

ANNEXATIONS

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Annexation Power

- The Extra-Territorial Jurisdiction
- Corporate Boundaries

THE THREE QUESTIONS

- Why?
- Authority?
- Procedures?

Why? Money and IGR in Texas

- Control development; and/or expand the city's tax base
- NOT a property rights issue
- IS a money and IGR issue
 - City services
 - State funding
 - Annexation power in lieu of state funding

Annexation Authority

- **Home Rule Cities**
 - Local Government Code
 - Charter Provisions
- **General Law Cities**
 - Local Government Code
 - Unilateral / Petition
- **ETJ**
- **Authority v. Procedures**

Authority vs Procedure

Alexander Oil Co. v. City of Seguin, 825 S.W.2d 434 (Tex. 1991)

- The only proper method for attacking the validity of a city's annexation of territory is by *quo warranto* proceeding, unless the annexation is wholly void
- A municipality that violates procedural requirements in the process of exercising annexation power may render an annexation voidable but not void.
- Historically, Texas courts have held that an annexation ordinance exceeds a municipality's authority (and are wholly void) when the annexation:
 - 1) exceeds the statutory limits on size;
 - 2) attempts to annex areas within the jurisdiction of another city;
 - 3) attempts to annex areas not contiguous with city limits; and
 - 4) attempts to annex an area with an open boundary description.

AUTHORITY OF GENERAL LAW MUNICIPALITY TO ANNEX AREA LGC § 43.033

A general-law municipality may annex adjacent territory without the consent of any of the residents or voters of the area and without the consent of any of the owners of land in the area provided that the following conditions are met:

- the municipality has a population of 1,000 or more and is not eligible to adopt a home-rule charter;
- the procedural rules prescribed by this chapter are met;
- the municipality must be providing the area with water or sewer service;

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A general-law municipality may annex adjacent territory without the consent of any of the residents or voters of the area and without the consent of any of the owners of land in the area provided that the following conditions are met:
(Continued)

➤ the area:

- does not include unoccupied territory in excess of one acre for each service address for water and sewer service; or
- is entirely surrounded by the municipality and the municipality is a Type A general-law municipality;
- the service plan requires that police and fire protection at a level consistent with protection provided within the municipality must be provided to the area within 10 days after the effective date of the annexation;
- the municipality and the affected landowners have not entered an agreement to not annex the area for a certain time period; and . . .

Authority of Home Rule Municipality to Annex

- Looks to its charter
- Adopts a three year municipal annexation plan
LGC §43.051

Exceptions LGC §43.051(h)

- This section does not apply to an area proposed for annexation if:
 - the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract;
 - the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners as provided by Subchapter B;
 - the area is or was the subject of:
 - ◆ an industrial district contract under § 42.044; or
 - ◆ a strategic partnership agreement under § 43.0751;

Exceptions LGC §43.051(h)

- This section does not apply to an area proposed for annexation if (Continued):
 - the area is located in a colonia, as that term is defined by § 2306.581, Government Code;
 - the area is annexed under § 43.026, 43.027, 43.029, or 43.031;
 - the area is located completely within the boundaries of a closed military installation; or
 - the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:
 - ◆ imminent destruction of property or injury to persons; or
 - ◆ a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.

However ...

A municipality may not circumvent the requirements of this section by proposing to separately annex two or more areas described by Subsection (h)(1) if no reason exists under generally accepted municipal planning principles and practices for separately annexing the areas. If a municipality proposes to separately annex areas in violation of this section, a person residing or owning land in the area may petition the municipality to include the area in the municipality's annexation plan. If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute.

Areas appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management LGC § 43.035

- A city is prohibited from annexing an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management, unless the city offers a development agreement to the landowner that would:
 - guarantee the continuation of the extraterritorial status of the area; and
 - authorize the enforcement of all regulations and planning authority of the
 - city that do not interfere with the use of the area for agriculture, wildlife management, or timber.
- A landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. An annexation without offering an agreement is void.

Procedures – Plan (3 Year Process)

- Non-annexation agreement
- Subchapter C
 - Inventory
 - Preliminary service plan
 - Notice and two public hearings
 - Negotiations/Arbitration
 - Ordinance Adoption

Recent cases

- A statute of limitations establishing a conclusive presumption after two years that annexation ordinance was adopted with the consent of all appropriate persons applied to a city's challenges to a neighboring city's annexation, including those challenges that were not based on consent. The city filed its challenge to the annexation several years after the statute of limitations had expired.

City of Celina, 2009 WL 2750978 (Or. A.G. Aug. 31, 2009)

Recent cases

- Landowners did not have standing to challenge municipality's annexation of their properties (under plan exception) and requiring property owners, including the Landowners, to pay the costs of connecting to Round Rock's water and sewer utility lines. Court held: since the annexation was not wholly void and the legislature had not expressly granted a private right to challenge the annexation, a quo warranto proceeding brought by the state was the only proper means of attacking the municipality's annexation in court

Round Rock Life Connection Church, Inc. v. City of Round Rock, 03-09-00523-CV, 2011 WL 589832 (Tex. App. Feb. 18, 2011), review denied (July 1, 2011)

Recent cases § 43.002 of the Texas Local Government Code

- The dispute between Alton Kirk Johnson and wife, Aliene Johnson (the Johnsons), and two Johnson companies,¹ on one side, and the City of Lufkin (the City), on the other, centers around how the Johnsons used their land during the fall of 2006, when the City was annexing the Johnson property into the City, and thus whether they qualified to continue a nonconforming use, notwithstanding the new contrary zoning by the City.

City of Lufkin, 2012 WL 2393087 (Fla. A.G. June 26, 2012)

THANK YOU!

QUESTIONS ?

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