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Annexation by Municipalities in Georgia

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ANNEXATION BY MUNICIPALITIES IN GEORGIA

In the research made for the writing of this comment it was gratifying to find that the decisions are not in conflict. The law pertaining to annexation was firmly established at an early date and has remained somewhat constant, despite the formidable array of confusion and uncertainty in other phases of municipal law.

The following exposition on annexation attempts (1) to recapitulate the law as it exists in Georgia, (2) to consider the applicable statutory provisions, and (3) to conjecture as to the effect of recent decisons by the State Supreme Court collaterally affecting annexation. The attempt last mentioned will be given particular emphasis, because of its importance as a practical matter.

I

"The legislature giveth and the legislature may take away" is the bedrock and essence of all legislation and judicial decision concerning municipalities in the State of Georgia. It is *a fortiori* the rational foundation sustaining the formulation of the law of annexation.[1] In 1823 the Supreme Court declared that public corporations created for the purpose of city government may be controlled by the legislative power, in any manner as the public interest may require, provided it does not conflict with any constitutional provision.[2] This concept has been attacked as unconstitutional on every conceivable ground, to be discussed later, but without success.[3]

Generally, annexation is accomplished by a local act of the General Assembly amending the charter of a particular city so as to extend the corporate limits to take in additional adjacent territory.[4] Such act usually provides for an election

4. Farmer v. Town of Thomson, 133 Ga. 94, 65 S.E. 180 (1909).

1. Cash v. Town of Douglasville, 94 Ga. 557, 20 S.E. 438 (1894).
2. State v. City of Savannah, R. M. Charlton 250 (Ga. 1823).
3. Farmer v. Town of Thomson, 133 Ga. 94, 65 S.E. 180 (1909); State v. Southern Express Co., 133 Ga. 113, 65 S.E. 282 (1909); Murray v. City of Waycross, 171 Ga. 484, 156 S.E. 38 (1930); Pierce v. Powell, 188 Ga. 481, 4 S.E.2d 192 (1939).

to determine whether the unincorporated territory shall be annexed.[5] However, an election is not obligatory,[6] because the General Assembly may extend the corporate limits of a municipality without the consent of those residing or owning property in the added territory.[7] Nonetheless, the usual practice is to provide for a referendum vote to determine whether the act should go into effect.[8]

Under such circumstances, unless otherwise provided for by law, debts of a municipal corporation contracted before the limits were extended, are chargeable upon the city as enlarged by the territory added, as well as upon that included in the boundaries before they were extended.[9] Such transfer of debt liability does not violate the constitutional provision as to debts of municipal corporations, nor does it impair the obligation of municipal bonds.[10]

All the inhabitants and their property within the boundaries as enlarged are alike subject to taxation to raise municipal revenue for all legitimate purposes. This is true regardless of the time when some of the liabilities arose to which the revenue is to be applied.[11]

Where the territory to be annexed is itself a chartered city, the act providing for annexation impliedly contemplates that its terms will become binding and result in the repeal of the charter of that city, from and after the date specified in the act for the law to go into effect.[12] When the annexed territory becomes incorporated as part of the other city, public assets and liabilities both are passed to that city.[13] As to creditors and all other persons, the annexed municipal

5. For example, see Ga. Laws 1906, No. 555, p. 1010.
6. White v. City of Atlanta, 134 Ga. 532, 68 S.E. 103 (1910).
7. Toney v. Mayor of Macon, 119 Ga. 83, 46 S.E. 80 (1903), *appeal dismissed, want of jurisdiction,* 195 U.S. 625, 25 S.Ct. 791, 49 L. Ed. 350 (1904).
8. Davidson v. Town of Kirkwood, 152 Ga. 357, 110 S.E. 154 (1921).
9. See note 2 *supra.*
10. U. S. CONST. Art. I, § 10; GA. CONST. Art. I, § 3 (1945), GA. CODE ANN. § 2-301 (Rev. 1948). See Note 2 *supra.*
11. See note 7 *supra.*
12. Walker v. Mayor of East Rome, 145 Ga. 294, 89 S.E. 204 (1916).
13. See note 7 *supra.*

corporation thereafter ceases to exist for all purposes.[14]

It furnishes no ground for attack upon the act that the inhabitants of the added territory or owners of property therein will be subject to taxation on account of municipal improvements previously made in the old territory.[15] Neither is it ground for attack that it is inequitable to include them in the corporate limits, or tax them on their property like other inhabitants of the city because the new territory is not at once fully supplied with municipal improvements and conveniences as that within the original limits.[16] Nor does the added liability so imposed deny to them the equal protection of the laws.[17]

The Supreme Court of Georgia has held that a citizen has no vested rights to determine in what particular political subdivision of the state the spot he selects for his residence shall remain.[18] However, the court conceded that equity could restrain proceedings instituted illegally under color of law, the effect of which would be to change such citizen's domicile from one political subdivision to another.[19] The court later modified this by holding that when the General Assembly provides for an election to determine the question as to whether the territory of one municipality shall be annexed to the territory of another municipality, and no provision is made in the act for judicial interference, and there is no general law authorizing such interference, and the authority to interfere cannot be derived from the common law, a court of equity has no power or jurisdiction over the matter. All questions arising out of the matter must be determined by the tribunal constituted by the General Assembly for that purpose.[20]

Once the boundaries of a city are established by the General Assembly, they remain as prescribed until changed by that body. They cannot be contracted or extended by the

14. See note 7 *supra.*
15. White v. Mayor of Forsyth, 138 Ga. 753, 76 S.E. 58 (1912).
16. *Ibid.*
17. See note 7 *supra.*
18. Hamrick v. Rouse, 17 Ga. 56 (1855).
19. Town of Roswell v. Ezzard, 128 Ga. 43, 57 S.E. 114 (1907).
20. Ivey v. City of Rome, 129 Ga. 286, 58 S.E. 852 (1907).

local governing body. This is true notwithstanding acquiescence by city council in a survey fixing and marking limits different from those prescribed and established by the act.[21]

From the foregoing it can be seen that the Supreme Court considers annexation to be within the General Assembly's control solely. This view calls for no argument, absent constitutional home rule. However, the views expressed by the General Assembly through statutory enactments do deserve to be considered.

II.

At present there are in force two statutory provisions providing for annexation. One of them authorizes annexation by ordinance in certain cases.[22] Action under authority of this section is predicated upon the signed petition of all of the owners of all of the land proposed to be annexed. This method of annexation is cumulative of all other methods now existing or thereafter adopted. However, it is not operative in counties having wholly or partly within them a city with a population of more than 200,000, nor does it apply to cities having a population of 50,000 or more according to the 1940 United States census or any future census.

The other statutory provision is embodied in the Municipal Home Rule Act of 1951.[23] This Act authorizes the incorporation of adjacent territory, other than that then embraced within another municipal corporation, upon affirmative vote of a majority of the qualified voters voting in elections in both the existing municipality and the territory to be so incorporated, computed separately. The ordinary of the county in which the territory proposed to be so incorporated lies must, upon notice from the governing authority of the municipality, or upon receipt of a petition signed by thirty per cent of the qualified voters in the terri-

21. A survey was authorized by ordinance and acquiesced in for period of thirty years in Martin v. City of Gainesville, 126 Ga. 577, 55 S.E. 499 (1906).

22. Ga. Laws 1946, No. 579, p. 130; GA. CODE ANN. § 69-901 (Supp. 1947).

23. Ga. Laws 1951, No. 125, § 3(j), p. 116.

tory proposed to be annexed, call a special election of the qualified voters in the area so proposed to be incorporated to be held not less than thirty days nor more than sixty days from the time such notice is received, to determine whether they favor such incorporation. Publication in the official gazette of the county once a week for four weeks next preceding the election is required. Only those whose names are included on the qualified list of voters residing in the territory proposed to be incorporated, as certified by the registrars of the county, and who own property therein, are eligible to vote in such election. The laws governing special elections, except to the extent changed by the act, govern such election. The provisions of the Home Rule Act are not applicable in any county wherein both a county and a separate or independent school system exist unless the petition signed by the qualified voters of the territory proposed to be annexed is accompanied by the approval in writing of a majority of the county board of education of the county wherein the territory proposed for annexation lies.[24]

If the election is in favor of incorporating such territory into the municipality, that fact must be certified by the ordinary to the governing authority of the municipality and another election must be held for the qualified voters of the municipality in the same manner as prescribed for the qualified voters of the territory to be annexed not less than thirty nor more than sixty days thereafter. Publication of such election once a week for four weeks next preceding the election is also required in the official gazette of the municipality. If both elections are in favor of incorporating the additional territory into the municipality, it immediately becomes a part thereof. The governing authority must certify to the Secretary of State the new corporate limits of the municipality and all courts are required to take judicial notice thereof. The statute is not operative in cities with a population of more than 200,000 persons whose boundaries extend into two or more counties.[25]

24. *Ibid.*

25. *Ibid.*

It is apparent that these provisions merely relieve the General Assembly of the burden of providing in detail for annexation in each particular case. The general structure and characteristics of the law of annexation remain undisturbed. Furthermore, it should be noted that the ultimate effect of annexation takes place on the local level, and it is here that annexation becomes problematical. The problem is viewed in its true perspective by the Supreme Court of Virginia, which declared:

> "The residents and property owners of annexation areas are vigorously opposed thereto. This is not surprising. A like condition has existed in nearly every effort of a Virginia city to annex suburban areas."[26]

The above quotation exposes the real problem, but in this case a disclosure is not a solution.

Charter restrictions are such that citizens of territories to be annexed are usually given the opportunity to vote for or against annexation. They almost always vote against it. Political considerations often exert a powerful influence upon the General Assembly to restrain it from providing for annexation without the consent of those affected, regardless of the greater expediency attainable by that method. A deadlock between politics and progress ensues. The effect of this stalemate upon everyday affairs demands a consideration of recent judicial decisions which, although not directly concerned with annexation, affect it in no small degree.

III.

Recently, the city council of Augusta adopted an ordinance requiring users of city water outside the city limits to pay double the city water rate. Later, they adopted another ordinance assessing the privilege of connecting, or continuing connections, with the city sewer system outside of the corporate limits of the city. A failure to pay either the increased rate or the assessment would result in the city's discontinuing the services.

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26. The court added, " . . . this ground is insufficient to deny annexation." Norfolk County v. City of Portsmouth, 186 Va. 1032, 45 S.E.2d 136 (1947).

Residents of Forrest Hills, owning improved property west and southwest of the city limits, filed three petitions[27] against city council to determine the validity of the ordinances. They complained: (1) that the city was under contract to furnish them water and sewerage service upon the same terms and conditions applicable to the city; (2) that the ordinance discriminated against them in favor of the citizens of Augusta in violation of the State Constitution[28] and the Constitution of the United States;[29] and (3) that its passage was not for the legitimate purpose of collecting revenue, but that it was passed through malice, and was an unjust and illegal attempt to force them to consent that their property be brought within the corporate limits of the city.[30]

Demurrers of the city to these complaints were sustained and the complainants appealed. On April 10, 1950 the Supreme Court of Georgia rendered decisions in the three cases. All justices concurred in finding as a matter of law: (1) that a municipal corporation has no power to make contracts restricting or limiting its legislative or governmental powers. Furnishing water and sewage disposal is a governmental function and any attempt to assume contractual obligations with reference to it is ultra vires and void;[31] (2) that an ordinance, which provides that rates for water services shall be higher in territory outside the corporate limits, is not unconstitutional and void as denying "due process" and "equal protection" under federal and state Constitutions;[32] and (3) that the complainants have no right to equitable relief, because the courts will not inquire into the motives of a municipal council in the enactment of an ordinance.[33]

27. Each entitled Barr v. City Council of Augusta, 206 Ga. 750, 753 and 756, 58 S.E.2d 820, 823 and 825 (1950).
28. GA. CONST. Art. I, § 3 (1945); GA. CODE ANN. § 2-302 (Rev. 1948).
29. U. S. CONST. Art I, § 10, cl. 1.
30. See note 28 *supra*.
31. Barr v. City Council of Augusta, 206 Ga. 750, 58 S.E.2d 820 (1950).
32. Barr v. City Council of Augusta, 206 Ga. 753, 58 S.E.2d 823 (1950).
33. See note 32 *supra*.

The rationale expressed by the Supreme Court is that a municipal corporation may not compel any person outside its territorial limits to accept public services which it undertakes to furnish, nor may the municipal authorities be compelled to render such services. Therefore, a municipal corporation may classify rates to be changed in outlying territories, and upon a failure of customers to pay such charges, the municipal corporation may discontinue its service.[34]

The Supreme Court thereby defines a power and illustrates a proper medium whereby city councils can coerce resolute inhabitants and property owners of outlying districts into petitioning for annexation to the city.[35] This resolves, to no small extent, the problem arising from the present stalemate in annexation. Residents of outlying districts have a tendency to look with disfavor upon annexation. This is encouraged by the self-interest of county officeholders and their efforts to retain taxable property in the counties. By adopting the technique employed by the city council of Augusta in the *Barr Cases,* other city councils may greatly minimize the effect of this tendency.

It is elementary that annexation of suburbs by Georgia cities would substantially increase their revenue in the form of property and license taxes. Nearly all of these cities are supplying contiguous communities with water, sewer, light and gas services. The initial outlay for materials and equipment has been met, and the only expense involved is that of maintenance—annexation would incur no additional expense. And further, recipients of these services are benefited by them both directly and indirectly, and it is no more than equitable that they be made to bear their proportionate share of the burden of original cost. They now escape the brunt of civic responsibility while basking in the warmth of

34. See note 28 *supra.*

35. Where authority has been conferred upon municipal corporations to operate gas, electric and power plants, the Public Service Commission does not have power to regulate rates charged thereunder. The power of regulation is in the municipal corporation. Georgia Public Service Commission v. City of Albany, 180 Ga. 355, 179 S. E. 369 (1935).

its security; enjoying the fruits of communal association without having to bear the obligations incident thereto. This is parasitism at its worst. In a democratic society such utilization without taxation is equally as obnoxious as taxation without representation.

In passing, it may be said that aside from the economic advantages to individual cities, unimpeded annexation is not without its social advantages to the entire state. Building codes now in force in the cities and the influence flowing from them could be extended to outlying districts. Public sanitation, safety programs and other long range developments could be put on a more practicable basis by enlarging their operative scope. Georgia cities can greatly ameliorate the quality of the public services presently being rendered if given the time and an increase in resources.

A most cursory analysis of the *Barr Cases* indicates their potential effect upon annexation. The method approved therein by the Supreme Court affords city councils an opportunity to exploit those potentialities. It is concluded that any method helping to place urban areas under urban government—where they rightfully belong—should be maximized for the public good.

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