after a vote of the people. The same is true of most debt incurred by local governments.

North Carolinians who live in an urban area (or in an area that has become urban around them) may expect soon to become citizens of the nearby city--if there is one.

Finally, it should be recognized that voting does not assure that every citizen's choice will prevail. Many votes are very close. It probably matters very little to a person annexed against his will whether the decision was made by five city council members or by 51 percent of his neighbors (depending upon the voting jurisdiction, this number might vary from two people to several hundred).

The voting issue is the one issue in municipal annexation that will probably never be fully solved. It is a matter of political philosophy on which people differ. Experience suggests that North Carolina's resolution of the question is in the public interest and the present statutes should continue to permit municipal annexation without a vote under the safeguards provided.

Although citizens may not vote on an annexation, after annexation they become city voters. Their city governing board makes decisions on streets and highways, water and sewer extensions, land use regulation, and other matters that affected them before annexation and will continue to affect their lives afterwards.

In this sense the state's annexation provisions help make North Carolina local governmental arrangements more democratic and more accountable to all citizens. All citizens are county citizens and influence county government's actions through the ballot box as well as by other means. A large majority of the state's citizens are also affected by the actions of some city government because they are citizens of the city or because they live near it. Annexation brings inside those who live outside the city and enlarges their capacity to participate directly as citizens in all local governments that serve them.

This Committee agrees with the 1980 Committee. We think North Carolina's present municipal annexation statutes serve better the interests of all the state's citizens than would a procedure that is based on a referendum of residents of areas proposed for annexation.

END

Summary of the Report of the Joint City/County Annexation Committee

Principles for Municipal Annexation Arrangements

A. The purpose of city and county governments (and other forms of local government) is to provide services to the state's citizens in an efficient and responsive manner.

B. Because cities and counties have overlapping jurisdictions, statutory provisions affecting their powers and procedures should reflect this arrangement and assist and promote cooperative arrangements between cities and counties when appropriate.

C. It is in the interest of the state and its citizens that urban and urbanizing areas receive urban services from existing general purpose governments where possible rather than create new special districts or new municipalities to provide them.

D. Annexation standards should balance fairly the interests of all persons in and around North Carolina cities who are affected by enlargement (or non-enlargement) of the cities' boundaries.

E. The annexation procedures should be as fair and orderly as possible.

F. The annexation arrangements should not promote or create adversarial relations between city and county governments.

G. The annexation arrangements should assure that the level of fire protection and solid waste services to citizens in areas proposed for annexation are preserved or enhanced, that these services to citizens in the surrounding areas who are not being annexed are not endangered, and that the agencies or individuals providing them are protected from significant financial losses.

The Committee's Recommendations

The Committee's recommendations take into account the changes in the social and economic life in North Carolina since 1959 and the trends in urban development that promise to be with us for the next 10 to 15 years. They fall into four general classes.

A. Support for higher levels of services and improved coordination between cities and counties in meeting the needs of the state's citizens for service

1. Require cities to adopt (with counties if possible) long-range services plans. The plan must cover possible future annexations. Cities that fail to adopt such plans would lose their authority to annex under the services and standards method.

2. Repeal the "resolution of consideration" provision. It is covered by services plan (No. 1).

3. Require cities to develop a report on the financial consequences for them of each annexation and deliver a copy of the report to the county(ies) affected.

4. Require cities undertaking contiguous or satellite annexations to offer contracts to volunteer fire departments in same manner as now required for standards and services annexations.

5. Require cities to send copies of each resolution of intent to county commissioners and any affected rural fire departments and solid waste collectors.

B. Modification of existing statutes to make them more open and responsive to citizen concerns,

6. Cities must show in their annexation reports how population estimates were developed.

7. Mailed notices to property owners must advise them of their right to challenge annexations.

8. The annexation reports on services must show how the chief services - water, sewer, solid wastes, street maintenance, fire protection and law enforcement - are to be financed.

9. Limit connecting areas to not more than 25% of the total area to be annexed.

10. Notices to property owners (in advance of hearing) must also advise owners of their right to ask the court to direct the city to provide services as outlined in its annexation report.

11. Increase from three months to 12 months the "window" during which citizens may ask courts to direct cities to provide services as planned in the annexation report.

C. Technical corrections to make the annexation process as clear, fair, and orderly as possible.

12. Provide that only participating cities may annex territory within areas covered by their long-range-service plans and annexation agreements.

13. Allow a city that is a party to a joint annexation agreement to annex, within its reserved area, satellite territory that is closer to another party's boundary than to its own boundary.

14. Repeal satellite provision that seems to say that part of a subdivision may not be annexed.

15. Repeal "under 5,000 population" procedure and make all cities subject to large-city statute.

16. Define "developed for urban purposes" to include a single lot/tract used for urban purposes.

17. Repeal the provision directing that in fixing annexation boundaries, where practical, "natural topographic features such as ridge lines and streams" shall be used.

18. Amend statutes to make clear that areas within street rights-of way should be included within the total area proposed for annexation when determining that annexation standards are met.

D. Issues related to annexation

19. Consider revision of the Joint Legislative Commission on Municipal Incorporation statute to streamline its provisions and encourage its use.

20. Consider legislation that would, under some circumstances, require cities to annex territory that is in need of municipal services. (From 1980 Joint City/County Committee)

Two Proposals Considered and Rejected

A. Require approval of municipal annexations by the board(s) of county commissioners.

B. Make each municipal annexation using the standards and services procedure subject to a referendum of the voters in the area proposed for annexation.

The Joint City/County Annexation Committee was comprised of 24 city and county officials: managers, finance officers, planners, and attorneys appointed by the executive directors of the NC League of Municipalities and the NC Association of County Commissioners. The Committee's final report was issued in December , 1996.

CITY OF HIGH POINT
NORTH CAROLINA

FRED P. BAGGETT
CITY ATTORNEY

January 28, 1997

Ms. Ella B. Scarborough
North Carolina League of Municipalities
P. O. Box 3069
Raleigh, North Carolina 27602

Re: Report of the Joint Annexation Committee

Dear President Scarborough:

As a member of the Committee, I wish to make clear that its report was not unanimous. I disagreed with and voted against Recommendation No. 1, the requirement that annexation authority be tied to joint city-county long range plans. While I agree with the desirability or even the requirement of such joint planning, I strongly disagree that it should be linked to annexation authority. Lest the report of the Committee be considered unanimous, I wanted to point this out.

Speaking as an individual, I believe there is no credible suggestion that this recommendation cures any perceived defect in existing annexation policy, but rather is an attempt to foster joint planning by jeopardizing annexation. In addition, I believe that this recommendation would be turned into an annexation moratorium by annexation opponents.

I urge the League to reject the Committee's recommended changes as current legislative policy, and rather consider them resource material. I hope and expect that the League will vigorously resist any legislative proposal that significantly changes the current state annexation policy.

Yours very truly,

Fred P. Baggett

Fred P. Baggett

FPB/jp

cc: Mr. Terry Henderson, NCLM
Mr. Bill Stuart, City Manager, Winston-Salem
Mr. John Link, County Manager - Orange County
Mr. Jake Wicker, Institute of Government