INSTITUTE OF GOVERNMENT

UNIVERSITY OF NORTH CAROLINA

A Memorandum on

Annexation and Annexation Procedures

Prepared for

The Municipal Government Study Commission

by

George H. Esser, Jr.
Assistant Director
Institute of Government

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Introduction

The question of annexation and annexation procedures is of primary importance at this time in North Carolina because of the following reasons:

1. North Carolina has a large number of rapidly-growing cities and towns, most of which are relatively independent and not clustered around one large metropolitan center.

2. Sound development of land for intensive residential uses and for commercial and industrial purposes requires the provision of municipal water and sewer services. Many cities for a number of reasons hesitate or refuse to extend services unless the territory served is annexed.

3. North Carolina's many cities, in marked contrast to those in most other states, are not surrounded by incorporated suburban municipalities.

4. The extension of municipal services at this time is generally regarded as a responsibility of the city, not the county.

5. Present annexation procedures, providing for an election on the question of annexation in the area to be annexed if as many as 15% of the qualified voters in the area petition, is, in the judgment of cities, holding back corporate extensions which are essential for the sound development of the entire urban area. Indirect evidence of this opinion is the flood of special annexation acts introduced into the General Assembly in the 1957 session. Many more are in prospect for 1959.

6. Whether or not North Carolina's cities will continue to grow soundly may depend upon whether as a matter of state policy they can continue to incorporate land into their boundaries which is necessary for urban development. Despite the fact that most of the nation's largest cities

can no longer annex, it is indisputable that these cities attribute their present size, prestige and strength to the process of annexation over the past century.

Thus annexation is not a problem for cities alone. It is a problem for the state. The state must determine, as a matter of policy, whether cities should be encouraged to expand their boundaries to provide the full range of municipal services to newly-developed areas which must have such services. The alternative to annexation is, in all likelihood, intensification of the "fringe area problem" throughout the state.

The Setting for Annexation

Since annexation may be the key to urban development in North Carolina, any basic revision of the approach to annexation in this state should be based on an understanding of the many complex factors involved in urban development. These factors are listed below and then each discussed briefly.

1. The actual pattern of land development in and around North Carolina cities.

2. The need of unincorporated land for services either to meet a demonstrated deficiency or to provide facilities for development.

3. The governmental structure within which annexation must operate.

4. The ability of the city to finance extension of its services.

5. The attitudes of residents and property owners inside and outside the city toward extension of corporate limits.

6. The problems that annexation raises for other units of government in the area.

Pattern of Land Development in and Around North Carolina Cities

Urban development today is not limited to block by block growth out from the central congested city. It is featured by:

---Ribbon development along the major highways approaching the city, development which carries with it serious problems of traffic congestion, sanitation and safety hazards.

---Large areas of farm or undeveloped land between the major highways running into the city.

---Scattered subdivisions and clumps of single family housing stretching out for some distance in all directions from the center of the city.

---More and more new industries located at some distance from the center of the city but within the general urban area of which the city is the center.

The pattern differs from city to city. What is significant is that frequently no rational boundary can be drawn around the land that is presently developed for urban uses. Considerable areas of land developed for urban uses may be separated from the major urban center by large tracts of relatively undeveloped land.

It is also important to consider the probable patterns of development in the future. (See pages 7 and 8 of the Report of the Municipal Government Study Commission.) New highways may make future residential and industrial location even more mobile, and new development may take place between, rather than in the vicinity of, existing cities.

Urban Land and Municipal Services

The Commission has already considered the need of residential, commercial and industrial land uses in an urban area for municipal services.

(See pages 11 and 12 of the Commission report.) In the report the Commission concluded that "for many purposes the distinguishing feature of a city is the existence of, and need for, large-scale and expensive community facilities." It was also pointed out that need depends to a great extent on density of development as well as factors such as soil conditions which determine satisfactory use of septic tanks. Density of development also helps determine whether it is financially feasible to extend water and sewer lines whose costs are most frequently met from water and sewer charges.

In considering the ability of a city to extend services, there are several factors which are of primary importance.

1. A high quality of fire protection is possible only where there is also a well-developed public water system.

2. While police protection, garbage collection and street maintenance services can be provided at a considerable distance from the present city boundaries without any significant increase in capital facilities, the same is not true of the water system, the sewer system and, to a lesser extent, fire protection facilities, especially when they must extend through undeveloped areas to reach and serve outlying urban areas in need of municipal services. Thus in many cases a considerable investment in water distribution and sewerage collection facilities must be made in extending the city boundary, an investment which will not produce a return until further development takes place. On the other hand, the existence of the facilities frequently encourages additional development.

3. In the past development has taken place with little regard to topographic considerations. Many of our cities have adjacent suburban areas

which may need or want municipal services but which are located in drainage areas other than the ones which have been developed for sewer systems and sewage treatment. The added expense of pumping stations or of new treatment plants may make it uneconomic for the city to attempt to serve such areas.

In short, much development which now or in the future will require municipal services is taking place in areas where the expense of extending water and sewer systems is so great that a city may not want to provide the necessary facilities. This fact raises the question of whether future development should, in some way, be controlled so that intensive development of the type requiring municipal services will be channeled into areas that can be provided with water and sewer facilities at a reasonable cost.

At the meeting on January 22nd, there will be a number of maps from North Carolina cities showing the problems raised by this scattered pattern of development.

Governmental Structure as it Affects Annexation

The feasibility of extending the city's boundaries is greatly affected by the very structure of local government and by the distribution of tax sources to local units of government. The governmental structure in North Carolina is surpassed by no state in providing favorable conditions for extension of municipal boundaries in accordance with need and demand.

First of all, cities and towns are the units of government primarily responsible for providing municipal-type services in this state. No city has responsibility for building and operating schools, and new buildings must not be financed from the new property values created in any single subdivision or group of subdivisions. Cities do not perform health and

welfare services so that extension of limits does not involve complex questions of varying levels of service.

Furthermore, counties in this state are not traditionally in the business of providing municipal-type services in unincorporated areas. In many staes counties are providing such services, discriminating against the city taxpayer, increasing the social cost resulting from duplication of services and facilities, and making coordinated urban development much more difficult.

The fact that North Carolina counties provide generally only those services needed by people throughout the county eliminates baffling questions of tax equity and assures uniform services throughout the county. Thus antagonism between city and county governments are reduced in a large degree.

Finally, the state system of highways removes from the city responsibility for building and maintaining large additional sections of major thoroughfares as city limits are extended.

Financing the Extension of Municipal Services

Because the responsibility of the North Carolina city is limited to functions required in urban or densely-populated communities, it is much easier to determine the effect of service extension and its probable cost.

In any North Carolina city where the ratio of assessed value of property to market value is not unreasonably low, the city can extend its General Fund services (police and fire protection, garbage collection, street maintenance, etc.) for a considerable distance without incurring heavy obligations not met from additional revenue from the annexed area--if the cost of new residential streets and drainage facilities are paid for wholly or largely by developers or property owners. One major reason for this is that

newly-developed areas, particularly residential areas, generally require relatively inexpensive services when compared to the cost of providing the same services to heavily-developed commercial and industrial areas.

/Note: this result probably will not be true in cities depending heavily on electrical profits rather than property tax revenues, particularly where the area annexed has been served by the city's electrical lines prior to annexation. In such cases the city is already enjoying the profits from the sale of electricity to such areas, and is already using such profits to meet present expenses within the city./

The major limitation on the ability of cities in North Carolina to extend services is the cost of water and sewer systems--including necessary expansion of the water supply or the sewage treatment facilities as well as water distribution mains and sewer interceptors and outfalls. Presently these systems are largely financed from rates charged for service, with some contribution from taxes (largely for debt service), or special assessments for lines (in some cities), or electrical profits (in those cities selling electricity). Thus, in any extension, the existing or proposed development must be of such a degree that the revenue to be derived will pay the debt service on bonds to pay for the extension as well as added operational costs.

This set of circumstances raises several possibilities that should be considered in adopting annexation procedures:

1. Should restraints be placed on the type and character of development in and around cities so that intensive development requiring utility services will be limited generally to areas that can be most easily and least expensively provided with utility services? For example, if a city presently

provides sewage treatment for a large drainage area in which there is ample room for future expansion of residential and commercial construction for several years, should intensive development necessitating early sewage treatment facilities be permitted in an adjacent drainage area not presently served by the city?

2. Should a city be encouraged to undertake periodic large-scale extensions of utility systems (which is generally desirable for major transmission and collection systems in the larger cities) or be limited to frequent small extensions of service, in which case the extension of major transmission and collection systems is complicated? A succession of small extensions, in which service is made dependent on annexation, means that the city governing board, perhaps unwillingly, is helping to determine whether or not particular tracts of land can or should be developed. On the other hand large water and sewer extensions open up large areas of land for development and the real estate market is not so much dependent on governing board action. But large extensions, accompanied by annexation, bring in large areas of undeveloped land which have to pay city taxes before they really need city services.

Again, these points will be further illustrated on January 22 by maps and other materials from North Carolina cities.

Having looked now at the physical situation it is important to consider why the city should want to annex.

Why Does, or Should, the City Want to Annex

Many, sometimes conflicting, reasons are given as to why the city should seek to extend its corporate limits. The following reasons are found, with varying degrees of emphasis, in most annexations.

1. To provide services required for sound development throughout the urban areas.

   (a) Some persons characterize this approach as the "do-good" approach, that is, it reflects an attempt to impose a standard of service on newly-developing areas that such areas do not want or need. What quality of a given service is <u>needed</u> is obviously a question of value. There may be no objective way of determining that municipal police protection of a high quality is needed, in the absence of evidence of criminal activity, but overflowing sewerage is generally accepted as evidence of a need for a public sewer system.

   (b) To provide the services essential to attract new economic growth. Insofar as it is true that the growth of a city depends on new industry and new residential development, and insofar as it is true that new development will need good services, and insofar as it is true that new growth will stabilize the tax base of the city to finance municipal services, then the city has an understandable self-interest in wanting to annex areas undergoing development. Sound development is an asset to the city; unsound or unsightly development is not and may mean additional and unnecessary expenditures when later annexed.

   (c) To insure efficiency in the extension of facilities. Engineers, planners and career governmental officials are often concerned that failure to extend corporate boundaries prevents most efficient extension of facilities.

2. To expand the tax base of the city. There is little doubt that the tax base of the average North Carolina city is strengthened by annexation. At the same time, it must be noted that the city prior to annexation has provided services and facilities in the city which have benefitted suburban residents working in the city. It is also true that the average person annexed to a city insurs at most a modest increase in governmental costs (a) because of savings in fire insurance and water charges, and (b) through enhancement in the value of land produced by improvements. On the other hand some commercial and industrial areas may pay substantially greater taxes, initially at least, than benefits received. Still the property tax is not a benefit tax and it is unwise to state categorically that benefits should equal tax payments. It is also important to point out that a strengthened tax base enables the city to provide some facilities of considerable economic importance to the entire urban community--such as airports, auditoriums, recreational facilities, and libraries.

3. To give the city additional status and prestige. Many annexation movements, especially just prior to the decennial federal census, are said to be motivated by "boosterism"--that is, an interest in a bigger city. The term is unfair, for it is unquestionably true that additional size and population bring concrete economic and prestige benefits. For example, the advertising system in this country is keyed closely to city population size, and location of business and industry in some cases is affected by population. While desire for status and prestige should not be the only motive for annexation, it is a reasonable motive so long as the city does not seek to annex more than it can economically and equitably serve.

Another aspect of status and prestige is the role that the city will play in state and federal political relationships. As the representative of its residents before legislative and administrative agencies, the city will have additional status if its corporate population accurately reflects the extent of the urban population.

These major reasons for annexation are not necessarily agreed upon by everyone in the urban community. As a matter of fact attitudes toward the city and toward annexation demonstrate more clearly than anything else the problems inherent in trying to devise annexation procedures that fit the demands of today's society.

Attitudes Toward Annexation

People react in a positive fashion toward annexation. Any action that hits the pocketbook is bound to excite interest, and there is a tendency to judge annexation on the simple basis of taxes paid versus benefits received. While there may be compelling reasons to give cities broad annexation authority in the interests of service adequacy, administrative efficiency, and sound urban and economic development, these reasons must be understood and accepted by residents and taxpayers as a whole in order to be acceptable politically.

What are the general attitudes toward annexation? Who are the people who have positive attitudes?

There is the average city taxpayer who is pretty well satisfied with his lot and is dubious of annexation for feat it will increase his taxes. His loyalty and concern for the whole community is more that of a follower, rather than a leader. He characteristically approves of outside tax contribution to support inside community services.

There are the elected city officials who may show an excess of caution for fear the advantages of annexation will not make themselves manifest before the next election, or who may demonstrate an overly acquisitive spirit.

There are the appointed city officials who want strong urban government but who want positive leadership from elected officials to bring it about.

There are the businessmen of the city who frequently take conflicting positions. Some of them are concerned with size and prestige and advocate annexation to attain this goal. Some are concerned with the long range development of the entire urban community. Some want to attract industry at any cost, even to the extent of extending utilities outside the city without annexation and without regard for equitable sharing of costs. Their objective is new payrolls today. More recently, many businessmen are evidencing great concern for the stability of the downtown business district and see a relationship between the city tax base and city limits extension policies.

There are the industries, both inside the city and out. Some of them want water and sewer services at the lowest possible cost and without city taxes. Others want to pay their fair share of community costs. Some want to be assured that the community is developing into an attractive and convenient place in which to live. Others do not care.

There are the fringe area residents, many of whom tend to be a bundle of fears. They fear higher taxes, that city control will mean more expensive but not necessarily better facilities, that land use controls will

limit their use of their property, and that political control will pass to and be vested in the city. Others seek municipal services, to correct service deficiencies or to protect their own land and property or to encourage sound development. Some, particularly part-time farmers who also work in the city, are sincerely satisfied with the less expensive services they are receiving and see no advantage in annexation.

Bona fide farmers understandably see no advantages to them in annexation, and in most cases positive disadvantages. Owners of undeveloped land favor services that make their land marketable but object to paying taxes until the land begins to produce income.

The sharp lines of the old rural-urban conflict are softened in the fringe area situation, but they are not erased. It is because of these attitudes that understanding of the process of urban development must be encouraged if essential agreement on annexation policies is to be reached.

How Does Annexation Affect Other Units of Government

Because of the clear allocation of responsibility between cities and counties in North Carolina, county governments are not directly concerned with annexation. Annexation relieves counties of any responsibility for facing problems created by unsound development and eases their financial situation insofar as they have been attempting to serve fringe areas. On the other hand, the county governing board is the representative of persons in unincorporated areas and often takes some responsibility in working for and against annexation.

The problem with respect to adjacent incorporated suburban municipalities is not great in North Carolina. There are only a handful. The problem

is to prevent such areas from incorporating in the future and "fractionating" governmental control in urban areas.

There is some problem with respect to sanitary districts and fire protection districts. At the present time annexation can include areas of such districts without decreasing district control unless special legislation is enacted to eliminate the overlapping. Some thought should be given to orderly adjustment on a general law basis of the jurisdiction, debt and property of such districts following annexation.

Summary and Conclusions

Without attempting to be comprehensive and complete, it would seem that annexation procedures, as a matter of state policy, must balance these objectives:

1. Progressive extension of essential municipal services to developed land so that problems affecting the health, safety and welfare of fringe areas can be avoided.

2. Periodic inclusion of undeveloped land into the city so that sound development can be coordinated with utility extensions and with municipal land use policies, and so that land needed for further economic development will be available.

3. Maintaining the fiscal stability of municipalities through periodic extensions of corporate limits that do not involve incurring unreasonable service obligations. This objective includes attempting to reduce the overall investment for sound land development through control of utility extensions, without leaving intensively-developed areas without means for getting needed services and without unfairly limiting the marketability of land not provided with the full range of municipal services.

4. Protection of the essential political and property rights of residents of areas undergoing urban development. The interests of the entire area must, in effect, be weighed against the desires and attitudes of individuals.

5. Vesting the right to make the determination in the governmental unit or agency best suited to make the determination, subject to reasonable standards or limitations deemed necessary for protecting individual property and political rights.

Approaches to Annexation

In reviewing annexation procedures in this and other states, and in evaluating them for possible change or adaptation, there are two points to keep in mind:

1. What is the basic concept of the city implied in the annexation procedure? As a result of annexation, will the city include (a) only those areas needing and receiving municipal services, or (b) substantial areas of land under development but not now receiving services?
2. What is the basic political approach in each policy? As a matter of state policy, which governmental units have the controlling voice in determining when and where annexations take place?

Concept of the Area to Which Annexation Should Apply

Entirely apart from the constitutionality of systems for determining what land should be annexed to a municipality, it is of interest to determine, through examination of provisions in other states, the land which can or

cannot be annexed. Where the statute imposes a specific standard, it is possible to determine what the objective of the legislature is. Where the statute permits a city governing board or an administrative agency or a court to apply a general standard, the objective is much less clear.

Basically there are two theoretical concepts:

1. The annexation statute may be based on the theory that the city should only annex land that should be served by municipal services and facilities. Thus the power to annex may be limited to territory which has a certain amount of population (500 persons per square mile or 25 persons per quarter section) or is subdivided into lots and tracts characteristic of urban use (some states have statutes applying only to land subdivided into tracts of five acres or less).

2. The annexation statute may be based on the theory that the city should be able to annex territory so that the full extent of the urban area undergoing urban development will be brought into the city. This is looked upon as "closing the door to the barn before the horse escapes." While no annexation statute specifically states this objective, those statutes which permit a city to annex land without imposing any legislative standards (selected cities in Texas, Missouri and Nebraska) or which only impose very general standards (Virginia and Tennessee) can be said to have this objective in mind.

Actually, no statute today defines a precise objective. Perhaps the draftsmen despaired of defining an objective. Perhaps they did not think it important. Yet, when the varied interests of so many persons are considered, it is odd that no statute is based on a policy which can be enunciated clearly.

The Political Basis of Annexation Procedures

Keeping in mind the ultimate objective, that is, the concept of what the city should include, it is now possible to move on to the kinds of procedures that are in use today. In this memorandum they are classified on the basis of who, in the judgment of the legislature, should make the decision on whether to extend the corporate limits of a municipality.

Approach Number One. That annexation is a matter for state legislative discretion.

In all of the New England states all questions of corporate boundaries are determined by the state legislature. Since all land in New England is located within the boundaries of a "town," this is understandable. Annexation in effect can only consist of acquiring part or all of the land and assets of another town.

Several other states permit annexation by special act, as does North Carolina. In many of these states the majority of annexation actions originate in special legislation rather than depending on the more cumbersome general law provisions. Under special legislation it is possible for the legislature (or more strictly, the local legislative delegation) to make the judgment on where the new corporate boundaries of the municipality should be. There are no limitations on legislative authority by virtue of the constitution or judicial interpretation, and the legislature can fix the boundaries of a city or town to include as much or as little land as it chooses. In short, the policy for each separate annexation is determined by the legislator, or legislative delegation, introducing the bill, and the entire decision may be made at the legislative level. For example, the new boundaries of Greensboro were fixed by the legislature in 1957.

If the philosophy of local determination of local issues is relied on, then legislative determination of corporate boundaries violates that philosophy. It results in the legislator deciding where the boundary should lie, who should receive services, who should pay taxes. If there is controversy over the proposed annexation, the entire General Assembly may be involved in determining whether the discretion of the representative from the county and city involved should be upheld or modified. Thus the final decision may not be based on an objective analysis of the proposed annexation.

Approach Number Two. That annexation is a political matter for determination by voters of the territory to be annexed and/or voters within the city.

In the early years of this country, all extensions of corporate limits were accomplished by the state legislature. Later, when urban development increased rapidly in the Northeast and Middle West, full control of local government through charter amendments led to abuses and caused adherents of local determination of local issues to seek restrictions on state legislative power. One of the common restrictions was to limit the right to pass special legislation, i.e., legislation applying to one or a few cities and towns. In many states legislation dealing with extension of corporate limits fell under this prohibition.

In passing general legislation dealing with the power of cities to annex land, many legislatures adopted the point of view that no annexation should take place unless a majority of the residents of the territory to be annexed approved, either in an election or through presentation of a petition. Thus today:

1. A total of seventeen states permit annexation only after a petition submitted by landowners in the area to be annexed, and in nine of these states

more than 50% of the landowners must sign the petition. In most of the other states, an election in the area to be annexed must be held after the petition has been submitted.

2. Eight states permit the city council to initiate the movement for annexation but require, at the least, the residents of the area to be annexed to approve the annexation.

Experience with this approach to annexation can be summed up in the following statements.

1. Requirement of a favorable vote or petition tends to discourage annexation in the following situations:

a. Where the city has already provided water and sewer to well-developed subdivisions. The residents then have "nothing to gain" and recognize no responsibility for services benefitting or affecting the entire urban area.

b. Where subdivisions or residential areas have wells and septic tanks which work satisfactorily. These residents particularly dislike the idea of being required to junk their existing investment and tie onto public water and sewer systems. But frequently an unfavorable vote occurs where the septic tank system is not working.

c. Where the area to be annexed, for real or imaginary reasons, "fears" the city and city controls. Whether fear of the city government or fear of controls is attributable to a failure on the part of the city to "sell" itself, or is based on a deep-seated dislike of rural residents for

the city and what it stands for, or is simply based on failure to understand what annexation will mean, the attitude is there and it has evidenced itself in countless situations.

d. Where the area is dominated by an industry or industries which does not want to be annexed. Often the industry, particularly in a former "company" or "mill" town, is providing its own essential services and opposes annexation for economic reasons.

e. Where economic activity is of a character that is subject to police power controls and does not want such controls. Roadside development featuring taverns, marginal variety stores, etc., frequently opposes annexation because municipal ordinances will regulate their activity.

f. Where the area has a preponderance of vacant or undeveloped land and the landowners want to put off municipal taxation so long as the land, being held for the best possible sale, is not producing income.

This raises the basic question of whether voters in a small part of an urban area, benefitting from the existence of the city and the services that the city makes available, should have the power to deny extensions that are directed at the better government of the entire area. Should basic policy questions be subject to the veto, for all practical purposes, of a segment of the area? Should not policy questions be worked through elective channels, but boundary questions be settled on the basis of factual determinations?

Keeping a vote but making the result depend on the vote of the city electorate and the residents of the outside area, counted together, attempts to place the question of boundary extension on an area-wide basis. But it is subject to the sound objection that it gives the appearance of forcing the outside area into the city and fosters discord and controversy.

In general, objective appraisals of annexation experience in states requiring either a petition or an effective vote conclude that, from the point of view of sound development, this procedure places very difficult obstacles in the path of municipal growth and the development of the entire urban area. This is not to say that cities cannot carry out successful annexation programs, particularly where the city has the initiative to propose annexation. Some North Carolina cities have demonstrated that intelligent campaigns, preceded by careful study and featured by friendly educational efforts, can result in a series of successful annexations, even when a vote is demanded. But even the most intelligent campaigns will not always be successful under all conditions.

Approach Number Three. That annexation is a matter for city determination, with or without standards or review.

It is difficult to distinguish between those procedures which permit a city to carry out annexation, subject only to judicial review to determine whether the exercise of power by the city was "reasonable," and those which permit a city to initiate annexation but which place the final determination of boundaries in a fact-finding judicial or administrative body. While the distinction made here may be arbitrary, it is based primarily on the role of the reviewing agency.

In at least three states some cities have the right to undertake annexation without any limitation placed by legislation.

1. Texas "home rule" cities and first and second class cities in Missouri may annex by charter amendment. Some of these cities require a vote of the area to be annexed; more require only a favorable vote of voters in the city or of the governong board alone. Bare statutory authority also gives metropolitan cities in Nebraska (principally Omaha) power unlimited by standards.

2. Ten states permit cities to annex platted territory adjacent to their boundaries without a petition or vote. Usually no lot containing more than five acres can be annexed. In addition Colorado, Kansas and Oklahoma permit cities to annex land entirely surrounded by the city or land where a large percentage of the boundary is a common boundary with the city.

3. Seven states permit the city council to initiate annexation by ordinance subject only to court review as to the reasonableness of the annexation.

4. Two states permit the city council to initiate annexation by ordinance subject only to court review if as many as 75% of the resident property owners sign a remonstrance.

In any case where a legislature delegates authority to the governing board of a municipality, action of the governing board in exercising that authority is subject to judicial review. The scope of review is whether the governing board acted reasonably in exercising the authority. In some annexation procedures the scope of judicial review is more specifically defined. In some the legislature does not attempt to define the court's scope of review. In Texas the court has held that the legislative delegation

of home rule authority to determine municipal boundaries, under specific constitutional authority, has removed the court's power to review action of the city governing boards in annexing territory, so long as each governing board follows the procedure adopted by the city electorate in the city charter. /See Appendix E/

As a rule, courts faced with cases where it was necessary to determine whether the governing board exercised its power to annex in a reasonable fashion, have developed their own judicial criteria. One of the most popular sets of judicial standards is one developed in an Arkansas case many years ago and carried into cases in many other states. Under the court's reasoning, municipal corporate limits extension is reasonable if it takes in contiguous lands,

1. When they are platted and held for sale or use as town lots.

2. Whether platted or not, if they are held to be brought on the market and sold as town property when they reach a value corresponding with the views of the owner.

3. When they furnish the abode for a densely-settled community or represent the actual growth of the municipality beyond its legal boundaries.

4. When they are needed for any urban purpose as for the extension of streets, sewers, drainage, electric, gas or water systems, or to supply places for the abode or business of residents, or for the extension of needed police regulations.

5. When they are valuable by reason of their adaptability for prospective town or city purposes, but the mere fact that their value is enhanced by reason of their nearness to the corporation would not give grounds for their

annexation, if it did not appear that such value was enhanced on account of their adaptability to town or city uses.

But, according to the cases, municipal boundaries could not be extended to take in contiguous lands,

1. When they are used only for purposes of agriculture or horticulture and are valuable on account of such use.

2. When they are vacant and do not derive special value from their adaptability for urban use, although their value may be enhanced by reason of their nearness to the city. The limits of a city cannot be extended to take in undivided lands merely for the purpose of increasing the city's revenue.

The action of a North Carolina city in annexing land is subject to review to determine the reasonableness of the city's action, but no case has ever been appealed to the Supreme Court and thus the court has never had to devise judicial standards for measuring the reasonableness of the city's action. It is probable that our court would exercise some restraints if any North Carolina city attempted to annex land on the same basis as Texas cities where the very extent of some annexations seems to constitute an abuse of discretion. But the important thing to note is that even if North Carolina cities were given broad powers to annex without an election, the court would probably devise judicial criteria for reviewing the action of the city that might, in fact, be narrower than the legislature intended.

To avoid such a result, some more recent statutes have both attempted to impose standards that the city must meet in annexing land and to define the scope of the court's review. For example, in Tennessee,

1. A municipality may annex "when it appears that the prosperity of such municipality will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered" unless annexation takes place.

2. In any annexation, the municipality may annex "such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole."

The Tennessee statute goes on to define the role of the courts on appeal. On trial of the issue of annexation, "the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the municipality." /See Appendix D/

In this connection the Indiana law, a version of which was introduced into the 1957 General Assembly, is of particular interest. Under that law a city may annex any contiguous territory that it wishes, under any terms and conditions that it considers just and equitable. An appeal may be taken either by a majority of the owners of land in the territory annexed or by the owners of more than 75% of the assessed valuation of real estate in the territory. The court, after hearing, shall permit the annexation to take place despite the petition if it is found that these primary determinants are present:

1. The annexation is in the best interests of the municipality and of the territory sought to be annexed.

2. The area is urban in character, being an economic and social part of the annexing municipality.

3. The terms and conditions set forth in the ordinance are fair and just.

4. The municipality is financially able to provide municipal services to the annexed area within the reasonably near future.

5. The area sought to be annexed, if undeveloped, is needed for development of the municipality in the reasonably near future.

6. The lines of the annexation are so drawn as to form a compact area abutting the municipality.

The annexation succeeds or fails as a whole. The judge is not given the power to adjust in any way the boundaries of the annexation. The statute also provides a method by which an area wanting to be annexed may be annexed despite the refusal of the city to annex. /See Appendix A/

Except in unusual cases, such as the Texas situation which is based on that state's home rule amendment, broad power given to municipalities to annex in the discretion of governing boards will be reviewable by the courts on appeal from affected property owners. Unless the basis of appeal is specifically provided, as in Tennessee and Indiana, the courts will be free to determine their own criteria for judging whether the city's action is reasonable. In most cases the judicial criteria have limited the city's power as indicated above. And even in Tennessee the courts have a margin of discretion in interpretation of the standards. For example, territory deemed "necessary" for the welfare of the city may be much smaller in extent than territory which is reasonably a part of the urban area, and the courts in Mississippi where the second Tennessee standard originated, have so held.

If certainty is desired, then specific legislative standards constitute the most desirable approach. Then the scope of the court's review is whether

the standards have been met. Whereas a court may interpret standards such as "necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole" in a narrow sense, there is little discretion in interpreting standards based on population density or the degree to which land is subdivided. On the other hand, it is very difficult to formulate such standards because the pattern of land use and the criteria of need of particular land uses for municipal services are so difficult to put into legislative language. For example, many municipalities want to annex undeveloped land so that its development and provision with essential services can be carefully coordinated. But can the language of the Indiana statute, vague as it is, be improved upon where it provides as one determinant of annexation that "the area sought to be annexed, if undeveloped, is needed for development of the municipality in the reasonably near future." Is the reasonably near future two, five or ten years? And who will determine that the land is ripe for or susceptible to reasonably quick development?

In short, specific standards must be limited to population density, contiguity, shape, degree of land subdivision, actual land use, ability to provide with services, and demonstrated need according to some accepted standard, such as in the case of sanitation.

The Indiana law is interesting in that it gives the city complete discretion unless the city's action is opposed by at least a majority of the resident land owners in the area annexed. And even then, the court may uphold the annexation if the general standards for determining necessity for annexation are, in the court's judgment, met. The problem is whether the court will give a broad or narrow interpretation to the standards.

Experience with these approaches has conformed almost completely to the impact of the law once it has been interpreted by the courts. In some states, the city has been left with a wide area of discretion. In others, judicial criteria have been superimposed on the statute to rather severely restrict the city's power. Perhaps the solution, if this approach is looked upon with favor, is to follow the example of Tennessee and attempt to define the scope of the court's review.

Approach Number Four. That annexation is a matter for factual determination by an administrative or judicial agency.

Four states give an administrative or judicial agency rather broad powers to determine whether or not annexation requested by the city should take place. Since annexation has been consistently and successfully carried out in only one of these states--Virginia--only that state's experience will be discussed.

In Virginia annexation petitions are heard by a special three-judge court which has broad powers to review and amend the boundaries requested by the city, as well as to change the terms and conditions suggested by the city. The standards for review are generally set forth in the statute--i.e., that the court must determine the necessity for and expediency of annexation. In making this determination the court has usually considered four factors. These are,

1. The municipality's need for additional territory in order to grow and develop.

2. The need for governmental services in the area to be annexed.

3. The existence of a community of interests between the municipality and the territory to be annexed.

4. The municipality's financial ability to provide services and meet obligations arising from annexation,

One feature of the Virginia system is peculiar to Virginia. Since most of the larger cities are independent city-counties, annexation involved detachment of territory from the adjacent county and an accompanying loss of taxable values and improvements. Part of the city's obligation is to reimburse the county for improvements acquired. For this reason some of the obstacles faced by a Virginia city would not necessarily be faced by a city in another state with similar procedure.

In general the Virginia courts have liberally construed the necessity of annexation, although they have also eliminated unsound and capricious annexations. The annexation hearings require careful preparation and the general result is annexation of land that is urban or ripe for urban development.

It is very probable that the use of a court would not be held constitutional in North Carolina, but the same function could be given to an administrative agency whose findings and orders would be final except on questions of law. And an administrative agency would have these advantages:

1. It would be a body which could accumulate and use a sustained body of information and experience on annexation questions.

2. It would have the power to amend a city's request in any way that it deemed for the best interests of the city and its surrounding suburban territory. It could insure that annexations included all urban land, not just land that the cities might find it profitable to annex.

3. It would have flexibility to schedule annexations over a period of time or to require that a city meet certain conditions with respect to providing services.

Considerations in Formulating State-Wide Policy

There is no easy answer to the annexation problem. There is no simple solution that can be borrowed lock, stock and barrel from some other state. There is no solution which will make everyone concerned with annexations happy, for there are irreconcilable conflicts in the interests of the residents of any urban area. Whatever solution is adopted must be a reflection of a positive policy adopted by the Commission, with due regard for

1. The need for sound urban development in North Carolina during the next twenty years.

2. The need for effective governmental planning in urban areas and effective measures to carry out plans.

3. The need for city governments which have the financial resources to extend basic municipal services to areas developed so that they now need or will need such services.

4. The frequent unwillingness or inability of cities to extend essential services.

5. The outright opposition of suburban residents to annexation, whatever the need, on the other.

6. The desirability of encouraging effective extension of services.

7. The desirability of protecting owners of agricultural and rural land from municipal taxation.

8. The desirability of encouraging cooperation and understanding between the city and the residents of the area outside the city.

9. The desirability of protecting the essential political rights of all citizens.

The Principal Questions

Against the background of these considerations, the Commission faces four questions.

1. Should there be one or several procedures available for the extension of corporate boundaries in North Carolina?

It is important to note that of all the annexations in North Carolina since 1950, the great majority were under authority of G. S. 160-452 permitting annexation of land with less than 25 eligible voter residents upon agreement of all property owners in the area. As a rule this procedure permits developers and large landowners to bring land into the city when it is ready to be developed.

Many city officials believe that such a simple procedure for taking in contiguous undeveloped land should be retained, in addition to any suggested revision directed at larger territories. But there are many suggestions that this procedure should be amended, in accord with procedures in some other states, to permit fewer than 100% of the property owners in an area to agree to annexation.

a. One suggestion would permit any territory to be annexed on receipt of a petition from two-thirds of the property owners in the area, without regard to population.

b. An alternative suggestion is to require a petition from 100% of the property owners in areas having fewer than ten property owners and a petition from two-thirds of the property owners when there are more than ten property owners.

These suggestions are limited to enabling the city to annex on receipt of a petition.

Even if an additional method for annexation is suggested by the Commission, these are strong arguments for keeping the present provisions in G. S. 160-446 ff. as an alternative procedure. Upon agreement of the resident voters, this procedure does not seek to bind the discretion of the municipal governing board in any way and may meet the needs of some cities in a manner that other procedures would not.

2. Should the state adopt a new procedure or procedures for annexation making it easier for cities to annex contiguous land? If so,

a. Should the procedure be based on general municipal authority to annex, subject to general standards and subject to court review on the question of "reasonableness?" or

b. Should the procedure be based on general municipal authority to annex land meeting specific statutory standards subject to review to determine that the standards have been properly met? or

c. Should the procedure be based on the city's right to initiate annexation with comprehensive review by an administrative or judicial agency which would have the power to change the terms and boundaries of annexation in its discretion, subject to review only on questions of law?

The procedure selected will necessarily reflect policy with respect to (a) the concept of how much territory and what type the city should be able

to annex, and (b) the political approach which best balances the interests of the city taxpayer, the suburban taxpayer and the urban area as a whole.

3. Should there be a procedure whereby a territory contiguous to the city could be annexed to the city over the protests of the city government?

Some states have procedures whereby areas which want to be annexed can be annexed through a court procedure or administrative action, even though the city does not want to annex. Of course, safeguards for the city are written into the procedures.

4. Should there be a procedure whereby areas annexed to a city can be relieved of liability for part or all city taxes until full services are available to the area? Such a procedure could cover (a) large areas or (b) individual tracts?

Despite the 1927 case from Asheville, which struck down a plan for zoning the city for municipal taxes according to services received, the present tax classification provision in the Constitution would permit some form of tax relief if urban land within municipal limits were classified according to services provided. To be feasible, the classification would probably have to be based on utility services.

There are arguments for and against such an approach. In favor are these:

a. Tax relief would make annexation much more palatable to suburban area residents,

b. Larger areas of land could be annexed without discriminating against owners of undeveloped land or persons receiving no services.

Cpposed are these:

a. Such a system would confuse the bond investors and possibly harm the credit of North Carolina cities.

b. The system would be administratively difficult and cumbersome to carry out.

c. The system would necessarily have to be arbitrary as to amount of taxes adjusted and individual properties receiving the adjustment. The result would be discrimination in a different form.

As a rule, city officials are opposed to this suggestion, even though they recognize the equities involved. Their objections are based on the administrative problems and the problem of credit.

APPENDICES - Selection of Present and Proposed Legislation

on Annexation Procedures in Other States

APPENDIX A

INDIANA

(As Proposed for North Carolina in 1957 Session)

"Section 160-446. Corporate boundaries; Annexation of lands.--The governing board shall have power, by ordinance, to declare and define the entire corporate boundaries of the municipality, and such ordinances, properly certified, shall be conclusive evidence, in any court or proceeding, of the boundaries of such municipality, except as provided in the next section. Such ordinances defining the entire municipal boundary may include contiguous territory, whether platted or not, not previously annexed, and may include such terms and conditions, as hereinafter defined, as may be deemed just and reasonable by said common council, and such annexation shall be binding, unless such newly annexed territory shall be within the limits of another municipality, in which case there may be an appeal, as hereinafter provided. Said governing board may also, by separate ordinance, not purporting to define the entire boundaries of such municipality, annex contiguous territory, where platted or not, to such municipality, and may include such terms and conditions, as hereinafter defined, as may be deemed just and reasonable by said governing board, and a certified copy of such ordinances shall be conclusive evidence in any proceeding that the territory therein described was properly annexed and constitutes a part of such municipality, except as provided in the following sections. Immediately after the passage of every such ordinance as provided for in this section, the same shall be published for at least two (2) consecutive weeks in a daily newspaper of general circulation published in such municipality, or in the County, if no newspaper is published in the said municipality.

"The terms and conditions applicable to any such annexation may relate to any matter reasonably and fairly calculated to render such annexation just and equitable both to the municipality, its property owners and inhabitants, and to the annexed territory, its property owners and inhabitants, including, but not restricted to, such matters as (a) postponing the effective date of such annexation, (b) impounding in a special fund in whole or in part the municipal property taxes to be imposed upon the annexed territory after annexation shall take effect in such amount and for such period of time, not to exceed three (3) years, as said governing board may determine, and using such impounded taxes solely for the benefit of such annexed territory, its property owners and inhabitants, in the extension of municipal services and benefits and the making of municipal or public improvements in the annexed territory, or (c) establishing equitable provisions for the future management and improvement of the annexed territory and for the rendering of needed services,"

"Section 160-448, Remonstrances against annexation; Procedure; Fire protection and other services; Agreement for or court action in regard to.--Whenever territory is annexed to a municipality whether by general ordinance defining the municipal boundaries, or by special ordinance for the purpose of annexing territory, an appeal may be taken from such annexation by either a majority of the owners of land in the territory or by the owners of more than seventy-five per cent (75%) of the assessed valuation of the real estate in the territory, if they deem themselves aggrieved or injuriously affected, by filing their remonstrances in writing against such annexation, together with a copy of such ordinance, in the superior court of the county where such territory is situated or with the judge thereof in chambers, within thirty (30) days after the last publication provided for in G. S. 160-446; such written remonstrance or complaint shall state the reason why such annexation ought not in justice take place. Upon receipt of such remonstrance the court or the judge thereof in chambers shall determine whether it bears the necessary signatures and complies with the requirements of this section. In determining the total number of landowners of the area and whether or not signers of the remonstrance are landowners, the names as they appear upon the tax records of the county shall be prima facie evidence of such ownership. In ascertaining the number of landowners of the area and for the purpose of determining the sufficiency of the remonstrance as to the number of landowners required to constitute a majority, not more than one (1) person having an interest in a single property, as evidenced by the said tax records, shall be considered a landowner. Upon the determination of the judge of the court that the remonstrance is sufficient he shall fix a time for a hearing on the remonstrance which shall be held not later than sixty (60) days thereafter. Notice of such proceedings by way of summons shall be served upon the proper officers of the municipality seeking to make annexation, and such municipality shall become defendant in such cause, and shall be required to appear and answer as in other cases. The judge of the court shall, upon the date fixed, proceed to hear and determine such appeal without the intervention of jury, and shall, without delay, give judgment upon the question of such annexation according to the evidence which either party may introduce. Such evidence demonstrating the presence of the following conditions shall be considered the primary determinants of the annexation's merit:

"(a) The annexation is in the best interests of the municipality and of the territory sought to be annexed.

"(b) The area is urban in character, being an economic and social part of the annexing municipality.

"(c) The terms and conditions set forth in the ordinance are fair and just.

"(d) The municipality is financially able to provide municipal services to the annexed area within the reasonably near future.

"(e) The area sought to be annexed, if undeveloped, is needed for development of the municipality in the reasonably near future.

"(f) The lines of the annexation are so drawn as to form a compact area abutting the municipality.

"If the judge of the court shall find that the primary determinants enumerated above apply to the annexation, it shall take place notwithstanding the remonstrance and notwithstanding, further, the provisions of any other statute of this state. If, however, the presence of these primary determinants cannot be demonstrated in the evidence, the annexation shall not take place. Costs shall follow judgment. Pending such appeal, and during the time within which such appeal may be taken, such territory sought to be annexed shall not be deemed a part of the annexing municipality. Upon the determination of such appeal, the judgment shall particularly describe the ordinance upon which the appeal is based, and it shall be the duty of the clerk of the superior court to forthwith deliver a certified copy of such judgment to the clerk of such municipality, who shall record the same in the ordinance record, and make a cross reference to the page thereof upon the margin where such original ordinance was recorded. In case the decision is adverse to such annexation, no further annexation proceedings for such territory shall be lawful for two (2) years after the rendition of such judgment, unless such annexation is petitioned in conformance with provisions of G. S. 160-447 hereof. . . ."

APPENDIX B

MICHICAN (Proposed)

Section 3. Annexation proceedings pursuant to this act may be initiated as follows:

(a) The governing body of any city or village to which territory is proposed to be annexed shall, by resolution adopted by a majority of the members-elect, declare that it desires to annex certain territory, which shall be accurately described in such resolution, and shall set forth the necessity for such annexation, the provisions which are made for the future management and improvement of such territory, and shall recite that such territory is eligible for annexation as prescribed in section 2 hereof.

(b) Within 60 days of the adoption of a resolution proposing the annexation of any territory, the city or village may apply by petition to the court of chancery for the county in which the greater part of such territory proposed to be annexed lies, for a decree ordering that such territory be annexed to the applicant.

(c) With every such application there shall be filed as exhibit annexed thereto a copy of the resolution of the applicant proposing the annexation and a map of the territory proposed to be annexed showing its relation to the territory of the applicant.

Section 4. Any person or persons, firms, corporations, the United States government or the state of Michigan, who at the time of filing the petition, collectively hold the record legal title to more than $\frac{1}{2}$ of the area of the territory proposed to be annexed, may apply by petition to the court of chancery for the county in which the greater part of such territory proposed to be annexed lies, for a decree ordering that such territory be annexed to the city or village. Every such application shall contain a statement of the reasons why such annexation is necessary, an accurate description of the territory to be annexed, a statement that the territory so described meets the eligibility requirements contained in this act as prescribed in section 2 hereof, and there shall be attached to said petition a map of the territory proposed to be annexed showing its relation to the city or village to which annexation is sought.

Section 5. Upon filing of an application for annexation, an order shall be entered requiring each township affected by the proposed annexation and every qualified elector or freeholder in such township or in the city or village to which such territory is proposed to be annexed, and, in cases initiated under section 4 of this act, the city or village to which the territory is proposed to be annexed, to show cause, if any they have, why such territory, which shall be accurately described in said order, should not be annexed to such city or village as prayed in such petition, before the court at some time and place to be therein specified not less than 30 days from the date thereof.

Section 8. On the day appointed in the order to show cause, the court shall proceed to hear the allegations and proof of the parties and shall take testimony in relation thereto. Upon said hearing, if it shall appear to the court that the material allegations of the petition are true and that the conditions set forth in this act have been met, then the court shall order such land annexed to the city or village to which annexation is prayed: Provided, however, That in making its determination, the court shall consider the necessity for such annexation, considering:

(1) The best interests of the city or village, of the township and of the area annexed;

(2) The protection of the health, safety and welfare of the persons residing in the area and in the city or village and township;

(3) Whether such territory is needed within the reasonably near future for development of the city or village to which annexation is sought;

(4) In cases where the applicant is a city or village, whether fair and equitable provisions have been set forth in the resolution of the applicant for the future management and improvement of the territory.

APPENDIX C

MINNESOTA (Proposed)

SECTION I. (CHAPTER 414.01) (CREATION OF COMMISSION). A Commission is hereby created to hear petitions for the incorporation of property into villages; the detachment of property from municipalities; and the annexation of property to municipalities. The term municipalities as used herein includes villages and cities of all classes.

The Commission shall be composed of five members including a District Judge from each Judicial District, appointed by the Governor, to serve as chairman of the Commission. He shall only serve on the Commission when all or a majority of the property to be annexed, incorporated, or detached is located within his Judicial District. The Chairman of the Board of County Commissioners of the County in which all or a majority of the property to be annexed, incorporated, or detached is located shall serve as a member. The remaining three members are to be appointed by the Governor from separate congressional districts and one shall be a lawyer who shall serve as Secretary and full time director of the Commission.

All those appointed shall have been residents of the State for at least five years prior to the appointment. All appointments shall be made within thirty days after the effective date of Chapter 414, and those appointed shall, in so far as possible, have experience and knowledge in the field of urban development and administration. Each appointed member shall serve for four years and until his successor is appointed and has qualified, or until he is removed by the Governor for cause after notice and hearing. In case any of the positions shall become vacant, the Governor shall appoint a member for the unexpired term who shall thereupon immediately take office and carry on all the duties of the office.

The Commission is authorized to transact business and conduct hearings by a majority of its members. However, no order of the Commission shall be final unless approved by three of the five members of the Commission.

Each member of the Commission shall receive $50.00 per day while in attendance at hearings, excepting the Secretary who shall receive a salary of $7,200.00 per year payable semi-monthly, and each member of the Commission shall be reimbursed for actual expenses incurred in accordance with regulations relative to travel of state officers and employees.

All correspondence and petitions shall be addressed to the Secretary who shall be charged with conducting the administrative affairs of the Commission, notifying the members of hearings and making arrangements for the hearings as to time and place, giving proper notice in the areas affected as hereinafter provided, keeping records and minutes, and providing secretarial service.

The Commission shall have authority to hire expert consultants in such fields as civil engineering, sociology, and economics to provide specialized information and assistance.

SECTION 3. (Chap. 414.03). (ANNEXATION OF UNINCORPORATED PROPERTY BY A MUNICIPALITY).

Subd. 1. (INITIATING PETITION). A petition for the annexation of adjoining unincorporated property may be initiated by resolution of the annexing village or city or by three legal voters residing in the area to be annexed, or by one or two legal voters if they own all the property stated in the petition. If initiated by resolution, the village or city council shall cause a census to be taken of the area showing the buildings in the area used for residences and the number of people living in each, or, if initiated by three legal voters residing in the area, they shall take a census containing the same information. The census list shall be attached to the petition which requests the Commission to hold a hearing on the proposed annexation. The petition shall set forth the boundaries of the territory, the quantity of land embraced in it, the number of actual residents, the number and character of the existing buildings in the area and the existing facilities such as water system, zoning, street planning, sewage disposal, fire and police protection. Under both methods of initiating the petition it shall be verified by the oaths of the census takers declaring that the census was accurately taken, specifying the dates when it was begun and completed, and that the statements in the petition are true.

Subd. 2. (HEARING AND NOTICE). Where the property to be annexed is owned by or completely within the boundaries of the annexing municipality, no hearing is necessary and the annexation shall be deemed complete upon issuance of an order approving the petition and resolution by the annexing municipality approving the annexation.

If the petition has been initiated by all or a majority of the land owners, in area and number, no hearing is necessary and the Commission may proceed to a decision, unless the Commission exercises its authority pursuant to this section by increasing the area to be annexed by including additional owners which inclusion eliminates the required majority, the newly included owners shall be notified within 5 days and a hearing shall be conducted as hereinafter provided unless within 10 days after transmittal of such notice written assent is received from the new owners in sufficient number to provide the required majority.

In all other proceedings, upon receipt of a petition for annexation, the Secretary of the Commission shall designate a time and place for a hearing on the petition, such time to be not less than 30 nor more than 40 days from the date the petition was received. The Secretary shall cause a copy of the petition together with a notice of the hearing to be sent to each member of the Commission, and to the chairman of the county board and the town board in which all or a part of the property to be annexed is located, and any duly constituted municipal or regional planning commission exercising authority over all or a part of the area. They may submit briefs prior to the hearing, for or against the proposed annexation stating clearly and succinctly the reasons therefore.

Subd. 3. (COMMISSION'S ORDER). Pursuant to a hearing on a petition for the annexation of unincorporated property to a village or city, the Commission shall affirm if it finds that the property to be annexed is so conditioned as to be properly subjected to municipal government and if it finds that the annexation would be to the best interest of the village or city and of the territory affected. As a guide in arriving at a determination, the Commission shall make findings as to the following factors: 1. The relative population of the annexing area to the annexed territory. 2. The relative area of the two territories. 3. The relative assessed valuation. 4. The past and future probable expansion of the annexing area with respect to population increase and construction. 5. The availability of space to accommodate that expansion. 6. Whether the taxes can be reasonably expected to increase in the annexed territory, and whether the expected increase will be proportional to the expected benefit inuring to the annexed territory as a result of the annexation. 7. The presence of an existing or reasonably anticipated need for governmental services in the annexed territory such as water system, sewage disposal, zoning, street planning, police and fire protection. 8. The feasibility and practicability of the annexing territory to provide these governmental services presently or when they become necessary. 9. The existence of all or a part of an organized township within the area to be annexed and its ability and necessity of continuing after the annexation. If a complete organized township is included within the area to be annexed, its residents shall remain liable for any existing indebtedness of the township existing prior to the annexation. In the event only a portion of an organized township is ultimately included in the area to be annexed, the Commission shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of the township property, if any, located in the area to be annexed, the assessed value of all the taxable property in the township, both within and without the area to be annexed, the indebtedness and the taxes due and delinquent. The Commission shall have authority to alter the boundaries of the area to be annexed by increasing or decreasing the area so as to include only that property which is so conditioned as to be properly subjected to municipal government and to preserve the symmetry of the area. The petition shall be denied if it appears that the primary motive for the annexation is to increase revenues for the annexing municipality and such increase bears no reasonable relation to the value of benefits conferred upon the annexed area. The order of the Commission shall be final. If the petition is denied in whole, no petition which includes all or a part of the same area may be submitted within two years after the date of the Commission's order, or if the petition is denied in part, no petition which includes all or a part of the area denied may be submitted within two years after the date of the Commission's order. The order shall be issued by the Commission within a reasonable time after the termination of the hearing.

APPENDIX D

ACTS OF 1955

Section 6-309. Annexation by Ordinance.--A municipality when petitioned by a majority of the residents and property owners of the affected area, or upon its own initiative when it appears that the prosperity of municipality and territory will be materially retarded, and the safety and welfare of the inhabitants and property thereof endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided said ordinance shall not become operative until 30 days after final passage thereof. (Ch. 113, sec. 2)

Section 6-310. Any aggrieved owner of property may file quo warranto suit to contest validity of annexation on grounds that it may not be deemed necessary for welfare of residents and property of area affected and of municipality as a whole and so constitutes unlawful exercise of power.

APPENDIX E

TEXAS

Staff Research Report to the Texas Legislative Council

CHAPTER II. HOME RULE CITIES

Subdivision 2 of Article 1175 provides that home rule cities have

> . . . the power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

Judicial decisions upon contested annexations under these provisions confirm this broad grant of authority to home rule cities. These decisions have established that the only limitation to annexation of unincorporated territory upon a home rule city acting in accordance with the provisions of its charter is that some part of the area be adjacent to the city; that the shape, size or use of the land or the motive for annexing is immaterial; that the power to annex is legislative in character and is not subject to judicial review on grounds of purpose; and that any limitation of this power must come from the Legislature.

Charter provisions of home rule cities vary substantially in the powers they confer on the city governments to extend their boundaries by annexation. These variations occur in provisions made for initiation of annexation proceedings, necessity of published notice, requirements for election both

within the city and in the territory considered for annexation. Examples of the charter provisions of three cities illustrate these variations.

Sections 3 and 4 of the New Braunfels charter govern its annexations. Section 3 authorizes the City Commission to annex territory by ordinance upon petition of a majority of the property owners in the territory. Section 4 requires the City Commission to hold an election upon a petition of 100 qualified taxpaying voters of whom one-third must own real property in the territory to be annexed but part must reside in the city. Both qualified voters within the city and property owners in the territory vote in the election and a majority of all votes is necessary to annexation.

The City of La Porte also has alternate charter provisions. One of these permits annexation of adjoining land by the City Commission by ordinance on petition of a majority of the qualified voters in the area or, if there are none, on petition of a majority of land owners. The alternate provision permits annexation by ordinance "with or without the consent of the territory and inhabitants annexed" after introduction of the ordinance, its publication, and a lapse of 30 days. This latter provision is typical of provisions in charters permitting annexation without consent of the residents of the annexed territory.

The Corpus Christi charter also provides for annexation without consent of the residents of the annexed territory but only upon the favorable vote of a majority of the residents of the city. The city is required to submit the question of annexation to the voters in an election upon any of three contingencies: recommendation of the zoning and planning commission; petition by 500 voters in the city; or petition of ten per cent of the voters of the territory to be annexed.

Annexation Procedures of Home Rule Cities

The annexation process in home rule cities varies, as does the source of the request. In cities with full annexation powers, the request may originate either with the city or with an individual or group in the area concerned.

After initiation of the request, the procedure varies in accordance with the charter and the policy of the city concerned. An informal conference between the city's governing body and the representatives of the area being annexed may be arranged. Other cities may make a formal, detailed, and comprehensive study of aspects of the proposed annexation.

In one city, after the governing body has tentatively accepted an annexation for consideration, the city engineering departments check the drainage of the area and the physical problems involved in providing utilities. The city planning commission then relates the area to the city plan. If no problems develop, each group reports to subsequent council meetings with recommendations. Since annexation by this city must be made with the consent of fringe residents, a petition signed by all qualified voters of the area

is considered sufficient to dispense with hearings. If hearings are held, any interested person may attend and discuss his viewpoints. The council then approves or rejects the annexation. If approved, the annexation ordinance is published in the local newspaper.

As the size of the city increases, the complexity of local government makes it impossible to consider every city problem in open discussion. The procedure then becomes more formalized and more emphasis is placed on written reports. Many larger cities have delegated to ad hoc or official groups the task of analyzing recommendations of various departments and officials and preparing a report summarizing and interpreting the material to the city governing body.

A detailed account of the procedure followed by one of the larger cities in the state is typical of this more formal approach.

Before 1951, when a home rule charter was adopted by this city, annexation proceedings were initiated by petitions of property owners in the area requesting inclusion in the city. A large number of petitions were submitted, and in most cases residential developments were planned on the property concerned. In order to obtain city services, the residents of the areas found it necessary to be within the corporate limits. The petition procedure was in accordance with general law provisions under which the city operated until 1951. Besides the residential developments, industrial expansion also accounted for some annexation requests to this city. In both cases, the city insisted that annexation was a requisite for the provision of city services. The current procedure is as follows:

The area for which annexation is proposed is studied thoroughly by the city planning commission to determine whether it is in the natural drainage area for sanitary sewer installation. Recommendations are then made to the city council. If the council approves the area, the proposed annexation ordinance is published in the local newspaper for two consecutive weeks. Public hearings are not held unless some opposition develops. After publication and public hearings, if any, the city council makes the final decision.

APPENDIX F

VIRGINIA

Material will be ready for meeting on January 22, 1959.

APPENDIX G

One Proposal for North Carolina

A BILL TO BE ENTITLED AN ACT TO PROVIDE AN ALTERNATE MEANS OF EXTENDING CORPORATE LIMITS FOR MUNICIPALITIES.

The General Assembly of North Carolina do enact:

Section One. Declaration of policy (to be added).

Section Two. Authority to Annex. The governing board of any municipality shall have authority to extend the corporate limits of such municipality by ordinance to include contiguous territory meeting the standards set forth in this article [and embracing not more than two square miles in any area or tract].

Section Three. Character of the Territory to be Annexed: Standards. No territory shall be annexed to a municipality under authority of this article unless such territory shall meet one of the following sets of standards:

A. Number One: The territory,

1. Has a total population equal to at least [three] [two] persons for each acre of land annexed but in any event no less than 25 persons; and

2. Is subdivided into lots and tracts such that 75% of the total acreage consists of lots five acres or less in size and of land dedicated or used for public streets and facilities; and

3. Is subdivided into lots and tracts such that 60% of all lots and tracts are one acre or less in size, or

Sixty per cent of all lots and tracts contain residences or structures which should, in the opinion of the county health department, be connected to a public sewer system for the protection of the health and welfare of the residents of the area.

B. Number Two: The territory,

1. Is subdivided into lots and tracts such that 75% of the total acreage

consists of lots five acres or less in size and of land dedicated or used for public streets and facilities; and

2. Sixty per cent of all lots or tracts in the area are presently connected to the public water system and/or public sewer system of the city.

Section Four. Character of the Territory to be Annexed: Boundaries. In fixing the boundaries of such territories to be annexed, the city council shall consider and apply the following factors insofar as possible:

1. The desirability of establishing regular, easy-to-define boundaries.
2. The desirability of using natural topographic features such as ridge lines, rivers and creeks for boundaries.
3. The desirability of including developed land on both sides of streets or roads, if such street or road is selected as a boundary.
4. The desirability of using the near side of railroad rights-of-way and the right-of-way of limited access highways as boundaries.
5. The desirability of excluding land which is presently being used for bona fide agricultural, timberland, etc., purposes and is not being offered for urban-type development.
6. The desirability of not running the boundary through parts of lots and tracts of five acres or less.
7. The desirability of excluding lots and tracts which cannot economically be served with municipal services set forth in Section 5.

Section Five. Prerequisites to Annexation: Ability to Serve. No municipality shall annex territory under authority of this article unless the governing board of the municipality shall first carefully study the ability of the municipality to provide services to the area to be annexed and shall pass a resolution finding as a fact:

1. That police protection, garbage collection and street maintenance services can be extended to the annexed area on the effective date of annexation in the same manner and on the same basis as they are provided to the remainder of the municipality.

2. That fire protection services can be extended to the annexed area on the effictive date of annexation in the same manner and on the same basis as they are provided to the remainder of the municipality, or, if annexation will necessitate the construction of a new fire station or of water lines in the area to be annexed, that appropriate steps will be taken to provide effective fire protection to residents of the area to be annexed until such facilities are available.

3. That extension of water and sewer lines in the area to be annexed will be made available to residents of the area to be annexed in the same manner and on the same basis as they are provided under municipal policy to residents of the remainder of the municipality.

4. That if it is necessary to build fire stations, or expand the water supply of the city, or expand the sewage treatment facilities of the city, or to construct major water transmission lines or sewer interceptors and outfalls, in order to provide services to the area to be annexed, that either funds are available to construct any and all of these facilities that are needed or that funds will be made available through a bond election or other means prior to the effective date of annexation.

5. That where construction of any of the facilities described in subsection 4 is necessary, that construction will be let to contract and begun as quickly as possible following the effective date of annexation, work thereon to be continued as rapidly as possible until completion. [It may be desirable to write some time limits into this section.]

Section Six. Procedure for Annexation.

A. Notice of Intent. Any municipal governing board desiring to annex territory under the authority of this article shall first pass a resolution stating the intent of the municipality to consider annexation, describing the boundaries of the area under consideration, and fixing a date for a public hearing on the question of annexation. The date for the public hearing shall be fixed for not less than thirty days following passage of the resolution and not more than forty-five days. Notice of the public hearing shall be given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within the municipality. The notice shall describe by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory that a session of the governing board will meet for the purpose of considering the annexation of such territory to the municipality.

B. Action Prior to the Hearing. Subsequent to passage of the notice of intent, the governing board shall, at a regular or special meeting but prior to the date of the public hearing, pass on first reading:

1. The resolution concerning ability to provide services to the area to be annexed, as provided in Section Five of this act; and
2. A bond ordinance providing for the issuance of bonds necessary to construct facilities in the area to be annexed, if necessary, and, if necessary, fixing a date for an election on the issuance of such bonds.

The governing board shall, at this meeting, also pass a resolution showing the application of the standards set forth in Section Two to the area under consideration.

C. Public Hearing. At the public hearing, all persons, resident or owning property in the territory described in the notice of intent shall be given an opportunity to be heard.

D. Passage of the Annexation Ordinance. At the first regular meeting following the date of the public hearing, or at a special meeting held no sooner than the third day following the date of the public hearing, the governing board shall:

1. Finally pass the resolution concerning ability to provide services to the area to be annexed, first making such amendments as may seem desirable.
2. Finally pass the bond ordinance, if necessary.
3. Adopt an ordinance extending the corporate limits of the municipality to include such part of the territory described in the notice of intent which meets any one of the sets of standards set forth in Section Two of this act. The ordinance shall contain specific findings relating the application of such standards to the territory to be annexed.

The governing board shall have authority to make the annexation ordinance effective immediately, or on any specified date within twelve months from the passage of the ordinance; Provided: That if bonds must be approved by the electorate of the municipality in order to finance improvements required in the area to be annexed as set forth in Section Five of this act; then the effective date of the ordinance can be no earlier than the day following the statement of the successful result of the bond election.

E. Effect of Annexation Ordinance. From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of

such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation.

Section Seven. Appeal. Within thirty days following the passage of the annexation ordinance, any person owning property in the territory to be annexed who shall believe that the governing board of the municipality failed to follow the procedure or to meet the standards set forth in this act may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board. Failure to file such petition within thirty days following the passage of the ordinance shall operate as a waiver of the right of such person to review, except that for good cause shown, the judge of the superior court may issue an order permitting a review notwithstanding such waiver.

[Provisions for appeal would follow here. Among other things it is suggested that if the full territory for some reason did not meet the full standards, the judge would have the power to decrease the proposed boundary extension to proportions meeting the appropriate set of standards.]

LEGISLATIVE ACTS AUTHORIZING CHANGES IN THE CORPORATE LIMITS OF NORTH CAROLINA MUNICIPALITIES:

YEAR	A Limits changed by Legislative fiat.	B Governing body of town given power to make change.	C Town and area to be annexed vote SEPARATELY.	D Election by area to be annexed, only.	E Election by voters of town, only.	F Town and area to be annexed vote TOGETHER.	TOTAL Total number of changes each year.
1947	25	1	3	2		9	40
1945	21			2		4	27
1943	7					3	10
1941	16			1		1	18
1939	20			1		2	23
1937	10			1			11
1935	13			1			14
1933	6				2		8
1931	9					4	13
1929	17					1	18
1927	27		2	1		3	33
1925	22			1		3	26
E.S.1924	1						1
1923	21			1		1	23
E.S.1921	9				1	2	12
1921	19					2	21
E.S.1920	5						5
1919	7		1			1	9
1917	10	2	1	1		1	15
1915	14					1	15
E.S.1913	1						1
1913	24		1			1	26
1911	7						7
1909	24						24
E.S.1908	2						2
1907	28			1		3	32
1905	27						27
1903	17					1	18
1901	18					1	19
1899	1						1
TOTALS:	428	3	7	13	3	44	498

TENTATIVE	A	B	C	D	E	F	TOTAL
1879	6		1				7
1877	2						2
1875	5						5
1849	4						4
1847	1						1
1845	--						
1825	--						
1823	--						
1821	--						
1799	--						
1797	--						
1795	--						

CONDITIONS IMPOSED UPON EXTENSION

1. Tax Provisions:

Tax provisions upon extension are of the greatest interest to both the city proper and the territory planned to be annexed. The addition to the town boundaries of property which will be subject to town taxation constitutes the most usual reason, from the point of view of the town, for extension. Conversely, a desire to avoid town taxes explains the reluctance with which many areas view annexation. The matter frequently resolves itself to a question of realistic and business-like bargaining, revolving around the question of what facilities and improvements the city will offer to extend the new area.

Nevertheless, it most frequently happens that territory is annexed without promises or concessions to the new area. In fact, most often no mention is made of the taxation question at all; which means, of course, that the new area is immediately subject to all town taxes. Sometimes this immediate liability for taxes is expressly provided for in the annexing act. Such a provision may be made in language similar to the following:

"That there shall be levied and collected in the new territory herein annexed to said city the same tax for all municipal purposes that is levied and collected within the territory heretofore within the corporate limits of the said city." Extension of corporate limits of Rocky Mount; Pr. L. 1927, Ch. 187. For similar provisions see: Pr. L. 1919, Ch. 116; Pr. L., Ex. S., 1921, Ch. 63; Pr. L. 1925, Ch. 85; Pr. L. 1927, Ch. 91; Pr. L. 1931, Ch. 41; P.-L. L. 1931, Ch. 550; 1947, Chs. 158, 713, 740.

The time for the commencement of taxation may be made even more specific. Thus, the annexing act may provide that municipal taxes "shall apply from the date of annexation of said territory." [Extension of corporate limits of Saluda; Pr. L. 1931, Ch. 112, §4.] Or, as where the extension took place in 1947, the act may provide that "all taxes shall become due upon listings made during the year 1947," [Extension of corporate limits of Hickory; S. L. 1947, Ch. 234]; or that "such taxes and assessments shall include taxes levied and assessed by said town for the year 1947," [Extension of corporate limits of Laurinburg; S. L. 1947, Ch. 634].

A very similar provision is found in some acts whereby it is provided that the new territory shall be liable for listing for municipal taxes as of some date during the current year; usually the month following the date of annexation.* For example, in the extension of the corporate limits of Roanoke Rapids in 1931, the annexing act provided that the election was to be held April 27; if the vote was favorable, the new limits were to be effective as of April 21, and that the new territory "shall be listed for taxes as of and beginning with the first day of May one thousand nine hundred and thirty-one . . . . It being the intent of this section that the City of Roanoke Rapids shall have the power and authority to collect taxes for the year one thousand nine hundred and thirty-one upon all property real, personal and poll located within the limits described in Section three of this act." Pr. L. 1931, Ch. 53 §12.

Other annexing acts which have provided a special date for listing for municipal taxation within the current year are the Mount Olive extension of 1939, which provided that the new territory "shall be subject to listing as of April first, one thousand nine hundred thirty-nine, in compliance with the Machinery Act of one thousand nine hundred thirty-seven"; (P.-L. L. 1939, Ch. 31 §2) also the Edenton extension of 1945, which provided that the new area "shall be subject to taxation as other property in the Town of Edenton for the next fiscal year beginning July first, one thousand nine hundred and forty-five. . ." S.L. 1945, Ch. 348, §2.

We come now to a consideration of those cases where the territory to be annexed has wrung concessions from the town or city, in the matter of taxation. By far the most common provision of this type is that which provides that there shall be no levy or collection of taxes for the year in which the annexation takes place. In some cases the forgiveness of taxes is contained in a provision that:

". . .No ad valorem tax shall be levied for the year one thousand nine hundred thirty-nine against any of the real or personal property of the territory above defined which was not formerly included in the corporate limits of the City of Wilmington." P.-L. L. 1939, Ch. 447, §2. For similar provisos, see: S. L. 1943, Ch. 427; S. L. 1945, Ch. 480; S. L. 1945, Ch. 35; S. L. 1947, Ch. 28; Pr. L. 1921, Ch. 149.

In some instances the tax forgiveness provision is somewhat broader, covering all municipal taxes. For example, the 1947 act providing for extension of the corporate limits of Scotland Neck provides that "the newly annexed territory shall be subject to municipal tax levied for the fiscal year following the date of the annexation ordinance." S. L. 1947, Ch. 591, §2. Similarly, the 1947 act providing for the extension of the corporate limits of Winston-Salem provided that "from and after the thirty-first day of December of the year in which the election is held the territory so voted on, its citizens and property shall be subject to all laws, ordinances and regulations then in force or thereafter adopted in the City of Winston-Salem." S. L. 1947, Ch. 710, §1 (f).

An unusual provision in the 1939 act extending, by fiat, the corporate limits of Spindale, declared a moratorium on tax collection in the territory annexed for three years. The section in question read as follows:

"That no tax shall be levied by the Town of Spindale against any property embraced within the new territory included within the boundaries hereinbefore set forth and which was not included within the corporate limits of said town before the passage of this Act until the regular tax levy of said town is made for the year one thousand nine hundred and forty-two." P.-L. L. 1939, Ch. 532, §3.

A 1923 act, extending the limits of the Town of Snow Hill, provided that the properties of the Snow Hill Redrying Plant, Inc., located within the newly annexed area, were to be exempt from municipal taxes for four years. Pr. L. 1923, Ch. 159.

No question seems to have been raised as to the constitutionality of provisos like the foregoing, where the Legislature delays the advent of taxation in the new territory. Often, however, the new territory not only wishes to escape taxation, but desires as strongly to secure the benefits of municipal services such as fire and police protection, sewer lines. In an effort

to reach an agreement whereby the new area is guaranteed such improvements in exchange for bringing new property into the tax system, the persons concerned have approached the bounds of legality, and even beyond. Perhaps due to the presence of these constitutional questions, examples of such agreements are rare.

The earliest of these attempts appears to have occurred in 1905, when Asheville hit off a sizeable chuck of the surrounding territory, including five or six incorporated towns. The act provided for the Asheville tax rate to go into effect in the new area June 1 following, "provided, however, that all municipal advantages in the way of water and sewerage lines, schools and lights, now enjoyed by the City of Asheville shall be extended as rapidly as practicable, in the opinion of the board of aldermen of said city of Asheville, to the new territory herein added to said City of Asheville; and the revenues received from said new territory from persons and property shall be applied as rapidly as practicable in the opinion of said board of aldermen, to that end." Pr. L. 1905, Ch. 309, §10.

In 1925 the corporate limits of the City of Shelby were extended. No election was provided for, but besides an agreement relating to privately owned facilities in the new area, which will not be considered here, an agreement was reached with respect to taxation which provided that "no tax shall be levied or collected in the new territory embraced in the town under this act to pay any bonds, notes or other present indebtedness of the old corporation of Shelby for a period of three years from the date of ratification hereof. . . ." It was also provided that the old corporate area should constitute a special tax district for a three year period to pay off the interest and installments on such debts as should come due within that period, but that both the new and old territory should share the obligation for municipal improvements "hereafter made." Pr. L. 1925, Ch. 91, §3.

This statute did not, apparently, result in a law suit, as did the Raleigh Act of 1941. In that year the Legislature passed an act calling for an election to determine whether certain territory should be annexed to the city. There was a proviso that taxes should not be levied or collected upon property after two years if any part of the new area had not been afforded public improvements and services comparable with like sections of the city within that period. Before the election was held, the constitutionality of the act was submitted to the Supreme Court for a declaratory judgment, whereupon the Court struck out the provision as to the moratorium on tax collection as being contrary to the constitutional requirement of uniformity in taxation. Banks v. Raleigh, 220 N. C. 34, 156 S. E. 161 (1941).

Following Banks v. Raleigh, two cities have written into acts authorizing extension of corporate limits provisions by which the territory to be annexed hoped to achieve a similar result by methods lying outside of the jurisdiction of the courts. In 1947 a bill passed the General Assembly calling for an election on the question of extending the corporate limits of Winston-Salem. The act contained the provision that, should the note be favorable to the extension, "the territory so annexed and the citizens and property therein shall be afforded by the City of Winston-Salem as soon as practicable the same municipal privileges, benefits, services and facilities, without discrimination, as are afforded other comparable parts of the City of Winston-Salem at the time said territory is annexed." S. L. 1947, Ch. 710, §1 (f).

An even more ambitious agreement was reached by the City Council of Wilmington and the citizens of the territory the City proposed to annex.

Here the act provided that the election on the question of extension could not be called, "until at least four members of the city council and the city manager have signed and made provision for publishing, as hereinafter provided, a declaration to the effect that if the city limits are extended in the manner herein provided the City of Wilmington will, from and after the effective date of said extension, promptly begin to furnish to the new area included within the extension, municipal services comparable to those now furnished to the present City of Wilmington, to-wit police and fire protection, street cleaning, garbage and trash removal, street lighting, and water and sewerage at rates equal to city rates where city water and sewer service are furnished in said new area, and that the city council will also promptly begin and in an orderly manner complete the installation of adequate water and sewer mains in the new area." S. L. 1945, Ch. 188, §2. There appears to be no objection to an act of this type; it does not affect uniformity of taxation; the only objection which might arise is whether the signing and publication of such a resolution would be an ultra vires act on the part of the Council.

An interesting and unique method of resolving this particular conflict of interests between the old city and the new area is found in the Leaksville extension act of 1945. Predicated upon a vote favorable to the proposed extension, the Board of Commissioners of the Town were given power to establish different rates of taxation for the new area and the old limits. A separate account system was to be set up for the new area, and all improvements undertaken in the area were to be financed exclusively from funds collected in the area whether from taxes or utilities. The act expressly states that tax funds collected in the old area are not to be used in constructing improvements in the new area; *however, the act is not complete in that it does not indicate whether the separate account system set up in the new area may be drawn upon by the city government for expenses of the city at large. Several alternatives appear possible: (1) that the tax rate in the new area will be higher than that within the old coroprate limits, the difference to be deposited in the separate account; or (2) that all funds collected in the new area will be deposited in the separate account, whereupon it is possible that the city might draw upon this fund (a) at will (b) only after such funds as are needed for improvements within the new area have been withdrawn, or (c) not at all.

N. B. A provision working against the interests of the area to be annexed is found in the extension of the limits of Lexington in 1905; the citizens of the new area were "not to be entitled to the benefit of the city graded school" until June 1, 1905. Pr. L. 1905, Ch. 21.

2. Debt Provisions

In those bills which have passed the General Assembly since 1900 authorizing an extension of the corporate limits of a municipality, there have been relatively few provisions relative to the adjustment of indebtedness. This lack of legislation may be traced to the settled quality of the law upon this point. It has never been seriously questioned since Watson v. Commissioners of Pamlico, 82 N. C. 17 (1880), that where a new territory is added to an old governmental unit, the new territory incurs its part of all the liability of the unit to which it is attached. In

several of the bills for extension a provision expressing this well-settled doctrine may be found: The 1947 act for the extension of the corporate limits of Conover states that "the territory and its citizens and property shall be subject to all. . . .debts of. .said town. . .", S. L. 1947, Ch. 367, §5. The 1947 act for the extension of the corporate limits of Smithfield provided that the ballots should read: "For (or against) annexation to the Town of Smithfield and the assumption of the outstanding indebtedness of said town as the same may exist on the first day of July, 1948," S. L. 1947, Ch. 640, §4.

a) Partial Annexation of School Districts:

Greater complication in the legislation is shown where the area to be annexed has incurred a separate liability for indebtedness. Such a situation may arise in several ways. For example, where the new territory includes a portion of a separate school district, some settlement must be reached as to the adjustment of existing school debts. In the cases where this problem has arisen, and the Legislature has recognized the problem, the method of settlement employed has been for the Legislature to direct the school commissioners concerned to reach an agreement.

For example: in the extension of the corporate limits of Greensboro, in 1919, the act directed the board of education of the City of Greensboro, and the board of education of Guilford County "to consider and adjust the bonded indebtedness and transfer of property to the city of school districts wholly or partially included within the new limits of said city," and provided that if they could not agree, or if the agreement was not approved by the county commissioners or city governing board, then the matter should be submitted to arbitration by a three man committee chosen by the two boards (Pr. L. 1919, Ch. 116, §5); in the extension of the corporate limits of High Point in 1921, the clause relating to the adjustment of the debts of the school districts was similarly worded, (Pr. L., Ex. S. 1921, Ch. 29 §4); in the extension of the corporate limits of Charlotte, in 1927, the act provided "that any and all claims for existing indebtedness incurred in the purchase or construction of said property shall be satisfied by said city under an agreement between said board of school commissioners of said city and the board of education of Mecklenburg County; but in case the parties cannot agree upon a settlement of all claims, the clerk of the Superior Court of said county shall, upon the petition of the parties, appoint five disinterested persons as commissioners to arbitrate a settlement thereof, and their award shall be final," (Pr. L. 1927, Ch. 227, §7); and, to provide a contrast, in the extension of the corporate limits of Asheville, in 1929, the act provided: "That this act shall not affect any of the other school districts in Buncombe County" (than the district completely taken in) "notwithstanding that a part of the territory of such school districts has been included within the corporate territory of the city. . .and all such school districts shall continue to be administered by the board of education of Buncombe County. . . ." (Pr. L. 1929, Ch. 205, §14). For a similar act, see Pr. L. 1923 §13 (relating to extension of limits of Burlington.)

b) Annexation of Incorporated Towns:

Frequently the extension of corporate limits of a city takes

the form of annexation of or consolidation with another incorporated municipality. When such a consolidation takes place the annexing city assumes the indebtedness of the territory taken in.

The history of the extension of the corporate limits of the City of Asheville affords an example of this type of consolidation. In 1905 the corporate limits were extended to take in the towns of Ramoth, Montford, part of Kenilworth, Victoria and "other towns." It was provided that Asheville was to assume the debts of these towns, and that the towns were to have no power to contract new debts until the annexation went into effect. Pr. L. 1905, Ch. 309. In 1917 the General Assembly provided for an election on the question of consolidation with West Asheville, and provided that upon a favorable vote Asheville was to assume all of the debts of West Asheville. Pr. L. 1917, Ch. 169. In 1927 an act was passed setting up a commission to study the question of further expansion of the Asheville limits so as to make them include the "entire urban community," and providing that the final recommendation of any extension into the territory of an incorporated town must provide that all of the town be included, and also that Asheville would assume all indebtedness of such town. Pr. L. 1927, Ch. 138. In 1929 an act was passed which supposedly incorporated these recommendations, and called for an election upon the question of extension. This act provided that should the result of the election be favorable to extension, Asheville was to assume all of the debts of the three towns completely taken in: Kenilworth, Biltmore and South Biltmore; that Asheville was to assume a proportionate share of the debts of Biltmore Forest "as the percentage of assessed valuation of the area of said town included within said city limits bears to the entire assessed valuation of said town. . . ." and likewise a proportionate share of the bonds of the sewer and water district. A special tax to pay off this assumed indebtedness was authorized; the school districts were to be unaffected, and local special school taxes were not repealed. Pr. L. 1929, Ch. 205.

For the problems of double taxation raised by the adoption of this proposal, see Green v. Asheville, 199 N. C. 516 (1930), and companion cases.

The territory included in the expansion of 1929 evidently proved to be larger than the new city could or wished to administer, and several reductions were made thereafter. In 1935 unimproved territory, mainly farm land, was excluded from the city limits, (Pr. L. 1935, Ch. 64); and the territory taken from the Town of Biltmore Forest in 1929 was given back, the old corporate limits of Biltmore Forest were restored, and Biltmore Forest reassumed the proportionate share of its debt assumed by Asheville in 1929 along with such proportionate share of the taxes and debts as it had incurred liability for as part of Asheville. (Pr. L. 1935, Ch. 25.)

Other examples of similar consolidations are: In 1909 the corporate limits of Tarboro were extended to take in three towns whose charters were repealed - Farrar, Runnymede and West Tarboro - but without express debt provision, (Pr. L. 1909, Ch. 237); In 1913 the City of Winston and the town of Salem were joined, in accordance with an act calling for an election - (an 1879 act had previously called for an election for

forming the "City of Salem" - Pr. L. 1879, Ch. 78) - the new city to assume the debts and property of both old towns, (Pr. L. 1913, Ch. 10); In 1923, Kings Mountain took in East Kings Mountain - all funds to be paid over by the treasurer - all uncollected taxes due for 1922 to be collected by Kings Mountain - all property owned by East Kings Mountain to vest in the town of Kings Mountain, (Pr. L. 1923, Ch. 10); In 1927, the limits of the city of Rocky Mount were extended so as to annex the town of Rocky Mount Mills - in this case an agreement was drawn up between the city and the corporation which owned all the property of the town, whereby the city assumed the $50,000 bonded debt of the town, and agreed to pay the Mills additional annual sums for the upkeep of the Park, streets, etc., and in exchange the entire Mills property was to be taxable by the City at the same rate as the other city property, (Pr. L. 1927, Ch. 221); In 1927, an ill-fated act provided for the calling of an election on the question of extending the corporate boundaries of the city of Charlotte so as to make them coextensive with the boundaries of Mecklenburg County, and provided that Charlotte was to assume all of the debts of the existing governmental units annexed, (Pr. L. 1927, Ch. 192); In 1931, the corporate limits of Southern Pines were extended to embrace the territory of West Southern Pines - Southern Pines to assume and pay all existing debts of the new territory, (Pr. L. 1931, Ch. 39; see Hasty v. Southern Pines, 202 N. C. 169); In 1931, the corporate limits of Hickory were extended to embrace the towns of Highlands and West Hickory; Hickory to assume all existing debts, (Pr. L. 1931, Ch. 41; see Highlands v. Hickory, 202 N. C. 167); And in 1945, the corporate limits of Monroe were extended to embrace the area embraced within the boundaries of the town of Benton Heights - Monroe to assume all debts, and all of the Benton Heights cash on hand to be placed in a special fund, used to retire any Benton Heights debts maturing before 1946, and then to be used for improvements within the area, (S. L. 1945, Ch. 597).

3. Property Provisions

Special provisions with reference to property in the territory to be annexed are rare. Reference has already been made to the Rocky Mount extension of 1927, in which an incorporated town, totally owned by a private mill, was annexed, and an agreement was signed whereby the mill corporation retained control over certain aspects of the property. The memorandum of agreement covered among other points, the following: recognition of the mill corporation's right to sell coal and wood, purchase cotton, and to operate a laundry and moving picture show; the recognition of the franchise granted to the mill corporation by the mill village for use of streets for conveying electric power, and compensation to the corporation for current used in lighting streets and bridges; reimbursement for cost of installing a fire alarm station, and an agreement to purchase such fire apparatus as the city could make use of; annual payments for the use and maintenance of the sewerage purification plant, under supervision and control of the city's health officer; annual payments for the upkeep, under the direction and supervision of the city engineer, of the streets, sidewalks, and park located within the mill village; and the dedication to the public of the streets as laid out within the mill village. (Pr. L. 1927, Ch. 221, § 4.)

In 1921, the town of Southern Pines annexed a suburban development known as Weymouth Heights. The act contained this proviso:

"Provided, that nothing herein contained shall be construed to authorize or empower the board of aldermen of the town of Southern Pines, or any officer, or department of said town, to lay out, establish, change, alter, or interfere with any of the streets, side-walks, alleys, parks, driveways, or public places now existing in the new portion of the corporate limits of said town of Southern Pines, known as Weymouth Heights. . . ." Pr. L. 1921, Ch. 92, § 1.

Other miscellaneous provisos relating to property which have appeared in acts authorizing the extension of corporate limits are: The Burlington Act of 1923, which provided that in event of extension of the city limits the city was not required to pay for public improvements existing in the new area, except sidewalks, water and sewer lines which the city might have contracted to purchase when the streets under and along which they had been laid should become within the city, (Pr. L. 1923, Ch. 151); The Shelby extension of 1925, whereby the city agreed to purchase within one year the water mains, sewer mains and electric transmission lines in the new area from private owners, and also to buy property used by the public schools in the new area, (Pr. L. 1925, Ch. 91); The Charlotte extension of 1927 also provided for the annexation and purchase of school property, (Pr. L. 1927, Ch. 227); The Blowing Rock extension of 1927 provided that all the streets, public driveways and county highways within the new limits were to be made town streets - the town to keep them up, [Pr. L. 1927, Ch. 13; see Matthews v. Blowing Rock, 207 N. C. 450 (1928)]; and the consolidation of the town of Hamilton Lakes with the City of Greensboro in 1945 contained the proviso that Hamilton Lakes must relinquish the lakes within its boundaries as public property, (S. L. 1945, Ch. 1044).

II

REDUCTION OF CORPORATE LIMITS

A brief word needs to be said about the special problems which arise when the corporate limits of a municipality are reduced. Out of approximately five hundred (500) acts authorizing changes in the corporate boundaries of North Carolina during the period from 1900 to 1948, ten per cent, or 48, are clearly classifiable as acts excluding territory from the corporate limits, (as compared to 266 acts which clearly relate to extensions of corporate limits. The remaining acts "correct errors," or "make the limits conform to the survey," or merely state a "change" in the corporate limits.)

Sometimes the acts state the reason for the change. Interesting are two Asheville acts which exclude territory "which was unintentionally included in the extension of 1929," Pr. L. 1933, Ch. 191; and Pr. L. 1935, Ch. 38. Vacant property and unimproved farm lands were excluded from municipal limits by the following acts: Pr. L. 1917, Ch. 9 (relating to the corporate limits of Franklin); Pr. L. 1935, Ch. 64 (relating to the corporate limits of Asheville); and P.-L. L. 1939, Ch. 413 (relating to the corporate limits of Wilson). In 1921, Wilmington, in order to encourage new industry, excluded from the corporate limits - and therefore from municipal taxes - an unimproved point of land which in the view of the city possessed "great possibilities as an adjunct for the port of Wilmington." In several other acts laws which had enlarged the corporate boundaries were repealed, thus reenacting a prior act: Pr. L. 1915, Ch. 93 (relating to the corporate limits of Shallotte); Pr. L., Ex. S., 1921, Ch. 87 (relating to the corporate limits of Roseboro); and Pr. L. 1931, Ch. 38 (relating to the corporate limits of Peachland). A similar act in 1935 restored the old corporate limits of the town of Biltmore Forest, taking back the territory which had been incorporated into the boundaries of Asheville in 1929. Pr. L. 1935, Ch. 25.

In the majority of cases where the corporate limits are decreased, no special provisions appear. As has already been pointed out, in the restoration of the boundaries of the town of Biltmore Forest, in 1935, the town reassumed its old debt and assumed its proportionate share of the debt and tax liability incurred as a part of Asheville. Pr. L. 1935, Ch. 25. Tax provisions are similarly rare. In 1931, the corporate limits of Brevard were reduced. The act provided: "that this contraction of the limits of the town shall not affect the agreement made by citizens of the territory excluded from that embraced in section two of chapter ninety-one, Private Laws, one thousand nine hundred and twenty-seven, to pay water rents and taxes not to exceed fifty cents on each one hundred dollars, heretofore levied or hereafter to be levied for the cost of that part of the water line extending beyond the three-quarters of a mile corporate limit." Pr. L. 1931, Ch. 64, § 1.

One act excluding land declares that no taxes of the town are to be collected on the excluded territory "hereafter," (Pr. L. 1929, Ch. 186); two others expressly provide that no taxes are due on the excluded area for the current year (S. L. 1943, Ch. 427; S. L. 1945, Ch. 35).

It is worthy of note that in the period from 1900 to 1948, the General Assembly has never provided for an election on the question of decreasing the corporate boundaries. All of the contractions made within this period were accomplished by legislative fiat, with one exception. In a 1917 act, the Legislature authorized the town commissioners to two towns, Hampton and Rutherford, to decrease the corporate limits of their respective towns with certain specified limits, by vote of the meeting. Pr. L. 1917, Ch. 159.