

REPORT OF THE

# Municipal Government Study Commission

NORTH CAROLINA GENERAL ASSEMBLY  
SUPPLEMENTARY REPORT

# *Municipal Government Study Commission*

February 26, 1959

Honorable Luther H. Hodges  
Governor of North Carolina  
Raleigh, North Carolina

Dear Governor Hodges:

In our report dated November 1, 1958, we stated that we hoped to issue a supplementary report containing recommendations for changes in the procedure for extending municipal corporate boundaries. Since November we have continued our research, held an additional meeting with representatives of the State's municipalities, and have reached final conclusions on this subject. This report contains our conclusions.

It is our hope that these recommendations will provide a practical method for dealing with the vexing problems of annexation, and we urge their adoption.

Respectfully,

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## Introduction

In our report to the Governor and the General Assembly on November 1, 1958, we stated that we hoped to bring forth a supplementary report outlining our views on procedures for the extension of municipal boundaries. This is our report on that subject.

Since November we have had the benefit of a further research report on annexation procedures used in North Carolina and in other states. We also held a very helpful conference with more than sixty mayors, managers and other municipal officials who have had recent experience with annexation. And we have studied the land use patterns, topography, and present and potential service areas in and around several typical North Carolina cities. This additional information and analysis helped confirm our views that a new procedure is needed, and put us on the track of a practical new procedure.

There is no need to restate in detail the views on annexation which we set forth in our November report. For the convenience of those who may not have that report easily available, we are including an excerpt from pages 19-21 of the November report as an appendix to this report. But it is probably desirable to summarize briefly what we said in November as a prelude to our further conclusions.

We said then that "cities cannot continue to remain strong and to provide essential municipal services unless their boundaries are periodically extended to take in those areas which require municipal services for sound development and whose residents make extensive use of municipal facilities."

We said then that North Carolina must not permit its cities to be "surrounded and squeezed out" by many small incorporated municipalities or by poorly developed fringe areas.

We said then that we do not believe that "city governments should have uncontrolled authority in determining the boundaries of a city," and also that "we do not believe that the extension of municipal boundaries is a legitimate question to be decided by a vote of the residents of a small portion of a large community."

We said then that we believe that "the boundaries of a city should include all that part of the urban area which *is developed* in such fashion as to presently require the package of services offered

by a city, as well as that part of the urban area which is presently *being developed* in such a way as to need such services in the very near future."

We concluded that "the question of municipal boundary extension should be a matter of State-wide policy and that the State should define the type and character of areas which should be provided municipal services in the interests of sound urban development."

We have had no reason to change our minds as to these general conclusions. We have had reason to reach more specific conclusions as to the procedure which should be employed.

## Record of Annexation in North Carolina

Even though we believe that the basic annexation should be changed, we want to pay tribute to the success many cities have had in extending their corporate limits under existing general law procedures. Since 1950, 128 cities and towns reported to us that they had extended their corporate limits a total of 441 times. A large majority of these extensions were accomplished under the procedure set forth in G. S. 160-452 whereby 100% of the landowners in any area having fewer than 25 voter-residents may petition for annexation. This procedure is an excellent one for small tracts undergoing immediate development. It does not, however, make possible the continuous and regular extension of boundaries which is essential.

The remainder of the annexations under the general law underline our concern that the existing procedure does not meet the demands of growing cities, or of a growing state. Two out of every five proposals submitted to a vote of the people under G. S. 160-445 to 451 failed to receive approval, and an undertermined but large number of additional proposals never reached the election stage because of the unwillingness of the municipal governing boards to request an election. In some of these cases, it is likely that the municipality made ill-timed proposals. In the large number, we are convinced that proposals which were desirable for the sound development of the entire urban area were defeated or simply dropped.

Furthermore, there is an increasing tendency to bring large-scale annexations to the General Assembly rather than to submit them to a vote of the people. Since 1950 the General Assembly has passed 38 annexation acts. In 29 of these cases, as

in the case of Greensboro in 1957, the General Assembly made binding boundary extensions. In some of the others, exemplified in the case of Charlotte in 1957, the Legislature gave permission to use procedures different from those provided in the general law. In Charlotte, for example, the voters of the city and the area to be annexed voted together in a single election. And today there are strong indications that a larger number of special annexation proposals will be introduced in the 1959 General Assembly than in any previous session.

We do not believe that it is proper for the General Assembly to make these decisions, community by community and year by year, on the precise boundaries for cities. In the Legislature we cannot have the detailed knowledge of community development potential and municipal service ability which would enable us to make such decisions wisely. At the same time we understand the reasons that have impelled cities and towns to bring their proposals to the General Assembly rather than to use existing general law procedures.

#### What Is the Problem

Annexation involves the continuous extension of major utility facilities and other municipal services to parts of the urban area which are now or soon will become parts of the densely-populated and congested urban core. Contrary to the impression given by a number of North Carolina cities in recent years, annexation proposals should not be periodic and large scale in nature. Nor should annexation be considered outside the context of long-range planning in any community. Rather, it should be considered as an integral part of the planning process. Unless the annexation process is continuous, and unless it is an integral part of the planning process we emphasized in our November report, the growth of our North Carolina cities will be choked off by expanding rings of unsoundly-developed "fringe areas."

In our desire to reach an objective important for the entire state, we have tried to understand all aspects of the problem. We are all landowners. We are all legislators. We are all citizens. We represent both farm and city.

We understand the point of view of the homeowner outside the city who builds a home to avoid city taxes and perhaps gardens an acre or two. We know that for every industry which settles in the city and pays city taxes there is another which

located outside the city to avoid city taxes. We understand, though we do not agree with, the point of view that the question of municipal boundaries is a political question, to be decided at the polls. And we concede that not every city has approached annexation in a manner that would encourage confidence of the outside resident in the proposal.

We could go on to document the attitudes which we know exist about annexation on the part of city and outside residents alike. These attitudes are clearly expressed in every annexation election. But nothing will be accomplished by additional documentation of political arguments.

The essential question, after all, is relatively simple.

In a state undergoing rapid urban development, what should be the State policy on the extension of municipal boundaries? Should the policy be designed to give the individual resident outside municipal boundaries a controlling voice in the extension of those boundaries? Or should the policy be one designed to support the objectives of the larger urban community, assuming that those objectives have been reached in a democratic fashion?

We do not believe that affirmative support of the objectives of the larger community of individuals involves any denial of traditional constitutional rights.

For almost one hundred years the Supreme Court of North Carolina has upheld the unrestricted right of the General Assembly, as the duly constituted representative of the people, to fix municipal boundaries. And this is done in practically every session of the General Assembly.

If the Legislature can and does exercise this power, the question for the General Assembly is how to delegate the actual power of decision to political subdivisions in each community so as to (1) assure that sound State policy is met, and (2) assure that the rights of individual property owners are protected.

Since we are agreed that State policy demands soundly-governed, financially stable, attractive-to-live-in cities, with a high quality of municipal services, then we are principally concerned with recommending a procedure for needed extension of the corporate limits of cities that does give necessary protection to the rights of property owners.

## Factors Bearing on the Need for and Extent of Annexation

Before reaching final conclusions, we examined very carefully the factors which are part and parcel of every proposal to expand corporate limits. Where in fact should the city line go? What must be considered in making the decision to draw the line along a specific geographical direction?

We have found that it is not always easy to define land or territory which has developed or is developing to such a point that it logically should be part of a city. A specific standard, based on population density or the degree to which land had been subdivided for urban-type uses, is a guide to existing development. But it excludes those large tracts of undeveloped land which are "ripe" for development and whose development for urban purposes should be guided by the city. Our study points up the following factors as important in deciding what land should be annexed:

1. The actual distribution of developed and vacant land in the suburban areas contiguous to municipal boundaries. Land is not being developed block by block as it was in the street car days. Rather it is being developed first along streets and highways leading out from municipalities, and then along roads connecting such highways. In between this "ribbon" development along highways, much vacant and even farm land is located. This vacant land away from the existing street system is characteristically slower to develop. It must be subdivided; and new streets must be opened up which, in the discretion of the landowner or developer, may await city water and/or sewers.

2. The extent to which presently-developed land outside the city limits "needs" municipal services. We recognize that standard of "need" for municipal services cannot be measured in precise terms. For example, an individual who has built a home on a large lot with an acceptable septic tank may not presently need connection to a sanitary sewer system. But as his home becomes surrounded by many similar homes, the acceptable septic tank at some point becomes inadequate. Thus, in assessing need for a sewer system, attention must be given to the quality of sanitation available today and the quality that will be available as development continues. Similarly, private wells may provide high quality water today. Tomorrow, the water table may drop or sewage effluent may make

ground water unsafe. Thus one question is whether the extension of municipal systems should be delayed until a health emergency actually arises, or whether land undergoing development should be provided with such facilities before an emergency arises.

This discussion of need can be extended to other situations. Ribbon development leading from a city often creates traffic congestion or law enforcement problems that the sheriff with the help of the highway patrol cannot effectively handle. Should municipal police protection be delayed until critical problems arise or be extended while the development is taking place? And the same analysis can be extended to other municipal services.

3. The extent to which owners of presently-developed land outside the city desire municipal services. There are frequently persons in suburban areas who want better services of the quality provided by the city. They may want water lines or fire protection or garbage collection. But while the individual homeowner or merchant may want service, or need service, his neighbor may have neither the need nor the desire for such services at the present time.

4. The availability inside the present corporate limits of vacant land suitable or desirable for residential, commercial and industrial development. How much urban development is going to take place in and around the city will depend on the rate of growth of the local economy, anticipated population growth, the availability of land to accommodate that growth, and the locational characteristics of such land. If there is a large amount of suitable vacant land inside the city, the prospective rate of development outside the city may be small. On the other hand, if there is a shortage of land suitable for development inside the city, the demand for land outside the city may be relatively great. And the latter situation generally prevails in North Carolina today. The impetus behind the demand for annexation in many cities is the almost complete exhaustion of developable land inside the city.

5. The extent to which land contiguous to the city can be provided with those services and facilities which will permit intensive development for residential, commercial and industrial purposes. Ability to serve has many facets. Each deserves a paragraph.

Topography is one effective limitation on the

city's ability to extend some of its facilities. Frequently a city cannot extend sewer lines into adjacent territory without building expensive pumping facilities to pump the sewage back across a drainage boundary into an area where gravity flow to a sewage treatment plant is available. Or, extension of sewer lines may constitute an implied obligation to build sewage treatment facilities in a drainage area not now served with such facilities, a project which the city cannot financially meet in the near future. In too many North Carolina cities there is much vacant land served by sewer systems while intensive development is taking place in nearby areas which the city cannot economically serve. Ideally, the vacant land served by sewers should be developed intensively and development in outlying areas should be limited to a density not requiring public sewer systems.

Financial capacity is a second major and even more effective limitation. In North Carolina where most water and sewer systems are financed largely from user service charges, utility line extensions must reach a sufficient number of present or potential users to provide the revenue necessary to justify the extension. Furthermore, in extending water and sewer systems, the city must take into consideration the additional cost of increasing the overall capacity of the water supply system and sewer treatment facilities to handle the increased demand resulting from line extensions. A city cannot make extensions of these utility systems in an indiscriminate manner. It can and will make extensions where there is either a present demand promising a reasonable financial return, or a reasonably definite potential demand from expected urban development.

Consideration must also be given to the engineering and administrative aspects of service extensions. The time comes when water lines can no longer be extended as spokes on a wheel. The time comes when a line following the direction of the rim of the wheel is essential for adequate pressure. Nor can sewer lines always follow street lines. They must follow the path of least resistance if an efficient gravity system of sewer lines is to result. And the path of least resistance often does not follow the path of streets and water lines.

The extension of the utility system is, after all, the principal limiting factor on the ability of the city to extend its *full range* of services. The cost effects of leap-frogging vacant land to provide

police protection, garbage collection, and other services not tied to utility lines are relatively small. But water lines and sewer lines cannot leapfrog vacant land. They must pass through vacant land. And unquestionably without a high quality of water and sewer service and fire protection, other municipal services have relatively little attraction.

6. The impact of services and taxation upon land being annexed to the city. In our November report we called attention to the fact that in some cities land has been annexed which has not, in fact, been provided with services for several years following annexation. At that time we were of the opinion that if land were annexed and services were not made available, then such land should not be subject to full municipal taxes. We have thoroughly studied the possibilities of granting some sort of tax relief, either through exempting undeveloped land from annexation or through classifying land within municipalities for tax purposes according to services received or used. We have concluded that such tax relief cannot be theoretically justified in all cases, that administration of such a system would be very complex and cumbersome, and that classification of land for tax purposes might harm the credit rating of North Carolina cities.

But this does not mean that protection cannot be afforded to individuals in areas annexed to a city. The major inequity is not suffered by the landowner who does not use services which are made available. The real estate market provides some protection for him, because even if his land is vacant, it generally enjoys an increase in value through the availability of water, sewer service, and other municipal services. He will recoup in increased market price part, all, or more than the modest increase in taxes brought about through extension of the corporate limits. The inequity is suffered by the people who are brought into the city, made liable for city taxes, and to whom the full range of services is *not* made available.

Now to summarize.

We conclude that there is no simple way to define the land adjacent to a municipality which is now or soon will become "urban" in character. Patterns of land development are very responsive to land prices, demand, availability of essential services, and other locational factors. In the suburban area undergoing urban development, intensive-

ly developed subdivisions now rub shoulders with dairy farms; new industrial locations rub shoulders with old, established crossroads settlements; shopping centers rub shoulders with small farms or vacant land being held for the most propitious time for development.

We conclude that there is no simple way to define the need of land outside the city for municipal services. Homes and businesses which today do not "need" municipal services may face emergency needs tomorrow if services are not provided now in anticipation of future conditions. And once the emergency is permitted to arise, the effect may be to depreciate land values and render such areas undesirable for future development.

We conclude that the potential for development in areas now lying outside corporate limits depends upon the economic outlook for the entire urban area, looking at the incorporated and unincorporated areas as a unit. And furthermore, while development will not cease if corporate limits are not extended, there will be much less likelihood of sound and profitable development over an extended period if the city does not play an important role.

We conclude that there are some effective limitations on what areas can be effectively provided with municipal services. Topography is one such limitation. The cost of extending services is another. The degree of need is still another.

We conclude that there is no way to adjust the local tax structure to assure absolute equity to every landowner in the extension of corporate boundaries. But we believe that the most important factor in balancing equities is whether land within the city actually has the services of the city available to it when the time for development comes. If the services are not available, then there is no justification for including such land within the city. If services are available, the land will reflect in its market value its increased potential for development.

### The Factors Shape the Procedure

Realistic evaluation of these factors suggests the conditions of a practical and equitable annexation procedure.

We recognize that a city's reach may be considerably greater than its effective grasp. If a city makes a determination on land to be annexed without careful consideration, it may include much

land which may not receive services in the near future. The basic inequity in annexation arises where land is annexed and is not provided with services.

But, if a city is required to make assurances prior to annexation that newly-annexed land will be provided services on the effective date of annexation or soon thereafter, we believe that the basic inequity will have been eliminated. That is, if assurance can be given to landowners in territory to be annexed that they will receive the services that are the hallmark of city government from the time they are annexed, then there can be little argument that taxes are being levied unfairly. And furthermore, we seriously doubt that any city, required to give such assurances, will overreach its grasp, particularly when the revenue structure of North Carolina cities is so dependent on service charges that must rely on potential development to generate revenue.

To put it another way, in the vicinity of our growing cities all land (whatever its present use) has potential value for urban-type purposes. Land sold for residential, commercial or industrial purposes in an urban area brings a higher price than the same land in a rural area where agriculture is the highest and best use. In order to assure that land in urban areas is used effectively such land must sooner or later receive municipal services. Rather than multiply many small and inefficient governmental units to supply these services as need arises—the pattern in many other states—we believe that the existing cities and towns should expand their service systems wherever practical. And the agency best fitted to determine the extent to which municipal facilities *can* be extended is the municipal governing board.

But the General Assembly should not delegate unlimited power to these governing boards. Exercise of discretion to extend corporate boundaries must and should be subject to general standards or limitations imposed by the General Assembly. And we think that the primary standards should be these: (1) that the land to be annexed is either developed for urban purposes or is reasonably expected to be so developed in the near future and (2) that the city give satisfactory assurances that services will be provided and made available to all the land annexed within specified periods following the effective date of annexation.



There are other standards which we think important and we shall enumerate them in our recommendations. But these are the primary ones.

Given these standards, there are still major decisions to be reached. For example, if the municipal governing board determines the proposed annexation boundaries, who should be the arbiter, the judge, of whether the proposal is sound and fair and whether the proposal actually meets the statutory standards imposed? What agency has the collective wisdom of passing judgment on the city's proposal? Certainly the property owner should be assured of an impartial review of the reasonableness of the governing board's action.

We have already signified that we do not approve of annexation by special act or of annexation subject to the veto of the electorate in the area to be annexed. Nor do we look with favor on another state agency with the power to fix municipal boundaries.

We do not believe that a precise municipal boundary can be fixed by reference to specific factual standards. Somewhere in the process there must be the exercise of judgment by some board or agency. Therefore, whether the decision is made by a city council or a state administrative board, the most practical method of reviewing the administrative decision is to provide judicial review of the decision. And the scope of review must necessarily be whether the agency making the decision made a reasonable decision in accord with the statutory standards. This, we believe, is the best protection for the individual property owner. It is a middle ground between a specific decision by the General Assembly which is not reviewable, and a decision by the residents to be annexed which is also not reviewable.

In this connection we have asked ourselves again whether statutory conditions plus judicial review would constitute sufficient protection for the resident of the area to be annexed. And we reach the same conclusion each time. We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby *acquires* the right to stand in the way of action

which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. Therefore, sooner or later his property must become subject to the regulations and services that have been found necessary and indispensable to the health, welfare, safety, convenience and general prosperity of the entire urban area. Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is the proper arena for the exercise of political rights, as this General Assembly has evidenced time and again in passing annexation legislation without recourse to an election.

We have delayed our recommendations to give the most careful consideration to this procedure. We are convinced that a procedure which gives municipal governing boards the power to annex land undergoing urban development, provided that services are made available throughout the annexed territory soon after annexation, meets the varied points of view involved better than any other procedure.

The suggestion has been made forcibly that annexation would be made easier in many cases if the 100% signature requirement of G. S. 160-452 were relaxed so that a town could annex land if a petition signed by more than half but fewer than all of the property owners, or by the owners of more than half but fewer than all the acreage, were submitted. In view of the flexibility afforded by our suggested new procedure, we do not believe it necessary to change the petition law except in one respect. So long as all the property owners agree, we see no reason to suggest that the petition procedure should apply only where there are fewer than twenty-five residents. We are making suggestions for simplifying this entire procedure.

One general comment should be added. We do not believe that good public relations can be the subject of effective legislation. But we do believe that much of the misunderstanding and conflict as-

sociated with annexation can be eliminated if the city, in planning annexation, would bring representatives of the suburban area into the study process—before a specific proposal is made. This approach is particularly important where large-scale annexation is proposed.

### Recommendations

Our detailed recommendations follow. Where we make a recommendation which includes specific items not heretofore mentioned, a brief comment follows the recommendation. These recommendations are set forth in more detail than usual in order to clarify the details of the general procedure.

We recommend:

**1. That a new annexation procedure be adopted, in lieu of the election procedure, authorizing the governing board of any municipality to annex land by ordinance if the conditions of the procedure are met.**

**2. That any territory annexed must meet the following standards:**

(a) **The land must be adjacent or contiguous to the municipality's present boundaries and at least one-eighth of its aggregate external boundaries must coincide with the municipal boundary.**

We suggest that land be considered contiguous even if it is separated from the actual physical boundary by a street or road right-of-way, a creek or river, publicly-owned lands, or the right-of-way of a railroad or public utility.

(b) **The land must not be included within the corporate boundaries of another city or town.**

(c) **The land must be presently developed for urban purposes or undergoing urban development.** We are working on specific statutory standards which will guide the city, the outside residents and the court in determining whether territory to be annexed falls within this general definition. Expressed in general terms, these standards will define land as "undergoing urban development" if (1) there has been substantial subdivision of land into lots and tracts of five acres or less, and/or (2) there has been substantial residential, commercial or in-

dustrial development along the streets or highways or in small communities, settlements or subdivision, and/or (3) there is a reasonable expectation that land not already subdivided or developed will soon be developed by reason of being a logical service area into which municipal water and sewer systems should be extended, or by reason of being adjacent to land now subdivided or developed for urban purposes.

*Comment.* The definition of "contiguous" is suggested as the result of the experience of several cities in determining whether they could annex land separated from the city by a river, for example. The one-eighth requirement is intended to prevent "strip" annexations, along a highway for example. The requirement that the land be "undergoing urban development" is made general on purpose. The discussion of the factors to be considered in undertaking annexation demonstrated to us that any more specific definition would rob the cities of necessary flexibility in fixing boundary lines. In short, we believe that the legislative standard should act as a brake only with respect to attempted annexation of large tracts of agricultural or vacant land where no evidence of urban development can be shown.

**3. That the municipal governing board, prior to passage of an annexation ordinance, shall be required to take the following steps:**

- (a) To publish a description of the land to be considered for annexation.
- (b) To publish notice of a public hearing on the question of annexation.
- (c) Prior to the public hearing, to pass a resolution for public distribution which (1) shows the application of the standards set forth in recommendation 2 above to the area to be annexed, and which (2) states the ability of the city to provide services to such area as set forth in recommendation 4 below.

**4. That the municipal governing board, prior to passage of an annexation ordinance, shall be required to study the extension of services to the area to be annexed and to issue a statement setting forth (a) the plans of the city for extending each major municipal service to the area to be annexed, (b) showing that the services to be pro-**

**vided in the area to be annexed will be made available substantially in the same manner and on the same basis as such services are provided within the rest of the municipality on the date of annexation, (c) setting forth a plan for financing the necessary service extensions, and (d) fixing a time schedule for construction of necessary capital facilities.** The plans under (a) above shall,

- (1) Provide that services not necessitating construction of capital facilities shall be made available on the effective date of annexation.
- (2) Where water and/or sewer service is not available throughout the area to be annexed, call for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that property owners in the area will be able to secure water and/or sewer service following such construction according to the policy of the municipality for water and sewer extensions.
- (3) Provide for beginning construction on all necessary capital facilities as soon as possible following the effective date of annexation and in any event within twelve months following the effective date.

If the municipal board finds that funds for construction will not be available before the effective date of annexation, then the board shall secure authority to issue bonds to finance such facilities before the effective date of annexation. If it is necessary to submit the bond issue to a vote of the people to secure the necessary authority, then the election must be called for a date prior to the effective date of annexation, and the annexation ordinance shall not take effect if the bond election fails. Of course the bonds need not be issued until actual expenditures are necessary. *Comment.* There is no great problem in making arrangements for extension of police protection, garbage collection and street maintenance services to an annexed area. Effective fire protection, however, is very dependent upon a public water system, as well as manned fire companies. And extension of water and sewer lines, whether they are financed by the city or through special assessments or by the property owner with a refund from the city, cannot be accomplished if the major trunk water mains and sewer outfall lines are not installed.

Thus the proposed act will require that where construction of such facilities is necessary, the funds to build the facilities should be available prior to the effective date of annexation so that residents of the annexed area will have assurance that such facilities will be constructed as soon as possible. With the funds on hand on the effective date of annexation it should not be difficult to let the contracts and begin construction soon after the effective date of annexation.

**5. That at a regularly-scheduled or special meeting of the governing board held not more than sixty days following the public hearing, the governing board shall have authority to pass an ordinance extending the corporate limits of the city to include the territory described in the publication notice, or any part thereof, which it has found to meet the standards set forth in Recommendation 2 and which it has found that it can serve in accordance with Recommendation 4. The governing board shall have authority to fix the effective date of the ordinance for any date up to one year from the date of passage of the ordinance. If a bond election becomes necessary under the provisions of Recommendation 4, then the effective date of annexation shall be no earlier than the day following approval of the bonds by the electorate.**

*Comment.* In fairness to residents of the area to be annexed, there should be no unnecessary delay in deciding whether to proceed with annexation. At the same time the service requirements of this procedure may make immediate annexation impossible, and the governing board should be able to postpone the effective date of annexation up to one year from the date of passage of the ordinance.

**6. That if any property owner wishes to challenge the action of the municipal governing board, he shall have thirty days from the date of passage of the ordinance to 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. Multiple petitions should be consolidated. The statute should provide for an expeditious procedure, and the court should have the responsibility of reviewing the action of the municipality to determine if the annexation proceedings conform to the statutory procedure.**

*Comment.* Our intent is to permit any property owner to seek judicial review if he so desires, but that review should be expedited so as to avoid long and tedious delays in determining the validity of the annexation action. The scope of review should be limited to a determination of whether the proposed boundaries conform to the standards set forth in Recommendation 2, whether the municipality's plan for providing services conforms to the requirements in Recommendation 4, and whether the statutory procedure has been complied with. The court should be given the power to remand the case to the municipal governing board for appropriate action if it finds that any of the substantial conditions have not been met.

**7. That G. S. 160-452 be rewritten to make it apply to any area where 100% of the property owners sign a petition requesting annexation and that the annexation procedure in such section be simplified.**

#### **Conclusion**

We acknowledge that the service and procedural requirements which we suggest appear to be cumbersome at first glance. But we believe that most city officials will recognize one reflection that major problems will arise only when large-scale annexa-

tions are proposed, not with respect to the annexation of relatively small areas.

We believe that this procedure will meet the needs of North Carolina cities, and provide protection to landowners. We have tried to steer a middle path between the delegation of board general authority to cities on the one hand and delegation of an absolute veto to residents of the area to be annexed on the other. We examined the laws of all the states, as well as new proposals in a number of states. We benefitted from the experience of other states. But the procedure we are recommending is not borrowed from any state. It is a procedure which we believe is peculiarly fitted to North Carolina conditions and is therefore a home-grown product—a North Carolina procedure.

In summary we believe that this procedure will assure the continued sound growth and development of our cities in a manner that will contribute to the sound development of the State. We believe that this procedure will encourage sound planning by municipalities and insure equity to residents of areas being annexed. And we believe that the policy of the State will be protected through the standards recommended and the provisions for judicial review of action taken pursuant to such standards.

## Appendix A

### Statement Concerning Extension of Municipal Boundaries from Report of Municipal Government Study Commission, November 1, 1958 (pages 19-21)

*"Municipal Boundaries.* We have already stated our belief in and concern for strong city governments in North Carolina. Cities cannot continue to remain strong and to provide essential municipal services unless their boundaries are periodically extended to take in those areas which require municipal services for sound development and whose residents make extensive use of municipal facilities.

"As a result, we have given, and are still giving, careful attention to the whole problem of municipal boundaries. We have viewed with alarm the experience in other states where failure of cities to expand their boundaries periodically has resulted in what is called the "metropolitan problem." We have analyzed what can happen if a city is surrounded by heavily populated fringe areas that cannot for a variety of reasons be annexed by the city. We have noted fringe areas that are, in every sense of the word, slums. We have noted fringe areas whose problems of sanitation and traffic and law enforcement are so great that cities are discouraged from attempting annexation. We have noted fringe areas so poorly developed that the city finds it impossible to extend water and sewer facilities through these areas to serve presently undeveloped land that could accommodate sound development.

"Furthermore, we have studied urban areas where the fringe is not unincorporated but a tangled thicket of small, financially weak and competing towns and special districts. In these areas it is impossible to find any one governmental unit which has the jurisdiction or financial ability to provide those services and facilities which are essential to the development of the entire urban area.

"We must not permit North Carolina's cities to be surrounded and squeezed out in this fashion. We must provide a climate within which our city governments may expand their operations in step with the growth of the urban area.

"Our recommendations with respect to plan-

ning and the control of land development do not fully meet this problem. Well conceived ordinances and good intentions will not provide the water and sewer systems that we need, the street systems that are necessary, the high quality fire protection, and the other services which are accepted as necessary for urban living.

"We have thoroughly analyzed the experience of North Carolina cities under present general law annexation provisions and under the variety of procedures set forth in special acts. We have been impressed with the success of some cities in extending their boundaries as new areas were developed. We have also been impressed with the fact that heretofore annexation in this State has generally been a political process in which the residents of one small part of an urban area have had power to cast a veto over city limits extension proposals which might have had profound significance for the development of the entire urban area.

"This procedure has given us much concern. On the one hand, we believe that the legitimate rights of every person must be protected. We do not think that city governments should have uncontrolled authority in determining the boundaries of a city. On the other hand, we do not believe that the extension of municipal boundaries is a legitimate question to be decided by a vote of the residents of a small portion of a large community.

"As we have indicated above, the significant feature of city government today is the system of facilities which the city provides and which is essential for urban living. We believe, in general, that the boundaries of a city should include all that part of the urban area which *is developed* in such a fashion as to presently require the package of services offered by a city, as well as that part of the urban area which is presently *being developed* in such a way as to need such services in the very near future.

"Furthermore, municipal utility systems are absolutely necessary for sound urban development in North Carolina. Extension of these systems beyond corporate limits is possible, and is being done in some areas. In the long run, however, outside extension represents a substantial and unfair subsidization of outside development by city resi-

dents and may materially weaken the ability of the city to finance necessary expansion of both utility systems and service operations. In short, a city dependent on the property tax and water and sewer charges cannot expand to serve new growth unless its tax base is also expanded to take in that new growth.

"Therefore, in the interests of sound urban development, in the interests of continued improvement and expansion of essential utility systems, and in the interests of soundly financed urban services, we have concluded that *the question of municipal boundary extension should be a matter of State-wide policy and that the State should define the type and character of areas which should be provided municipal services in the interests of sound urban development.*

"This is easier said than done. Typical annexation procedures in the United States:

*"Leave full discretion in the state legislature;*  
or

*"Give the city governing board broad discretion to determine municipal boundaries; or*

*"Permit residents of areas proposed for annexation to decide for or against annexation; or*

*"Give judicial or administrative bodies the power to determine whether proposed annexations meet broad statutory standards defining land which may be annexed.*

"We have already decided that the first three approaches do not provide a satisfactory solution to the boundary problem. We are concerned with the fact that most statutory standards regulating when annexation may take place are so broad that judicial or administrative agencies can interpret them in any way they see fit. We believe that standards should be more specific, so that it is the legislature which fixes policy, not judicial or administrative agencies.

"At the present time we are working on such an approach. Because the problem is so complex,

we are not yet ready to make specific recommendations, but we can set forth our objectives.

"We are working on a set of standards which, individually or cumulatively, would permit municipal governing boards to annex areas which (a) presently receive or need municipal services, or (b) will need municipal services in the immediate future (one to two years) if the areas are to be properly developed. Because of our recommendations for extraterritorial municipal jurisdiction, we believe that the need for extension of services can be confined to relatively small areas each year and that annexation for the purpose of extending subdivision control and zoning will become unnecessary.

"Despite the fact that the system we are working on will define land to be annexed more precisely than the present system does, we recognize that the owners of land being annexed should have some right to a review by a disinterested party or agency. We are considering several types of review—by a State administrative agency, by a local administrative agency, or by the superior court. Since the proposed standards would be specific rather than general, at the present time we favor review by the superior court to determine if the land annexed in fact meets the statutory standards.

"Finally, we are aware that in recent years some land has been annexed to North Carolina cities which, while admittedly urban in nature, has not received full municipal services for several years following annexation. In such cases it is unfair, we believe, for landowners to pay full municipal taxes, particularly when they do not receive benefits such as a reduction in fire insurance rates because their property is not tied into a municipal water supply. We are studying methods by which such landowners can be given some relief until the time when services are in fact made available."