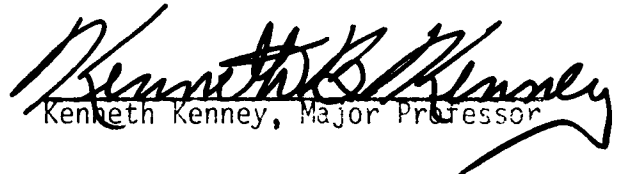
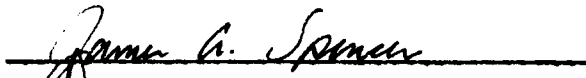


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THE ANNEXATION CONTROVERSY IN TENNESSEE: A COMPARISON OF THE
LAWS AND ATTITUDES AFFECTING UNILATERAL ANNEXATIONS
IN TENNESSEE AND NORTH CAROLINA

A Thesis
Presented for the
Master of Science
Degree
The University of Tennessee, Knoxville

Jay C. Vincent
March 1986

DEDICATION

Although the time and efforts put into the production of this document were mostly my own, I was supported and assisted by the time and efforts contributed by my family, friends, and numerous associates, especially those who volunteer their time to community and civic improvements. Some of these individuals made actual contributions to my efforts, others provided encouragement, and others made sacrifices in order that I could commit myself to this effort. To these individuals I dedicate this work.

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ABSTRACT

The unilateral provisions of the Tennessee annexation law have been under attack since its adoption in 1954. The attack has occurred primarily in the courts, the Tennessee General Assembly, and in the news media in the form of expressions of opinions. The apparent dissatisfaction with the present law has resulted in lost time and money as the legislature, the courts, and others have tried to resolve the issues surrounding the problem of unilateral annexations.

Several states, including North Carolina, have unilateral annexation provisions in their laws, but few appear to have experienced the controversy that has been obvious in Tennessee. This research compares the unilateral provisions of the laws of Tennessee and North Carolina and attitudes towards those provisions as expressed by individuals in both states. Expressions of these attitudes were reported in two survey questionnaires mailed to survey participants. The first survey was administered in both states and was used to identify perceived strengths and weaknesses of the respective laws. The second was administered in Tennessee and was used to determine if elements of the North Carolina law would be acceptable in Tennessee.

The surveys showed that there are elements in the North Carolina law that can be considered for incorporation into the Tennessee law. Among the features of the North Carolina law that may help to reduce controversy in Tennessee were the following: 1) more emphasis on planning and the importance of municipalities in the provision of urban services; 2) the importance of municipalities in the overall social and economic development of the state; and 3) state mandated standards and guidelines for carrying out annexation activities.

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CHAPTER I

INTRODUCTION

"Annex top factor in Sun cities' explosion" was one of the lead stories in the October 29, 1984, issue of the Knoxville Journal. The story addressed an issue that has been the center of controversy in Tennessee for several years. While the Journal article focused on the use of annexation by cities in the South and West as a growth management tool its importance nationwide was also pointed out. As noted in the article, Sun Belt cities have experienced substantial growth in the decade ending in 1980. Migration was cited as only a part of the reason for recent population increases; annexation was given as the overriding factor in the growth of cities such as Houston, San Antonio, and Phoenix.

Houston, for example, grew more than 29 percent from 1.2 million to 1.6 million people between 1970 and 1980. The Texas city is often cited in studies of the attraction of the Sun Belt to outsiders.

"But the city also annexed (more than 200,000) people," Miller said (John Miller, Bureau of the Census). "Without the annexation the city would have grown only modestly." (Knoxville Journal, p. A-3)

Mr. Miller went on to say that growth in Western and Southern cities could not be totally attributed to major regional population shifts; the populations of the various regions of the country remained relatively the same.

And while such expansions didn't change the comparative number of people in each region of the country, annexations did make Southern and Western cities seem to grow faster than those in the Northeast. (Knoxville Journal, p. A-3)

According to Miller, Southern cities are more likely to annex than cities in the Northeast and the Middle Atlantic. Cities in these regions rarely annex. There were only four minor annexations in the New England states during the preceding decade (1970's), and cities in the Middle Atlantic states added only 37 square miles and approximately 9,000 people during the decade studied.

The United States Bureau of the Census reports that more than 61,000 annexations were carried out by American cities between 1970 and 1980. Obviously, there are sound reasons for annexation actions if this many annexations were reported in the United States Bureau of the Census publication Boundary and Annexation Survey 1970--1980.

The survey included annexations reported by incorporated places with a population of 2,500 or more. The Knoxville Journal article mentioned previously reported that 40 percent of all the annexations completed during the decade occurred in California, Florida, Illinois, and Texas. Several cities in states adjacent to Tennessee cited as strong gainers as a result of annexation included Charlotte, North Carolina; Savannah, Georgia; Little Rock, Arkansas; Montgomery, Alabama; Jackson, Mississippi; Roanoke and Lynchburg, Virginia; and Lexington and Owensboro, Kentucky. Clarksville, Chattanooga, Memphis, and Hendersonville were cited as strong gainers in Tennessee.

The Boundary and Annexation Survey shows that Illinois had more annexation actions than any other state during the period covered by the report. During the same period, California had the second highest, whereas Vermont and Massachusetts had only two. Tennessee ranked twenty-fifth among the 50 states in the number of annexations reported

Table I offers a sampling of states and the number of annexations completed in each state during the period covered in the report.

TABLE I
1970 - 1980 SAMPLE OF ANNEXATIONS BY SELECTED STATES

STATE	NUMBER OF ANNEXATIONS
Alabama	1,348
California	7,229
Georgia	2,311
Illinois	11,415
Massachusetts	2
Mississippi	126
North Carolina	1,959
Tennessee	833
Texas	3,964
Vermont	2
Virginia	45

Source: United States Census Bureau.

Background Information

Definitions

Annexation is defined by the Southern Growth Policies Board (SGPB), an organization that studies growth in southern states, as the expansion of a municipality achieved by extending its corporate boundaries to include additional territory as an integral part of the municipality. Each state listed in Table I has provisions for unilateral annexations. The term unilateral annexation, refers to a procedure that permits a municipality to annex territory without the direct approval of residents and property owners affected by the annexation action.

Other words and terms that have special connotations in this thesis are defined below:

1. Fringe area. The territory adjacent to and within the sphere of influence of an incorporated place.
2. Municipality. A geographic political jurisdiction created as a result of incorporation under general state laws or the granting of a charter of incorporation by a state legislature.
3. Referendum. The submission of a law, question, or issue to a direct vote of the people.
4. Urban. A state or condition of a geographic area that exists as a result of land use activities, densities and development that distinguishes it from land areas that are less developed and generally agricultural in character.
5. City. A geographic area generally defined as an incorporated place and its fringe.
6. Community. A group of people with common interests living in a geographic area that has no fixed boundaries.
7. Consolidation. The act of combining two or more governmental jurisdictions.
8. Special District. A geographic area established or defined by law for the provision of a particular governmental service or group of services.

Classification of Annexation Procedures

In spite of the widespread use of annexation nationally, its use has been described by some people as controversial. In 1881 the

United States Supreme Court ruled in Kelly v. City of Pittsburgh that it is within the powers of state governments to establish municipal boundaries.

Mr. Justice Miller delivered the opinion:

It is not denied that the legislature could rightfully enlarge the boundary of the City of Pittsburgh so as to include the defendant's land. If this power were denied, we are unable to see how such a denial could be sustained. What portion of a State shall be within a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. How thickly or how sparsely the territory within a city must be settled is one of the matters within legislative discretion. Whether territory shall be governed for local purposes by a county, city, or township organization, is one of the most usual and ordinary subjects of State legislation. (Kelly v. City of Pittsburgh, 104 U.S. 78, 26 L. Ed. 658, 1881)

The Court reaffirmed this position in 1904 with its decision in Hunter v. City of Pittsburgh. (207 U.S. 167, 28 SC 40, 52 LE 151, 1904) Although these decisions defined the rights of states to determine municipal boundaries, neither removed other controversial aspects of some annexation statutes.

Forty-nine of the 50 states have chosen to enact general legislation governing the annexation of territory by municipalities. Delaware, the single exception, provides for municipal annexation in the individual charters of its municipalities and in the State Home Rule Act. State legislatures have generally elected to provide several alternative methods for municipalities choosing to annex territory.

Donald G. Hagman writes that Dixon and Kersetter classifies these methods into the following six categories:

1. Bilateral annexation; e.g., after consent of both fringe and city (municipality) has been expressed by some combination of petition and referenda, or petition and ordinance procedure;
 2. Unilateral annexation by the municipality; e.g., full power in the municipality to effect an annexation usually by ordinance or charter amendment;
 3. Unilateral annexation by the municipality subject to judicial remonstrance; e.g., opportunity for fringe area to appeal to a court before annexation becomes final;
 4. Annexation by court order; after initiation of proceedings either by the municipality or the fringe area;
 5. Annexation by approval of an outside body other than a court; and
 6. Annexation by special act of the state legislature.
- (Hagman, 1980, p. 337)

Most state legislatures have provided at least two methods for municipalities to alter their boundaries. Bilateral annexation appears to be the most popular; the exercise of annexation jurisdiction by the state legislature is used least. Only nine of the 17 states that permit unilateral annexations do not require outside approval (Barnes and Varney,, 1975, p. 13). Annexation statutes that do not provide for outside review are especially unpopular among fringe area residents, but among public officials it is often viewed as the best method for effecting an annexation action. Victor C. Hobday and Eugene Puett make the following comment:

The issue may be simply stated thus: should the destiny of a city be determined by its politically responsible leadership (the governing body) on a basis of broad community considerations, or should it be determined by a minority of urban fringe residents who, in voting on the question, would be influenced primarily by the factor of added city taxes? To give this power (to require a referendum) to urban fringe residents would in many cases result in permanent sealing of city (municipal) boundaries. (Hobday and Puett, 1975, p. 10)

Hobday and Puett offer comments from public officials in Indiana, Arkansas, Kentucky, and Virginia in support of their position. They cite the Virginia Supreme Court's 1941 ruling in the case Henrico County v. Richmond:

. . . it is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire and health protection and even tolerate the inadequacy of sewerage, water, and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of the population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that he needs the city government as it is the area in which he lives needs it.

These words summarize the positions held by some fringe area residents and many public officials; they also indicate some of the problems annexation can be used to resolve. The following have been identified as some of the problems facing municipalities that may justify the use of annexation and other methods of municipal boundary changes:

1. Uncontrolled growth in the urban fringe;
2. A stagnant or declining municipal tax base; and
3. A need for or a demand for urban services in the urban fringe.

An Overview of Methods Used to Deal with Urban Problems

Annexation is but one of several methods identified as a means of dealing with some of the problems of urbanizing communities. Other methods include consolidation, incorporation, and the creation of special service districts. Each method has been used to achieve specific objectives.

Generally, annexation has been the method most easily implemented when the primary objective has been the consolidation of governmental functions and the expansion of the municipality's tax base; consolidation has been useful in eliminating service duplications. The creation of special service districts has played an important role when the objective has been the provision of particular urban services to fringe area communities. Incorporation has sometimes been used to preclude the annexation of a fringe community by an existing municipality as well as to provide urban services to fringe area communities when needed services cannot be provided by other means, or in situations where fringe area residents would rather not be a part of an existing municipality.

There are several statements that can be made concerning the advantages and disadvantages of the various methods for dealing with the problems of urbanizing communities. Between 1921 and 1980, 57 American communities attempted to consolidate municipal and county governments. Of the 85 attempts made by these communities, only 27 were successful. Of these 27, ten were mandated by state legislatures and the remainder were approved by referenda.

While consolidation is considered by many public officials and some lay citizens to be the best method for the provision of

services, the political realities of its implementation make it more difficult to achieve. In spite of expressions extolling the benefits of consolidated government from communities such as Jacksonville, Florida and Nashville, Tennessee, other communities continue to reject the concept. From communities that have consolidated governments, comments relating to slower increases in the costs of government and better service delivery are heard. At the same time, communities considering consolidation express some of their concerns; the unwieldiness of government because of diluted representation and the real or perceived notion that fringe area residents would be forced to subsidize municipal debts.

The consolidation alternative may offer opportunities for an overall reduction in the size and costs of government through the elimination of duplication of services and efforts, but there are other costs that the community may not be willing to endure. Consolidation will generally require political restructuring. This may mean shifts in political strengths for some individuals, groups, and institutions. These may not be options the community would find desirable.

Special service districts have provided realistic alternatives to annexation, consolidation, and incorporation in fringe communities that are beyond the service area of an existing municipality. On the other hand, they have also served as a disincentive for consolidation, incorporation, and annexation. Fringe communities with effective special service districts often have little incentive to seek services from other sources. Special service districts are

generally limited in both size and function, and there is often a perception of local control that may be lost under the other alternatives.

Some of the positive incentives offered by alternative methods of servicing fringe areas are sometimes overlooked. The economies of scale provided by these methods should reduce costs. It is noted also that local control can be lost if the governing body of the special district is self-perpetuating and fails to share power with the community it serves.

In the special district situation, there is the perception that each user pays. This is generally more acceptable than taxation. In some instances, the actual costs of the service may exceed the costs of providing the service with tax revenues. Another cost that is sometimes overlooked, and often present, is the lack of comprehensive planning and coordination among the various special districts and between districts and other service providers in the larger community.

Incorporation is an alternative that poses an interesting paradox. Many fringe communities reject annexation and consolidation because of a fear of higher taxes, yet in most situations that result in incorporation, these communities will need to tax themselves in order to provide for some of the services they need and desire. This is not true in all situations.

The incorporation of new municipalities does offer the opportunity for a community to retain its identity and remain close to its governing authority. On the other hand, it also subjects the community to the same financial pressures and problems found in other

incorporated places. Incorporation increases the potential for duplicated services and personnel. And as is the case with special districts, planning coordination may be lost. Regardless of the method chosen by the community for dealing with the problems that accompany urbanization, there are costs to be paid.

For existing municipalities, and often to the advantage of fringe areas, annexation frequently offers a practical alternative. This method of boundary alteration for the purpose of dealing with the problems of an urbanizing community provides a simple way for implementing growth management policies, expanding the municipality's tax base, and providing urban services to fringe communities.

Some Reasons for Annexation

A quick review of the history of cities reveals that cities are formed to provide for the needs and conveniences of their residents.

A state, I said, arises, as I conceive out of the needs of mankind; no one is self-sufficing, but all of us have many wants. Can any other origin of a state be imagined. . . .

For I suspect that many will not be satisfied with the simpler way of life. . . . We must go beyond the necessities (food, dwelling, clothing). . . .

.
Then we must enlarge our borders; for the original healthy state is no longer sufficient. (Plato, The Republic)

There is a common theme in the writings of some early political and social theorists and present-day urban economists and geographers which purports that there is a tendency for people to gather and live in close proximity for their own protection and convenience. It is this tendency that gives rise to the need for urban services.

Frank Sengstock, in Annexation: A Solution to the Metropolitan Area Problem, published in 1960, makes the following comment:

If a city within a metropolitan area hopes to establish high standards regarding public health measures, police protection, recreation and welfare programs, what is transpiring within the rest of the metropolitan area will affect and in some instances be determinative of the success of any single municipality's plans. Vice, protected by inadequate police supervision in the outlying area, will infest the core city. Germs do not stop at the corporate limits. Private parties are enabled to pit the city against the rest of the metropolitan area and vice versa to obtain undeserving tax advantage. (Sengstock, p. 2)

Sengstock concludes this statement with the following quote from Daniel Mendelson's Annexation Handbook for Municipal Officials:

If any one general conclusion can be put down, certainly it is this: the longer a fringe area is permitted to exist, the more difficult it is to handle.

According to Sengstock, fringe area growth will continue at an accelerated pace. He cites "the exploding character of the population of the United States and metropolitan areas . . ." as a factor that encourages the expansion of fringe communities around municipalities. Other factors cited include:

1. Rapid transportation facilities;
2. Lack of space within the core city to develop new industrial and housing projects;
3. The feeling that the city is not a suitable place to raise one's family; and
4. The inviting prospect of lower tax rates.

The continued population growth in municipal fringes predicted by Sengstock and others has come to pass. Not only has growth continued on the fringes of America's metropolitan municipalities, it has spread to many smaller cities. The problems seen by Sengstock and others in larger cities can now be seen in smaller communities. Many of these smaller cities are unprepared for such growth. Annexation is today, as it was in 1960, one of the tools available for dealing with fringe area growth.

The decision to annex should be based upon sound planning and development policies. In many instances, communities embark upon annexation in response to crisis situations. The community may be faced with uncontrolled fringe area growth. It may be experiencing a decline in its tax base; or it may recognize the need for, or be receiving demands for, services from its fringe communities. These are some of the reasons that may justify annexation actions.

A growth management tool. Ignoring the fact that some states restrict certain annexation actions to territory that is showing a trend toward urban development, annexation can be seen as a growth management tool. One of the problems with implementing growth management policies is the absence of sufficient legal authority to exercise certain municipal powers outside municipal boundaries. Other problems stem from the tendency of municipal residents to question the expenditure of municipal revenues outside the municipality and the tendency of fringe area residents to question the imposition of municipal regulations in fringe areas without allowing fringe residents to participate in municipal electoral processes. Although some states permit the exercise of limited extra-territorial

powers by municipalities, it is a power that many municipalities are reluctant to use.

Municipalities should have extensive powers to manage growth outside their boundaries. Growth management policies, such as land use regulations and utility and other service extension policies in particular, offer untold opportunities for a municipality to guide the location, timing, and quality of growth and development. Through zoning and subdivision regulations, land areas can be preserved until conditions are appropriate for development. While zoning and subdivision regulations cannot be used to completely control or prevent the development of land, they are useful and powerful tools in the hands of planning and legislative bodies with backbone and commitment. They can be used to both restrict development in areas where development is inappropriate for environmental reasons and to determine the sequence, density, and design quality where development is appropriate.

Utility and other service policies can be used to retard or accelerate development. The imposition of such policies and the extension of services prior to annexation can sometimes make annexation more difficult because once services are available, it is easier for fringe area residents to show that annexation may not be necessary. Attempts to annex such areas will generally result in accusations of annexation for revenue purposes.

The annexation of territory prior to urban development affords the opportunity for the municipality to make expenditures in undeveloped areas in anticipation of growth and development. It

also permits immediate participation by newly annexed property owners in the governmental processes of the municipality. As a growth management tool, annexation permits the municipality to influence, if not determine, the timing, nature, and extent of growth in an area.

Expansion of the municipal tax base. There is no question that annexation expands the municipal tax base. In fact, expanding the tax base should be a conscious objective if conditions exist that warrant the economical annexation of the area. The expansion of the tax base may not be immediate, but the area should have the potential for contributing to the overall fiscal well-being of the city.

It has been noted that the decision to locate in the urban fringe can generally be attributed to the natural desire of people to cluster. As people cluster around incorporated places, they are afforded the opportunity to benefit from the social, cultural, and economic interaction offered by the municipality. In many urban-suburban settings, fringe area residents can usually rely upon the municipality to provide certain public and private facilities and services not normally available in rural areas.

The costs of providing these opportunities are borne primarily by municipal taxpayers. In some instances, a part of these costs may be recovered through user fees and some forms of taxation, but for the most part, the services and facilities are intended for and paid for by municipal residents. Annexation provides the municipality the opportunity to redistribute costs associated with the provision of these services and facilities.

In addition to the need for fringe area residents to share in the costs of municipal services and facilities, some writers point

out that there is a moral obligation for the redistribution of the municipal tax burden. Others suggest that municipalities have outlived their usefulness and should be abandoned to the poor. But as observed by Sengstock and others, the city (and its prosperity or depravity) does not stop at an imaginary line known as the corporate limits.

Service needs and demands of fringe communities. The potential for health and safety hazards increases as a result of close living. Most often, these hazards are reduced with the provision of police and fire protection, potable water, and waste collection and treatment services. Municipalities must be prepared, and are often expected, to provide these services. The June 18, 1984, issue of Nation's Cities Weekly demonstrates the extent some fringe communities are willing to go in their efforts to receive needed services.

The (U.S.) Supreme Court decided last week to examine whether a city violates the antitrust laws by requiring annexation as a condition to extend sewer service to surrounding areas.

The high court will review two lower court decisions that upheld the city's action as a valid implementation of an explicit state law. The case, Hallie v. Eau Claire (No. 82-1832), will not come before the court until next fall.

More often than not, it is the municipality that first recognizes the need for annexation.

These problems (the need for fringe area services and facilities) are all part and parcel of the fundamental question: Is the city government responsible for sound development in the urban area beyond its corporate limits? Most cities today acknowledge this responsibility. . . . (Esser, 1961, p. 1)

The following describes an attitude held by some small-scale developers. It is also an attitude held by some fringe area residents.

We do not have to worry about sewage plants, hospitals, and public improvement bond issues. We don't have to prove to our financial backers that the tax base will support the schools that children from our development will attend

In short, it will be easier for us to market our houses and cheaper for us to put the development together if we tie into existing public services as well as into general retail, service, and employment fabric of the community. People will come to buy homes from us partly because there are good department stores and office jobs downtown, available by freeway directly adjoining our development, because there is a medical complex in the city, a high school and elementary schools nearby, a sewage and waste disposal system, a good water supply, parks, museums, and so on. But we will not have to see to it that any of this is provided or that the facilities which exist are expanded to take care of the new population we house. (Smith, 1975, p. 254)

William Coleman describes the development of suburban communities, both incorporated and unincorporated, as the creation of "a White Noose around the throats of many of America's central cities." Coleman addresses the urban problem as it relates to racial segregation. There is another aspect that has important meaning for municipalities -- that is the impact that suburbanization has had upon cities regardless of their racial makeup. Suburbanization has provided the opportunity for people living in the urban fringe to enjoy the benefits of urban living without adequately sharing the costs of providing for an urban environment.

There is an increasing realization that when we talk about the quality of American life, we mean life as it is lived in the metropolitan area. In a nation already predominantly urban, and becoming more so with every passing census, it could not long remain otherwise. But the grip of

the past is still firm in conservative circles, particularly legislatures. We are still torn between our romantic dreams of a rural utopia and the crying needs of urban life. (Berry and Meltzer, 1967, p. 38)

George Esser has pointed out that most cities have recognized that municipalities must in many situations accept responsibility for making urban services available to fringe communities. A few state legislatures have reached the same conclusion: Oregon, a state that requires that most annexations be by petition or referendum, provides that a municipality may annex unilaterally if health hazards exist. California statutes permit the annexation of territory over the opposition of municipalities; In Ferrini v. City of San Luis Obispo a California Court of Appeals made the following ruling:

In reaching its decision, the court found that the history of (the Municipal Organization Act of 1977) indicates that the goals of promoting orderly growth and providing municipal services to newly urbanized areas cannot be met if a city's voters can veto annexations. Similarly, the court noted that the California Supreme Court has held that if city residents could veto all annexations, areas producing a low tax base or requiring costly services would seldom, if ever, be annexed. The highest California court had further said that the state has a compelling state interest in facilitating these annexations against voter opposition. (Land Use Law and Zoning Digest, May 1984, p. 15)

Other reasons for annexations. All annexations are not intended to address the problems identified in the preceding pages. In some situations, annexation has been used to preclude the incorporation of new municipalities. In others it has been used to protect a fringe community from annexation by another municipality. Another use has been to secure different land use and development regulations that

might be available if the territory is not annexed. A group of Roanoke County, Virginia residents, seeking annexation by the City of Salem cited "the desire to keep their commercial, social, recreational, civic, church and other interest in Salem." (The Roanoke Times and World News, August 18, 1984, p. 1)

In spite of the widespread utilization of annexation in dealing with the problems of urbanization and other situations communities must face in meeting the needs of citizens, annexation is still a source of considerable controversy.

The annexation controversy often results in efforts to have state annexation laws changed by state legislatures or struck down in the courts. A third approach is to challenge the legality of individual annexation actions. Most often, the controversy centers around annexation procedures that do not afford property owners and residents living in the area being annexed the opportunity to approve of the annexation action.

The next section examines some of the problems municipalities and states have had with annexation. It also identifies specific problems that have plagued Tennesseans.

Problem Statement

Annexation has played an important part in the growth of American cities, but controversy has resulted in wide-spread efforts to restrict its use. These efforts have been concentrated primarily in three areas -- in the courts, in the state legislatures, and in

expressions of public opinion. The following are examples of statute changes published in various issues of The Municipal Yearbook:

1. Maryland legislature authorized counties to request referenda approval of municipal annexations.
2. Florida legislature voted to require separate votes within the annexing municipality and the area being annexed.
(1976)
3. South Dakota legislature voted to require referenda approval of annexations.

The following are examples of court challenges to annexation laws (See Table of Cases for citations).

1. City of Wood Village v. Portland Metropolitan Area Local Government Boundary Commission: Wood Village claimed the Commission failed to consider the financial impacts of Portland's annexation on the future growth of Wood Village.
(1981, Oregon)
2. West Side Sanitary District v. Land Conservation and Development Commission: The District contested the Commission's authority to force the annexation of the District in order that a municipality could provide sewerage service.
(1981, California)
3. Scuri v. County of Ventura: Residents claimed annexation statute discriminated against small unincorporated areas. (1983, California)

4. Mongolo Subdivision v. City of Sparks: Citizens claimed city failed to meet minimum requirements for annexation. (1982, Nevada)
5. Forsyth Citizens Opposing Annexation v. City of Winston-Salem: Citizens claimed violation of Fourteenth Amendment. (1984, North Carolina)

The following are excerpts from 1981 legislative hearings in Tennessee:

The statements and exhibits were to show why the proposed annexation is unreasonable and unnecessary. Also how the citizens are being abused under existing Tennessee State Law governing annexation of territory by a city. . . . United Citizens for Better Government do not recommend that the right of a city to annex should be abolished, providing the involved citizens are permitted to have a voice in the proposed transaction.

.
If a city has something the citizens really need, enhances his way of living and at a price he can afford, then make the approach with truth and integrity together with an acceptable plan of action, no referendum would be required. (Barnes and Varney, p. 77)

. . . While we do not wish to stymie the growth of cities, neither do we wish to capitulate to them in the control of farm land and the desires of farm people.

We favor legislative limitations which would confine municipal zoning to the municipality itself. We favor amending the statutes to prohibit taxation in annexed areas until such time as full services are provided. Some legislative solution must be found to give the people of the area annexed an effective method for expressing themselves, either through referendum or otherwise, regarding the annexation and for the placement of penalties on municipalities for failure to provide services as promised and scheduled for newly annexed areas. . . . (Barnes and Varney, p. 103)

The preceding examples show that annexation is controversial. The latter excerpts show that Tennessee has not escaped the controversy; it can also be noted that there is a desire to have the Tennessee annexation law altered.

Annexation Problems in Tennessee

In addition to public expressions of dislike for the present Tennessee law governing annexation, there have been several important legal challenges to the law as well as considerable efforts to have the law changed by the state legislature.

Court challenges. Legal challenges to the present Tennessee annexation statute began within a few years of its passage in 1954 by the Tennessee General Assembly. Among the several challenges heard by the Tennessee Supreme Court are the following: Witt v. McCanless (1956); Morton v. Johnson City (1960); Senff v. City of Columbia (1961); Stall v. City of Knoxville (1962); and Stall v. City of Knoxville (1963). Although each of these cases has its own distinguishing characteristics, all sought the invalidation of municipally initiated ordinances that required no vote by residents and property owners in the areas proposed for annexation. Most questioned the reasonableness of the annexation; two challenged the legality of the delegation of annexation authority to municipal legislatures; one claimed that jurisdiction had been illegally granted to the courts; and another attempted to preclude the collection of taxes.

Legislative challenges. Challenges in the court systems have for the most part failed, leaving those opposed to municipal annexation one option, that being to have the state statutes altered. Notable success was achieved in this effort in 1974 and is reported in Study of the Laws Concerning Annexation 1980, a report to the Tennessee House of Representatives.

In 1974 Tennessee Code Annotated, Section 6-310, was amended to place the burden of proof upon the municipality in quo warranto proceeding to contest an annexation. Urban spokesmen pointed out that the burden of proof coupled with the jury trial has resulted in significant decrease in the number of annexations. (Barnes and Varney, p. 36)

More than 30 bills affecting municipal annexation have been submitted to the General Assembly since it received the above report. Some of these were intended to make annexation easier for municipalities, but most attempted to make annexations more difficult without a referendum of the voters in the area proposed for annexation. Of the thirty-odd proposed amendments, only seven were adopted, and one of these was voided after judicial review.

The Ninety-first General Assembly enacted two amendments; 11 were considered. One of the two adopted amendments restricted the amount of land that certain municipalities could annex on their own initiative. The other placed restrictions on annexations by the City of Knoxville. The Ninety-second General Assembly enacted four amendments; 18 were proposed. One of these required the adoption of a plan of services before annexing a certain amount of territory within a specified time period. Another authorized the holding of referendums within areas proposed for annexation; the third extended a prohibition on annexations under certain circumstances in certain counties.

Only one of the four amendments proposed in the Ninety-third General Assembly was passed. The adopted measure permits property owners adjacent to an annexed area to have judicial standing to contest annexation actions.

The efforts of the state legislature, the actions of courts, and the attention given annexation issues by the news media all serve as examples of the controversy annexation generates in Tennessee. What is not documented here, but ever present, are other problems. Two of the more important problems are the costs of legal challenges to annexation actions and the time and money expended by the legislature in its attempt to resolve the issues. Citizens opposed to annexation must raise large sums of money to bring about court challenges, and municipalities must use tax revenues to defend annexation actions. Untold amounts are expended by the state legislature as it holds hearings across the state and in committee and other meetings, as it attempts to resolve the issues.

The Controversy: Unilateral Annexation

One observation about the nature of unilateral annexation has been made -- unilateral annexations spark highly emotional expressions of opinions. Most of these opinions can be found in any newspaper in a community attempting to annex unilaterally:

However, Ricker, like most city officials, said he opposes letting the people vote on annexation. One official said he was against annexation, "unless you know you'll win."
.....
"Anything that affects people like annexation does, should be voted on," Lee said. "The city could give it (the right to vote) to us, but they know it wouldn't go. I'd never fight it if a vote approved it." (Knoxville Journal, March 3, 1980; p. 10)

In a debate sponsored by a homeowners group Wednesday night, 18th District candidates Bill Owen and David Adams agreed that state legislation should be enacted to allow residents of an annexation area to vote for or against joining an expanding city. (Knoxville Journal, October 9, 1980)

The Harriman Record conducted a non-scientific survey of residents living outside Roane County municipalities and the results, published on February 5, 1981, showed that all eight persons polled felt that a vote should be held before an annexation action becomes final. The article concluded with the following:

For the citizens in areas subject to annexation, the question is one of city services as opposed to increased taxation levels. Since such action sometimes appears arbitrary, it should be considered whether annexation should take place without prior consent of those most directly involved.

Evidence of the controversy can also be seen in this excerpt from the April 27, 1983, issue of the Knoxville Journal:

Unhappy with the defeat of legislation that would limit annexations this year, about 80 sign waving demonstrators from Knoxville descended on the General Assembly Tuesday in an effort to revive the bills. But all they got was a resolution by Representative Bill Owens, D-Knoxville, to create a special committee to study the long-running controversy before the legislature reconvenes next January (1984). Taking a philosophical view of the results, the president of West Knoxville's Citizens for Home Rule pronounced ". . . we're satisfied with anything that can keep a focus on the issue and get a good resolution of the problem."

The ensuing public hearings provided additional evidence of the statewide concern about the issue. One hearing was held in Knoxville. Most of the nearly 300 people attending expressed displeasure with the present Tennessee law. The influence those opposed to the law is best expressed in the words of former State Senator Victor Ashe: ". . . some of the anti-annexation legislation, including some of my own, is submitted to satisfy or respond to the demands of constituents." (Ashe Interview, September 10, 1982) This is an indication that in some instances, little thought is given to the preparation of

legislation affecting annexation in Tennessee. The intent of the public hearings was to provide a mechanism for identifying the elements of an annexation law that would meet the needs of the people of Tennessee. Indications are that this did not happen.

A cursory survey of court challenges to state annexation laws indicated that unilateral annexation may not be as controversial in other states as it is in Tennessee. A review of the literature suggests that this apparent lower level of controversy may be attributable to several factors. First, the statute governing annexation may limit judicial review; this is the case in Alabama. Second, the annexation decision may be made by a court or quasi-judicial body with limited or no opportunity for challenge. This appears to be the situation in California and Virginia. A third possibility is that some annexation statutes and actions have evolved to the point that they have effectively met the needs and concerns of parties on both sides of the issue; this appears to to be the case in North Carolina. A final possibility is that municipal officials and those normally opposed to annexations have agreed on the mutual benefits of annexation. This appears to be the situation in both Illinois and Virginia.

The Nature of Recent Challenges in Other States

As is true in Tennessee, challenges to the annexation laws in other states have occurred in the courts and legislatures of the respective states. Earlier examples cited showed that the states of Florida, South Dakota, and Maryland have moved to restrict annexation actions. Court challenges cited earlier provide some insight into the

the nature of some of the reasons annexations have been questioned. Most of these attacked the way the statutes were applied in a given situation, not the reasonableness of the action itself, as has been the case in many challenges in the Tennessee courts. Additional examples challenging annexations cited in various issues of Land Use Law and Zoning Digest are listed below:

1. North Carolina Court of Appeals ruled that the City of Durham's method for providing fire service and for calculating density complied with the state annexation law. (311 S. E. 2nd 898, 1984)
2. Texas Court of Appeals ruled an annexation ordinance was not void solely because it was enacted for taxation purposes. (Superior Oil Company v. Port Arthur, 628 S. W. 2nd 94, 1981)
3. Missouri Supreme Court rejected claims by St. Louis County that county interest in an area and businessmen's claims to a right to vote on an annexation question, as grounds for vacating an annexation action. (City of Town and Country v. St. Louis County, 657 S. W. 2nd 598, 1983)

In 1976 the Texas Supreme Court banned the annexation of territory not contiguous with the corporate boundary of the annexing municipality and the Arkansas legislature eased restrictions on the annexation of farmlands and authorized cities to prevent new incorporations within three miles of their corporate limits. These are but a few of the available examples showing the nature of challenges to existing annexation laws in other states. As can be observed from the examples cited, all challenges have not weakened annexation laws.

Some have improved the ability of municipalities to extend their boundaries. Regardless of whether the challenge results in a condition favored by those who support or oppose annexation, challenges mean that there is dissatisfaction with the law or the way the law has been applied. The end results are costly in both time and money.

Purpose of the Research

This research examines the annexation laws of several states, giving particular attention to the unilateral provisions of the Tennessee and North Carolina laws. The primary purpose is to determine why the unilateral provisions of some statutes do not generate the controversy so obvious in Tennessee. North Carolina has been selected because it shares a cultural and legislative history with Tennessee.

Some of the issues raised in discussions of the Tennessee annexation law are expressed in the following questions:

1. Should a municipality annex without the consent of persons living in or owning property in the area proposed for annexation?
2. Should a municipality annex large undeveloped rural lands in its fringe?
3. Should a municipality have unlimited discretion to decide the suitability of an area for annexation?
4. Should a municipality be required to provide urban services to an area immediately upon annexation?
5. Should a municipality be limited in the frequency of annexation?

The failure of the Tennessee General Assembly to resolve these and other issues has resulted in confusion and has hampered local decisions to annex. The following is taken from the April 2, 1980 issue of The Rockwood Times:

Rockwood's annexation has been put on the back burner and may stay there for awhile due to action by the legislature. . . . City council has also been waiting to see what type of annexation bill comes out of the state legislature before beginning final proceedings on the issue.

Unilateral annexation is seen by some people, especially those responsible for providing municipal services, as the best method for dealing with a variety of urban growth problems. These problems include (1) declining municipal tax revenues and population, (2) the increasing needs and demands for urban services by people living in the unincorporated fringes of the municipality, and (3) uncontrolled fringe area growth.

People who support unilateral annexations by municipalities contend that many people living in the unincorporated fringes enjoy the benefits of urban living without adequately sharing in the costs of providing an urban environment. Residents of unincorporated fringes contend that municipalities are inefficient. They claim support of municipalities with their shopping and employment activities. They argue that unilateral annexations violate their constitutional rights to representative government. The opposing forces tend to overlook the possibilities of mutual benefits shared in the urban environment. Few in either camp have come to understand the real issues related to annexation as a means of mutual support.

Frank Schnidman, in a June 1976 Urban Land article entitled "Annexation Agreement," suggested that Illinois municipalities have been able to lead the nation in the number of effected annexations because of the simple annexation procedure provided by that state's enabling legislation.

In this article Schnidman makes a case for annexation agreements -- one of the several methods available in Illinois. According to Schnidman, a unilateral annexation procedure is available in Illinois, but is rarely used. His presentation tends to counteract arguments made by some that the authority to carry out unilateral annexations is essential to the survival of municipalities.

Illinois and other states, including North Carolina, appear to have resolved some of the issues that make annexation a problem in Tennessee. Given the wide-spread use of annexation, a closer look at state annexation laws and how they are used is appropriate. This review is presented in the next chapter.

CHAPTER II

THE USE OF ANNEXATION LAWS

Municipal annexation of unincorporated lands has been the primary method for altering municipal boundaries since the founding of the republic, says to William G. Coleman in Cities, Suburbs, and States. He reports that America's municipalities acquired the bulk of their existing land area through annexation; adding that in 1970-71, municipalities over 2,500 population, increased their land areas by more than 800 square miles and their population by more than a half million people through annexations.

This chapter provides a brief history of annexation. It contains a discussion of the uses of annexation as a planning tool, the problems encountered with its use, and includes a brief review of some of the annexation laws available for use today. Each topic is explained in separate sections and a concluding summary provides a foundation for discussions that follow in the next chapter.

A Brief History of Annexation

The State of Pennsylvania has been a major contributor the development and utilization of annexation in the United States. Pittsburgh was identified in Chapter I as a party to two annexation suits argued before the United States Supreme Court.

Richard L. Forestall, United States Bureau of the Census, points out that:

The history of major annexations dates back at least to 1854, when Philadelphia added 300,000 to its population by extending its boundaries to include the whole of Philadelphia county. (1975 Municipal Yearbook, p. 21)

Forestall notes that other large municipalities, including Boston and Chicago, followed with annexations of their own. The largest of these pre-1900 annexations occurred in 1898 when New York City annexed Brooklyn, Staten Island, and Queens.

Coleman points to the industrial revolution and the population changes it brought as the major cause of the growth experienced in major eastern and midwestern American cities prior to 1900. He notes that annexations proceeded at a rapid pace until 1900 when state legislatures began to respond to the demands of fringe area residents for protection from municipal annexations. The demand heard most often, and the one receiving the most attention from state legislatures, was the demand that fringe area residents should be annexed only after a vote of the people.

Coleman argues that had the pre-1900 legal condition prevailed, American metropolitan communities would have a different look today. He contends that there would be less of an "urban crisis" because the earlier annexation procedures, annexation by municipal resolution, annexation by special act of the state legislatures, and annexation by approval of a majority of the municipal voters of the territory being annexed made it "possible for city boundaries to expand to keep abreast with the spread of population."

Coleman continues:

Few if any, new units of government were created in the process. There was no chance for the people on the urban fringe to incorporate, because they were annexed before they could do so. (Coleman, p. 18)

The response of many state legislatures to the demands of fringe area residents was the tightening of annexation laws and the relaxation of laws governing incorporations. In most instances, this response was also to the benefit of the individual legislatures. Coleman makes the following observation:

Moved not only by the cogent arguments of the fringe residents, legislatures were becoming apprehensive about the rapidly increasing size of the city populations. Early in the nation's history, legislatures had been apportioned on the basis of population. As cities grew and threatened to dominate legislative bodies, state constitutions were amended to use geography, not population, as a basis of representation. Consequently, when the debate over annexation and incorporation reached a critical point in the early part of the century, the legislatures were already beginning to show what might be termed anti-city attitudes. The combined factors of immigration, population growth, and municipal corruption made it not only easy, but necessary, for legislatures to decide in favor of arguments, apparently valid at the time, for a tightening of annexation laws and a corresponding loosening of incorporation laws. (Coleman, p. 19)

The efforts to restrain municipal annexation in America's large cities lasted for a brief period; generally, long enough for most larger cities to become ringed with new municipalities that successfully precluded large scale annexations.

Meanwhile newer cities, such as Cleveland, Detroit, Los Angeles, Cincinnati, and Pittsburgh kept the use of annexation alive until the early 1930's. After 1945 the annexation action shifted to smaller municipalities and to the Southern and Western states. Coleman suggests that his readers compare the metropolitan areas of the Northeast, where annexation was restricted, and those of other states, especially in the South, where state legislatures continue to allow annexations without the referendum requirement. He identifies Texas, Virginia, and North Carolina as specific examples.

Forestall points out that between 1950 and 1970, of 177 southern and western cities, only six failed "to make significant annexations." (1975 Municipal Yearbook, p. 21) He adds that in 1971 alone, in municipalities under 2,500 population, more than 5,000 annexations were completed. Widespread annexations in the South and the West have continued into the 1980's, as was reported in the first chapter.

Annexation as a Planning Tool

Chapter I identified fringe area growth, declining municipal tax bases, and urban service needs and demands as three reasons used to justify the annexation of additional territory. Sound planning and development policies are suggested there as a prerequisite for annexation actions. Contrary to annexation procedures and policies that limit annexation actions to the annexation of urbanized lands, it could be argued that sound planning and development policies should include provisions for the annexation of vacant territory.

The annexation of vacant lands places the responsibility and the opportunity for the development of fringe areas into the hands of municipalities before some of the problems of urbanization get out of control.

Cities and Their Fringes

Marion Clawson and Peter Hall note that at one time in history, the word "city" conveyed the idea of a well-defined physical place.

. . .neatly bounded in a physical sense--by an actual a wall if an old city, or the limited distance from which workers walked from their homes to their place of employment in the city center. There was a fairly clear and sharp break between city and country. (Clawson and Hall, p. 59)

Clawson and Hall say today's cities are three dimensional: the functional or economic city refers to its sphere of economic influence; the physical city refers to the city-like form the settlement occupies; and the legal or political city is geographic area over which the municipal governing body exercises jurisdiction. They further describe cities as a core with a series of rings, each having a separate character. The outermost ring is called the back country or hinterland. It is the region from which the core city receives at least some of its agricultural products. They identify the other rings, moving toward the core, as the metropolis and the urbanized area.

On a smaller scale, the metropolis can be compared to the functional city described above. The urbanized area is defined as less a different inner layer than a physically occupied space of the metropolitan area; this area is the subject of the discussion that follows.

Clawson and Hall describe the purpose of the urbanized area category as a way to identify land that is used for urban purposes. They conclude that it is necessary to include vacant lands as well as lands actually in urban uses. It is these lands that provide opportunities for the application of sound planning and development policies.

Planning and Development Policies

The Southern Growth Policies Board (SGPB) conducted a survey of 104 southern cities and found that of the 89 cities responding to a question on the integration of annexation into growth management policies, only half have used annexation as a growth management tool.

However, of those that have used it, most have found it to be an effective tool. SGPB made the following comment:

The usefulness of annexation as a growth management tool is limited by the failure of cities to include it as a growth management policy. This in turn reflects the facts that (A) 30 percent of the southern cities over 50,000 population have no growth management policy and (B) almost half of the cities surveyed are located in states not permitting unilateral annexation by municipal government. (SGPB, 1980, p. 78)

SGPB points out that most cities are more concerned with the fiscal impacts of an annexation decision and are reluctant to lose money in order to guide growth in fringe areas.

In the modern world, planning by the individual, the corporation, or any unit of government not only is essential but unavoidable. The making of an investment, whether in manufacturing plants, public service facilities, or in one's own education makes sense, if at all, only in the context of some assumptions or some plans for the future. Denying an interest in planning or criticizing the planning efforts of others does not free one from a dependence on the future. (Clawson and Hall, p. 152)

Given the character of most urban areas as described by Coleman and others--the surrounding of older municipalities by a host of newly incorporated places, special service districts, and densely populated subdivisions, complete with commercial and industrial activities--it is important that municipalities that have not experienced such occurrences have sound development plans for their immediate unincorporated fringes.

A similar theme is noted by Clawson and Hall who point to the lack of effective planning as one of the primary causes of urban sprawl, noting that in the United States, planning has lacked strong consistent governmental support. They join Coleman and others in focusing on the fragmentation of public services delivery systems as a key element in the creation of urban sprawl.

In the United States the national government has very little real control over land use development activities, thus removing opportunities for central planning. Most state governments are more concerned with balancing the needs and demands of rural and urban communities so that little effective planning enabling legislation is generated. On the local level, counties and service districts tend to operate in a state of confused isolation, if not in actual competition for the delivery of public services. Where there is a desire and capacity to meet the needs of fringe communities, many times the isolated efforts of one entity will conflict with the goals and objectives of another. In this setting, Clawson and Hall poses several pertinent questions:

1. Who enforces land use and development controls?
2. By what rules?
3. To what ends?
4. By what processes?

Many local government administrators have recognized the need to have these questions answered. Clawson and Hall again provide an appropriate comment.

Most advanced countries have found it necessary to institute some degree of control over land use in the interests of economic efficiency or (more commonly) of the well-being of their citizens. Ever since the reaction against the unplanned nineteenth-century industrial city, local administrations have sought to ensure that building take place where it can be minimally serviced by what are regarded as essential public services. (Clawson and Hall, p. 152)

Planning is suggested as the recognized vehicle for achieving the desired ends. However, it is also acknowledged that there is a fatal flaw. No matter how good a plan is, it becomes effective only when

it is properly implemented and enforced. Disregarding the fiscal requirements of implementation, legal authority to control the planning process and the ability to ensure meaningful benefits from implementation remain as important concerns.

The municipal planning enabling statutes of some states permit some control over land use and development by municipalities outside their corporate boundaries; however, in many instances, such authority is fragmented and too difficult, politically and fiscally, to be considered practical. Consolidation of functions, annexation, and other methods for consolidating political jurisdiction in order to plan for and manage fringe area development was discussed in Chapter I; annexation was suggested to be the more practical option in many situations.

The SGPB survey showed that most cities indicated that annexation is undertaken for the benefit of the annexing municipality. Generally, municipalities expected tax revenues to equal, if not exceed the costs of providing services. The survey also showed that most annexing municipalities conducted only rudimentary cost-benefit analyses prior to the decision to annex.

Armed with an effective annexation tool, a community can assure itself that vacant fringe areas are developed appropriately, as well as ensure that urban services are provided in a timely fashion. The tool is not sufficient in itself; there must exist the proper skills and attitudes to ensure proper application. The process begins with establishing community goals that include fringe areas. Community goals that address the timing of development are generally considered

to be appropriate. Goals and objectives are then converted to policies that can be used to determine the nature of and timing of development in the fringe areas. Annexation gives the municipality both the jurisdiction and authority to apply its policies in the fringe community.

Some of the Problems with the Use of Annexation

The use of annexation to deal with the problems of urbanization is not without drawbacks. Most often these drawbacks can be observed in situations where the municipality has not adequately planned for development in fringe areas. Others, however, can be attributed to the attitudes of people toward annexation. Inadequate planning can be identified as the primary problem in both situations. One of the reasons for annexation is the provision of needed public services in the community being annexed. Most municipalities contemplating an annexation action expect to recover the costs associated with annexation. If the area being annexed cannot produce the revenues needed to provide services, the municipality gambles with its ability to provide needed services to the area being annexed as well as its ability to provide for the needs of the existing municipality.

Another reason for annexation is the expansion of the municipality's tax base. Again, inadequate planning can result in fringe areas that will not contribute to the financial needs of the overall community. This condition generally exists in smaller communities experiencing a rapid decline in agricultural activities. Often farmlands are subdivided and sold for the placement of mobile homes and other low-cost housing; in other instances, farms are abandoned with little or no productive uses. The annexation of these areas can mean

the annexation of lands that are unsightly. Such annexations often fail to provide the desired tax base, even if services are provided.

A. C. Lock, Jr., a Municipal Technical Advisory Service Consultant, provides the following view:

In making (annexation) studies, I have always found at least one area for consideration to have a mixture of beer joints, junk yards, residences, and a hodgepodge of other things. I think mixed land can have as deleterious an effect on an area as anything. Zoning must be instituted before the land use gets mixed. Many times I have recommended the annexation of these areas with mixed land use only to have the mayor or alderman say, 'You don't mean to tell me you are going to recommend that we annex that mess.' And my response is, 'That mess is a part of your city whether you want to admit it or not. Anyone driving into your city supposes that it is a part of your city; when anyone living in that area goes to some other city he says he is from your city; and if anyone ever cleans up that eyesore, you will have to. (Lock, November 1981)

Attitudes toward annexation. Public attitudes toward annexation are perhaps the greatest drawback to annexation. Public opposition to annexation can be found both within the municipality and in its unincorporated fringe communities. Such opposition is often expressed in the media, public hearings, and in court testimony. Negative public attitudes toward annexation can be categorized into several groups--three of which are listed below:

1. Opposition to any annexation action,
2. Opposition to higher taxation; and
3. The fear that needed services will not be provided.

A fourth category which would include persons opposed to living in the city because of a preference for "country living" was considered, but as already noted, the placement of municipal boundaries have

little effect on where the country environment begins. The country environment is more a function of the absence of development than municipal boundary location.

Examples of the second category have been addressed earlier. The other two are addressed here. Opposition to the concept of annexation appears to be demonstrated in challenges to the Town of Clinton's 1983 annexation of an area commonly referred to as South Clinton. In 1978 the residents of South Clinton were successful in blocking a unilateral annexation attempt in court. In 1983 after an extensive public relations campaign, the city successfully annexed the area through the referendum process. Immediately upon certification of the election, suit was filed by a single dissatisfied South Clinton resident.

"In my opinion there's no merit to the suit," Charles Seivers, Clinton city administrator, said this morning. "It's probably a time-delaying tactic." Seivers, a long time supporter of annexation, said South Clinton residents are due to start receiving city police and fire protection on November 21. . . . But he said the election challenge . . . could well delay those services In the October 18 election, a total of 496 voters in Clinton, North Clinton, and South Clinton supported annexation, with 264 against. But the vote was much closer in South Clinton itself--219 for, 202 against
(The Oak Ridger, November 2, 1983)

The news article points out that the plaintiff in the suit had attempted to block an earlier annexation of city-owned property--another example of opposition to any annexation action. Negative attitudes toward annexation are sometimes well-founded; The following are two of several examples where cities have failed to adequately provide services:

It has been 23 years since Fountain City was annexed by the City of Knoxville. You would think that within that period of time, all necessary services would have been provided to all citizens. (Knoxville Journal, Editorial, Sept. 6, 1984)

Recently, a dead dog lay on property just inside the City of Knoxville. After numerous phone calls from residents in the area, city workers came a week later to remove the dog

"If we cannot get the city to even pick up a dead dog for a week, how can we expect to get residential services out of them?" asked one East Knox Countian whose property the city administration is trying to annex. (Knoxville News-Sentinel, January 23, 1983)

Municipal boundary changes have also been blamed for shifts in political power.

The merger of Indianapolis and surrounding Marion County and consideration of city-county consolidation elsewhere have caused black leadership to distrust regional arrangements because they see the breakup of black voting power as an inevitable result. (Coleman, p. 18)

Although Coleman was addressing the problem from a regional perspective, similar comments have been made about the use of annexation. Blacks are not the only ones to complain; many politicians fear annexation because it may dilute their political strength--as was the case at the turn of the century. Annexation has also been named the culprit in the defeat of local politicians who have supported its use.

Providing urban services. The provision of urban services is primary among the functions of municipal government. The provision of services is a costly undertaking that can result in crisis management; this can be especially true when a municipality is either forced to annex or annexes of its own accord without proper planning.

As noted in the earlier example of the City of Knoxville's annexation of Fountain City, annexation can result in problems for the annexing municipality. A recent annexation by the City of Kingston drew the following comments:

Public outcries against annexation of some 200 acres around Willowbrook altered city council plans Monday night. A revamping of the proposed annexation may be done before a vote. Areas which have residents who complained may be taken out. . . .

The main objection was that the city should not annex areas it cannot service. According to citizens present, much of the proposed area is rocky and not feasible for the extension of water and sewer lines.

Citizens attending from the Lakeside Golf Course section (inside the city) opposed the (new annexation) measure, saying Kingston has not even provided sewer services to the last area it annexed, services promised five years ago. . . . (The Roane County News, November 30, 1983)

The article quotes one resident concerning the city's obligation to service the proposed annexation area: "It may break you to fulfill your promises."

In addition to the problems relating to public attitudes towards annexation and the problems associated with providing adequate services, there are accusations of abuse of municipal annexation powers. In Tennessee, such accusations have added one more reason for the state legislature to consider altering the present law. After describing the methods available to Tennessee municipalities choosing to annex, State Senator Ben Atchley made the following observation:

The problem we had in Knoxville is that the city used lateral ordinance) to do what we call finger annexation. .

.
They had a right to do it by ordinance. Then certain landowners several miles from the city limits, but adjacent to the (annexed) roadways, petitioned to be annexed. They put in liquor stores and restaurants which serve liquor by the drink on plots that had not been zoned for that by the county. (Tennessee Town and City, April 23, 1984, p. 1)

These and other examples are demonstrative of the problems that the state legislature must face in their efforts to provide effective annexation statutes. Today, state statutes governing municipal annexation vary; most reflect characteristics intended to make annexation acceptable to the people affected. Some statutes with these characteristics are discussed below.

A Review of Selected Annexation Statutes

The original method for altering municipal boundaries was to have special legislation enacted by state legislatures. Today of the 14 southern states only Alabama, Florida, Georgia, and North Carolina still retain this provision. Other methods are also available. Most states have outlawed special annexation acts generally, but some have made provisions for annexation laws that allow some municipalities to function under different procedures than may be available to other municipalities within the same state. Most of these are intended to recognize varying needs and responsibilities between larger urban cities and smaller rural cities.

The SGPB study of the annexation laws of the 14 southern states shown in Table II reveal that four states, Alabama, Florida, Georgia, and North Carolina use special acts of the legislature as one of the means for altering municipal boundaries. Four other states, Arkansas, Mississippi, Virginia, and West Virginia include court actions, unrelated to judicial review, to approve annexations. Eight of the 14 have included provisions that are based upon city class; these provisions offer different annexation procedures and standards for some cities that are not available to others. All 14 states provide for annexation by municipal ordinance.

TABLE II
ANNEXATION METHODS AVAILABLE TO SOUTHERN CITIES BY STATES

					MUNICIPAL ORDINANCE			
					BY PETITION	MUNICIPAL INITIATION		
	SPECIAL LEGISLATIVE ACT	JUDICIAL APPROVAL	REFERENDUM	NO REFERENDUM	REFERENDUM	NO REFERENDUM	CLASS-SIZE VARIATIONS	
ALABAMA	X		X	X	X		X	
ARKANSAS		X		X	X	X		
FLORIDA	X			X	X			
GEORGIA	X			X	X		X	
KENTUCKY					X			
LOUISIANA			X		X	X		
MISSISSIPPI		X		X		X		
NORTH CAROLINA	X			X	X	X	X	
OKLAHOMA				X		X	X	
SOUTH CAROLINA			X	X			X	
TENNESSEE				X		X	X	
TEXAS			X		X	X	X	
VIRGINIA		X		X		X	X	
WEST VIRGINIA		X		X	X	X		

SOURCE: Modified from Southern Growth Policies Board table

Local annexation procedures that allow annexation by municipal ordinance are broken into two groups. The first group includes those states which permit annexation in response to petitions from residents or property owners of the area to be considered for annexation. The second group includes 13 states that permit annexations initiated by municipalities. Approval by referenda may be required in both groups.

Annexation by Petition

Kentucky is the only state studied by SGPB that makes no provisions for annexation by petition. Alabama, Texas, South Carolina, and Louisiana (except in Rapides Parrish) require a referendum on the petition. In Alabama, the referendum is waived if the petition is signed by 100 percent of the property owners in the area affected. The statutes of Florida and North Carolina require that the petition be signed by 100 percent of the property owners.

Annexations Initiated by the Municipality

Annexations by ordinances initiated by municipalities may also be subject to referenda. Arkansas, Louisiana, and West Virginia statutes have provisions for annexation of territory without a referendum on ordinances initiated by municipalities. Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia have no provisions for referendums on these ordinances in most cases. A referendum is required in Kentucky only if 50 percent of the voters or property owners in the area petition against the annexation.

The required referendum is waived in Arkansas and Louisiana if the area is surrounded by the municipality. West Virginia permits minor boundary adjustments without a referendum. Louisiana also

provides for a waiver if property owners approve of the annexation prior to the enactment of the municipal annexation ordinance. North Carolina allows some exceptions to the present referendum requirements based upon exemptions permitted in its annexation law adopted in 1959. North Carolina also permits certain other exemptions based upon city classification.

Unilateral Annexations

The SGPB study shows that certain states permit annexation by an ordinance or resolution of the municipality without outside approval in some situations. This is a provision of the Alabama law if no persons in the area annexed have lived in the area for at least three months. North Carolina allows such annexations in certain cities; Oklahoma and Texas have no provisions for a required referendum on municipally initiated annexations, and Tennessee makes the referendum an option of the annexing municipality. This option granted to Tennessee municipalities has become the center of controversy, as has been noted earlier.

Recent events in Tennessee show the impact on appeals procedures can have on the ability of cities to annex. Tennessee general law permits unilateral annexation, but the annexing power of Tennessee cities was reduced in 1974 when the burden of proof was shifted to the city. It was diminished even further in 1979 when the Tennessee Supreme Court ruled in Moretz v. Johnson City that the question of reasonableness was a mixed question of law in fact and thus must be submitted to a jury. Now, a unanimous jury verdict is required to uphold a contested annexation, and there have been few unilateral annexations in Tennessee since that decision. (SGPB, p. 15)

(d)

A Mississippi court, ruling in a similar challenge of the Mississippi law, found that reasonableness is a judicial question and

a proper exercise of judicial function. (Ritchie v Brookhaven, 217 M 860, 65 So 2d 683) The results of the findings of the Tennessee and Mississippi courts, ruling on similar appeals provide an example of how different states handle annexations.

Variations in Statutes Based Upon City or County Class

North Carolina is not the only state that makes a distinction in the way annexation is applied based upon city or county class. Similar provisions are found in the annexation laws of Alabama, Georgia, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Generally, population size is the basis for the distinction between classes of cities and counties. This information is also presented in Table II.

Summary

The annexation laws of the 50 states had a common beginning as special acts of the various state legislatures. Today, state annexation statutes will reflect similar characteristics, such as optional annexation methods and legislative delegation. It is not unusual for state legislatures to borrow or copy legislation from one another. This has been true in the case of Tennessee and North Carolina; and it is to be expected since the states have a common geographic, cultural, and legal history.

Tennessee to the west (of North Carolina) was created out of the land that North Carolina reluctantly ceded to the federal government in 1789. Attempts by frontiersmen in 1784 to establish a separate state there, the State of Franklin, failed after five years. North Carolinians have often looked down upon their western neighbors as not quite their equals even though distantly related by both blood and geography. (Powell, 1977, p. 4)

In 1796, Tennessee, including the territory that had been the State of Franklin, became the sixteenth state. Statehood for Tennessee came primarily through the efforts of former North Carolinians, John Sevier and William Blount. They had also been promoters of the State of Franklin, along with William Cocke.

These early Tennesseans were no novices at government, nor were the leaders of their first constitutional convention inexperienced in making of basic laws. Governor Blount, who served as president of the convention, had been a member of the convention which drafted the Constitution of the United States. He was also a member of the Constitutional Convention of North Carolina, had served as a member of North Carolina legislative bodies. (Caldwell, 1974, p. 199)

The fact that North Carolina and Tennessee have a common past and the fact that both have retained provisions for unilateral annexations by municipalities provides the basis for comparing the annexation laws of the two states. Although Tennessee is often cited with Texas and Oklahoma as having liberal municipal annexation laws, the unilateral annexation provisions of the North Carolina law appear to provide an element that does not generate the level of controversy found in Tennessee.

The review and comparison of the nature of challenges to the annexation laws of the two states reveal that while some of the more important challenges to the Tennessee statute have been aimed at the destruction of the unilateral provisions of the law, the North Carolina challenges have been aimed at ensuring proper procedure under the law. The next chapter includes a closer examination of the laws of the two states.

CHAPTER III

THE ANNEXATION LAWS OF TENNESSEE AND NORTH CAROLINA

The common cultural and legislative history of Tennessee and North Carolina, and the fact that both have attempted to retain unilateral annexation provisions for their municipalities, provide the basis for comparing and contrasting the annexation statutes of the two states. Both states made major revisions to their annexation laws in the 1950's; Tennessee in 1955, and North Carolina in 1959. This chapter examines the annexation laws of these states. This examination includes an analysis of their content, paying particular attention to their unilateral provisions.

The Tennessee Law

Prior to 1953, most Tennessee annexations were accomplished through the adoption of private acts by the state legislature. In 1953 a constitutional amendment was approved that restricted the alteration of municipal boundaries to methods provided for in general laws. Constitutional Amendment 7 provides that the "legislature shall by general law provide the exclusive methods . . . by which municipal boundaries may be altered." (Tennessee State Constitution, Article 11, Section 9) The major impact of this amendment was its requirement that a new annexation law be adopted.

The Tennessee Supreme Court made the following commentary on the earlier Tennessee annexation procedure:

At the time under existing statutes neither a municipality, nor any of its residents, could initiate annexation proceedings. There was no way the City could protect itself from the unincorporated fringe areas that were composed either of poor and less desirable areas for habitation which were unsanitary, or the well-to-do adjacent areas, in times past called the "Bon Ton" areas, consisting of well-to-do people who wanted to escape the burden of carrying their share of the taxes necessary for the welfare of the metropolitan community. (Central Soya v. Chattanooga, 207 Tenn. 138 338 S. W. 2d 576, 1960)

The General Law

Tennessee's first general law governing annexation authorized municipalities to annex contiguous lands by ordinance. The law required that before the ordinance could become effective, public notice must have been given and a public hearing held. A property owner aggrieved by the action was allowed 30 days within which to challenge the action in court. If no suit was filed, the annexation became effective 30 days after the adoption of the ordinance. If suit was filed, the courts were charged with determining the reasonableness of the annexation action. If the annexation was upheld by the court, the court could set the effective date of the annexation.

The law included provisions for a municipality to submit an annexation question to the voters of the area proposed for annexation, or to both the voters of the area and those of the municipality. Persons desiring to have an area annexed were also permitted to petition the municipality to have territory annexed. Municipal authority to reduce the size of such areas was established as a result of the Central Soya v. Chattanooga ruling.

Amendments Affecting Unilateral Annexations

The unilateral annexation procedures for Tennessee are found in Tennessee Code Annotated 6-51-102 and provisions for challenging annexations are found in Section 6-51-103 (see Appendix IV). These sections have been amended by the following acts of the Tennessee General Assembly:

1. Chapter 320, Section 1, 1961.
2. Chapter 136, Section 1, 1969.
3. Chapter 420 ,Sections 1, 2, and 3, 1971.
4. Chapter 844, Section 1, (Adjourned Session), 1972.
5. Chapter 753, Sections 1, 2, 8, and 9, (Adjourned Session), 1974.
6. Chapter 849, Section 1, (Adjourned Session), 1980.
7. Chapter 522, Sections 1 and 2, 1981.
8. Chapter 867, Section 1, (Adjourned Session), 1982.
9. Chapter 642, Section 1 through 10, 1984.

Two amendments were approved in 1961; the first placed upon municipalities the burden of proving that the industrial plant annexations would be beneficial to the industry. The intent of this provision was the prevention of annexations that resulted in the annexation industrial plants solely for the anticipated tax revenues generated by the industry. The second amendment had a direct effect on unilateral annexations. This amendment required the local governing body to prepare and adopt a plan of services if the annexation resulted in the addition of 500 people or one-quarter (1/4) square mile of territory.

Eight years passed before the annexation laws of Tennessee were amended again. In 1969 the law was changed to permit the smaller municipalities in Knox, Shelby, and Davidson counties to annex territory within the corporate boundaries of large municipalities. The 1971 amendment permits certain municipalities to impose separate ad valorem taxes for services with the stipulation that taxes are not to be imposed until the services are made available to the annexed area. A year later the law was amended to change the classification of certain counties where the required plan of services applied.

The following is Hobday and Puett's description of the 1974 amendment:

As a result of the amendments, the statutory procedure in annexation cases is not uniform for all municipalities. Chapter 753 of Public Acts of 1974 (Adj. S.) amended the annexation statute in several respects, but the most significant is an amendment of TCA 6-310 (now 6-51-103), which provides that the municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved. (p. 15)

Placing the burden of proof on municipalities was but a portion of the significance of this amendment. The Tennessee Supreme Court ruled on March 29, 1979 that it was the intent of the General Assembly that parties contesting an annexation ordinance could request that a jury be called upon to determine the reasonableness of an annexation ordinance. Previous to this ruling, in Moretz v. Johnson City, the courts had held that where the reasonableness of an ordinance is fairly debatable, it is not an issue to be determined by a jury. In Morton v. Johnson City, the Supreme Court made the following observation:

We might say that in our judgement of the correct legal principle to apply is what is said in the outset of this opinion, that is, if a fairly debatable question as to whether or not the ordinance is reasonable or unreasonable, the courts certainly are not going to take any hand in it one way or the other. In other words if it becomes a fairly debatable question on this theory (reasonable or unreasonable) of the thing it is not a question to be submitted to a jury.

In Stall v. Knoxville in 1972, the Supreme Court upheld a lower court action in which the judge took the case from the jury after determining that the issue was one of reasonableness. The 1974 amendment changed this position; in Moretz v. Johnson City, the Supreme Court said:

When the fairly debatable rule applied, the question of whether there was evidence for and against the ordinance was one to be answered by the trial judge. The question whether there is any evidence on an issue is always a law question. So when a trial judge decided there was evidence for and against the reasonableness of an ordinance, he had to withdraw the case from the jury and uphold the ordinance. This is no longer the situation. Under the amended statute . . . appellants are entitled to have the issue of reasonableness submitted to a jury, unless on remand, the proof on the issue brings into play some other rule applying to chancery jury trials which might prevent this.

Six years passed before the law was amended again; 1980 saw a renewed effort to restrict, if not eliminate, unilateral annexations in Tennessee. The 1980 amendment provided that a municipality with a population greater than 10,000 could not increase its land area by 25 percent through unilateral annexation within any 24 month period. The 1981 amendment attempted to extend the effective date of unilateral annexations from 30 to 120 days, but was so poorly worded that it was rewritten and readopted in 1984. Both versions of this amendment applied to only eight counties.

The focus of the 1982 amendment was the plan of services and exempted Madison, Shelby, and Davidson counties. This amendment provided that before any territory or territories totaling more than one-fourth square mile in area, or an area having a population of 500 or more people, can be annexed unilaterally, within a 12 month period, the governing body of the annexing municipality shall have adopted a plan of services setting forth at a minimum, the identification and projected timing of municipal services proposed to be extended to the territory or territories to be annexed.

In addition to rewording the 1981 amendment, the 1984 amendment made it possible in some counties for property owners abutting an annexation area to contest the annexation.

Chapter 642 of Public Acts of 1984 substituted the words "which borders or lies" for the word "lying" in the sentence [6-51-103. Any aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance prior to the operative date thereof, may file suit. . .]. However, the chapter exempted 81 counties from its effect. Accordingly, only in the following 14 counties are the owners of property "which border" an annexation area are empowered to file a quo warranto suit: Blount, Bradley, Carter, Greene, Hamblen, Knox, Maury, Montgomery, Putnam, Roane, Rutherford, Sumner, Washington, Wilson. In the other 81 counties, the aggrieved person must own property within the annexation area. (Meisenhelder and Pruett, 1984, p. 7)

A dual purpose can be seen in the adoption of these amendments. First they are legislative responses to the clamoring of fringe area residents and property owners for protection from expanding municipal governments' geographical jurisdiction, and second, they have served to remind municipalities that annexation has at least a dual purpose. On the one hand, annexation is to provide for the orderly growth and development of cities. On the other hand, it is to ensure

that urbanizing communities are provided adequate and timely urban services.

It should be sufficient to acknowledge that where power is not properly managed, abuses can occur. Each of the amendments discussed have contributed to the erosion of municipal annexation powers in Tennessee. Most of the amendments have been adopted in response to real or perceived abuses of municipal annexation powers. Some of these amendments have been aimed at municipalities within specific counties.

Gov. Lamar Alexander refused to sign the 1981 amendment; the following is from the June 18, 1981 issue of the Knoxville Journal:

In a letter to Lt. Gov. John Wilder and House Speaker Ned Ray McWherter, Alexander said the main reason he declined to ink the legislation was that it is "applicable only to a few designated counties.

There does not appear to be any reasonable basis for having different annexation procedures for those counties covered by the bill than those not covered. Absent such reasonable basis, the bill appears to be violation of Article XI, Section 8 of the Tennessee Constitution," Alexander wrote.

Attorney General William Leech, he noted, reached a similar conclusion. . . .

Alexander also noted that the Tennessee Municipal League, which represents municipal governments in the state, believes the bill "could result in a virtual end to annexation in those counties covered by the bill -- the result being stagnant municipalities which are unable to adequately provide basic services to their citizens."

The amendment became law without the governor's signature, and as noted earlier, was revised in 1984. Today the amendment applies to municipalities within Blount, Crockett, Hamblen, Knox, Loudon, Montgomery, Sullivan, and Washington counties. The municipalities in

these counties have been fairly aggressive in their use of unilateral annexation powers, thereby creating at least a perception of abuse of the annexation authority granted by the state legislature.

The 1984 amendment was intended to restrain the ability of municipalities in these counties to annex. Municipalities in the affected counties must wait 120 days after passage of the annexation ordinance before it can become operative. If the annexation adds 1,000 or more people, 10 percent of the voters and property owners of the area are allowed 120 days to petition to have the annexation validated by a referendum of the voters of the area affected and the voters of the municipality. The costs of the election are charged to the municipality. If the majority of the votes are cast against the annexation, the ordinance is voided and the area cannot be proposed for annexation for one year from the date of the election. If the vote is for the annexation, the ordinance shall become effective 30 days after the election, but not before 120 days after passage of the annexation ordinance. Persons opposed to the annexation are still afforded the opportunity to bring suit to halt the annexation within 30 days following validation of the ordinance.

Other important aspects of this section of the law have been described in the discussions of amendments to the law. Most of the amendments discussed have restricted unilateral annexations in Tennessee, especially in those counties affected by the 1981 and 1984 amendments. The need for modifying the original statute may be warranted, but to date, most amendments have had the effect of making some municipalities fearful of long and expensive court battles. The long term costs may be the deterioration of municipalities and an

abundance of poorly planned and developed unincorporated places with severe health and safety problems.

The North Carolina Law

Tennessee has taken a piecemeal approach to resolving the problems associated with the annexation issue. Primary among these problems is the unilateral annexation provisions of the law. After reviewing the statutes of other southeastern states with unilateral annexation provisions, North Carolina was identified as a state similar enough to Tennessee to warrant a closer examination. The results of that examination follows. Rather than trace the development of the North Carolina law from the first general law, this examination begins with the adoption of major revisions in 1959; the results of those changes are for the most part still intact, although minor amendments have been enacted.

General Provisions Of the Law

North Carolina, like most states, offers alternative methods for expanding municipal boundaries. North Carolina law permits annexation by petition, by referendum, and by unilateral adoption of a municipal ordinance. As is the case in Tennessee, the first two methods are rarely challenged, and it is with even less frequency that such challenges are sustained. Based upon a review of court cases where the laws of Tennessee and North Carolina have been challenged, it appears that challenges to the North Carolina law have been made to ensure that procedures have been followed and services provided. In Tennessee, such challenges have been made to determine the reasonableness of the annexation.

The North Carolina law and the Tennessee law make use of class-size classifications for the application of general law. Unlike Tennessee, North Carolina specifies exceptions to the law by listing county or city names while Tennessee use a somewhat complicated system of groupings by county population. The basis for the classification in North Carolina is not revealed in the statute. The statute does differentiate the application of the annexation law to cities by population size; separate provisions are then applied to municipalities with populations above and below 5,000 people. The North Carolina statute also makes provisions for non-contiguous annexations, while the Tennessee law requires that areas being considered for annexation be contiguous with existing municipal boundaries.

Amendments to the Law

The North Carolina law was amended in 1967, 1971, 1973, 1975, 1977, 1981, and 1983. The importance of these amendments on the general application of the law has been minor. Most have been minor housekeeping measures that have changed the application of the general law to specific cities and counties. One amendment changed the judicial jurisdiction to hear challenges to annexation actions.

The most recent amendment, Session Laws 1983, c.768, s. 25, provides the following:

The General Assembly intends by this act to repeal all acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns.

Unilateral Provisions of the Law

The unilateral provisions of the North Carolina law is written so as to provide one set of requirements for municipalities with populations greater than 5,000 and another set for those with populations under 5,000 people. The following section describes and compares these provisions.

General format of the statute. The unilateral provisions of the law are found in Article 4. Parts 2 and 3 of the General Statutes of North Carolina. In addition to several administrative titles, both parts are divided into the following titles:

1. Declaration of policy
2. Prerequisites to annexation
3. Character of the area to be annexed
4. Procedure for annexation
5. Appeal

With rare exception, the provisions of both parts contain the same language; the more important exceptions are noted in the following discussion.

The Declaration of policy statement recognizes "that sound urban development is essential to the continued economic development of North Carolina." It points out that cities are created to provide governmental services necessary for urban development and the protection of intensely developed and developing areas. It acknowledges that municipalities should annex in accordance with standards established by the General Assembly and that it is the legislature's intent that municipalities provide urban services.

Perhaps the most important element of the policy statement is the differentiation made between the development patterns of small cities and large cities. For the purposes of applying the provisions of the state's annexation law, the population figure of 5,000 is identified. The following statement is used to describe the development patterns of small cities:

New development in and around the municipality . . . tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the case of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities.

Development in and around larger municipalities is described as "more scattered than in and around smaller municipalities." The description continues with the justification for differing annexation procedures.

. . .because larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained.

The policy statements set the stage for recognizing differences in the application of the annexation laws in smaller communities versus their application in larger cities. A minor difference is seen in the prerequisite for annexation, but the major difference is seen in the description of the character of the area to be annexed. The prerequisite of an annexation action is the preparation of a plan of annexation. The plan must specify the services that are to be provided and the manner in which they will be financed. The only

notable difference between requirements for larger and smaller municipalities is that larger municipalities are required to show existing utility systems as well as those systems proposed for the area being considered for annexation. Small cities must show only those systems proposed.

A clear distinction is made in the definition of "urban" in a large municipal setting as opposed to the small municipal setting. In the larger city "part or all of the area to be annexed must be developed for urban purposes." Urban is then defined as an area that meets any one of the following standards:

1. Has a total resident population equal to at least two persons for each acre of land; or
2. Has a total resident population equal to at least one person for each acre of land and at least 60 percent of the land has been subdivided into lots and tracts of five acres or less and 60 percent of such lots and tracts are one acre or less; or
3. The area is so developed that at least 60 percent of the the total number of lots and tracts are used for residential, commercial, industrial, institutional or governmental purpose, and is subdivided into lots and tracts such that 60 percent of the total acreage, not counting the above land uses, consist of lots and tracts of five acres or less.

In the small municipal setting, the area must be urban, and urban is defined as in item 3 above. No provisions are made for the annexation of undeveloped land as is the case for larger cities. Larger municipalities may annex such land if it lies between the municipal

boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served without extending services through the undeveloped area. The statute also provides that a municipality can annex undeveloped land "adjacent to the municipality on at least sixty percent (60%) of its external boundary to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes. . . ."

Other required characteristics for an area to be considered for unilateral annexation include the following:

1. The area must be adjacent or contiguous to the municipality.
2. At least one-eighth of the aggregate external boundaries must coincide with the municipality.
3. No part of the area can be a part of another municipality.

The statute also requires that the new boundaries follow natural topographic features wherever practical and that where a street is used as a boundary, both sides of the street shall be annexed. In the case of larger municipalities, there is the additional requirement that at least 200 feet beyond the street right-of-way be annexed.

The annexation procedures for both small and large municipalities are substantially the same. There are five steps in the procedure. First, the governing body of the municipality must adopt a resolution of its intent to consider the annexation of an area. Second, it must prepare and approve the plan of services cited above in the discussion of the prerequisites for annexation followed by a public hearing and the adoption of the annexation ordinance.

Summary of Statutes and Observations

Both Tennessee and North Carolina have, as a part of their annexation laws, procedures that permit municipalities to alter municipal boundaries by simply adopting an ordinance and complying with standards established by their respective state legislatures. Although there are some similarities in the statutes, the manifestations of their differences are extremely important. In addition to having unilateral provisions, both have "plan of services" requirements. In Tennessee a services plan is required for the annexation of territory that adds 160 acres or 500 people to the municipality. In North Carolina, municipalities annexing unilaterally are required to prepare and adopt a plan of services regardless of the size of the area being annexed or its population. Other similarities include separate provisions for different classes of municipalities (counties in Tennessee's case), requirements for public notice and a public hearing, and judicial appeal of annexation actions.

The important differences between the two statutes begin with their individual basic formats. The Tennessee unilateral provisions are given in a single subsection of the Tennessee Code Annotated. Included within this subsection are class-size exemptions and inclusions. The North Carolina statute, in contrast, uses two separate sections, designated as "Parts," for the two classes of municipalities recognized in the statutes. Separate subsections are reserved for any exceptions to the general provisions of the law.

The clearly defined intent of the North Carolina General Assembly to place primary responsibility for urban services in the hands of municipal governments is another major difference. The policy statements of the North Carolina law express the fact that municipalities are "created to provide governmental services necessary for urban development." This delegation is based upon the legislature's desire for the sound economic development of the entire state.

The Tennessee state legislature on the other hand, in its delegation of unilateral annexation powers, states that 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 endangered, . . ."

Although this may be interpreted as a statement of policy, it fails to link the needs and prosperity of the municipality with those of the entire state. Furthermore, as the remaining portions of the law are presently written, the powers of municipalities to carry out a policy of "self-protection" and growth management are diminished.

The North Carolina commitment to the provision of governmental services necessary for urban development is emphasized again by the requirement that municipalities intending to annex, adopt a plan of services. Similar plan of services requirements in the Tennessee law, applicable under certain conditions, lack this emphasis. In fact, based upon testimonies given at public hearings held by committees

of the Tennessee General Assembly and published newspaper interviews of individual property owners and residents of areas annexed by Tennessee municipalities, it is common for Tennessee municipalities to renege on the provision of needed services.

Assuming the validity of the reported abuses, it can be acknowledged that these abuses have occurred in spite of the fact that the Tennessee law declares that unfulfilled plans of services are grounds for mandamus action to have the plans implemented. Similar provisions are included in the North Carolina law, but as is the case with other comparisons, the North Carolina law is more precise. While Tennessee law requires the publication of an annual status report until all services are provided, the North Carolina law allows 15 months for services to be provided, then an aggrieved individual can seek judicial relief.

The differences between the two states' annexation laws are manifest in several ways, some of which have been described in the preceding paragraphs. Of the different manifestations, the most important is probably the general tone of the two laws. The North Carolina law is clearly written, the Tennessee law is not. Most of the vagueness found in the Tennessee law can be attributed to the way the law has been amended. While the North Carolina law has been amended, most amendments have been minor alterations to further define responsibilities and to alter exemptions. Amendments to the Tennessee law on the other hand, appear to have been intended to restrict municipal unilateral annexation powers.

In order to further understand these and other differences in the laws of the two states, an attitude survey was conducted in both states. A followup survey was conducted in Tennessee. The next two chapters provide the details of these surveys. The first survey focused on the identification of differences; the second, attempted to determine if some of the features of the North Carolina law would be acceptable to the municipal governments and citizens of Tennessee.

CHAPTER IV

METHODOLOGY

The research for this thesis included reviews of existing literature and the administration of two survey questionnaires. Efforts to identify published literature other than newspaper articles revealed a substantial void of information dealing primarily with the subject. Generally, publications dealt with annexation as a topic relating to the growth and management of cities. Major sources of information dealing directly with the subject were the annexation manuals published by the Municipal Technical Advisory Service and research reports prepared by the legislative staff of the Tennessee General Assembly.

Two surveys were conducted. The first was mailed to potential participants in North Carolina and Tennessee; the second was administered only in Tennessee. The surveys sought direct participation from people who participate in the annexation processes of the respective states.

Survey Sample Selection

The United States Bureau of the Census publishes information on annexations completed in municipalities of 2,500 or more population. North Carolina and Tennessee municipalities that had completed at least ten annexations between 1970 and 1980 were identified as potential municipal participants. It was assumed that municipal officials in these municipalities would have the experience and knowledge appropriate for contributing to the research.

The City of Clinton, Tennessee, did not meet this standard but was included because of its recent experience with both unilateral and referendum annexations. Seventy-seven of 90 (86 percent) municipalities responded to the questionnaire.

In addition to municipal officials, persons in state agencies responsible for providing technical assistance to municipalities were also included in the survey. These included municipal league personnel in both states and the six regional directors of the Tennessee Local Planning Assistance Office. Ten of 12 (83 percent) responded.

The second survey questionnaire was mailed to Tennessee respondents who participated in the first survey and to selected members of the Tennessee General Assembly and to persons identified as opposed to annexations. Selected legislators included members of the House and Senate committees for State and Local Government and one Knox County legislator who has led the effort to change the Tennessee law. Persons identified as opposed to annexations were named by Local Planning Assistance Office staff planners in each of the six state planning regions. Only 33 percent of the 100 questionnaires were returned.

The Questionnaires

The questionnaires were intended to identify the perceived strengths and weaknesses of the annexation laws of the respective states as well as determine if the laws of North Carolina were suitable for adaptation in Tennessee. The questionnaires are included as Appendix II.

Questionnaire 1. The questionnaire consisted of ten questions. The first three questions asked information about the responding individual and the organization represented. The remaining questions dealt with attitudes and the mechanics of annexation.

Questionnaire 2. The questionnaire was divided into three parts. The first contained five multiple part statements; respondents were asked to indicate their level of agreement. The second part contained six statements which required yes or no answers; respondents were given the opportunity to add their own comments. The third part asked respondents to provide information about their personal experiences regarding annexation; the results of this part are included in the appendix for the benefit of the reader. The analysis and results of other parts of both questionnaires are presented in Chapter V.

CHAPTER V

SURVEY RESULTS AND ANALYSIS

The key element of this thesis rests upon the premise that annexation in North Carolina is less controversial than annexation in Tennessee although both states have similar annexation statutes. Some of the similarities and differences found in the laws of these two states were examined in Chapter III. Chapter IV explained the mechanics of a survey of Tennessee and North Carolina municipal officials and technical assistance advisors. This survey was done to provide a clearer understanding of the laws of the two states and to identify additional differences that may not be apparent from reading the statutes.

Chapter IV also described a second survey. The second survey was administered only in Tennessee and attempted to determine if there are features in the North Carolina law that the people of Tennessee might find suitable for application in Tennessee. The results and an analysis of both surveys are presented in this chapter.

This chapter is divided into three sections; the first presents the results and analysis of the first survey and the second section does the same for the second survey. The third section synthesizes the results of both surveys and presents conclusions that will be examined in the final chapter.

The First Survey

Each of the ten questions making up the questionnaire is examined and a state-to-state comparison of the responses is presented. A comparison of responses by respondents is made in some situations. The section

is divided into two subsections. The first presents the question, the results, and analysis. The second summarizes the results.

Survey Results

Eighty-seven of the 102 questionnaires (85 percent) were returned. Fifty-two of the 62 North Carolina municipalities responded and 25 of the 28 Tennessee municipalities responded. Only one of the two questionnaires sent to technical advisors in North Carolina was returned, compared to nine of the ten submitted technical advisors in Tennessee. Several questionnaires were completed by community planners; some were municipal employees and others were employed by state technical assistance agencies. Table III shows sample size and participation rates.

TABLE III
FIRST SURVEY SAMPLE SIZE AND PARTICIPATION LEVEL
BY TYPE OF EMPLOYER AND STATE

	<u>NORTH CAROLINA</u>		<u>TENNESSEE</u>	
	Municipalities	Advisors	Municipalities	Advisors
SAMPLE SIZE	62	2	28	10
NUMBER RESPONSES	52	1	25	9
PARTICIPATION RATE	84%	50%	89%	90%

Question 1. This question sought to identify the official position of the respondent. Table IV shows that 92 percent of the North Carolina respondents were municipal employees, compared to 64 percent of the Tennessee respondents. Most of the municipal respondents identified themselves as either city managers or city administrators. The percentage of responding elected officials was notably higher in Tennessee than in North Carolina.

TABLE IV
FIRST SURVEY OFFICIAL POSITION OF RESPONDENTS
BY RESPECTIVE STATE

	<u>NORTH CAROLINA</u>			<u>TENNESSEE</u>		
	Elected	Employees	Planners	Elected	Employees	Planners
COUNT	2	48	2	7	16	2
DISTRIBUTION	4%	92%	4%	28%	64%	8%

Question 2. The survey was mailed to municipalities with a minimum population of 2,500 that reported at least 10 annexations to the Census Bureau between 1970 and 1980. Question 2 asked respondents to provide an estimate of the number of annexations the responding organization has participated in during the last five years. The responses to this question provide some measure of annexation activity between 1980 and the present. This information is presented in Table V.

TABLE V
1980 THROUGH 1984 ANNEXATION PARTICIPATION
BY ORGANIZATIONS AND BY STATE

	<u>NORTH CAROLINA</u>		<u>TENNESSEE</u>	
	Number Responses	Percent of Responses	Number Responses	Percent of Responses
NO RESPONSE	2	-	-	-
NONE	3	6	3	9
ONE TO THREE	13	26	6	19
FOUR TO TEN	16	31	14	44
MORE THAN TEN	19	37	9	28
Totals	53	100	32	100

The results shown in Table V show that there was substantial annexation activity in the responding cities and indicate that annexation remains an important procedure in both North Carolina and Tennessee. More than 94 percent of the 51 respondents representing North Carolina municipalities and all 25 responding Tennessee municipalities reported some annexation activity (See Appendix III). Sixty-eight percent of the municipal respondents indicated their municipalities have annexed at least four times during the last five years. This is consistent with annexations reported to the Bureau of the Census for the preceding decade.

Question 3. The respondent's knowledge and experience with annexation was the subject of Question 3. All respondents rated their knowledge of their respective state annexation laws, but two respondents in each state did not respond to the experience portion of the question. The results are presented in Table VI.

TABLE VI

RESPONDENTS SELF RATING OF ANNEXATION KNOWLEDGE AND EXPERIENCE
BY RESPONDENT AND BY STATE

KNOWLEDGE	NORTH CAROLINA					TENNESSEE				
	ELECTED	EMPLOYEE	ADVISOR	TOTAL	PERCENT OF TOTAL	ELECTED	EMPLOYEE	ADVISOR	TOTAL	PERCENT OF TOTAL
EXCELLENT	-	23	2	25	47	2	7	4	13	41
GOOD	1	22	-	23	43	2	4	5	11	34
FAIR	1	3	-	4	8	3	5	-	8	25
POOR	-	-	1	1	2	-	-	-	-	-
NO RESPONSE	-	-	-	-	-	-	-	-	-	-
TOTAL RESPONSES	2	48	3	53	100	7	16	9	32	100
<u>EXPERIENCE</u>										
EXCELLENT	-	20	1	21	41	2	7	4	13	43
GOOD	1	21	1	23	45	3	5	4	12	40
FAIR	1	5	-	6	12	1	4	-	5	17
POOR	-	1	-	1	2	-	-	-	-	-
NO RESPONSE	-	1	1	-	-	1	-	1	-	-
TOTAL RESPONSES	2	47	2	51	100	6	16	8	30	100

Most respondents gave themselves high rating in both categories; this was particularly true among municipal employees and technical advisors. One North Carolina respondent rated experience and knowledge poor, and cited unfamiliarity with recent changes in the law as the reason.

Question 4. Question 4 asked respondents to indicate which of three statements best described their view of annexation. They were asked to choose one of three choices with the option of expressing alternatives to the suggested choices. Several respondents disregarded this instruction and indicated more than one choice. Respondents provided 104 responses to the suggested choices and added several alternate purposes; their responses to the suggested choices are presented in Table VII.

TABLE VII

RESPONDENTS VIEWS ON THE PURPOSES OF ANNEXATION
BY RESPONDENT POSITION AND BY STATE

	NORTH CAROLINA					TENNESSEE				
	ELECTED	EMPLOYEE	ADVISOR	TOTAL	PERCENT OF TOTAL	ELECTED	EMPLOYEE	ADVISOR	TOTAL	PERCENT OF TOTAL
TO EXTEND SERVICES	-	16	-	16	26	4	8	3	15	43
TO EXPAND TAX BASE	-	16	-	16	26	1	4	2	7	16
TO FULFILL A PLAN	2	25	2	29	48	3	13	5	21	49
NO RESPONSE	-	1	1	-	-	-	-	-	-	-
TOTAL RESPONSES	2	56	2	61	100	8	25	10	43	100

There was agreement between North Carolina and Tennessee respondents that the purpose of annexation is the fulfillment of a plan for community growth and development; 48 percent in North Carolina and 49 percent in Tennessee. North Carolina respondents split evenly (26 percent for each) between annexation for the extension of services and for the expansion of the municipal tax base.

Tennessee respondents were divided; 43 percent viewed annexation as a means for providing services to municipal fringe areas, while only 16 percent said annexation should be used to expand the municipal tax base.

The following is a partial list of other comments:

1. Annexation is a normal growth process for cities.
2. Annexation is essential for the long-term health of a city.
3. That which is urban in nature should be urban in fact.
4. To ensure that fringe residents share in the costs of municipal benefits.
5. To expand participation in the political affairs of the municipality.

The comments and the responses to the question suggest that respondents share the philosophy expressed in this paraphrased comment North Carolina respondent:

There should exist, a community of interest between the area to be annexed and the municipality, so that the area to be annexed will be adaptable to the maintenance of municipal government.

Question 5. At the heart of the controversy in Tennessee are the unilateral provisions of the Tennessee law. Question 5 solicited opinions on the importance of this provision as a part of a community's annexation program. It asked respondents if they believe a municipality can have a successful annexation program if fringe area residents must initiate and approve annexations. Respondents were also asked to give the reasons for their answers. Two respondents did not answer the question. Responses to Question 5 are shown in Table VIII: the table shows that four North Carolina respondents and eight Tennessee respondents answered yes.

TABLE VIII

CAN A CITY HAVE A SUCCESSFUL ANNEXATION PROGRAM IF FRINGE AREA RESIDENTS
MUST INITIATE AND APPROVE ANNEXATION ACTIONS

	COMBINED DISTRIBUTION	NORTH CAROLINA		TENNESSEE	
		NUMBER RESPONSES	PERCENT OF RESPONSE	NUMBER RESPONSES	PERCENT OF RESPONSE
YES	15%	4	8	8	25
NO	85%	47	92	24	75
NO RESPONSE		2			

The following summarizes the reasons cited for some of the yes responses:

1. If you can sell it to fringe area residents.
2. This situation could exist where the county provides a very low level of services and the city a very high level and the area was urban or urbanizing.
3. If a municipality provides good services for the least cost, so that a majority of the people are able to see what they are getting for their money and will request annexation if they desire additional services.

The remaining respondents answered no and gave the following reasons:

1. Annexation would rarely be approved.
2. The municipality must be considered as a whole.
3. This approach is not a program; people rarely want to be annexed.
4. Absolutely not! People like to be able to escape city taxes, while enjoying the amenities of city living. This, in spite of the fact that being annexed is often cost-efficient for fringe area residents.
5. It will never happen if it must be initiated and approved by residents of the area.

6. Unless there is a major health problem, few people will agree to initiate an annexation, yet the development of the potential annexation area is predicated on the community.
7. It is too difficult to explain the benefits of government.
8. Fringe area residents preceive that the tax costs to them are not justified by the added services they will gain. This is likely to be an accurate perception because unincorporated fringes enjoy many benefits of an adjoining municipality and pay nothing.
9. By the time fringe area residents want to annexed, neighborhoods have declined to the point that the area would be an albatross around the city's neck.

The majority view is that a municipality cannot have a successful annexation program where the residents of the area to be annexed must initiate and approve the annexation. The dissenting minority felt that municipalities that provided good services and those that had effective public relations and education programs could maintain successful programs dependent upon the approval of fringe area residents.

Question 6. Respondents who believed that municipalities could have successful annexation programs that required fringe area resident approval were asked if they believed there were situations which might require the annexation of territory without the approval of fringe area residents. Twenty-eight participants responded to the question; 14 responses were received from each state.

All respondents answered yes to the question except two Tennesseans. Those responding yes to the question were asked to specify situations they believed to be appropriate for such annexations; the following were reported:

1. Where development beyond the proposed annexation area would cease if not annexed. Where large business areas are developed in order to enlarge the tax base.
2. When the area borders another city and that city would not be able to provide services, or for orderly growth.
3. Where city growth would be impeded. Where fringe area development trends are detrimental to future orderly growth. Where the public health, safety, and welfare demand it.
4. Where services are needed to correct a health problem. Where land for planned growth is needed. Where the county is unable or unwilling to deal with a problem.
5. Small areas that you know will be detrimental to the city if not annexed and services can be provided.
6. Where fringe areas are already receiving services.

Growth of the municipality and the health and safety of the municipality and fringe areas seem to provide the basis for the yes responses to Question 6.

Question 7. The provision of services to an area being considered for annexation is a key part of the annexation laws of both states. Discussions in the earlier chapters revealed that in some instances municipalities have been slow to provide these services. Question 7 asked respondents to indicate their views on the time frame for making services available to newly annexed areas. Respondents were asked to specify the timing of the follow services: police, fire, water, sewer, street lights, and street improvements and maintenance. The results are shown in Table IX.

TABLE IX
THE TIMING OF SERVICES
RESPONSE BY STATE

AFTER ANNEXATION SERVICES SHOULD FOLLOW	POLICE		FIRE		WATER		SEWER		LIGHTS		STREETS	
	NC	TN	NC	TN	NC	TN	NC	TN	NC	TN	NC	TN
<u>IMMEDIATELY</u>	98	100	94	94	4	16	2	3	37	13	18	19
WITHIN ONE YEAR	2	-	6	-	49	16	47	9	49	44	28	29
WITHIN TWO YEARS	-	-	-	6	43	19	42	3	6	16	20	19
WITHIN FIVE YEARS	-	-	-	-	4	19	6	19	-	9	6	19
AS BUDGET PERMITS	-	-	-	-	-	31	4	50	8	19	29	34

NUMBERS REPRESENT PERCENT OF TOTAL BY STATE RESPONDENTS.
SEE APPENDIX IV FOR ADDITIONAL DETAIL.

Question 7 appears to shed light on the real reason many Tennesseans are opposed to unilateral annexation. Based upon the comments made by persons opposed to such annexations and survey results discussed above, many residents are fearful of not receiving real benefits from an annexation action. The information in Table IX seems to verify their fears. North Carolina respondents indicate that most services should and can be provided within two years, while Tennessee respondents are reluctant to make such commitments. This is especially true in the provision of water, sewer, and road and street services. Most North Carolina respondents (49, 47, and 49 percent respectively) said water, sewer, and street lights should be provided within the first year. Tennessee respondents (44 percent) agreed that street lights should be provided within the first year, but 31 and 50 percent respectively, said that water and sewer should be provided as budget conditions permitted. Respondents in both states agreed that street and road improvements should be provided as budget conditions permitted. Additional details relating to Table IX are shown in Appendix IV.

Question 8. Participants were asked if the laws of their state were easy to understand and follow, needed major revisions, made it difficult to annex, or if the process was so controversial that municipalities were reluctant to annex. Respondents were given the option of marking any number of responses or providing their own response.

Table X below provides supporting evidence for the earlier finding that suggested that the North Carolina law may have something to offer the people of Tennessee. All participants responded to the question (North Carolina 53 and Tennessee 34). North Carolina respondents offered 56 responses and Tennessee provided 51 responses. In response to the first part of the question, an obvious difference is seen, 77 percent of the North Carolina respondents said their laws are easy to understand; this can be compared with 35 percent of the Tennessee respondents. Similarly, there were very different responses to negative statements about the laws of the two states. Only two percent of the North Carolina respondents said their laws needed major revisions, compared to 32 percent of the Tennesseans. Only 13 percent of the North Carolina respondents said the law makes it difficult to annex and another 13 percent said the process is controversial. Tennessee respondents on the other hand had a different view; 44 percent said the law makes it difficult and 38 percent said the process is controversial.

North Carolina respondents provided the following additional information:

1. The laws require too much time between the initiation of the project and its completion.
2. The law is generally okay, but has become more complex and difficult recently.

TABLE X

THE SERVICEABILITY OF ANNEXATION LAWS BY STATE AS
PERCENTAGES OF TIMES SELECTED AND RESPONDENTS

	NORTH CAROLINA			TENNESSEE		
	TIMES SELECTED	PERCENT OF RESPONDENTS	PERCENT OF RESPONSES	TIMES SELECTED	PERCENT OF RESPONDENTS	PERCENT OF RESPONSES
THE LAWS ARE EASY TO UNDERSTAND AND FOLLOW	41	77	73	12	35	24
THE LAWS NEED MAJOR REVISION	1	2	2	11	32	22
THE LAWS MAKE IT DIFFICULT TO ANNEX	7	13	13	15	44	29
THE PROCESS IS SO CONTRO- VERSIAL, CITIES RELUCTANT TO ANNEX	7	13	13	13	38	25
Total Numbers	56	53		51	34	

3. Recent changes in the law make it more difficult, still not too difficult except where two small jurisdictions are competing, which can act as a tax shelter for potential annexation area.
4. The law had good standards for services, was made less workable two years ago.
5. The laws are complex, but can be followed.
6. The laws are fair.
7. North Carolina has a good law.
8. Petitioned annexations are easy. Forced annexations are more difficult and time consuming.
9. Considerable staff time is necessary to qualify an area and to plan for services.
10. The law provides a logical, reasonable process, giving ample public notice and requiring detail municipal planning.

Tennessee respondents made the following comments:

1. Even though we have unilateral annexation powers, elected officials reluctant to annex hostile persons who will vote in city elections.
2. Annexation should be by city ordinance.
3. The laws need some revisions.
4. The removal of the amendments that have been added over years would be a big improvement.
5. A city should always have the option of annexing by ordinance.

Question 9. Table XI presents the results of a question that asked respondents to rate the desirability of seven elements for inclusion in an annexation law. Fifty percent of the respondents in both states found annexation by referendum to be Not Desirable. Both groups said unilateral annexation was Very Desirable and neither found approval by an annexation review board to be Desirable. Neither group felt strongly about the annexation of active agricultural lands.

TABLE XI

THE DESIRABILITY OF CERTAIN PROVISIONS IN AN ANNEXATION LAW
AS A PERCENT OF STATE TOTALS

	STATE	VERY DESIRABLE	2	3	4	NOT DESIRABLE
		1				5
ANNEXATION BY REFERENDUM						
ANNEXATION BY REFERENDUM	NORTH CAROLINA	10	8	11	21	50
	TENNESSEE	13	3	67	17	-
ANNEXATION BY MUNICIPAL ORDINANCE AND WITHOUT VOTER APPROVAL	NORTH CAROLINA	77	15	2	4	2
	TENNESSEE	67	20	6	7	-
ANNEXATION BY MUNICIPAL ORDINANCE BUT WITH APPROVAL OF REVIEW BOARD	NORTH CAROLINA	-	10	21	26	43
	TENNESSEE	10	13	35	23	19
THE ANNEXATION OF ACTIVE FARM AND AGRICULTURAL LANDS	NORTH CAROLINA	2	4	43	26	25
	TENNESSEE	13	13	45	16	13
ANNEXATION OF LAND ONLY AFTER IT IS DEVELOPED IN URBAN USE	NORTH CAROLINA	42	30	10	10	8
	TENNESSEE	16	6	23	29	26
A REQUIREMENT SPECIFYING A TIME PERIOD FOR PROVIDING SERVICES	NORTH CAROLINA	58	34	8	-	-
	TENNESSEE	47	31	10	6	6
A PROVISION THAT ALLOWS THE THE PRORATION OF TAXES	NORTH CAROLINA	49	41	2	-	8
	TENNESSEE	17	27	23	3	30

There was a definite split between the groups on the issue of waiting until an area developed before annexation. Tennessee respondents, by a slight margin favored annexation before development, but 42 percent of the North Carolina respondents found waiting to be Very Desirable. Both groups said a specific time frame for providing services is desirable. Tennesseans were not for the proration of taxes, but North Carolina respondents were.

Question 10. The last question of this survey asked participants what they believed to be important for a successful annexation program. Public relations, education, and good state enabling legislation were cited as examples. Sixteen Tennessee respondents and 33 North Carolina respondents answered the question. Respondents were not limited to the number of responses and most listed several items as being important to a successful annexation program.

Three Tennessee respondents said the law was most important; two said public relations, and one said education. Two respondents said education and public relations. Each of the following was listed once: good laws and obedience to the law; good laws and public relations; good laws, planning, and public relations; and good laws and education.

Of the North Carolina responses, eight said all three of the examples were important. Five said the law and there were two responses each for good laws and public relations. Five respondents said a combination of good laws and public relations; two said proper study and two said a combination of good laws, public relations, and the ability to provide services. Two said education and good laws. The following

were also listed: good laws and planning, good laws and obedience to the laws, public relations, planning, and a good law; good planning and services; public relations and education; and good laws and a good planning staff.

Most respondents in both states indicated that having good state enabling legislation is important, but 24 percent said all three suggested examples were important. Only a few respondents did not include good laws as a part of the responses offered. Twenty-nine responses included references to a good public relations program. A Tennessee respondent provided the following comment: "You must first have adequate legislation. Secondly, the financial ability to provide services and third, a good public relations and education program."

Summary Of Survey Results

The number responses to the survey questionnaire, 87 of 102, provides an excellent foundation for making conclusions about the opinions public officials in Tennessee and North Carolina have about annexation. Most participants responded to all questions, and many took the time to add comments for clarification, as well as to express their views in their own words when given that option. The responses given were important to the development of the second questionnaire.

Responses to questions 4, 7, 8, and 9 provide considerable insight into the differences in attitudes toward annexation held by North Carolina and Tennessee respondents. The tone and formats of the respective statutes seem to provide the bases for some of the responses and comments.

Almost 50 percent of the Tennessee and North Carolina respondents agreed that the purpose of annexation is to fulfill a community development plan (Question 4); but 43 percent of the Tennesseans, compared to 26 percent of the North Carolinians, felt that the purpose of annexation is the provision of services. The North Carolina law specifies that a plan is to be prepared, and the purpose of the annexation law is to promote state economic growth and development.

The purpose of the Tennessee law is the protection of the public health, safety, and welfare. The latter offers the opportunity to encompass the former, but the tendency in Tennessee toward strict interpretation of the law limits the ability of Tennessee officials to adopt this broader view.

In spite of the response given in Question 4, Tennessee municipal officials are either reluctant or unable to provide services to an annexed area in a timely manner when compared to North Carolina. Question 7 (Table IX) provides the example. North Carolina respondents believe that most services can be provided within two years, while Tennesseans tended to base the provision of services upon budgetary conditions. Notable differences are seen in attitudes affecting water, sewer, and street lights. Again, the basis for the differing attitude may rest in the fact that North Carolina requires a financial plan for annexations.

Perhaps the most notable confirmation provided by the survey was the premise that the North Carolina law is a better law. Responses to Question 8 (Table X) show that 77 percent of the North Carolina respondents found their law easy to understand and follow, compared to 35 percent of the Tennessee respondents. Thirty-two percent of the

Tennessee respondents, compared to two percent of North Carolina respondents, felt that the laws need major revision. The attitudes reflected here support the Chapter III finding that the Tennessee law is difficult to administer and understand.

Sixteen percent of the Tennessee respondents said the purpose of annexation was to improve the municipal tax base. This can be compared to 26 percent of the North Carolina respondents. Interestingly, only 17 percent of the Tennessee respondents, compared to 49 percent in North Carolina, found the proration of taxes Very Desirable.

The second survey confirms that there is a basis for looking to the North Carolina law as a possible model for reforming the Tennessee law. Given the manner in which the North Carolina law has a major revision of the North Carolina law in 1959 with relatively few amendments since its adoption, and the 1954 adoption of the Tennessee law and the numerous amendments that have followed, it is not surprising that many Tennesseans do not feel comfortable with the present law. It is possible that the piecemeal revision of the law is at the root of the problem.

The Second Survey

The second survey consisted of three parts; the first two parts dealt with annexation philosophies and the elements of an annexation law. The third part dealt with the respondent's experience with annexation.

Survey Results of Part One

The first part of the questionnaire was divided into five statement sets. Each set is examined separately. A table accompanies each

set and permits the comparison of responses among the responding groups as well as a comparison with total responses.

Set 1. This set of statements dealt with why people do not like to be annexed. It presented three issues. The first said that people do not like to be annexed because of the added tax burden; the second said they do not like to be annexed because often, promised services are not provided. The third said that often, services are not needed. To the first, 46 percent of the 39 respondents strongly agreed; 49 percent agreed and the remainder were either neutral or disagreed.

Table XII shows that most respondent groups were in general agreement with the first statement. Those opposed to annexation showed the strongest agreement; 67 percent strongly agreed. Seventy-one percent of the advisors agreed. These responses show that there is a definite concern for the impact municipal taxation has on an area subject to annexation.

Table XII shows a wider distribution of responses to the second statement. All of those opposed to annexation either agreed or strongly agreed that often promised services were not provided; 67 percent strongly disagreed. Surprisingly, only six percent of municipal officials strongly disagreed and 38 percent agreed. A clear majority, 71 percent, of technical advisors disagreed; the remainder were neutral. Legislators did not disagree with the statement. Only three percent of all respondents strongly disagreed while most other responses were fairly evenly distributed; 23 percent did disagree. As was the case with the first statement, there seems to be some validity to the statement, especially with 38 percent of municipal officials agreeing and only 26 percent of all respondents disagreeing or strongly disagreeing.

TABLE XII

WHY PEOPLE DO NOT LIKE TO BE ANNEXED
PERCENT AGREEMENT BY GROUPS

PEOPLE DON'T LIKE TO BE ANNEXED BECAUSE...		STRONGLY AGREE AGREE NEUTRAL DISAGREE STRONGLY DISAGREE				
OF THE ADDED TAX BURDEN						
MUNICIPAL OFFICIALS	44	50	-	6	-	
OPPOSITION	67	33	-	-	-	
TECHNICAL ADVISORS	29	71	-	-	-	
LEGISLATORS	43	43	14	-	-	
ALL RESPONDENTS	46	49	3	3	-	
OFTEN, PROMISED SERVICES ARE NOT PROVIDED						
MUNICIPAL OFFICIALS	-	38	31	25	6	
OPPOSITION	67	33	-	-	-	
TECHNICAL ADVISORS	-	-	29	71	-	
LEGISLATORS	29	57	14	-	-	
ALL RESPONDENTS	21	33	21	23	3	
OFTEN, SERVICES ARE NOT NEEDED						
MUNICIPAL OFFICIALS	-	31	13	44	13	
OPPOSITION	89	11	-	-	-	
TECHNICAL ADVISORS	14	14	-	57	14	
LEGISLATORS	14	14	29	29	14	
ALL RESPONDENTS	26	21	10	33	10	

Totals may not equal 100 because of rounding.

— This tendency for respondents to agree is not carried over into the statement that often, services are not needed. The opposition group clearly stands alone in the strongly agree category. Most other respondents disagreed and a few strongly disagreed. There were enough in these groups to conclude that the perception is that services are not needed.

Set 2. The responses to the statements contained in this set are presented in Table XIII. This set asked respondents to indicate their level of agreement with statements related to the acceptability of annexation. Annexation would be more acceptable if taxes were not imposed until after services were provided said 66 percent of all respondents. Respondents generally agreed that a minimal level of services required by law would make annexation more acceptable. More than 45 percent of all respondents felt that a state arbitration board would not improve the acceptability of annexation; however, 27 percent were neutral.

Those opposed to annexation were definite in their opinions about the tax issue, and while most agreed, 38 percent disagreed. Each group agreed (even the opposition) by a substantial margin that people would find annexation more acceptable if taxes were imposed after services were provided.

Overall, the response to the question on a requirement for a minimal level of urban services was balanced. It can be noted however, that municipal officials and technical advisors came down on opposite sides of the questions although there was a large neutral vote by municipal officials.

Most respondents were divided on the proposition that annexation decisions be arbitrated by a state board. Legislators were bunched around the neutral position. In fact, many respondents in each group except technical advisors were neutral; no technical advisors were neutral, 71 percent disagreed, as did 57 percent of the legislators.

TABLE XIII

MAKING ANNEXATION MORE ACCEPTABLE
PERCENT AGREEMENT BY GROUPS

PEOPLE WOULD FIND ANNEXATION MORE ACCEPTABLE IF...	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
TAXES WERE IMPOSED AFTER SERVICES WERE PROVIDED					
MUNICIPAL OFFICIAL	24	47	18	12	-
OPPOSITION	13	50	-	25	13
TECHNICAL ADVISORS	-	57	29	14	-
LEGISLATORS	14	57	14	14	-
ALL RESPONDENTS	15	51	15	15	3
A MINIMAL LEVEL OF CITY SERVICES WERE REQUIRED					
MUNICIPAL OFFICIALS	7	33	47	13	-
OPPOSITION	13	38	13	25	13
TECHNICAL ADVISORS	-	29	14	57	-
LEGISLATORS	-	43	14	43	-
ALL RESPONDENTS	5	35	27	30	3
ANNEXATIONS WERE APPROVED BY A DISINTERESTED THIRD PARTY SUCH AS A STATE ARBITRATION BOARD					
MUNICIPAL OFFICIALS	13	27	33	20	7
OPPOSITION	22	11	33	22	11
TECHNICAL ADVISORS	-	14	-	71	14
LEGISLATORS	-	14	29	57	-
ALL RESPONDENTS	10	18	27	36	10

Totals may not equal 100 because of rounding.

Generally, it can be concluded that those least affected by an annexation action, the legislators and advisors, did not have very strong feelings about the issues raised in Set 2. It can be noted that while the other two groups disagreed by degrees, they were generally in agreement.

Set 3. This set asked when should cities annex; responses are given in Table XIV. Only 37 percent said cities should annex to expand the municipal tax base. The highest level of agreement was shown on annexation for the provision of urban services (84 percent). Eighty-four percent concurred on a similar issue--the annexation of territory in order to ensure proper development around the city. Respondents ranked annexation in response to petitions by property owners third with 64 percent agreeing.

On the expansion of the municipal tax base issue, 13 percent of those opposed to annexation joined 86 percent of the technical advisors and 46 percent of the municipal officials in agreeing that a city should annex to expand its tax base. It is worth noting that the opposition group disagreed with the proposition by a very wide margin. Legislators were either neutral (57 percent) or disagreed.

Only the opposition group strongly disagreed with annexation to provide services. In spite of 25 percent taking this position, along with 13 percent who disagreed, 63 percent expressed agreement. This was also an issue with which most legislators agreed. Technical advisors and municipal officials showed the strongest support.

As noted above, 84 percent of all respondents said annexation should be used to ensure proper development as opposed to only eight percent disagreeing. Those opposed to annexation showed little rejection of this concept (25 percent strongly disagreed), the remaining 75

TABLE XIV
REASONS FOR MUNICIPAL ANNEXATIONS
PERCENT AGREEMENT BY GROUPS

CITIES SHOULD ANNEX TO...	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
EXPAND THE MUNICIPAL TAX BASE					
MUNICIPAL OFFICIALS	6	40	20	27	6
OPPOSITION	13	-	-	38	50
TECHNICAL ADVISORS	-	86	14	-	-
LEGISLATORS	-	-	57	43	-
ALL RESPONDENTS	5	32	22	27	14
PROVIDE NEEDED URBAN SERVICES					
MUNICIPAL OFFICIALS	40	53	-	6	-
OPPOSITION	25	38	-	13	25
TECHNICAL ADVISORS	57	29	14	-	-
LEGISLATORS	14	57	14	14	-
ALL RESPONDENTS	35	49	5	8	5
ENSURE PROPER DEVELOPMENT AROUND THE CITY					
MUNICIPAL OFFICIALS	69	25	-	6	-
OPPOSITION	-	75	-	-	25
TECHNICAL ADVISORS	71	29	-	-	-
ALL RESPONDENTS	47	37	8	3	5
RESPOND TO PROPERTY OWNER PETITIONS					
MUNICIPAL OFFICIALS	19	31	44	6	-
OPPOSITION	33	56	11	-	-
TECHNICAL ADVISORS	29	43	14	14	-
LEGISLATORS	29	29	29	14	-
ALL RESPONDENTS	26	38	28	8	-

Totals may not equal 100 because of rounding

percent agreed. Six percent of municipal officials disagreed.

With the exception of six percent of municipal officials and 14 percent of legislators and technical advisors all other respondents were either neutral or agreed with annexation in response to the petitions of property owners. Only 11 percent of those opposed were neutral. A considerable portion (44 percent) of municipal officials were also neutral.

Set 4. This set considers the annexation of vacant lands: When should cities annex vacant lands? Table XV shows that 53 percent of all respondents agreed that municipalities should annex vacant lands in order to improve planning and service delivery. On the issue of annexing vacant lands in order to reach developed areas, 38 percent agreed. The third issue, the annexation of vacant lands in order to manage the rate and quality of urban development, 67 percent of all respondents agreed.

The responses here reflect the findings revealed in Set 3; respondents felt that annexation should be used to improve planning and service delivery. All technical advisors either agreed or strongly agreed on this issue. Legislators were more reluctant, with 43 percent disagreeing. Forty-four percent of those opposed also disagreed as did 12 percent of municipal officials.

Annexation to reach developed areas did not receive the high levels of support given the other issues in this set, but surprisingly, those opposed to annexation and legislators gave greatest support. Technical advisors and municipal officials were slow to lend support to such annexations.

Managing the rate and quality of urban development received more favor than either of the other two issues. Most of this support came from municipal officials and technical advisors. Most legislators (43 percent) were neutral. Those opposed to annexation disagreed substantially.

TABLE XV

REASONS FOR MUNICIPAL ANNEXATION OF VACANT LANDS
PERCENT AGREEMENT BY GROUPS

VACANT LANDS SHOULD BE ANNEXED TO...		STRONGLY AGREE AGREE NEUTRAL DISAGREE STRONGLY DISAGREE				
IMPROVE PLANNING AND SERVICE DELIVERY						
MUNICIPAL OFFICIAL	25	31	31	6	6	
OPPOSITION	22	11	22	11	33	
TECHNICAL ADVISORS	43	57	-	-	-	
LEGISLATORS	14	14	29	43	-	
ALL RESPONDENTS	25	28	23	13	10	
ONLY IF THEY ARE BETWEEN THE CITY AND ALREADY DEVELOPED AREAS TO BE ANNEXED						
MUNICIPAL OFFICIALS	7	27	7	53	7	
OPPOSITION	13	25	-	38	25	
TECHNICAL ADVISORS	-	14	29	29	29	
LEGISLATORS	29	43	29	-	-	
ALL RESPONDENTS	11	27	14	35	14	
MANAGE THE RATE AND QUALITY OF URBAN DEVELOPMENT						
MUNICIPAL OFFICIALS	21	71	-	7	-	
OPPOSITION	13	13	13	38	25	
TECHNICAL ADVISORS	57	29	14	-	-	
LEGISLATORS	14	29	43	14	-	
ALL RESPONDENTS	25	42	14	14	5	

Totals may not equal 100 because of rounding.

Set 5. The final set in this part of the questionnaire asked participants to react to suggested elements of an annexation law as shown in Table XVI. Respondents gave almost equal support for annexation by municipal ordinance and annexation in response to petitions. Annexation by referendum was supported by 63 percent of all respondents. Only 19 percent agreed with approval by a state board and 28 percent favored appeal by jury trial.

Annexation by petition found favor among all respondents although 43 percent of the legislators remained neutral and seven percent of municipal officials and 14 percent of technical advisors strongly disagreed.

Annexation by municipal ordinance also found favor among municipal officials and technical advisors. Among those opposed to annexation, 75 percent disagreed. Legislators expressed no strong opinions, although 50 percent disagreed.

Those opposed to annexation overwhelmingly favored annexation by referendum (88 percent). They were joined by 84 percent of legislators. Only eight percent strongly disagreed; all were municipal officials and technical advisors.

Annexation approval by a disinterested state appointed arbitration board found no support among state legislators; 43 percent disagreed and the remaining 57 percent were neutral. A mere 19 percent of all respondents offered support and none of the four groups favored this approach.

Much of the information provided by the first part of the second survey reinforces the findings of the first survey. The following is a summary of some of those respondent attitude findings:

1. Annexation should contribute to total community development.

TABLE XVI
ELEMENTS THAT SHOULD BE IN AN ANNEXATION LAW
PERCENT AGREEMENT BY GROUPS

AN ANNEXATION LAW SHOULD INCLUDE...		STRONGLY AGREE AGREE NEUTRAL DISAGREE STRONGLY DISAGREE				
ANNEXATION BY PETITION						
MUNICIPAL OFFICIALS	33	47	13	-	7	
OPPOSITION	67	11	22	-	-	
TECHNICAL ADVISORS	43	43	-	-	14	
LEGISLATORS	14	29	43	14	5	
ALL RESPONDENTS	39	32	19	3	5	
ANNEXATION BY CITY INITIATED ORDINANCE						
MUNICIPAL OFFICIALS	53	47	-	-	-	
OPPOSITION	13	13	-	25	50	
TECHNICAL ADVISORS	57	43	-	-	-	
LEGISLATORS	-	33	17	50	-	
ALL RESPONDENTS	35	35	3	14	11	
ANNEXATION APPEAL BY JURY TRIAL						
MUNICIPAL OFFICIALS	-	14	14	21	50	
OPPOSITION	57	29	-	14	-	
TECHNICAL ADVISORS	14	-	14	57	14	
LEGISLATORS	-	14	14	71	-	
ALL RESPONDENTS	14	14	11	39	22	
ANNEXATION BY REFERENDUM						
MUNICIPAL OFFICIALS	19	25	6	38	13	
OPPOSITION	63	25	-	13	-	
TECHNICAL ADVISORS	29	29	-	29	14	
LEGISLATORS	14	71	-	14	-	
ALL RESPONDENTS	29	34	3	29	5	
ANNEXATION APPROVAL BY A DISINTERESTED STATE APPOINTED ARBITRATION BOARD						
MUNICIPAL OFFICIALS	7	20	33	27	13	
OPPOSITION	22	-	22	44	11	
TECHNICAL ADIVSORS	-	14	29	29	29	
LEGISLATORS	-	-	57	43	-	
ALL RESPONDENTS	8	11	34	34	13	

Totals may not equal 100 because of rounding.

2. People resist annexation because services are not always provided.
3. There is dissatisfaction with the present Tennessee annexation law.

Survey Results for Parts Two and Three

Part Two of the questionnaire asked respondents to answer yes or no regarding specific elements that might be included in the Tennessee annexation statute. The six elements suggested and responses are shown in Table XVII.

Part Three asked respondents to provide information about their personal annexation experience. This information is included as Appendix V.

Respondents showed very strong support for the first four elements but split on the latter two. Table XVII shows three instances where group responses departed from overall responses. First, 57 percent of the technical advisors said yes to a financial plan compared to 85 percent of all respondents. Second, 89 percent of those opposed, compared to 50 percent of all respondents, favored deannexation if services were not provided; legislators expressed similar opinions. Third, only 14 percent of the technical advisors, compared to 83 percent of the legislators favored a one year delay before allowing an annexation ordinance to become effective.

Summary of Survey Results

Only half of those identified as potential participants responded. Although this was a much lower response rate than obtained in the first survey, it was sufficient for the intended research.

TABLE XVII

THE DESIRABILITY OF SUGGESTED ELEMENTS
FOR THE TENNESSEE ANNEXATION LAW

MOST OF THE RECENT ATTEMPTS TO AMEND THE TENNESSEE ANNEXATION LAW HAVE BEEN AIMED AT RESTRICTING THE ABILITY OF CITIES TO ANNEX BY MUNICIPALLY INITIATED ORDINANCES THAT DO NOT OFFER THE OPPORTUNITY FOR FRINGE AREA PROPERTY OWNERS AND RESIDENTS APPROVAL OR DISAPPROVAL OF THE ANNEXATION. THOSE PUBLIC OFFICIALS RESPONDING TO QUESTIONNAIRE NUMBER ONE HAVE INDICATED THAT THIS PROVISION SHOULD BE RETAINED AS A PART OF TENNESSEE'S ANNEXATION LAW. IN ORDER TO OPERATE UNDER A SIMILAR PROVISION, NORTH CAROLINA CITIES ARE REQUIRED TO DEMONSTRATE THE ABILITY TO PROVIDE URBAN SERVICES. PLEASE INDICATE WHETHER OR NOT YOU BELIEVE THE FOLLOWING ITEMS TO BE DESIRABLE OR HELPFUL ELEMENTS OF AN ANNEXATION LAW IF ANNEXATION BY CITY INITIATED ORDINANCE IS RETAINED AS A PART OF THE TENNESSEE ANNEXATION LAW.

SUGGESTED ELEMENT	RESPONDING GROUPS	PERCENT YES	PERCENT NO
A PLAN THAT PROGRAMS AREAS TO BE CONSIDERED FOR ANNEXATION WITHIN THE NEXT FIVE YEARS.	MUNICIPAL OFFICIALS	82	18
	OPPOSITION	78	22
	TECHNICAL ADVISORS	100	-
	LEGISLATORS	71	29
	ALL RESPONDENTS	83	17
A SERVICES PLAN THAT SPECIFIES, WITHIN A TIME PERIOD SET BY STATE LAW, WHEN ALL SERVICES ARE TO BE PROVIDED.	MUNICIPAL OFFICIALS	71	29
	OPPOSITION	100	-
	TECHNICAL ADVISORS	71	29
	LEGISLATORS	86	14
	ALL RESPONDENTS	80	20
A SERVICES PLAN THAT OUTLINES HOW COST OF SERVICES ARE TO BE FINANCED.	MUNICIPAL OFFICIALS	87	13
	OPPOSITION	100	-
	TECHNICAL ADVISORS	57	43
	LEGISLATORS	100	-
	ALL RESPONDENTS	85	15
A PROVISION THAT PERMITS WORKING FARMS TO BE TAXED AT A LOWER RATE THAN OTHER LAND USES.	MUNICIPAL OFFICIALS	76	24
	OPPOSITION	100	-
	TECHNICAL ADVISORS	86	14
	LEGISLATORS	100	-
	ALL RESPONDENTS	88	12
A PROVISION THAT ALLOWS DEANNEXATION IF SERVICES ARE NOT PROVIDED WITHIN FIVE YEARS OF THE EFFECTIVE DATE OF ANNEXATION.	MUNICIPAL OFFICIALS	41	59
	OPPOSITION	89	11
	TECHNICAL ADVISORS	100	-
	LEGISLATORS	71	29
	ALL RESPONDENTS	50	50
A PROVISION THAT ALLOWS A CITY TO SET THE EFFECTIVE DATE OF ANNEXATION UP TO ONE YEAR AFTER PASSAGE OF THE ANNEXATION ORDINANCE.	MUNICIPAL OFFICIALS	65	35
	OPPOSITION	55	45
	TECHNICAL ADVISORS	14	86
	LEGISLATORS	83	17
	ALL RESPONDENTS	56	44

The survey results can be categorized into three issue related categories--first those related to taxation; second, those related to the provision of urban services, and third, those related to planning and development. The survey showed that respondents believe that people dislike annexation because of higher taxes; they believe that annexation would be more acceptable if taxes were imposed after services were provided. Respondents also indicated that annexation laws should provide a means for taxing farmlands at a lower rate than lands in more intense land uses.

The provision of services was the one issue that most respondents agreed on. Eighty-four percent of all respondents said that municipalities should annex to provide needed urban services; this included 63 percent of respondents identified as being opposed to annexation. The survey showed that 38 percent of the responding municipal officials agreed with a 54 percent majority of all respondents that often needed services are not provided.

Forty percent of all respondents said that a minimal level of services should be required as a part of an annexation action. Thirty-three percent disagreed while 27 percent were neutral. Respondents favored including a time period for providing services to an annexed area. Respondents also favored the inclusion of a financial plan as a means for ensuring that an annexing municipality could provide needed services.

Planning and planning related activities were seen as a legitimate reason for annexation. Respondents felt that vacant lands should be annexed in order to improve planning and development; they felt that municipalities should prepare five-year annexation plans.

The second part of the survey indicated that respondents generally agreed that the three methods of annexation provided in the Tennessee

present law should be retained. This included 26 percent of the opposition group who either agreed or strongly agreed with annexations initiated by municipalities. There was very little positive support for including provisions for third party approval in the form of a state appointed arbitration board.

These are some of the more notable findings of the second survey. These, along with the results of the first survey are discussed below.

Synthesis of the Two Questionnaires

The use of two survey questionnaires was intended first to identify perceived strengths and weaknesses in the annexation laws of Tennessee and North Carolina. The second survey was intended to determine if certain characteristics found in the North Carolina law would be acceptable to the people of Tennessee and help to reduce controversy in the administration and implementation of annexations.

The first survey clearly showed that North Carolina officials felt better about their state law than did their counterparts in Tennessee. It was also clear that few believed the North Carolina law to be either controversial or difficult to administer. Although a few North Carolina respondents noted that their law has been amended recently, and is now more difficult to administer. At least one respondent acknowledged that a part of the problem is unfamiliarity with the new amendments. This section examines other survey findings within the context of certain issues pertinent to this research.

The Issues

The following four issues are considered pertinent to the research:

1. Should municipalities annex?

2. If so, when and under what conditions and circumstances?
3. What procedures should be used to annex?
4. Once an annexation action is completed, what are the obligations and responsibilities of the annexing municipality and the people of the annexed area?

Should municipalities annex? Annexation is viewed by some people as a way for assuring the proper growth and development of cities. The results of both surveys attest to this conclusion. Forty-seven percent of those responding to the first questionnaire said the purpose of annexation is the fulfillment of a community development and growth plan. In the second survey, 84 percent said the purpose of annexation is to ensure proper development. The question might be asked: "What is proper growth and development?"

Also ranked high among the reasons for annexation was the need to provide services within the fringe community. The need to provide services ranked high in both surveys; 30 percent of the responses in the first survey and 84 percent in the second. On the other hand, 54 percent of those responding to the second survey said people do not like to be annexed because often promised services are not needed. There appears to be a dichotomy here: "What is its basis?"

Annexation to expand the municipal tax base ranked third in the first survey and fourth in the second. The second survey contained an element not included in the first, annexation in response to petitions. (Two-thirds of the respondents said municipalities should annex in response to petitions). In the first survey, only 23 percent said the purpose of annexation is the expansion of the municipal tax base; this is compared to 37 percent in the second survey. Can it be said that municipalities do not annex to expand their tax base in spite of the

10. 4. 8
numerous comments alluding to the need for fringe area residents to share in the costs of the municipality's existence?

When and under what conditions and circumstances should a municipality annex? Several first survey respondents made the following comment: "That which is urban in nature should be urban in fact." This statement seems to imply an identifiable distinction between the urban and rural settings. This distinction probably exists, but there are conditions and circumstances that may interfere with the annexation of urbanized fringe areas. Two examples are vacant lands that may not be suitable for urban development and lands that are still in agricultural uses and lie between an unincorporated urbanized fringe area and the municipality.

Most respondents in the first survey believed that a municipality could not have a successful annexation program if annexations were dependent upon the initiation by and approval of fringe area residents. Respondents holding the opposite view were asked to describe conditions and circumstances that might require annexation without fringe area approval. Most said the need to protect the integrity, health, safety, and welfare of the municipality and the fringe community was sufficient reason.

Participants in both surveys were asked their views on the annexation of vacant and agricultural lands, and waiting until an area developed before initiating annexation actions. Most respondents were reluctant to advocate the annexation of vacant and agricultural lands, but in the second survey almost 70 percent said the annexation of vacant lands is an important method for land use management. This can be contrasted to the 23 percent in the first survey that favored waiting until land developed before annexing.

If municipalities annex in order to offer better services and land use management, and vacant and agricultural lands seldom need most urban type services, but are needed for land use management purposes, why are municipalities reluctant to annex such lands?

What procedure should be used to annex? Four annexation procedures -- petition, referendum, state arbitration, and unilateral annexation by municipalities -- were presented to survey participants. All except state arbitration found support for inclusion in the state enabling law. State arbitration was not singled out as an undesirable, but respondents in both surveys tended to be neutral. The greater portion of the neutral responses were given by municipal officials and those opposed.

The first survey showed that only 35 percent of the Tennessee respondents said the law is controversial; 21 percent said it needs major revision; 24 percent said the law is easy to understand and administer. These results may indicate that the problems and controversy may rest with the administration of the law rather than in the fact that the law contains unilateral provisions. This possibility is given credence when considered in view of the North Carolina responses. Of these responses, 73 percent said the law is easy to understand and administer, only 13 percent said the law is either controversial or made it difficult to annex. What makes the North Carolina law simpler than the Tennessee law?

What are the obligations and responsibilities of those involved in an annexation action? Almost 63 percent (Table XIV) of those identified as being opposed to annexation were in favor of annexation to provide needed services and 75 percent agreed with annexation to ensure proper development. This places these respondents with other second

survey respondents and those responding to the first survey in their belief that municipalities should annex to provide services. All of those opposed to annexation said that promised services are often not provided. Thirty-eight percent of the responding municipal officials agreed, as did 86 percent of the responding state legislators. Thirty-one percent of the municipal officials and 29 percent of the technical advisors took a neutral position on the issue.

If those who have opposed annexations in the past, favor the annexation of territory in order to provide services and improved community development, and municipal officials and technical advisors say that these are the prime reasons for annexation, then why is there disagreement when municipalities attempt to annex?

The answers to the questions raised in this section are important in the resolution of the issues identified above and may help to reduce some of the controversy surrounding annexation in Tennessee. The next chapter will look closer at these questions and provide some possible answers. It will also address other questions not discussed in this section.

CHAPTER VI

CONCLUSION

Almost five percent of the 61,000 annexations reported to the Bureau of the Census between 1970 and 1980 occurred in Tennessee and North Carolina. Tennessee municipalities reported 833; 1,959 were reported by North Carolina municipalities. Much of the growth that has occurred in larger municipalities such as Memphis and Chattanooga in Tennessee and Raleigh and Charlotte, North Carolina has been attributed to annexation actions. Annexation has also contributed to growth in smaller municipalities such as Hendersonville, Tennessee and Selmer, North Carolina.

The increase in the land area alone demonstrates the impact annexation has had on these municipalities. Memphis and Chattanooga added approximately 63 square miles. Charlotte has added in excess of 65 square miles and Raleigh more than 28 square miles. Similar experiences have occurred in smaller municipalities; Hendersonville increased its land area from approximately 0.6 square miles to approximately 13.5 square miles. Annexations have increased the land area of Selmer from 1.5 to 2.7 square miles.

Without doubt annexation plays an important role in municipal growth. The growth of cities on the other hand is a more natural phenomenon. Cities are the result of a human need for social interaction and protection; municipalities are created to provide organizational structure to ensure that these needs are met. A municipality should serve as the heart of a community of interest that makes up a city.

Recognition of the community of interest concept has not been included as a part of the Tennessee annexation law; in fact it appears that this concept is not generally recognized by the Tennessee General Assembly, municipal officials, or the residents of fringe communities. This is not the case in North Carolina, where survey respondents acknowledged the need for such recognition if a municipality is to have a successful annexation program. The North Carolina annexation law also reflects this concept.

North Carolina's recognition of this concept is not the only attitudinal difference revealed during this research. It was noted in Table IV that 90 percent of the North Carolina respondents were professional city administrators, compared to 64 percent of the Tennessee respondents. This seems to indicate that North Carolina municipalities depend upon professional administrators (city managers) more than Tennessee municipalities. If this is the case, then it is reasonable to assume that North Carolina municipalities may have a greater degree of continuity in municipal government than Tennessee where elected executives are often elected for two year terms rather than four year staggered terms. This may also account for the higher levels of experience and understanding of that state's annexation laws. Continuity in government also contributes to the ability of municipalities to provide the services required by citizens.

Municipalities meet the needs of their citizens by providing services deemed necessary for the well-being of citizens. The number and quality of services made available is determined by the willingness of citizens to make available the funds necessary for such services through taxation. Citizens are generally willing to make

such funds available if there is a perception that their monies are being used effectively to provide the services.

An effective planning program helps the municipal governing body balance the provision of needed and desired services against the willingness of citizens to pay. This effort can be made more difficult when a sizable portion of the community is not willing to share in the costs of providing services and are not within the legal jurisdiction of the municipality. It is also difficult for the community to manage growth and development and provide needed urban services.

Municipalities have the authority to levy taxes upon their citizens to pay for services. This authority is not extended to affect persons living in unincorporated fringes who may share in the benefits offered by the municipality. Without power to impose taxes and municipal policies in fringe communities, and without other equitable means for sharing costs, such as the imposition of policies, user fees, or the redistribution of funds collected by a governmental unit having jurisdiction over fringe communities, municipal taxpayers must bear more than their share of the costs of maintaining the municipality. Annexation is one tool available in each of the 50 United States for managing growth and development, providing urban services and shifting the burden of municipal maintenance in an equitable manner.

The Tennessee annexation statute has been identified as being one of the "more liberal" annexation laws in the nation. Today this statute is under attack because it fails to meet the needs of both Tennessee municipalities and citizens who may be subject to annexation actions. Earlier chapters have provided discussions of the pros

and cons of annexation, the need for annexation, a comparison of the statute is under attack because it fails to meet the needs of both Tennessee municipalities and citizens who may be subject to annexation actions. Earlier chapters have provided discussions of the pros and cons of annexation, the need for annexation, a comparison of the Tennessee and North Carolina statutes, and the results of surveys administered in these states. These discussions have provided the basis for one conclusion: there is sufficient concern to warrant a thorough evaluation of the present Tennessee law which should lead to significant changes in its purpose content, and administration.

Revising the Tennessee law in itself will not result in all of the administrative improvements needed to make unilateral annexation more acceptable in Tennessee. A part of the success demonstrated in North Carolina and other states must be attributed to attitudinal differences. The clarity of the enabling statutes may provide the basis for the development of positive attitudes toward annexation, but it is the manner in which annexation is perceived that determines the life span of positive attitudes.

Responsibility for the development of positive perceptions must be shared primarily between the state legislature which makes the laws and local public officials who must put the laws into effect. Legislators and other public officials must recognize the community of interest shared between municipalities and their fringes. This can be demonstrated first by the legislature through the adoption of effective legislation and second by public officials in its application.

Public officials have a special responsibility, for their role is most visible. They are in position to recognize the need for

Local public officials have a special responsibility, for their role is most visible. They are in position to recognize the need for annexation actions and they are responsible for ensuring that municipal growth keeps pace with the growth of the city. They cannot afford to allow fringe growth to exceed the ability of the municipality to provide services nor can they provide services to fringe areas without first considering the impact on future expansions of the municipal boundary.

The Issues

Several issues were raised in the "Statement of Purpose" and in the concluding section of Chapter V. These issues have been reduced through synthesization to four issues to be presented in this chapter. These issues are:

1. Should municipalities annex?
2. When and under what conditions should municipalities annex?
3. What are the obligations and responsibilities of an annexing municipality and those being annexed?
4. What procedure should be followed in annexing territory?

Should Municipalities Annex

Earlier discussions have presented evidence that public officials who are responsible for the enactment of annexation laws, those responsible for their administration, and citizens who have opposed annexation agree there are conditions and circumstances that warrant the annexation of territory by municipalities. It has been established by the United States Supreme Court that it is within the power

of a state legislature to determine the governmental subdivisions within its jurisdiction. It has also been established by the Court that the legislatures have the power to determine municipal boundaries and to delegate these powers to municipal governing bodies. In this setting, it can be concluded that there are times that a municipality should annex. Based upon the research findings annexation is a viable consideration for dealing with the problems associated with urbanization. The survey showed that annexation is a reasonable means for providing services to fringe areas and for land use and development management. There was also non-conclusive evidence that a municipality should annex in order to expand its tax base.

Municipalities are generally charged by state legislatures to act as an extension of the state, and as is the case in California and some other states, may be forced to annex territory to carry out state mandated functions. Tennessee municipalities are not forced to annex territory in order to remove threats to the state, the municipality, or a fringe community.

Unilateral annexation provisions have been the focus of attention in challenges to the Tennessee law. They have also been the focus of this research. The research has resulted however in a new question: Is the problem with the unilateral provisions of the law per se, or is it the way these provisions have been used? If it is the latter, then the method of annexation is of little consequence. However, based upon survey results, it would seem prudent to retain municipal unilateral annexation powers because many people would not consent to annexation.

The surveys have shown that other annexation methods present only minor, if any, problems. Annexation by referendum and annexation in response to petitions received high rating from most survey respondents. Even the suggestion of a state review board to approve annexation actions was not rejected. These annexation methods offer third party review, something not established in the Tennessee statute. Some people may say the law requires a public hearing. True, but in most instances, such hearings have little influence on the outcome of an annexation decision. Its main function has been to identify the strength of the opposition.

Tennesseeans have, however, established a system of de facto review of unilateral annexation actions -- almost any unilateral annexation ordinance adopted will be challenged in court if there is sufficient political and financial support in opposition. Often, municipalities will forego an annexation action in the face of such opposition, regardless of the need for the annexation.

The Timing And Conditions Under Which A Municipality Should Annex

Resolution of this issue requires the examination of several subordinate issues:

1. Does the municipality have the capacity to service the area?
2. Should the municipality have unlimited discretion in deciding the suitability of an area for annexation?
3. Should the municipality be limited in the frequency of annexing territory?

The first and third of these can be discussed concurrently. The capacity of a municipality to service an annexed area should influence the decision-making process that determines the frequency of annexation by a given municipality. The frequency of annexation is included in this discussion because in recent years a number of proposed amendments to the Tennessee law have sought to limit the number of times a municipality could annex within specified time period.

Capacity to serve. In spite of the recognized fact that municipalities do sometimes annex in order to expand the municipal tax base, the first and foremost consideration in an annexation decisions should be the municipality's ability to provide services to the area being annexed without jeopardizing the level of services to present citizens. A municipality that has the ability to provide needed services is in a better position to control other issues related to the annexation process, such as the frequency of annexation, than those that lack capacity.

One of the more frequent complaints about annexation is the failure of the municipality to provide services. Such complaints are sometimes made by citizens of the municipality who feel that the level and choice of services being offered are either inappropriate or inadequate. In order for a municipality to have a successful annexation program it must have both the ability and the capacity to provide the services required for its citizens.

On several occasions the Tennessee General Assembly has included the frequency of annexation in its debates of the annexation issue. The 1980 amendment restricted unilateral annexations by

municipalities of 10,000 or more population to one annexation per 24 month period, if such annexations increased the municipality's land area by 25 percent. The frequency of annexation should be a function of the municipality's ability and capacity to service its citizens and not its population size.

Suitability of the area to be annexed. Unlimited discretion in deciding the suitability of an area for annexation is not advisable, although municipalities should be granted broad discretion within a framework established by the Tennessee General Assembly. Planning the growth and development of the municipality has been cited as a reason for annexation and it has been acknowledged that some fringe areas present liabilities that the municipality cannot afford. Unlimited discretion without proper restrictions imposed in the language of the law will permit the continued avoidance of areas that cannot pay their fair share, thus hindering any potentials for total community growth and development.

Another potential problem is the possibility of annexing vast farmlands and increasing pressures for development. This can be an expected outcome where services are made available and farmlands are taxed at a rate as high as more intense land uses. Tennessee law does offer some relief through its Agricultural, Forest, and Open Space Land Act of 1976 for landowners who desire some level of protection from the pressures of development.

This Act offers such landowners the opportunity to maintain their lands in the protected classifications and pay lower taxes as long as the lands are maintained in the protected use. The law is

also designed to penalize speculators by requiring a three to five year roll-back to appropriate tax rates should the land use be changed to an unprotected land use activity. The Act gives the property owner some control over when the land will be developed but allows the municipality to annex the area without placing an undue burden on those who might otherwise resist annexation because of higher taxes. The Act does not relieve the property owner of all municipal taxes, but may make annexation more palatable.

Obligations and Responsibilities

Municipalities have an obligation to provide those services required by the state legislature, as well as those deemed necessary for the health, safety, and welfare of its citizens. Citizens have the responsibility of electing officials who will recognize and fulfill their obligations.

Municipal obligations. The examples provided by North Carolina, which recognizes the relationship between state and municipal needs; by Illinois, leading the nation in the number of annexations, primarily through annexation agreements; and by California and Oregon, two states which coerce municipal annexations, show that some states recognize municipalities as tools for providing needed services to state citizens. The fact that population densities will generally trigger needs should be sufficient for legislators and municipalities to recognize the opportunities and responsibilities municipalities have for providing needed services. Normally, municipalities are in better position for meeting the needs of urban communities than other levels of government.

Fringe area resident responsibilities. The perceptual flaw in the minds of many fringe area residents is that they either have no

obligations or responsibilities to their neighboring municipality or such obligations and responsibilities are voluntarily fulfilled as a result of their proximity to and interaction with the municipality. Neither position in and of itself can be held to be valid in all cases, thus the need for fringe residents to recognize their true relationship with the municipality. To paraphrase Sengstock, an imaginary line between the municipality and its fringe communities does not prevent the spread of crime, disease, and discontent.

Plato's concept of the origin of cities should provide the guidance: people tend to gather and form cities for their own mutual protection and interaction. This is still the case. While it is generally true that cities are no longer walled fortresses, the social, cultural, and economic amenities protect the quality of life chosen by those who choose to live both within and near the municipality.

Acceptance of these concepts will allow fringe area residents to face and deal with the real problems threatening municipalities as well as the quality of life of those who live in the fringes. The real responsibility of fringe residents is the recognition of mutual responsibility for the urban environment. They can demonstrate their responsibility by becoming an integral part of the urban community as electors of those responsible for its management and by sharing in the costs of its maintenance. It can be acknowledged that the existence of fringe communities provide some degree of economic support for municipalities. But that support must be formalized if adequate planning is to occur and if appropriate services are to be provided by the municipality.

Annexation Procedures

If, as has been suggested, the major problem with annexation in Tennessee is not the unilateral provisions, but rather the way the law is used, then unilateral annexation is the scapegoat of public protest. Attempts to restrict and eliminate this method of annexation are perhaps misplaced. Should the focus most appropriately be on the removal of the problems associated with the way the law is used?

Providing services, fulfilling a community growth management plan, and expanding the municipal tax base were the reasons cited by survey respondents who said municipalities should annex. They also said that a good annexation law and a good public relations effort are important to a successful annexation program. The comparison of the North Carolina and Tennessee statutes has suggested that North Carolina does not have the problems with annexation that Tennessee has. The research also showed that although there are similarities in the laws of the two states, the differences are such that changes to the Tennessee law should be considered.

The Bases For Recommendations

The primary bases for the recommendations that follow are the survey finding that survey respondents are dissatisfied with the present annexation law and the writer's judgment, based upon professional experience, that there is widespread dissatisfaction with the present Tennessee annexation law. A supporting basis is the finding that the North Carolina example addresses some of the concerns identified by Tennessee survey participants.

Dissatisfaction with the Tennessee law. A major factor leading to the conclusion that there is dissatisfaction with the Tennessee law is the fact that there has been a strong effort to have the law changed. This effort is supported most by those who have been the target of an annexation action and those who feel the threat of future annexation actions. Although local public officials have rarely promoted changes to the law, the survey results show that they believe the law needs to be revised.

The surprise finding of the research was the fact that those who were identified as opposed to annexation, were not entirely opposed to annexation in itself. Their complaint centered around the failure of municipalities to provide promised services and the perception that they would not get an equitable return for their tax dollars. Another concern was their feeling that they are not being given adequate voice in the annexation process.

The North Carolina example. Several differences between the Tennessee and North Carolina statutes were pointed out under the heading "Summary of Statutes and Observations" in Chapter III. The following highlights are presented:

1. The format of the North Carolina law is clearly defined; section headings almost always identify the subjects dealt with within the section.
2. The North Carolina statute clearly states the purpose of the law is to provide services in support of the economic development of the state.

3. The North Carolina law clearly supports the protection of municipalities and their right to exist and prosper as an important link between the state and its citizens.
4. The North Carolina law has stronger plan of services provisions.
5. The North Carolina law specifies a time period for the provision of services to newly annexed areas.

Other considerations. In addition to dissatisfaction with the Tennessee law and the example offered by the North Carolina law, other bases for recommendations were identified.

1. Tennessee municipalities are often unprepared to annex and are too dependent upon revenues generated by property taxes in the annexed area for the provision of needed services.
2. The Tennessee law fails to recognize the relationship between annexation, the provision of services, and land use planning and development.
3. Tennessee municipalities often fail to develop positive cooperative relationships with fringe communities.

Recommendations

If Tennessee municipalities are to preserve unilateral annexation, changes need to be made on two fronts. First, municipalities need to develop positive cooperative relationships with fringe communities; second, Tennessee municipalities need to exercise leadership in the effort to have the state enabling law changed instead of only reacting against proposals put forth by fringe area residents and others who are anti-municipal government.

The perception of abuse of the present law appears to have done more to alienate fringe area residents and legislators representing rural and suburban communities than any real abuse discovered in this research. Educating fringe residents as well as municipal residents to the natural form of cities and the interrelationships between municipalities and their fringe communities is most important. Obedience to the law is also important to creating a new atmosphere: the present law provides for annexation for the protection of the municipalities as well as fringe areas, and although the law does not specify a time period for the provision of services there is a provision that requires the preparation and publication of an annual report specifying services provided until all services have been provided. Unfortunately, this report is rarely prepared. Annexed residents and property owners have the right to mandamus action to force the issue; this is rarely done. It is generally accepted among technical advisors and municipal officials that five to eight years is a reasonable time period for providing services. A good faith effort by municipalities to comply with the spirit of the law will help to promote an atmosphere that will encourage fringe communities to want to be a legal as well as a physical part of the municipality.

Municipalities must also consider the impacts of providing services prior to annexation. Some municipalities will provide services to fringe communities at the same or just above the costs they provide them to their municipal residents. This practice hurts when such municipalities later attempt annexation. Often fringe area residents will not see the benefit in exchanging high user fees and high fire

insurance premiums for municipal taxes and slightly lower user fees. These considerations do not include such benefits as use of municipal services such as recreation facilities and programs which are difficult to assign user fees.

Tennessee municipalities can no longer permit suburban and rural residents to unduly influence the form and content of legislation. Definitive action is needed to change Tennessee's annexation laws so that they will more fairly reflect the interrelationships of municipalities and their fringes. Obviously, preservation of the unilateral provisions of the law falls short of the needs of municipalities, if annexation ordinances must be constantly defended in the courts.

Any effort made to resolve the unilateral annexation issue in Tennessee should have as its objective the provision of methods for ensuring that the needs of both municipalities and fringe communities are met. A new concept of municipal-fringe area relationship should be adopted and put into practice. A municipality should be seen as an extension of the state's effort to provide for the needs of its citizens and not as independent entities established solely for providing for the needs of people who choose to live within its corporate limits.

This concept should be established and embraced in a new annexation law for the people of Tennessee. The new law should not only authorize municipal annexations, it should encourage them. The law should clearly state that it is an objective of state government to ensure adequate public services are made available to the people of Tennessee. It should establish standards and criteria by which

municipalities will use annexation to achieve this objective. In addition to a statement of state policy the law should address the following:

1. A pre-annexation plan
2. Alternative methods for effecting annexation
3. Criteria upon which to base annexation decisions
4. Minimum standards for providing services to annexed areas
5. Annexation procedures
6. Appeals procedures

A pre-annexation plan. One of the problems with annexation in Tennessee can be traced to the fact that some municipalities are unprepared to annex. Whether in response to petitions or of their own initiative, municipalities should be prepared to service annexed areas within a reasonable time after annexation. In order to remove this shortcoming municipalities should plan ahead. An on-going annexation program should be a part of the municipality's planning program. It should identify areas that can be expected to be suitable for annexation within a specified time period. The plan should identify expected needs for the area and offer methods for fulfilling such needs.

Methods of annexation. The three methods of annexation presently in effect seem to meet the needs of all parties, and should remain in place; these are annexation by petition, referendum, and municipally initiated ordinance. The first two require no discussion since they have not been the focus of controversy. The third, unilateral annexation offers opportunities for "land and tax grabbing" and should be controlled. Methods for effecting control is discussed below.

The decision to annex. The decision to annex should be based upon the knowledge that the municipality will be able to fulfill and implement its plan. Development potential and existing development within the area should be considered, but not as the sole condition for the decision to annex. The minimum criteria should be established in state law. It may allow a municipality to annex an area to either encourage or delay development. In the first situation, the law may require that the municipality commit to a minimum level of services if the area is sparsely developed, but must be prepared to provide services as they are required. In the second situation, a municipality may annex with no intentions of providing services if it can justify delaying development. A third situation might be one that considers the need for services in a developed fringe community.

Service standards. Service delivery is the key to successful retention of unilateral annexation. The state law must address both the level and timing of services. Both of these concerns must be clearly defined with little room for deviation. If municipalities adhere to the earlier recommendation aimed at long-term planning prior to annexation, there would be few excuses that could be used to justify failure to provide services at a required level and within a reasonable time period.

Taxation. A key finding was shared by many survey respondents concerning the effect of taxes in the area annexed. Consideration should be given to provisions in the law that link the application of taxes to the provision of services. Newly annexed residents and property owners should not be made to pay municipal taxes for long

periods unless services are available or can be offered within five years of annexation.

Annexation procedures. Proper control of unilateral annexation activities is important. The pre-annexation plan helps to ensure that a municipality is prepared to annex and it alerts fringe residents and property owners that the area is subject to municipal annexation. This phase of the process will afford the opportunity for negotiations and clarification of what to expect prior to completion of the annexation process. It should include a public notice, a public hearing, the preparation and adoption of a plan of services, adoption of an annexation ordinance, and a post-annexation evaluation report.

Generally, public hearings have been one-sided. The municipality presents its case, hears the comments of attendees, and vote on the question. In some instances, the municipality may have considered the concerns expressed at the hearing and in others those concerns have been ignored. At a minimum the concerns of fringe area residents and property owners should be addressed. This may require the preparation of a written report or a follow-up hearing prior to the adoption of the final ordinance.

The plan of services as presently formatted will generally address most services expected to be provided, however, they tend to be general and in some cases vague. The plan of services should be as specific as is reasonable. It should, at a minimum, consider concerns voiced during the public hearing. Where services are not to be made available immediately, the plan should include a time schedule.

The time schedule can provide a basis for evaluating the success of the annexation at the end of the period required for providing services. Such an evaluation report should be required as is under the present law. However, it should be published and submitted to a state monitoring agency responsible for ensuring proper performance and compliance.

Appeals. Reasonableness, compliance with the law, and performance should be the legal bases for appealing an annexation action. Each should be defined and the municipality should be responsible for maintaining appropriate documentation. The appeals process should not involve a jury. Ideally, the appeal should be heard by an administrative judge familiar with municipal government and state policies regarding the provision of public services.

Summary

As long as there are multiple levels of local governments and a variety of government sanctioned service providers, there will be differences of opinion on the responsibilities and level of service to be provided. Municipalities have traditionally accepted responsibility for providing or ensuring the highest level of services to people at the local level. In most instances it must be concluded that these services are both needed and desired.

It cannot, however, be concluded that annexation is the best method for assuring that services are provided most effectively by municipalities. Annexation is but one of several ways that are available; annexation, when properly accomplished, is a simple

practical solution. Of all the methods of annexation, unilateral annexation has been identified as the most controversial in Tennessee. This research has revealed that a part of this controversy can be attributed to both real and perceived abuses. The elimination of these should make unilateral annexations more acceptable in Tennessee, as it is in North Carolina and other states that do not require the approval of persons subject to the annexation action.

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APPENDIXES

APPENDIX I

TABLE OF CASES CITED

TABLE OF CASES

- Central Soya v. Chattanooga, 207 Tenn. 138, 338 S.W. 2d 576 (1960)
- City of Durham Annexation Ordinance No. 5791, 311 S.E. 2d 898 (1984)
- City of Town and Country v. St. Louis County, 657 S.W. 2d 598 (1983)
- City of Wood Village V. Portland Metropolitan Area Local Government Boundary Commission, 48 Oregon Reporter 79 (1980)
- Ferrini v. City of San Luis Obispo, 197 California Reporter 694 (1983)
- Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 65 North Carolina Reports 165 (1984)
- Henrico County v. Richmond, 1977 Virginia 789, 15 S.E. 2d 309 (1941)
- Hunter v. City of Pittsburg, 207 S.S. 167, 28 SC 40, 52 LE 151 (1904)
- Kelley v. City of Pittsburg, 104 U.S. 78, 26 LE 658 (1881)
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- Morton v. Johnson City, 206 Tenn. 411, 333 S.W. 2d 924 (1960)
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- Ritchie v. Brookhaven, 217 M 860, 65 So 2d 683
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- West Side Sanitary District v. Land Conservation and Development Commission. Supreme Court of Oregon, 614 2d 1148 (1980)
- Witt v. McCanless, 200 Tenn. 360, 292 S.W. 2d 392 (1952)

APPENDIX II

SURVEY QUESTIONNAIRES

MUNICIPAL ANNEXATION ATTITUDE SURVEY

(Additional comments and/or explanations are welcomed.)

1. What is your official position.
- _____ Elected public official
- _____ Municipal employee
- _____ Technical assistance advisor (____ Private consultant;
_____ State Agency employee; _____ University employee.)
- _____ Other _____
2. During the last five years how many annexation actions has your organization participated in?
- _____ None
- _____ One to three
- _____ Four to ten
- _____ More than ten
3. Please rate your knowledge and experience with the annexation laws and practices of your state.
- | Knowledge | | Experience |
|-----------|------------------|------------|
| _____ | <u>EXCELLENT</u> | _____ |
| _____ | <u>GOOD</u> | _____ |
| _____ | <u>FAIR</u> | _____ |
| _____ | <u>POOR</u> | _____ |
4. Which one of the following best describes your view of annexation?
- _____ Annexation is to extend services to a fringe area.
- _____ Annexation is to expand the municipal tax base.
- _____ Annexation is to fulfill a planned community development program.
- _____ None of the above, my view is _____

5. Do you believe that a municipality can have a successful annexation program where the residents of the area to be annexed must initiate and approve the annexation?

Yes _____ No _____

Your reason for this viewpoint:

Answer question #6 only if you answered "Yes" to question #5.

6. Do you believe there are any situations which might require that a municipality annex territory without the approval of residents and/or property owners in the area being annexed?

Yes _____ No _____

If yes, what situation(s)?

7. Generally, annexation laws require that urban services comparable to those provided within the municipality be provided to newly annexed territory. Please indicate your views on the timeframe within which various municipal services should be made available:

		Available Immediately	Within One Year	Within Two Years	Within Five Years	As Budget Permits	Other (Please Explain)
Police							
Fire							
Water							
Sewer							
Street lights							
Road improvements							

8. Please check any of the following statements that you believe to be true about the annexation laws of your state.

_____ The laws are easy to understand and follow.

_____ The laws need major revisions.

_____ The laws make it difficult to annex.

_____ The annexations process is so controversial that cities are reluctant to annex.

_____ Other. (Please explain.)

#2

9. Most state annexation laws offer alternative annexation procedures and some specify conditions for annexation. Please indicate your opinion of the relative desirability of the following as elements of an annexation law.

	VERY DESIRABLE			NOT DESIRABLE	
	1	2	3	4	5
Annexation by referendum	—	—	—	—	—
Annexation by ordinance initiated by a municipality and without voter approval	—	—	—	—	—
Annexation initiated by a municipality, but given final approval by an annexation review board	—	—	—	—	—
The annexation of active farm or agricultural lands.	—	—	—	—	—
The annexation of land only after it is developed in urban use.	—	—	—	—	—
A requirement specifying a time period for providing services.	—	—	—	—	—
A provision that allows the proration of taxes.	—	—	—	—	—

YOU MAY USE THE SPACE BELOW TO MAKE ADDITIONAL COMMENTS OR ELABORATE ON ANY RESPONSE YOU HAVE GIVEN.

10. Please indicate what you believe to be most important in having a successful annexation program (i.e. public relations, education, good state enabling legislation, etc.).

#2

PART ONE

ANNEXATION PROCEDURES IN TENNESSEE HAVE BEEN DESCRIBED AS AMONG THE BEST IN THE NATION BY SOME PEOPLE WHILE OTHER PEOPLE HAVE DESCRIBED THEM AS AMONG THE WORST IN THE NATION. THE FOLLOWING FIVE (5) STATEMENTS RELATE TO SOME OF THE MORE FREQUENT COMMENTS MADE TO DESCRIBE PROBLEMS WITH ANNEXATION IN TENNESSEE. PLEASE INDICATE YOUR LEVEL OF AGREEMENT OR DISAGREEMENT WITH THESE STATEMENTS.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
-------------------	-------	---------	----------	----------------------

1. PEOPLE DON'T LIKE TO BE ANNEXED BECAUSE...
 - A. OF THE ADDED TAX BURDEN.....[] [] [] [] []
 - B. OFTEN, PROMISED SERVICES ARE NOT PROVIDED...[] [] [] [] []
 - C. OFTEN, SERVICES ARE NOT NEEDED.....[] [] [] [] []
2. PEOPLE WOULD FIND ANNEXATION ACCEPTABLE IF...
 - A. TAXES WERE IMPOSED AFTER SERVICES WERE PROVIDED.....[] [] [] [] []
 - B. A MINIMAL LEVEL OF CITY SERVICES WERE REQUIRED[] [] [] [] []
 - C. ANNEXATIONS WERE APPROVED BY A DISINTERESTED THIRD PARTY SUCH AS A STATE ARBITRATION BOARD[] [] [] [] []
3. CITIES SHOULD ANNEX TO...
 - A. EXPAND THE MUNICIPAL TAX BASE.....[] [] [] [] []
 - B. PROVIDE NEEDED URBAN SERVICES.....[] [] [] [] []
 - C. ENSURE PROPER DEVELOPMENT AROUND THE CITY...[] [] [] [] []
 - D. RESPOND TO PROPERTY OWNER PETITIONS.....[] [] [] [] []
4. VACANT LANDS SHOULD BE ANNEXED TO...
 - A. IMPROVE PLANNING AND SERVICE DELIVERY. [] [] [] [] []
 - B. ONLY IF THEY ARE BETWEEN THE CITY AND ALREADY DEVELOPED AREAS TO BE ANNEXED.....[] [] [] [] []
 - C. MANAGE THE RATE AND QUALITY OF URBAN DEVELOPMENT.....[] [] [] [] []
5. AN ANNEXATION LAW SHOULD INCLUDE...
 - A. ANNEXATION BY PETITION.....[] [] [] [] []
 - B. ANNEXATION BY CITY INITIATED ORDINANCE.....[] [] [] [] []
 - C. ANNEXATION APPEAL BY JURY TRIAL.....[] [] [] [] []
 - D. ANNEXATION BY REFERENDUM.....[] [] [] [] []
 - E. ANNEXATION APPROVAL BY A DISINTERESTED STATE APPOINTED ARBITRATION BOARD.....[] [] [] [] []

PART TWO

MOST OF THE RECENT ATTEMPTS TO AMEND THE TENNESSEE ANNEXATION LAW HAVE BEEN AIMED A RESTRICTING THE ABILITY OF CITIES TO ANNEX BY MUNICIPALLY INITIATED ORDINANCES THAT DO NOT OFFER THE OPPORTUNITY FOR FRINGE AREA PROPERTY OWNERS AND RESIDENTS APPROVAL OR DISAPPROVAL OF THE ANNEXATION. THOSE PUBLIC OFFICIALS RESPONDING TO QUESTIONNAIRE NUMBER ONE HAVE INDICATED THAT THIS PROVISION SHOULD BE RETAINED AS A PART OF TENNESSEE'S ANNEXATION LAW. IN ORDER TO OPERATE UNDER A SIMILAR PROVISION, NORTH CAROLINA CITIES ARE REQUIRED TO DEMONSTRATE THE ABILITY TO PROVIDE URBAN SERVICES. PLEASE INDICATE WHETHER OR NOT YOU BELIEVE THE FOLLOWING ITEMS TO BE DESIRABLE OR HELPFUL ELEMENTS OF AN ANNEXATION LAW IF ANNEXATION BY CITY INITIATED ORDINANCE IS RETAINED AS A PART OF THE TENNESSEE ANNEXATION LAW.

	YES	NO
1. A PLAN THAT PROGRAMS AREAS TO BE CONSIDERED FOR ANNEXATION WITHIN THE NEXT FIVE (5) YEARS.	[]	[]
2. A SERVICES PLAN THAT SPECIFIES, WITHIN A TIME PERIOD SET BY STATE LAW, WHEN ALL SERVICES ARE TO BE PROVIDED.	[]	[]
3. A SERVICES PLAN THAT OUTLINES HOW COST OF SERVICES ARE TO BE FINANCED.	[]	[]
4. A PROVISION THAT PERMITS WORKING FARMS TO BE TAXED AT A LOWER RATE THAN OTHER LAND USES.	[]	[]
5. A PROVISION THAT ALLOWS DEANNEXATION IF SERVICES ARE NOT PROVIDED WITHIN FIVE (5) YEARS OF THE EFFECTIVE DATE OF ANNEXATION.	[]	[]
6. A PROVISION THAT ALLOWS A CITY TO SET THE EFFECTIVE DATE OF ANNEXATION UP TO ONE YEAR AFTER PASSAGE OF THE ANNEXATION ORDINANCE.	[]	[]
7. OTHER: PLEASE ADD OTHER PROVISION THAT YOU BELIEVE SHOULD BE A PART OF THE STATE ANNEXATION LAW. _____		

PART THREE

PLEASE INDICATE THE APPROXIMATE NUMBER OF ANNEXATIONS YOU HAVE PARTICIPATED

IN _____. ANSWER ALL THAT APPLY.

	YES	NO
A. AS A PUBLIC OFFICIAL	[]	[]
B. AS A RESIDENT OR PROPERTY OWNER IN AN AREA BEING CONSIDERED FOR ANNEXATION	[]	[]
C. AS AN ANNEXATION OPPONENT.	[]	[]
D. AS AN ANNEXATION PROPONENT	[]	[]
E. AS AN ADVISOR TO A CITY CONSIDERING ANNEXATION	[]	[]
F. AS AN ADVISOR TO AN OPPOSITION GROUP OR AN INDIVIDUAL	[]	[]
G. AS AN ADVISOR TO A PROPONENT GROUP OR INDIVIDUAL	[]	[]
H. OTHER: PLEASE SPECIFY. _____		

OTHER COMMENTS MAY BE ADDED BELOW.

[] YES I AM INTERESTED IN RECEIVING THE RESULTS OF THE SURVEYS.

NAME _____

ADDRESS _____

APPENDIX III

PARTICIPATING MUNICIPALITIES

PART ONE

NORTH CAROLINA MUNICIPALITIES OF 2,500 OR MORE POPULATION
REPORTING TEN OR MORE ANNEXATIONS: 1970-1979

MUNICIPALITY	1980 POPULATION	RESPONDING OFFICIAL	
		ELECTED	EMPLOYEE TECHNICAL ADVISOR
APEX	2,847		X
ASHBORO	15,244		X
BURLINGTON	37, 324		X
CARBORO	7,336		X
CARY	21,708		X
CHAPEL HILL	32,461		X
CHARLOTTE	314,447		X
CHERRYVILLE	4,844		X
CONCORD	15,942		X
CONOVER	4,245		X
DUNN	8,962		X
DURHAM	100,847		X
ELKIN	2,855	X	
FAIRMONT	2,578		X
FAYETTEVILLE	59,507		
FOREST CITY	7,688		X
GARNER	10,073		X
GASTONIA	47,285		X
GOLDSBORO	31,895		
GREENVILLE	35,740		X
HAVELOCK	17,718		
HENDERSONVILLE	6,862	X	
HICKORY	20,753		X
HIGH POINT	63,355		X
HOPE MILLS	5,412		X
HUDSON	2,888		X
JACKSONVILLE	17,056		X
KINGS MOUNTAIN	9,116		X
KINSTON	25,234		X

PART ONE CONTINUED

NORTH CAROLINA MUNICIPLAITIES OF 2,500 OR MORE POPULATION
REPORTING TEN OR MORE ANNEXATIONS: 1970-1979

MUNICIPALITY	RESPONDING OFFICIAL		
	1980 POPULATION	ELECTED EMPLOYEE	TECHNICAL ADVISOR
LENOIR	13,748	X	
LEXINGTON	15,711		
LINCOLNTON	4,843		
LONGVIEW	3,607	X	
LOUISBURG	3,238	X	
LUMBERTON	18,241	X	
MINT HILL	7,915	X	
MONROE	13,633	X	
MOORESVILLE	8,575	X	
MORGANTON	13,763	X	
MOUNT AIRY	6,862	X	
NEW BERN	14,557	X	
NEWTON	7,624		
NORTH WILKSBORO	3,260	X	
RALEIGH	150,255		
ROCKY MOUNT	41,283	X	
SALISBURY	22,677	X	
SANFORD	14,773	X	
SELMA	4,762	X	
SHELBY	15,310	X	
SMITHFIELD	7,288	X	
SOUTHERN PINES	8,620	X	
SPRING LAKE	6,273		
STATESVILLE	18,607	X	
TARBORO	8,364	X	
VALDESE	3,364	X	
WAKE FOREST	3,780	X	
WHITEVILLE	5,565	X	
WILMINGTON	44,000	X	

PART TWO

TENNESSEE MUNICIPALITIES OF 2,500 OR MORE POPULATION
REPORTING TEN OR MORE ANNEXATIONS: 1970-1979

MUNICIPALITY	1980 POPULATION	RESPONDING OFFICIAL		
		ELECTED	EMPLOYEE	TECHNICAL ADVISOR
BROWNSVILLE	9,307	X		
CHATTANOOGA	169,565		X	
CLARKSVILLE	54,777	X		
CLINTON*	5,245		X	
COLLIERVILLE	7,839		X	
COOKVILLE	20,245		X	
DICKSON	7,040			
ELIZABETHTON	12,431		X	
FRANKLIN	12,407			X
GALLATIN	17,191	X		
GERMANTOWN	20,459		X	
HENDERSONVILLE	26,561		X	
JACKSON	49,131		X	
JOHNSON CITY	39,753		X	
KINGSPORT	32,027		X	
KNOXVILLE	175,030			X
LAFAYETTE	3,808	X		
LAWRENCEBURG	10,184	X		
LEWISBURG	8,760	X		
LOUDON	3,943		X	
MEMPHIS	646,356		X	
MORRISTOWN	19,683		X	
MURFREESBORO	32,845		X	
PORTLAND	4,030			
PULASKI	7,184	X		
SEVIERVILLE	4,556		X	
SMYRNA	8,839	X		
WINCHESTER	5,281			

* Did not meet "Number Annexations" -- Included because of unilateral and referendum annexation experience.

APPENDIX IV

STATISTICAL SUPPLEMENT:
THE TIMING OF SERVICES

THE TIMING OF SERVICES BY STATE AND RESPONDENT

	DATE OF ANNEXATION	NORTH CAROLINA					TENNESSEE					
		SERVICES	ELECTED OFFICIAL	MUNICIPAL EMPLOYEE	TECHNICAL ADVISOR	TOTAL RESPONSE	PERCENT OF RESPONSES	ELECTED OFFICIAL	MUNICIPAL EMPLOYEE	TECHNICAL ADVISOR	TOTAL RESPONSE	PERCENT OF RESPONSES
WITHIN ONE YEAR		POLICE	2	47	2	51	98	7	16	9	32	100
		FIRE	2	45	2	49	94	6	15	8	29	94
		WATER	1		1	2	4	1	2	2	5	16
		SEWER			1	1	2		1		1	3
		STREET LIGHTS	2	16	1	19	37	2	2		4	13
		ROAD SERVICES	1	6	2	9	18	1	2	3	6	19
		POLICE		1		1	2					
		FIRE		3		3	6					
		WATER	1	23	1	25	49	2	2	1	5	16
		SEWER		23	1	24	47	3			3	9
		STREET LIGHTS	25			25	49	2	8	4	14	44
WITHIN TWO YEARS		ROAD SERVICES	14			14	28	1	2		3	29
		POLICE										
		FIRE					1		1	2	6	
		WATER		22		22	43		4	2	6	19
		SEWER		21		21	42		1		1	3
		STREET LIGHTS		3		3	6	2	1	2	5	16
		ROAD SERVICES		10		10	20	3	1	2	6	19
		POLICE										
		FIRE										
	WITHIN FIVE YEARS		WATER		2		2	4	1	5		6
		SEWER		3		3	6		6		6	19
		STREET LIGHTS							3		3	9
		ROAD SERVICES		3		3	6		6		6	19
		POLICE										
		FIRE										
		WATER					3	3	4	10	31	
		SEWER	2			2	4	3	6	7	16	50
		STREET LIGHTS		4		4	8	1	2	3	6	19
		ROAD SERVICES	1	13	1	15	29	2	5	4	11	34
AS BUDGET PERMITS												
		POLICE										
		FIRE										
		WATER										
		SEWER										

APPENDIX V

THE ANNEXATION EXPERIENCES OF
SECOND SURVEY RESPONDENTS

PLEASE INDICATE THE ROLES YOU HAVE PLAYED IN ANNEXATIONS AND THE NUMBER YOU HAVE PARTICIPATED IN.

	<u>MUNICIPAL OFFICIALS</u>	OPPOSITION	<u>TECHNICAL ADVISORS</u>	LEGISLATORS
AS A PUBLIC OFFICIAL	16	1	3	5
AS A RESIDENT/OWNER IN AN AREA TO BE ANNEXED	3	6	1	1
AN ANNEXATION OPPONENT	1	7	0	1
AS AN ANNEXATION PROPONENT	6	2	4	2
AS AN ADVISOR TO A CITY CONSIDERING ANNEXATION	8	2	6	1
AS AN ADVISOR TO AN OPPOSITION GROUP OR INDIVIDUAL	0	7	0	2
AS AN ADVISOR TO A PROPONENT GROUP OR INDIVIDUAL	2	1	4	0

THE NUMBER ANNEXATIONS YOU HAVE PARTICIPATED IN.

NUMBER				
1	0	5	0	0
2	2	2	0	0
3	2	1	0	1
4	1	0	0	0
5	0	0	1	1
6-10	7	1	1	0
11-20	2	0	2	0
20 OR MORE	2	0	3	0
NONE	0	0	0	2
NO RESPONSE	1	1	0	4

APPENDIX VI

EXCERPT FROM THE TENNESSEE AND
NORTH CAROLINA STATUTES

Tennessee Code Annotated

1984 Supplement

Updated through the 1984 Session of the General Assembly

Volume 2A

1980 Replacement

THE OFFICIAL TENNESSEE CODE

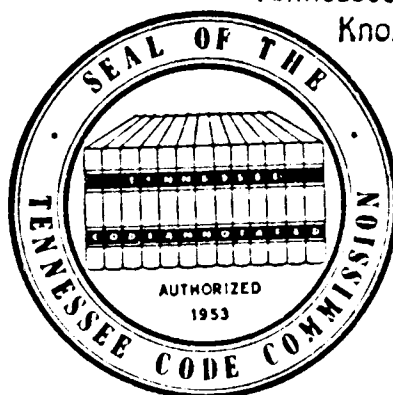
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6-51-102. Annexation by ordinance. — (a) (1) A municipality when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property 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 thirty (30) days after final passage thereof.

(2) (A) A municipality when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such 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.

An ordinance of annexation enacted by a municipality in response to petition by a majority of the residents and property owners, requesting annexation of the affected territory, shall not become operative until thirty (30) days after final passage thereof.

An ordinance of annexation enacted by a municipality upon its own initiative shall not become operative prior to the expiration of the one hundred twenty (120) day period following final passage of such ordinance. If such ordinance of annexation would bring one thousand (1,000) or more additional residents within the boundaries of such municipality then during such one hundred twenty (120) day period the qualified voters and the property owners within the territory proposed to be annexed may by petition require ratification of the ordinance by means of referendum of the qualified voters of such territory. Such petition shall be signed by at least ten percent (10%) of the total number of persons who are either qualified voters or property owners within the territory proposed to be annexed and shall be filed with the county election commission.

Such petition shall read substantially as follows:

"We do hereby respectfully request the holding of a referendum to vote on an ordinance of annexation of the City of _____
_____ (Here insert name of municipality) as provided by law."

In signing such petition, each person shall insert after his name, his residential address and the address of real property, if any, that such person owns within such territory. Said petition may be in two (2) or more counterparts.

Within ninety (90) days of the filing of such petition, an election shall be held by the county election commission in the municipality and the territory proposed to be annexed. The question submitted to the qualified voters of the municipality and of the territory proposed to be annexed shall be "for annexation," "against annexation." The county election commission shall promptly

certify the results of the election. All expenses for the election shall be paid by the municipality.

If the majority of votes in the election are cast "against annexation," the ordinance of annexation shall be void and the territory proposed to be annexed shall not be considered for annexation by ordinance by the municipality for a period of one (1) year from the date of such election.

If the majority of votes in the election are cast "for annexation," the ordinance shall become operative thirty (30) days after the date of the election; provided, however, such ordinance shall not become operative before the expiration of the one hundred twenty (120) day period following final passage of the annexation ordinance. Any owner of property lying within the territory proposed to be annexed by an ordinance which is approved by referendum shall have those rights and privileges provided in § 6-51-103, if a suit is filed within thirty (30) days following the election ratifying the ordinance.

Notwithstanding the ratification of the annexation by referendum under the provision of this subsection (a)(2), the municipality shall be required to have a plan of services as required by § 6-51-102(b).

(B) Provided, however, the provisions of this subsection (a)(2) shall only apply to counties having a population of not less than seventy-seven thousand (77,000) nor more than four hundred thousand (400,000) according to the 1980 federal census of population or any subsequent federal census, except that this subsection (a)(2) shall not apply to counties having a population of not less than two hundred eighty-seven thousand (287,000) nor more than two hundred eighty-eight thousand (288,000) or a population of not less than eighty-four thousand (84,000) nor more than eighty-six thousand (86,000) all according to the 1980 federal census of population or any subsequent federal census. Provided, further, the provisions of this subsection (a)(2) shall also apply to any two adjacent counties which contain a part of a standard metropolitan statistical area, within the state of Tennessee, and have at least three (3) cities with a population of not less than twenty-five thousand (25,000) nor more than fifty thousand (50,000) within such counties; to any county containing an airport belonging to a municipality which is located in an adjoining county; and to any county in a standard metropolitan statistical area containing a federal military reservation of twenty-five thousand (25,000) acres or more. Provided further, the provisions of this subsection (a)(2) shall also apply to any counties having a population of not less than forty-nine thousand two hundred seventy-five (49,275) nor more than forty-nine thousand three hundred seventy-five (49,375) and of not less than fourteen thousand nine hundred forty (14,940) nor more than fifteen thousand one hundred twenty-five (15,125) all according to the 1980 federal census of population or any subsequent federal census. Provided, further, effective January 1, 1982, the provisions of subsection (a)(2) shall also apply to any county having a population of not less than twenty-eight thousand five hundred (28,500) nor more than twenty-eight thousand six hundred (28,600) according to the 1980 federal census of population or any subsequent federal census.

The provisions of this subsection (a)(2) shall not apply to any county with a metropolitan form of government prior to June 1, 1981.

(3) Provided, however, no municipality having a population greater than ten thousand (10,000), according to the 1970 federal census of population or any subsequent federal census, shall, by means of annexation by ordinance upon its own initiative, increase the land area contained within its boundaries by more than twenty-five percent (25%) during any twenty-four (24) month period.

(b) Provided, however, that before any territory or territories totaling more than one-fourth ($\frac{1}{4}$) square mile in area or having a population of more than five hundred (500) persons may be annexed under this section by a municipality within any twelve (12) month period, the governing body of the municipality shall have previously adopted a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory or territories to be so annexed. Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, the plan of services, to be identified, shall include but be not limited to: police protection, fire protection, water service, electrical service, sanitary sewage system, solid waste disposal, road and street construction and repair, recreational facilities, and the zoning services which the municipality shall enact for the territory proposed to be annexed; provided such plan may except such services which are being provided by another public agency or private company in the area to be annexed. Provided, further, that before any such plan of service shall be adopted, it must have been submitted to the local planning commission, if there be such, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, prior to the adoption of the plan of services, a municipality shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality seven (7) days prior to the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

(c) Anything contained in this chapter to the contrary notwithstanding, a municipality in any county having a population of over sixty-six thousand (66,000) (except in those counties having a population of more than seven hundred thousand (700,000) according to the United States census of population of 1970 or any subsequent federal census; or in those counties which have the metropolitan form of government) shall have the supplemental right and authority to annex upon its own initiative by ordinance any territory without levying any municipal ad valorem taxes except for actual municipal

services rendered, and that the residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality; and it shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body. Any municipality that exercises such right to annex is hereby authorized, required and shall levy separate ad valorem taxes for each municipal purpose and/or service within the existing limits of the city and shall levy only such taxes, if any, in any territory annexed hereunder when and if the municipal service or purpose for which such taxes have been imposed is actually being rendered; provided however, that in the case of sanitary sewers, such sewers shall be furnished within thirty-six (36) months after ad valorem taxes become due.

(d) In counties having a population of more than seven hundred thousand (700,000), or having a population of not less than two hundred and sixty thousand (260,000) nor more than two hundred and eighty thousand (280,000) according to the United States census of population of 1970 or any subsequent federal census, or in those counties which have the metropolitan form of government, a smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation. [Acts 1955, ch. 113, § 2; 1961, ch. 320, § 1; 1969, ch. 136, § 1; 1971, ch. 420, §§ 1, 2, 3; 1972 (Adj. S.), ch. 844, § 1; 1974 (Adj. S.), ch. 753, §§ 1, 2, 8, 9; T.C.A., § 6-309; Acts 1980 (Adj. S.), ch. 849, § 1; 1981, ch. 522, §§ 1, 2; 1982 (Adj. S.), ch. 867, § 1.]

Compiler's Notes. For U.S. decennial population of Tennessee counties, see Volume 13.

Cited: City of Watauga v. City of Johnson

City, 589 S.W.2d 901 (Tenn. 1979); Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

ANALYSIS

- 1a. Theory of annexation.
13. Review.

1a. Theory of Annexation.

The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. The failure of a city to extend its corporate boundaries to embrace contiguous areas of growth and development is an abdication of responsibility. The time to annex is in the incipient stage of growth, lest the basic purpose

of annexation be frustrated and the public interest suffer by the annexation of standard areas. State ex rel. Collier v. City of Pigeon Forge, 599 S.W.2d 545 (Tenn. 1980).

13. Review.

Annexation statutes expressly permit court review when method of annexation is by adoption of an ordinance but make no provision for court review when annexation is by referendum. State ex rel. Vicars v. City of Kingsport, 659 S.W.2d 367 (Tenn. Ct. App. 1983).

6-51-103. Quo warranto to contest annexation ordinance — Appellate review. — (a) (1)(A) Any aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with §§ 6-51-101 — 6-51-112 and 6-51-301 and chapter 35 of title 29, to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law.

(B) The provisions of this subdivision (a)(1) shall not apply to the counties covered by subdivision (a)(2).

(2)(A) Any aggrieved owner of property lying within territory which is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with §§ 6-51-101 — 6-51-112 and 6-51-301 and chapter 35 of title 29, to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law.

(B) The provisions of this subsection (a)(2) shall apply only in counties having a metropolitan form of government and in counties having populations of:

<i>not less than</i>	<i>nor more than</i>
4,000	43,000
14,940	15,000
43,700	44,700
49,400	49,500
58,000	59,000
67,300	67,400
74,500	74,600
100,000	250,000
475,000	480,000
700,000	

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than 285,000 and not more than 290,000 based upon the 1980 federal census.

(b) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

(c) If more than one suit is filed, all of them shall be consolidated and tried as one in the first court of appropriate jurisdiction in which suit is filed. Suit or suits, shall be tried on an issue to be made up there, and 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 territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the same and the municipality shall be prohibited from

annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. In the absence of such finding an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

(d) If an appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102 any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. If judgment shall be in favor of the validity of such ordinance, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final.

(e) Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above mentioned, including the necessity for, or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the said industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

(f) During the time that any annexation ordinance is being contested as provided herein, the annexing municipality and the county governing body (and/or any affected school, sanitary or utility district) may enter into an agreement to provide for new, expanded, and/or upgraded services and facilities (including, but not limited to, equipment, land, and buildings), and capital expenditures (including sale of bonds) to finance such services and facilities, which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance. [Acts 1955, ch. 113, § 2; 1961, ch. 220, § 1; 1970 (Adj. S.), ch. 516, § 1; 1974 (Adj. S.), ch. 753, §§ 4, 8, 9; T.C.A., § 6-310; Acts 1982 (Adj. S.), ch. 867, § 2; Acts 1984, ch. 642, §§ 1-10.]

Amendments. The 1984 amendment added (a)(1) and (a)(2)(B).

Effective Dates. Acts 1984, ch. 642, § 12. May 11, 1984.

Law Reviews. Municipal Annexation in Tennessee, 47 Tenn. L. Rev. 651.

Cited: City of Watauga v. City of Johnson City, 589 S.W.2d 901 (Tenn. 1979).

annexation ordinance. *Lee v. City of Chattanooga*, 500 S.W.2d 917 (Tenn. 1973).

6-51-107. Planning agency study — Report. — The governing body of a municipality shall, if its charter so provides, and otherwise may, refer any proposed annexation to the planning agency of the municipality for study of all pertinent matters relating thereto, and the planning agency expeditiously, shall make such a study and report to the governing body. [Acts 1955, ch. 113, § 5; T.C.A., § 6-314.]

Section to Section References. This section is referred to in § 7-82-301.

Cited: *Witt v. McCanless*, 200 Tenn. 360, 292 S.W.2d 392 (1956).

NOTES TO DECISIONS

1. Construction.

Where charter of City of Knoxville made no mention of annexation of territory, provisions of this section were discretionary rather than mandatory. *City of Knoxville v. State ex rel. Graves*, 207 Tenn. 558, 341 S.W.2d 718 (1960).

Referral to a planning commission was discretionary and not mandatory where

charter did not so require. *State ex rel. Hardison v. City of Columbia*, 210 Tenn. 514, 360 S.W.2d 39 (1962).

Collateral References. *Municipal Corporations* ⇐ 41-43.

6-51-108. Rights of residents of annexed territory — Plan of service and progress report. — (a) Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body.

(b) Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, upon the expiration of a year from the date any annexed area for which a plan of service has been adopted becomes a part of the annexing municipality, and annually thereafter until services have been extended according to such plan, there shall be prepared and published in a newspaper of general circulation in the municipality a report of the progress made in the preceding year toward extension of services according to such plan, and any changes proposed therein, and the governing body of the municipality shall publish notice of a public hearing on such progress reports and changes, and hold such hearing thereon. Any changes in the plan of service shall be incorporated in a resolution approved by the governing body of the municipality. Any owner of property in an annexed area to which such plan and progress report are applicable may file a suit for mandamus to compel the governing body to comply with the requirements of this subsection. [Acts 1955, ch. 113, § 6; 1974 (Adj. S.), ch. 753, §§ 3, 8, 9; T.C.A., § 6-315.]

[SEE TABLE IN FRONT OF THIS VOLUME FOR CHANGES IN SECTION NUMBERING]

6-51-110. Priority of larger or smaller municipalities in annexation.

— (a) Nothing in §§ 6-51-101 — 6-51-112 and 6-51-301 shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory within the corporate limits of a larger municipality nor, except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence for ten (10) or more years. Notwithstanding any provisions of this chapter to the contrary, in counties of this state having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000) according to the federal census of 1970 or any subsequent federal census, nothing in §§ 6-51-101 — 6-51-114, shall be construed to authorize annexation proceedings by a larger municipality with respect to territory within the corporate limits of any smaller municipality in existence at the time of the proposed annexation.

(b) If two (2) municipalities which were incorporated in the same county shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality having the larger population shall have precedence and the smaller municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality.

(c) If two (2) municipalities which were incorporated in different counties shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality which was incorporated in the same county in which the territory to be annexed is located shall have precedence and the other municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of the municipality which was incorporated in the same county as the territory to be annexed.

(d) Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, annexation proceedings shall be considered as initiated upon passage on first reading of an ordinance of annexation.

(e) If the ordinance of annexation of the larger municipality does not receive final approval within one hundred eighty (180) days after having passed its first reading, the proceeding shall be void and a smaller municipality shall have priority with respect to annexation of the territory; provided its annexation ordinance shall likewise be adopted upon final passage within one hundred and eighty (180) days after having passed its first reading.

(f) When a larger municipality initiates annexation proceedings for a territory which could be subject to annexation by a smaller municipality, the smaller municipality shall have standing to challenge the proceedings in the chancery court of the county where the territory proposed to be annexed is located.

(g) Provided, however, that a smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation. [Acts 1955, ch. 113, § 8; 1969, ch. 136, § 2; 1974 (Adj. S.), ch. 753, §§ 5, 8, 9; 1978 (Adj. S.), ch. 684, § 1; T.C.A., § 6-317; Acts 1980 (Adj. S.), ch. 833, § 1.]

Law Reviews. Municipal Annexation in Tennessee, 47 Tenn. L. Rev. 651.

NOTES TO DECISIONS

ANALYSIS

3. Annexation of same area.
4. No monopoly created.
5. Venue for annexation challenge.
6. Standing of smaller municipalities.
7. Complaint by smaller municipality.

3. Annexation of Same Area.

No suspension of the general annexation law is involved in prescribing which municipality should be given precedence, as between two municipalities competing for the same territory at the same time, and a determination by the legislature that the larger municipality should prevail did not constitute unreasonable class legislation. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979).

4. No Monopoly Created.

It is the exclusive prerogative of the legislature to create municipalities and to alter, shrink or enlarge their boundaries and therefore this section favoring larger municipalities does not create a monopoly in violation of Tenn. Const., art. 1, § 22. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979).

5. Venue for Annexation Challenge.

Where territory annexed was located in two counties, the venue of an action challenging such annexation would be in either county. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979).

6. Standing of Smaller Municipalities.

By this section the legislature intended to grant to smaller municipalities the same standing to challenge annexation that it, theretofore, granted to owners of property in the territory to be annexed as provided in § 6-51-103, no more and no less. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979).

7. Complaint by Smaller Municipality.

A complaint by a smaller municipality challenging an annexation must raise the issue of reasonableness of the annexation as prescribed by § 6-51-103 and such complaint cannot be based on procedural defects for actions contrary to § 6-51-102. *City of Watauga v. City of Johnson City*, 589 S.W.2d 901 (Tenn. 1979).

6-51-114. Special census after annexation. — In the event any area is annexed to any municipality, the municipality may have a special census and in any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000) according to the 1970 federal census of population or any subsequent federal census the municipality shall have such special census within the annexed area taken by the federal bureau of the census or in a manner directed by and satisfactory to the Tennessee state planning office, in which case the population of such municipality shall be changed and revised so as to include the population of the annexed area as shown by such supplemental census; the

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THE GENERAL STATUTES OF NORTH CAROLINA

**CONTAINING GENERAL LAWS OF NORTH CAROLINA
ENACTED THROUGH THE SESSION LAWS OF 1981
(REGULAR SESSION, 1982)**

(SELECTED 1985 AMENDMENTS INCLUDED)

**Prepared under the Supervision of the Department of Justice
of the State of North Carolina**

**Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers**

**UNDER THE DIRECTION OF
D. P. HARRIMAN, S. C. WILLARD, SYLVIA FAULKNER
AND K. S. MAWYER**

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Part I

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Part 2. Annexation by Cities of Less than 5,000.

§ 160A-33. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and
- (4) That new urban development in and around municipalities having a population of less than 5,000 persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities and still attain the objectives set forth in this section;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-35(3). (1959, c. 1010, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 8.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — (As to Part 2) Durham and Wake: 1985, c. 435, s. 2; Town of Dobbins Heights: 1983, c. 658; village of Sugar Mountain: 1985, c. 395.

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provides: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provides: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Effect of Amendments. — The 1983 amendment, effective with respect to all annexations where resolutions of intent are adopted on or after June 29, 1983, substituted "in accordance with G.S. 160A-35(3)" for "as soon as possible following annexation" at the end of subdivision (5).

Legal Periodicals. —

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

§ 160A-34. Authority to annex.

The governing board of any municipality having a population of less than 5,000 persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part, except that this Part does not apply to any municipality in Craven County having a population of less than 500 persons according to the last federal decennial census unless that municipality provides at least six of the seven categories of municipal services listed in G.S. 136-41.2(c). (1959, c. 1010, s. 2; 1973, c. 426, s. 74; 1985, c. 92, s. 1.)

Effect of Amendments. — The 1985 amendment, effective April 12, 1985, added the language beginning "except that this Part does not apply" at the end of the section.

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
 - a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
 - b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.
 - c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. (1959, c. 1010, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7.1, 16, 18; 1985, c. 610, ss. 1, 5, 7.)

§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. (1959, c. 1010, s. 4; 1973, c. 426, s. 74; 1985, c. 757, s. 205(c).)

§ 160A-37. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) **Action Prior to Hearing.** — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public hearing a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(e) **Passage of the Annexation Ordinance.** — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) **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. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(g) **Simultaneous Annexation Proceedings.** — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-35(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5.)

(i) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk.

(j) (Effective with Respect to All Annexations where Resolutions of Intent Are Adopted on or after July 1, 1984.) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5; 1983, c. 636, ss. 2, 4, 6, 36; 1985, c. 384, s. 1.)

§ 160A-38. Appeal.

(a) Within 30 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property 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.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within five days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Court of Appeals; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7.)

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina;
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;
- (3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;
- (4) That new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;
- (5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-47(3). (1959, c. 1009, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 9.)

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
 - c. The general land use pattern in the area to be annexed.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
 - a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

- b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.
- c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.
- d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. (1959, c. 1009, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7, 10, 11, 17, 19; 1985, c. 610, ss. 2, 6, 7.)

§ 160A-48. Character of area to be annexed.

- (a) A municipal governing board may extend the municipal corporate limits to include any area
 - (1) Which meets the general standards of subsection (b), and
 - (2) Every part of which meets the requirements of either subsection (c) or subsection (d).
- (b) The total area to be annexed must meet the following standards:
 - (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
 - (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
 - (3) No part of the area shall be included within the boundary of another incorporated municipality.

§ 160A-48. Character of area to be annexed.

(c) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least two persons for each acre of land included within its boundaries; or
- (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
- (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

- (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban

purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

(e) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. (1959, c. 1009, s. 4; 1973, c. 426, s. 74; 1983, c. 636, s. 15; 1985, c. 757, s. 205(d).)

§ 160A-49. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 45 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

- (1) Fix the date, hour and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public hearing.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing in a newspaper having general circulation in the municipality and, in addition thereto, if the area to

be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public hearing. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing. In addition, notice shall be mailed at least four weeks prior to date of the hearing by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the hearing, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the hearing. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public hearing on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Hearing. — At least 30 days before the date of the public hearing, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public hearing, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In show-

ing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.

- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) **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. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(g) **Simultaneous Annexation Proceedings.** — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) **Remedies for Failure to Provide Services.** — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete

such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk.

(j) (Effective with Respect to All Annexations Where Resolutions of Intent Are Adopted on or after July 1, 1984.) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00). (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1.)

VITA

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