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# Annexation of Unincorporated Territory in New Mexico

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# NOTE

# ANNEXATION OF UNINCORPORATED TERRITORY IN NEW MEXICO

> The increase in population growth in metropolitan areas has tremendously increased the financial burden on the cities usually to be found at their center. The areas adjoining these cities all contribute to the increased use of the streets, thereby imposing added street maintenance and traffic regulation problems. The increased population also imposes additional burdens on practically every other city service. As a result cities throughout the United States are seeking additional authority to expand their boundaries in order to obtain increased revenue and in order to extend their regulatory authority to cover the entire metropolitan area.[1]

A growing municipality must be able to add to its area those territories which represent the growth of the city beyond its former boundaries. Not only is this necessary for the proper growth and development of the city itself, but annexation is also desirable in the long run from the viewpoint of the residents of the area to be annexed, because annexation should result in their receiving better governmental services. Annexation is, of course, only one solution to the problems of the metropolitan area, but assuming that in given circumstances annexation is desirable, there should be a statutory scheme allowing annexation when needed and with a minimum of delay. Unfortunately, traditional forms of annnexation statutes too often are ill-suited to accomplish this result, particularly when the municipality involved is experiencing rapid growth. The city of Albuquerque is faced with this situation, and other New Mexico municipalities may experience similar difficulties in the future.

New Mexico's Twenty-Seventh Legislature recognized this problem, and took some steps to alleviate it. In February of 1965, the legislature passed a law[2] which places a two-year moratorium on annexations in Bernalillo County. The law directs the State Planning Office, in close cooperation with the Attorney General, to examine the annexation laws of New Mexico and other states and report

1. Graham, *Change In Municipal Boundaries*, 1961 U. Ill. L.F. 452.

2. N.M. Laws 1965, ch. 12. The law applies only to class "A" counties, and Bernalillo County is presently the only class "A" county in New Mexico. See N.M. Stat. Ann. § 15-43-1 (Supp. 1965).

its findings by December 1, 1966.[3] In addition, after the close of the legislative session, Governor Campbell appointed an "Advisory Committee on Boundaries of Local Public Bodies and Extension of Municipal Limits in Class A Counties"[4] which is directed to perform a similar task. The moratorium statute forbids the formation of any local public body within ten miles of a Bernalillo County municipality before July 1, 1967, and prohibits Bernalillo County municipalities from annexing land during such period except in the following instances: (1) when the annexation is approved by majority vote of the landowners residing in the area to be annexed; (2) when 100 per cent of the owners of real property in any territory contiguous to the municipality petition for annexation; or (3) when the state public health department determines that sanitary conditions in any area contiguous to the municipality are hazardous to life and health, notifies the resident owners of real property, and a majority of the owners then file a petition for annexation accompanied by a plat of the territory to be annexed.[5]

In addition to the moratorium law, the legislature in March of 1965 also passed a new Municipal Code[6] which repealed prior annexation laws.[7] Although two former methods of annexation are retained by the Code without substantial change,[8] the Code creates

3. N.M. Laws 1965, ch. 12.

4. Albuquerque Tribune, May 12, 1965, p. A-1, cols. 1-2. The committee members, all residents of Albuquerque, are State Representative John M. Eaves, Chairman, Mr. Stanley P. Zuris, Mrs. Ramona Montoya, Mr. James M. O'Toole, and Mr. Charles S. Lanier. *Ibid.*

5. N.M. Laws 1965, ch. 12. The statute also provides that any owner of twenty-five or more acres of real property situate within the territory to be annexed may automatically exclude his land from annexation by filing a protest with the governing board of the municipality. *Ibid.*

6. N.M. Laws 1965, ch. 300.

7. N.M. Laws 1965, ch. 300, § 595.

8. N.M. Stat. Ann. § 14-7-17 (Supp. 1965) provides for annexation by petition of the owners of a majority of the number of acres in the territory to be annexed, followed by approval of the annexing municipality. This provision is substantially identical to N.M. Laws 1939, ch. 204, § 2.

N.M. Stat. Ann. §§ 14-7-5 to -10 (Supp. 1965) provide for approval of annexations by a local board of arbitration. These provisions are substantially identical to N.M. Laws 1947, ch. 211.

Three former methods of annexation were not carried over into the new Code. See N.M. Laws 1884, ch. 39, § 8, which authorized annexation upon approval by the voters of the municipality and by the owners of the land annexed; N.M. Laws 1939, ch. 204, § 3, which authorized a municipality to annex, by ordinance, territory contiguous on two sides to the municipality, if such territory contained two or more commercial establishments and had been platted into tracts containing five acres or less; N.M. Laws 1963, ch. 50, §§ 1-2, which allowed a city to annex territory which had been enclosed by the municipality for a period of five years. All these statutes were repealed by N.M. Laws 1965, ch. 300, § 595.

a new method of annexation whereby a state-wide boundary commission passes upon annexation proposals.[9]

This Note examines the effect of these new laws on the annexation of unincorporated territory. The problems to be considered are: (1) What were the deficiencies of prior New Mexico annexation laws? (2) Has the Municipal Code cured or alleviated these problems? and (3) If not, what statutes should be considered by the State Planning Office and the Governor's Advisory Committee[10] as most likely to cure the problems? In attempting to answer these questions, it will be necessary to examine the annexation laws of selected states. It will also be necessary, before the discussion can proceed, to examine in general terms the law relating to annexation.

## I

## LEGISLATIVE POWER OVER BOUNDARIES

Generally, in the absence of constitutional restriction,[11] the legislature has absolute power to create or change municipal bound-

9. N.M. Stat. Ann. §§ 14-7-11 to -16 (Supp. 1965).

Other statutes relating to annexation passed by the Twenty-Seventh Legislature include the following: N.M. Stat. Ann. § 14-7-4 (Supp. 1965), which provides as follows:

> A. Territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico, may be annexed to a municipality upon the consent of the authorized agent of the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.
>
> B. Territory may be annexed to a municipality which would otherwise be eligible for annexation except for the interposition of territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.

N.M. Stat. Ann. § 14-7-18 (Supp. 1965) provides:

> Any municipality annexing any territory shall include in the annexation any streets located along the boundary of the territory being annexed. As used in this section, "street" means any thoroughfare that is open to the public and has been accepted by the board of county commissioners as a public right of way.

See also N.M. Stat. Ann. §§ 15-53-1 to -11 (Supp. 1965), entitled the "Special District Procedures Act," providing for the regulation and determination of proposals for the creation of districts intended to furnish any "urban-oriented" service, and N.M. Stat. Ann. §§ 15-54-1 to -5 (Supp. 1965), regulating the financing of such districts.

10. See notes 3 & 4 *supra* and accompanying text.

11. See Cal. Const. art. 11, § 7½b, requiring voter approval when the area to be annexed is an incorporated city or town which is to be transferred to, annexed to, or consolidated with another municipality. See also N.Y. Const. art. 9, § 14, requiring voter approval in all cases. See generally Winters, State Constitutional Limitations on Solutions of Metropolitan Area Problems 35 (Legislative Research Center, Univ. of Mich. Law School 1961).

aries,[12] without the consent and even over the protest of those affected.[13] However, the legislative power to change boundaries is limited in New Mexico and in other states by constitutional provisions forbidding the enactment of local or special laws.[14] As a consequence of this limitation, the legislative power to enlarge boundaries through annexation must be delegated in some manner.

A legislature may delegate the power to annex to the courts, to the municipalities themselves, to the people affected, or to a special board or agency created for that purpose.[15] However, because a legislature may not completely delegate its power to make laws, annexation statutes are required to set forth the facts and conditions that must exist before annexation can take place.[16]

Annexation statutes take a variety of forms.[17] The most common are the following: the municipality may be given the power to annex simply by enacting an ordinance;[18] the power to annex may be given to a court which acts after the proceedings have been initiated by the municipality or by the residents affected;[19] annexation may depend upon approval by the residents or landowners of the territory annexed,[20] or upon the approval of the residents of both the municipality and the annexed territory;[21] annexation may come about through the petition of a certain number or percentage of residents;[22] or the final decision may be left to a specially-created board

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12. The power to create and to destroy municipal corporations, and to enlarge or diminish their boundaries is universally held to be solely and exclusively the exercise of legislative power.

Udall v. Severn, 52 Ariz. 65, 79 P.2d 347, 348 (1938), quoted in Leavell v. Town of Texico, 63 N.M. 233, 235, 316 P.2d 247, 248 (1957).

13. Hunter v. Pittsburgh, 207 U.S. 161 (1907). See also 2 McQuillan, Municipal Corporations §§ 7.10, 7.16 (3d ed. 1949) [hereinafter cited as McQuillan]; Rhyne, Municipal Law §§ 2-26, -37 (1957) [hereinafter cited as Rhyne]; 1 Antieau, Municipal Corporation Law § 1.14 n.88 (1964) [herinafter cited as Antieau].

14. N.M. Const. art. 4, § 24. See generally McQuillan § 7.11; Rhyne § 2-26.

15. See Antieau §§ 1.14(1) to .14(6).

16. Cox v. City of Albuquerque, 53 N.M. 334, 341-42, 207 P.2d 1017, 1022 (1949). See also City of Auburndale v. Adams Packing Ass'n, Inc., 171 So.2d 161 (Fla. 1965); McQuillan § 7.12 n.52; Antieau § 1.13; Winters, *op. cit. supra* note 11, at 128-30.

17. For a review of the annexation statutes of the several states, see Dixon & Kerstetter, Adjusting Municipal Boundaries: The Law and Practice in 48 States (tentative ed. 1959).

18. See Antieau § 1.14(1).

19. See Antieau § 1.14(3).

20. See Antieau § 1.14(6).

21. See N.M. Laws 1884, ch. 39, § 8, repealed by N.M. Laws 1965, ch. 300, § 595.

22. See N.M. Stat. Ann. § 14-7-17 (Supp. 1965). See also Antieau § 1.14(5).

or agency.[23] In addition to provisions for appeal by affected parties,[24] some statutes provide that an annexation may be defeated through protest or petition by a certain percentage of residents.[25]

## II

## JUDICIAL REVIEW OF ANNEXATION PROCEEDINGS

### *A. Noncompliance With Formal Statutory Requirements*

Courts will, of course, review an annexation proceeding to determine whether there has been compliance with formal statutory requirements. However, the courts recognize a presumption in favor of the validity of annexation proceedings, and generally refuse to strike down a completed annexation for a purely formal defect.[26]

### *B. Character of Land to be Annexed; Reasonableness of Annexation Proceedings*[27]

Annexation statutes generally require that land to be annexed must be "contiguous" or "adjacent" to the annexing municipality;[28] courts will enforce a requirement of contiguity even if it is not found in the statute.[29] Although some courts have viewed the requirement of contiguity as purely mechanical and satisfied by physical contiguity at any point,[30] most courts define "contiguous" more strictly. Thus, it is said that lands to be "contiguous" must be so situated with reference to the annexing municipality that they may reasonably be expected to receive the ordinary benefits of municipal government.[31] "Contiguity" has been defined variously as meaning a

23. See N.M. Stat. Ann. §§ 14-7-5 to -10, 14-7-11 to -16 (Supp. 1965). See also Antieau § 1.14(2).

24. See, *e.g.*, N.M. Stat. Ann. § 14-7-17 (Supp. 1965).

25. See Mont. Rev. Codes Ann. § 11-403(1) (Supp. 1965); Wyo. Stat. Ann. § 15-370.7 (Supp. 1963).

26. Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949); People v. City of San Bruno, 124 Cal. App. 2d 790, 269 P.2d 211 (1st Dist. Ct. App. 1954); Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

27. See generally Cutler, *Characteristics of Land Required for Incorporation or Expansion of a Municipality*, 1958 Wis. L. Rev. 6; Comment, 37 Wash. L. Rev. 404 (1962).

28. See, *e.g.*, N.M. Stat. Ann. §§ 14-7-5, -15, -17 (Supp. 1965).

29. See McGraw v. Merryman, 133 Md. 247, 104 Atl. 540 (1918).

30. See, *e.g.*, City of Burlingame v. San Mateo County, 90 Cal. App. 2d 705, 203 P.2d 807 (1st Dist. Ct. App. 1949).

31. McQuillan § 7.20; Comment, 37 Wash. L. Rev. 404, 407 (1962).

"substantial common boundary,"[32] or requiring that the annexed lands be "adjacent to and parallel to existing municipal limits."[33] Generally, land is held not to be contiguous to the annexing municipality: (1) when the territory to be annexed cannot be reached without traveling outside of the municipal boundaries;[34] (2) when the land is not so situated as to permit amalgamation in the usual sense of local government, with ordinary benefits for all citizens,[35] and (3) when a narrow strip of land is used as a "mere subterfuge" to achieve physical contiguity, defeating the requirement of homogeneity.[36] However, the fact that the annexed land is separated from the municipality by a highway or body of water,[37] or the fact that a small unincorporated area will remain between the municipality and the annexed land,[38] will not of itself violate the requirement of contiguity. The definition of "contiguity" has produced the most litigation in cases in which the municipality seeks to annex land lying some distance from it, attaching the land to the municipality through a long, narrow corridor or "strip" of land.[39]

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32. Spaulding School Dist. No. 58 v. City of Waukegan, 18 Ill. 2d 526, 165 N.E.2d 283 (1960), followed in People *ex rel.* Henderson v. City of Bloomington, 38 Ill. App. 2d 9, 186 N.E.2d 159 (1962).

33. People *ex rel.* Adamowski v. Village of Streamwood, 15 Ill. 2d 595, 155 N.E.2d 635 (1959).

34. Potvin v. Village of Chubbuck, 76 Idaho 453, 284 P.2d 414 (1955); Wild v. People *ex rel.* Stephens, 227 Ill. 556, 81 N.E. 707 (1907); State *ex rel.* Danielsen v. Village of Mound, 234 Minn. 531, 48 N.W.2d 855 (1951).

35. Vestal v. City of Little Rock, 54 Ark. 321, 15 S.W. 891, 892 (1891):

> By contiguous lands we understand such as are not separated from the corporation by outside land; and we think the statute permits the annexation of any such lands . . . whenever they are so situated with reference to the corporation that it may reasonably be expected that after annexation they will unite with the annexing corporation in making up a homogeneous city, which will afford to its several parts the ordinary benefits of local government.

See also Clark v. Holt, 218 Ark. 504, 237 S.W.2d 483 (1951).

36. Park v. Hardin, 203 Ark. 1135, 160 S.W.2d 501 (1942); Wortham Independent School Dist. v. State *ex rel.* Fairfield Consol. Independent School Dist., 244 S.W.2d 838 (Tex. Civ. App. 1951).

37. Vestal v. City of Little Rock, 54 Ark. 329, 15 S.W. 891 (1891); Garner v. Benson, 224 Ark. 215, 272 S.W.2d 442 (1954).

38. Spaulding School Dist. v. City of Waukegan, 18 Ill. 2d 526, 165 N.E.2d 283 (1960).

39. *Compare* Wortham Independent School Dist. v. State *ex rel.* Fairfield Consol. Independent School Dist., 244 S.W.2d 838 (Tex. Civ. App. 1951); Clark v. Holt, 218 Ark. 504, 237 S.W.2d 483 (1951); Wild v. People *ex rel.* Stephens, 227 Ill. 556, 81 N.E. 707 (1907); *with* City of Burlingame v. San Mateo County, 90 Cal. App. 2d 705, 203 P.2d 807 (1st Dist. Ct. App. 1949); *In re* Westmoreland, Inc., 15 Ill. App. 2d 51, 145 N.E.2d 257 (1957).

California has attempted to solve the problem of strip annexations by statute. Cal. Gov't Code § 35002.5 provides that land is not contiguous to the annexing municipality if the contiguity is based solely on a strip of land over 300 feet long and less than

Closely connected with the requirement of contiguity is that of reasonableness. It is generally required that an annexation be "reasonable," even if the statutory requirements have been met,[40] although a minority of courts have held that the reasonableness of extension of corporate boundaries is a legislative question which cannot be examined by the judiciary.[41] The rule generally followed appears to be that while a court may not examine the political desirability of annexation, it has power to rule upon the question of the reasonableness of the annexation. In this sense, "reasonableness" means, generally, a review of factual questions regarding the character of the land to be annexed and the availability of municipal benefits to the residents of the area to be annexed. Thus, a commonly accepted definition of "reasonableness" reads as follows:

> [C]ity limits may reasonably and properly be extended so as to take in contiguous lands (1) when they are platted and held for sale or use as town lots; (2) whether platted or not, if they are held to be brought on the market, and sold as town property, when they reach a value corresponding with the views of the owners; (3) when they furnish the abode for a densely-settled community, or represent the actual growth of the town beyond its legal boundary; (4) when they are needed for any proper town purpose, as for the extension of . . . needed police regulation; and (5) when they are valuable by reason of their adaptability for prospective town uses. But the mere fact that their value is enhanced by reason of their nearness to the corporation would not give ground for their annexation if it did not appear that such value was enhanced on account of their adaptability to town use.
>
> We conclude further that city limits should not be so extended as to take in contiguous lands (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use; (2) when they are vacant, and do not derive special value from their adaptability for city uses.[42]

The following factors are also considered as justifying annexation:

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200 feet wide, exclusive of highways. For a critical discussion of this statute and its reception by the California courts, see Gother, *A Study of Recent Amendments to California Annexation Laws*, 11 U.C.L.A. L. Rev. 41, 52-55 (1963).

40. Batchelder v. City of Coeur D'Alene, 375 P.2d 1001 (Idaho 1962).

41. See City of Burlingame v. San Mateo County, 90 Cal. App. 2d 705, 203 P.2d 807 (1st Dist. Ct. App. 1949); Sharp v. City of Oklahoma City, 181 Okla. 425, 74 P.2d 383 (1937).

42. Vestal v. City of Little Rock, 54 Ark. 215, 15 S.W. 891, 892 (1891). A definition similar to that laid down in *Vestal* was quoted with approval by the New Mexico court in Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949).

1. When the annexed lands have the advantages of the city;
2. When annexation will make the city limits regular;
3. When it will secure uniform grade and alignment of streets in the added territory;
4. When required by public convenience and health;
5. When necessary for enforcement of the annexing city's police ordinances;
6. When necessary to foster growth and prosperity of the annexing city;
7. To provide more adequate school facilities.[43]

A commonly litigated problem under the heading of "reasonableness" has been whether annexation of agricultural lands can be valid. The courts generally refuse to allow such annexations,[44] but there are cases allowing agricultural lands to be annexed.[45]

### C. *Collateral Attack of Completed Annexation Proceedings*

Two of the New Mexico annexation statutes contained in the new Municipal Code provide for appeal by a resident landowner who feels himself adversely affected by annexation proceedings.[46] In the absence of such a provision, it becomes necessary to determine whether a resident landowner or voter has standing to attack an annexation completed in accordance with statutory requirements. This problem was considered by the New Mexico Supreme Court in *Your Food Stores, Inc. v. Village of Espanola*,[47] where it was held that the village had no authority whatsoever to annex lands leased to the plaintiff corporation by an Indian pueblo. In holding that the proceedings could be collaterally attacked even though the annex-

43. Johnson v. Parkville, 269 S.W.2d 775, 777-78 (Mo. Ct. App. 1954).

44. See McQuillan § 7.21.

45. Antieau § 1.15: "Where a statute does not specifically forbid the annexation of unplatted agricultural lands or lands rural in character, the courts should not create such a prohibition but should apply the rule of reasonableness." See also Town of Brookfield v. City of Brookfield, 274 Wis. 638, 80 N.W.2d 800, 803 (1957), in which the court, upholding the annexation of 1850 acres, of which 1600 were agricultural, said: "The mere fact that a large percentage of the tract proposed to be annexed consists of agricultural land is not of itself a basis for holding the ordinance annexing the area to be null and void." See also City of Woodson Terrace v. Herklotz, 349 S.W.2d 446 (Mo. Ct. App. 1961).

46. N.M. Stat. Ann. § 14-7-15 (Supp. 1965) allows any owner of land within the territory proposed to be annexed to obtain review in the district court within thirty days after the filing of an order of the Municipal Boundary Commission. N.M. Stat. Ann. § 14-7-17 (Supp. 1965) allows appeal by a resident landowner to the district court within thirty days of the municipality's acceptance of an annexation petition initiated by landowners.

47. 68 N.M. 327, 361 P.2d 950 (1961).

ation had been completed in accordance with statutory requirements, the court said:

> We are familiar with the general rule that where there is authority and jurisdiction to annex territory to a municipality, its validity can not be questioned in a collateral proceeding by reason of defects, informalities and irregularities in the proceedings. It is different, however, when there is a complete lack of authority or jurisdiction. . . .[48]

If the alleged defect in the proceeding does not render the annexation wholly void, the proper remedy to attack a completed annexation is a direct suit in the nature of *quo warranto*.[49] It is not clear in New Mexico whether an annexation alleged to be unreasonable would be regarded as merely irregular (and thus not subject to collateral attack once completed) or wholly void.[50]

The relevance of the preceding case law to the problem of what form of annexation statutes are the most desirable is evident. First, the courts in considering the "reasonableness" of annexations have developed certain tests, some of which may be more permissive of annexation than others;[51] if an annexation statute were itself to contain such standards, a court may then be precluded from applying a restrictive definition of reasonableness. Second, the inclusion of legislative conditions that must be present before annexation can take place blunts an attack based on an argument that the statute unconstitutionally delegates legislative power. Finally, the problem of when collateral attack of annexation proceedings will be allowed

48. *Id.* at 335, 361 P.2d at 956. See also Annot., 13 A.L.R.2d 1279 (1950).

49. Antieau § 1.17 n.11.

50. *Cf.* Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949). In *Hughes*, the city had completed annexation proceedings under what is now N.M. Stat. Ann. § 14-7-17 (Supp. 1965). At that time, the statute contained no provision for appeal. N.M. Laws 1939, ch. 204, § 2. The plaintiffs brought suit seeking an injunction against the city on the grounds that the annexation was invalid because: (1) the land annexed included some barren and uninhabited acreage, and (2) statutory requirements relative to the filing of a plat of the annexed lands were not strictly complied with. It is not clear whether the injunction suit was brought prior to the completion of all steps required by the statute; but the city's answer alleged that such steps had been completed. The court, ruling for the city, decided the case on the merits and did not discuss the issue of whether collateral attack on the annexation was proper. If the allegation that the inclusion of uninhabited land rendered the annexation unreasonable was viewed as a contention that the annexation was wholly void, the plaintiffs would have been permitted to collaterally attack the proceedings, even if the suit had not been instituted prior to the completion of the annexation.

51. *E.g.*, the standards laid down in Vestal v. City of Little Rock, 54 Ark. 215, 15 S.W. 891, 892 (1891), quoted in text at note 42 *supra*, may, under given circumstances, be more restrictive of annexation than would those laid down in Johnson v. Parkville, 269 S.W.2d 775, 777-78 (Mo. Ct. App. 1954), quoted in text at note 43 *supra*.

can be avoided by a statute allowing an appeal within a specified time from the annexation proceeding.

## III

## NEW MEXICO'S ANNEXATION STATUTES

### *A. Existing Laws*

Prior to the adoption of the new Municipal Code,[52] the New Mexico statutes authorized five different methods of annexation of unincorporated territory. The first of these provided for approval by the voters of the municipality of the city's petition to annex land, followed by approval by the owners of a majority of the number of acres in the territory to be annexed.[53] This method was not continued by the Municipal Code.[54]

The second method of annexation (continued by the Municipal Code[55]) is initiated by the adoption of a resolution declaring the desirability of annexing contiguous lands to the municipality,[56] followed by the creation of a local "board of arbitration." The annexing municipality appoints three members to the board,[57] and the voters of the area to be annexed elect an additional three members.[58] If the six members thus elected fail to agree upon the selection of a seventh neutral member, who is required to reside in the county but outside the municipality and the territory being annexed, the district court is empowered to appoint the seventh member.[59] After the board elects a chairman, it is to hold meetings "to determine whether the benefits of the government of the municipality are or can be available within a reasonable time to the territory proposed to be annexed."[60] The board then determines whether the municipality will be allowed to annex the land; a determination of four of the seven members is final. If annexation is denied, the city is prohibited from "proceeding further" or passing a resolution seeking to annex the same territory for a period of two years.[61] In *Cox*

52. N.M. Stat. Ann. §§ 14-1-1 to 14-56-3 (Supp 1965).
53. N.M. Laws 1884, ch. 39, § 8, repealed by N.M. Laws 1965, ch. 300, § 595.
54. N.M. Stat. Ann. §§ 14-7-1 to -17 (Supp. 1965).
55. N.M. Stat. Ann. §§ 14-7-5 to -10 (Supp. 1965).
56. N.M. Stat. Ann. § 14-7-5 (Supp. 1965).
57. N.M. Stat. Ann. § 14-7-8 (Supp 1965).
58. N.M. Stat. Ann. § 14-7-7 (Supp. 1965).
59. N.M. Stat. Ann. § 14-7-9 (Supp. 1965).
60. N.M. Stat. Ann. § 14-7-10 (Supp. 1965).
61. *Ibid.*

*v. City of Albuquerque*,[62] it was argued that the statutory scheme outlined above was an unconstitutional delegation of legislative power: the board could find that the benefits of city government could not be made available to residents of the area to be annexed; under the terms of the statute, however, the board could still find that annexation should take place. The supreme court rejected this argument, holding that the statute, when read in light of the legislative intent, required the board to deny annexation if it found that municipal benefits would not be available to the area annexed.[63] The statutes, so construed, were held not to violate the New Mexico separation of powers clause.[64]

The third method of annexation was not retained by the Municipal Code.[65] It permitted the municipality to annex, by resolution, any territory contiguous on two or more sides to the municipality when the area had been platted into tracts containing five acres or less, and when the area contained two or more commercial establishments.[66]

The fourth method of annexation of unincorporated territory is continued in the new Municipal Code.[67] Under this method, annexation may be commenced when the owners of a majority of the acres in a contiguous territory petition the city to annex the area. Upon presentation of the petition, the city by resolution either accepts or rejects it. If the petition is accepted, the resolution and a plat of the territory annexed must be filed in the county clerk's office, which completes the annexation.[68]

The fifth method of annexation was not continued by the Code.[69] It provided for annexation, by the municipality's ordinance, of any territory (excepting land owned by the United States or by the state) which had been enclosed by the municipality for a period of five years preceding the annexation.[70]

Thus, the new Municipal Code carried over two former methods of annexation: (1) the submission of annexation proposals to a local arbitration board,[71] and (2) annexation upon petition initiated

62. 53 N.M. 334, 207 P.2d 1017 (1949).
63. *Ibid.*
64. N.M. Const. art. 3, § 1.
65. N.M. Stat. Ann. §§ 14-7-1 to -17 (Supp. 1965).
66. N.M. Laws 1939, ch. 204, § 3, repealed by N.M. Laws 1965, ch. 300, § 595.
67. N.M. Stat. Ann. § 14-7-17 (Supp. 1965).
68. *Ibid.*
69. N.M. Stat. Ann. §§ 14-7-1 to -17 (Supp. 1965).
70. N.M. Laws 1963, ch. 50, §§ 1-2, repealed by N.M. Laws 1965, ch. 300, § 595.
71. N.M. Stat. Ann. §§ 14-7-5 to -10 (Supp. 1965).

by the owners of a majority of acres in the territory to be annexed.[72] Additionally, the Municipal Code created a new third method of annexation: submission of annexation proposals to a state-wide municipal boundary commission.[73] This commission is to consider annexation proposals directed to it by resident petition or petition of the municipality.[74] The commission is to be composed of three members appointed by the governor. The commissioners must each live in different counties, and one of them must be a licensed attorney.[75] No more than two of the commissioners can belong to the same political party.[76] The commission is empowered to hold public meetings in the municipalities to which land is sought to be annexed,[77] and is directed to order annexation if it finds that the territory is contiguous and can be provided with municipal services.[78] No other standards are imposed upon the exercise of the commission's discretion; nor does the statute attempt to define "contiguous." Annexation under this method becomes final when a certified copy of the commission's order is filed in the offices of the municipal and county clerks.[79] Appeal by resident landowners is allowed to the district court within thirty days after the filing of the commission's order.[80]

### *B. Analysis of Existing New Mexico Annexation Laws*

New Mexico's annexation laws, even after the passage of the Municipal Code, are not satisfactory. The Code eliminated two prior provisions which allowed the municipality to annex, by ordinance, small tracts under restrictive conditions.[81] However, neither the local arbitration board method[82] nor the petition method[83] carried over into the Code are satisfactory without additional pro-

72. N.M. Stat. Ann. § 14-7-17 (Supp. 1965).
73. N.M. Stat. Ann. §§ 14-7-11 to -16 (Supp. 1965).
74. N.M. Stat. Ann. § 14-7-11 (Supp. 1965).
75. N.M. Stat. Ann. § 14-7-12 (Supp. 1965).
76. *Ibid.*
77. N.M. Stat. Ann. § 14-7-14 (Supp. 1965).
78. N.M. Stat. Ann. § 14-7-15 (Supp. 1965).
79. N.M. Stat. Ann. § 14-7-16 (Supp. 1965).
80. N.M. Stat. Ann. § 14-7-15(E) (Supp. 1965).
81. N.M. Laws 1939, ch. 204, § 3, repealed by N.M. Laws 1965, ch. 300, § 595; N.W. Laws 1963, ch. 50, §§ 1-2, repealed by N.M. Laws 1960, ch. 300, § 595. See notes 65 & 66, 69 & 70 *supra* and accompanying text.
82. N.M. Stat. Ann. §§ 14-7-5 to -10 (Supp. 1965). See notes 55-64 *supra* and accompanying text.
83. N.M. Stat. Ann. § 14-7-17 (Supp. 1965). See notes 67 & 68 *supra* and accompanying text.

visions; the state-wide boundary commission method[84] enacted by the Code is not sufficient in that it does not set up precise standards to guide the board.

The local board of arbitration method carried over into the Code is far from satisfactory. Since three of the board members are elected by the residents of the area to be annexed, and the seventh or "neutral" member must also be a county resident who resides outside of the municipality, it is likely that a majority of the commission will be predisposed against annexation. Moreover, the makeup of the commission casts a great burden of responsibility on the supposedly neutral seventh member; the board members elected by the residents of the area to be annexed can be expected to oppose annexation, while those appointed by the city can be expected to favor annexation. Further, one advantage supposedly gained by use of the administrative decision process is the development and application of administrative expertise. This benefit, however, is not gained through New Mexico's local board of arbitration method, because the local arbitration board is not a continuing body. And, finally, the standards set up for the board to follow are so deficient that the statute narrowly escaped being struck down as an unconstitutional delegation of power.[85]

The petition method of annexation carried over into the Code[86] is a desirable provision, but in and of itself it is not sufficient because it does not provide for situations in which the city urgently needs to annex certain lands, but the residents of those lands are violently opposed to such annexation. The requirement of consent to annexation has been prevalent in traditional annexation statutes,[87] including one repealed by the Municipal Code;[88] indeed, the two-year moratorium bill enacted by the Twenty-Seventh Legislature[89] forbids annexation except upon petition or approval of those residing in the area to be annexed.[90] Annexation laws restricting annexation to those situations in which the voters of the area to be annexed

84. N.M. Stat. Ann. §§ 14-7-11 to -16 (Supp. 1965). See note 73-80 *supra* and accompanying text.

85. See Cox v. City of Albuquerque, 53 N.M. 334, 207 P.2d 1017 (1949). See notes 62 & 63 *supra* and accompanying text.

86. N.M. Stat. Ann. § 14-7-17 (Supp. 1965). See notes 67 & 68 *supra* and accompanying text.

87. See McQuillan § 7.16 n.87.

88. N.M. Laws 1884, ch. 39, § 8, repealed by N.M. Laws 1965, ch. 300, § 595.

89. N.M. Laws 1965, ch. 12. See notes 2-5 *supra* and accompanying text.

90. *Ibid.*

approve the annexation have been justifiably criticized as too restrictive.[91] One writer has expressed the problem in the following terms:

> Most annexation statutes do not contain standards to guide the annexation process, and many make annexation a question for local determination by leaving the ultimate decision to the voters in the area sought to be annexed. Since annexation usually means higher urban taxes, frequent rejection is easily understandable. The continuation of procedures under which the area to be annexed retains an effective veto can only check the future growth of the central city. . . . [S]ound urban government requires a city whose urban boundaries include a tax and geographic base upon which the necessary services and functions can be rested. The question becomes one of writing legislation which will implement this decision while providing safeguards for the area to be annexed. A statute along these lines is not easy to draw. . . .[92]

If the above proposition is accepted, it is evident that a law is needed which allows annexation over the protest of the residents of the area sought to be annexed. Such a provision was enacted by the Municipal Code, which creates a state-wide boundary commission empowered to decide questions of annexation.[93] However, the law as enacted contains only the bare minimum of standards to guide the commission;[94] indeed, the standards imposed are not much different from those laid down in the local arbitration board statute,[95] which was at least of doubtful constitutionality.[96] Furhermore, the state-wide

91. See Comment, 1961 Wis. L. Rev. 123; Whiteside, *A Critique on Municipal Annexation in Ohio,* 21 Ohio St. L.J. 364 (1960); Comment, 13 S.C.L.Q. 258 (1961); Mandelker, *Municipal Incorporation and Annexation: Recent Legislative Trends,* 21 Ohio St. L.J. 285 (1960).

92. Mandelker, *supra* note 91, at 293.

93. N.M. Stat. Ann. §§ 14-7-11 to -16 (Supp. 1965).

94. N.M. Stat. Ann. § 14-7-15 (Supp. 1965):

> [T]he . . . commission shall determine if the territory proposed to be annexed:
>
> (1) is contingous to the municipality; and
>
> (2) may be provided with municipal services by the municipality to which the territory is proposed to be annexed.
>
> B. If the . . . commission determines that the conditions set forth . . . are met, the commission shall order annexed to the municipality the territory petitioned to be annexed to the municipality.

95. N.M. Stat. Ann. § 14-7-10 (Supp. 1965). The board is to determine "if the benefits of the municipality are or can be available within a reasonable time to the territory proposed to be annexed." *Ibid.*

96. See Cox v. City of Albuquerque, 53 N.M. 334, 207 P.2d 1017 (1949), discussed at notes 62 & 63 *supra* and accompanying text. It is true that, unlike the board of arbitration statute, the municipal boundary commission statute directs the commis-

boundary commission is only one solution to the problem, and not necessarily the best.

This Note will conclude with an examination of alternative annexation laws that should be considered by the State Planning Office and the Governor's Study Committee.[97] If the state-wide boundary commission method of annexation is continued, it is hoped that the imposition of standards on the commission will be recommended. Suggested forms of such standards will be considered below.

## IV

## PROPOSED CHANGES IN NEW MEXICO'S ANNEXATION LAWS

The majority of American annexation statutes require approval of the residents of the area to be annexed before annexation is possible.[98] However, a requirement of voter approval is undesirable because it restricts the ability of expanding municipalities to annex land.[99] Three major alternatives to the consent requirement have been proposed: (1) leaving the decision of whether annexation shall take place to a court; (2) submission of annexation proposals to a board, agency, or commission, which determines whether annexation shall take place according to discretionary standards imposed by the legislature, and (3) allowing the city itself to annex territory directly, under definite nondiscretionary legislative standards as to the character of the land that can be annexed, followed by court review of the city's action if sought. Each of these alternatives will be discussed below.

### *A. Submission of Question to Court*

Annexation statutes frequently allow an appeal by an affected landowner from an otherwise completed annexation,[100] and courts have the power to review annexation proceedings to determine whether statutory requirements have been met and whether the annexation is reasonable.[101] However, some states leave to a court the initial determination of whether annexation shall take place.

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sion to make its decision upon the basis of its findings regarding contiguity and municipal services. However, this does not detract from the fact that the standards imposed in the boundary commission statute are extremely vague.

97. N.M. Laws 1965, ch. 12. See note 3 *supra* and accompanying text.

98. McQuillan § 7.16 n.87.

99. See notes 91 & 92 *supra* and accompanying text.

100. See N.M. Stat. Ann. §§ 14-7-15, -17 (Supp. 1965).

101. See text at pp. 87-89 *supra*.

Virginia,[102] for example, authorizes the submission of annexation proposals to a special three-judge court.[103] Missouri[104] requires an annexing municipality to file an action seeking a declaratory judgment authorizing the annexation.[105] The standards under which the courts are to decide whether annexation shall take place are generally imprecise,[106] but courts operating under such statutes have developed more specific criteria.[107]

A system of submitting annexation proposals to a court has worked fairly well,[108] and has been commended,[109] but it is not recommended that New Mexico adopt such a system. First, whether such a system will be effective depends too much upon a judicial attitude sympathetic to annexation.[110] Second, unless the standards set forth for the court to follow are fairly definite, there is a possibility that the statute will be held to delegate legislative power to

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102. Va. Code Ann. §§ 15.1-1032 to -1058 (Repl. 1964). For discussions of the Virginia system, see Antieau § 1.14(3); Bain, *Terms and Conditions of Annexation Under the 1952 Statute*, 41 Va. L. Rev. 1129 (1955); Scott, Keller, & Bollens, Local Governmental Boundaries and Areas: New Policies for California 68-73 (1961 Legislative Problems No. 2, Univ. of Cal.); Graham, *Change in Municipal Boundaries*, 1961 U. Ill. L.F. 452, 461-63.

103. *Ibid.*

104. Mo. Ann. Stat. § 71-015 (Supp. 1959). For a discussion of Missouri's system, see Note, 1961 Wash. U.L.Q. 159.

105. *Ibid.* Other states have similar provisions. See Miss. Code Ann. §§ 3374-10 to -16 (Repl. 1957, Supp. 1964); Iowa Code Ann. § 362.26 (Supp. 1964). The Iowa Statute provides that a suit in equity must be brought against residents of the area to be annexed after the voters of the municipality approve the annexation.

106. See Va. Code Ann. § 15.1-1041(b) (Repl. 1964):

> The court shall determine the necessity for expediency of annexation, considering the best interest of the county and city or town, the best interests, services to be rendered and needs of the area proposed to be annexed, and the best interests of the remaining portion of the county.

The Missouri statute requires only that "such annexation be reasonable and necessary to the proper development of said city." Mo. Ann. Stat. § 71-015 (Supp. 1959). In Mississippi, the court is directed to approve the annexation when the following are found.

> If . . . the proposed enlargement . . . is reasonable and is required by the public convenience and necessity and . . . that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time . . . .

Miss. Code Ann. § 3374-13 (Repl. 1957).

107. See City of Olivette v. Graeler, 369 S.W.2d 85 (Mo. 1963); Mandelker, *supra* note 91; Note, 1961 Wash. U.L.Q. 159.

108. Scott, Keller & Bollens, *op. cit. supra* note 102, at 72.

109. See Antieau § 1.14(3), suggesting that Virginia's annexation laws have been effective and merit consideration elsewhere.

110. See Scott, Keller & Bollens, *op. cit. supra* note 102, at 72. See also Bain, *Annexation: Virginia's Not-So-Judicial System*, 15 Pub. Admin. Rev. 251 (1955).

the judiciary.[111] Finally, the availability of more attractive alternatives makes consideration of the "court method" unnecessary.

*B. Submission of Question to Commission or Agency.*

New Mexico law now provides for two different methods of annexation through the use of a board or commission: (1) the local board of arbitration method,[112] and (2) the state-wide boundary commission method.[113] The standards set forth for the respective agencies to follow are not sufficient.[114] It has been suggested that such a commission works best under a set of discretionary, general standards, which do no more than set forth the objectives the legislature hopes to achieve.[115] The standards set forth in the New Mexico laws are deficient even by this criterion. If New Mexico decides to retain the commission method, it would be advisable to enact a set of discretionary standards such as those found in the Minnesota statutes.[116] However, for reasons to be discussed, a sys-

111. The Missouri and Virginia statutes have been upheld as against an attack based on the ground that the statutes constituted an unlawful delegation of legislative power. See City of Portsmouth v. County of Norfolk, 198 Va. 247, 93 S.E.2d 296 (1956); City of St. Joseph v. Hankinson, 312 S.W.2d 4 (Mo. 1958). However, several statutes giving a court the power to pass initially upon the propriety of annexations have been declared unconstitutional. For an extended analysis of cases from several states, see State *ex rel.* Klise v. Town of Riverdale, 244 Iowa 423, 57 N.W.2d 63 (1953), 38 Minn. L. Rev. 170 (1954). See also Udall v. Severn, 52 Ariz. 65, 79 P.2d 347 (1938); City of Auburndale v. Adams Packing Ass'n, Inc., 171 So.2d 161, 166 (Fla. 1965):

> What we have said . . . does not mean that the legislature cannot provide for some court function in annexation proceedings by municipalities. Nor does it mean that may not not require court review of objections to annexation . . . . All it means is that if the courts are to be used, the legislature must clearly spell out the conditions or factual issues that are to be determined by the court, thereby restricting the court to performance of a judicial function.

112. N.M. Stat. Ann. §§ 14-7-5 to -10 (Supp. 1965). See notes 55-64 *supra* and accompanying text.

113. N.M. Stat. Ann. §§ 14-7-11 to -16 (Supp. 1965). See notes 73-80 *supra* and accompanying text.

114. Under N.M. Stat. Ann. § 14-7-15(a) (Supp. 1965), the boundary commission is directed to approve annexation if it finds that the territory is "contiguous to the municipality; and . . . may be provided with municipal services by the municipality to which the territory is proposed to be annexed."

Under N.M. Stat. Ann. § 14-7-10 (Supp. 1965), the local board of arbitration is directed to determine only if "the benefits of the government of the municipality are or can be available within a reasonable time to the territory proposed to be annexed."

115. Scott, Keller & Bollens, *op. cit. supra* note 102, at 3-6.

116. Minn. Stat. Ann. § 414.03(4) (Supp. 1964):

> [T]he commission shall approve [the annexation] if it finds that the property to be annexed is now, or is about to become, urban or suburban in character. The commission may, in any case, approve the annexation if it finds that municipal government of the area is required to protect the public health,

tem allowing municipalities to annex land directly is preferable to a commission method.

### C. *Direct Annexation by Municipal Ordinance*

In recent years, several states[117] have enacted statutes which allow a municipality to annex land directly by ordinance. Precise and comprehensive nondiscretionary standards relative to the character of land that can be annexed are imposed upon the municipality.[118] The statutes also set out in detail the procedures to be followed.[119] To prevent misuse of the statutes, it is also provided that a protest or

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safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter and if it finds that the annexation would be to the best interest of the village or city and of the territory affected. As a guide in arriving at a determination, the commission shall make findings as to the following factors: (1) The relative population of the annexing area to the annexed territory. (2) The relative of the two territories. (3) The relative assessed valuation. (4) The past and future probable expansion of the annexing area with respect to population increase and construction. (5) The availability of space to accommodate that expansion. (6) Whether the taxes can be reasonably expected to increase in the annexed territory, and whether the expected increase will be proportional to the expected benefit inuring to the annexed territory as a result of the annexation. (7) The presence of an existing or reasonably anticipated need for governmental services in the annexed territory such as water system, sewage disposal, zoning, street planning, police and fire protection. (8) The feasibility and practicability of the annexing territory to provide these governmental services presently or when they become necessary. (9) The existence of all or a part of an organized township within the area to be annexed and its ability and necessity of continuing after the annexation. (10) The adequacy af the township form of government to cope with problems of urban or suburban growth in the area proposed for annexation. . . . The petition shall be denied if it appears that the primary motive for the annexation is to increase revenues for the annexing municipality and such increase bears no reasonable relation to the value of benefits conferred upon the annexed area.

For an analysis of the Minnesota system, See Scott, Keller & Bollens, *op. cit. supra* note 102, at 40-47.

117. See Ind. Ann. Stat. §§ 48-701 to -702 (Repl. 1963); Mont. Rev. Codes Ann. § 11-403(1) (Supp. 1963); N.C. Gen Stat. Ann. §§ 160.453.13 -.24 (Repl. 1964); Tenn. Code Ann. §§ 6-309 to -310 (Supp. 1964); Wyo. Stat. Ann. §§ 15-1.57 to -1.61 (Supp. 1965). See also Tex. Rev. Civ. Stat. art. 970a (Repl. 1963). The Texas system is unique in that it provides that cities of 100,000 or more population shall have an "extra-territorial jurisdiction" of five miles beyond its corporate limits. Tex. Rev. Civ. Stat. art. 970a(3)(A)(5) (Repl. 1963). Such a municipality may annex within any one year an area equal to ten per cent of its corporate area as of the beginning of the year, but the city can only annex from within the area embraced by its extra-territorial jurisdiction. Tex. Rev. Civ. Stat. art. 970a(7)(A), (B) (Repl. 1963). The extra-territorial jurisdiction is expanded upon annexation to take into account the expanded corporate boundaries. Tex. Rev. Civ. Stat. art. 970a(3)(C) (Repl. 1963).

118. See, *e.g.*, N.C. Gen. Stat. Ann. § 160-453.16 (Repl. 1964).

119. See, *e.g.*, N.C. Gen. Stat. Ann. §§ 160-453.15, .17-.19 (Repl. 1964).

appeal by a designated number of residents of the area to be annexed will result in an appeal to a specified court,[120] or, in some states, mandatory nonpassage of the annexing ordinance.[121]

North Carolina's statutes[122] represent the best example of this approach. In that state, cities of 5000 or more population can annex land "developed for urban purposes" directly by ordinance.[123] Land "developed for urban purposes" is comprehensively defined in the statutes; *e.g.*, land is "developed for urban purposes" when any one of the following three combinations of factors are present: (1) when the land has a total resident population of two persons per acre;[124] (2) when the land has a resident population of one person per acre and sixty per cent of its area has been platted into tracts of five acres or less, if sixty per cent of the tracts are one acre or less,[125] or (3) when sixty per cent of the total number of tracts in its area are used for residential, commercial, industrial, institutional, or governmental purposes, if sixty per cent of the total acreage, not counting that used for commercial, industrial, institutional, or governmental purposes, is platted into tracts of five acres or less.[126] In addition, the municipality is allowed to annex land lying between the municipality and an area "developed for urban

120. Ind. Stat. Ann. § 48-702 (Repl. 1963) provides that a petition by the owners of 75% of the assessed valuation of property in the area to be annexed results in a nonjury trial, the court being directed to decide the propriety of the annexation by reference to defined legislative criteria. N.C. Gen. Stat. Ann. § 160-453.18 (Repl. 1964) allows an appeal by any person owning property within the area to be annexed, within thirty days following passage of the ordinance. Tenn. Code Ann. § 6-310 (Supp. 1964) allows any aggrieved person owning property in the area annexed to file an action in the nature of *quo warranto* prior to the effective date the annexing ordinance. Wyo. Stat. Ann. § 15-162 (Supp. 1965) allows an appeal by any person owning property within either the area annexed or the annexing municipality, such appeal to be taken within ten days of the effective date of the annexing ordinance. The Wyoming statutes also provide that annexation is ineffective without the consent of the owner or owners in cotenancy of tracts of forty acres or more if such tracts have an assessed valuation of $40,000 or more. Wyo. Stat. Ann. § 15.1-65 (Supp. 1965).

121. Mont. Rev. Codes Ann. § 11-403(1) (Supp. 1963) provides that the annexing ordinance will not be passed if a majority of freeholders residing in the area to be annexed disapprove of the annexation by petition. Wyo. Stat. Ann. § 15.1-59 (Supp. 1965) provides that the annexing ordinance will not be passed if the annexation is disapproved by the owners of 60% of the area to be annexed, if such area contains less than five family units.

122. N.C. Gen. Stat. Ann. §§ 160-453.13 -.22 (Repl. 1964).

123. N.C. Gen. Stat. Ann. § 160-453.16(c) (Repl. 1964).

124. N.C. Gen. Stat. Ann. § 160-453-16(c)(1) (Repl. 1964).

125. N.C. Gen. Stat. Ann. § 160-453.16(c)(2) (Repl. 1964).

126. N.C. Gen. Stat. Ann. § 160-453.16 (c) (3) (Repl. 1964). Property "used for residential purposes" is defined as "any lot or tract five acres or less in size on which is constructed a habitable dwelling unit." N.C. Gen. Stat. Ann. § 160-453.21(2) (Repl. 1964).

purposes."[127] Other characteristics required before land can be annexed are that the land must be contiguous to the municipality ("contiguity" is defined in the statutes[128]) at the time annexation is begun,[129] at least one eighth of the area's boundaries must coincide with the municipality's boundaries,[130] and no part of the area annexed can be a part of another municipality.[131] The annexing municipality is required to prepare a report demonstrating its ability to furnish services to the area annexed declaring that it has such ability and that it will begin construction of needed facilities within one year following the annexation,[132] and to hold a public meeting before it passes the annexation ordinance.[133] Any person owning property within the annexed territory may appeal the municipality's action to the superior court within thirty days of the passage of the ordinance;[134] the statutes are specific regarding the procedures to be followed in such an appeal.[135] In addition, any person owning property in the annexed territory may, between twelve and fifteen months from the effective date of annexation, seek a writ of mandamus compelling the municipality to furnish him municipal services or begin the construction of new facilities in accordance with the municipality's report regarding its ability to furnish services.[136]

The standards set forth in the North Carolina statutes would seem to allow annexation when it is called for, while at the same time protecting residents of the area annexed from unjustified annexations. Application of the standards involves only a determination of questions of fact, and the desirability of whether annexation shall take place is left primarily up to the municipality concerned. The procedural guides to be followed in an appeal of the annexation[137] should cut down on the time involved in such proceedings.

127. N.C. Gen. Stat. Ann. § 160-453.16(d) (Repl. 1964).
128. N.C. Gen. Stat. Ann. § 160-453.21(1) (Repl. 1964):
'Contiguous area' shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.
129. N.C. Gen. Stat. Ann. § 160-453.16(b)(1) (Repl. 1964).
130. N.C. Gen. Stat. Ann. § 160-453.16(b)(2) (Repl. 1964).
131. N.C. Gen. Stat. Ann. § 160.453.16(b)(3) (Repl. 1964).
132. N.C. Gen. Stat. Ann. § 160-453.15 (Repl. 1964).
133. N.C. Gen. Stat. Ann. § 160-453.17 (Repl. 1964).
134. N.C. Gen. Stat. Ann. § 160-453.18 (Repl. 1964).
135. *Ibid.*
136. N.C. Gen. Stat. Ann. § 160-453.17(h) (Repl. 1964).
137. *Ibid.*

Furthermore, the system appears to be the simplest and most direct yet devised.[138]

### D. *Comparison of Commission Method with Direct Annexation Method*

It has been said that the practice of submitting annexation proposals to state-created agencies which are to make their decisions according to legislative objectives is "too new to evaluate . . . but deserves careful watching as the cumulative expertise of a permanent administrative agency should be rewarding, and a more hopeful resolution of metropolitan problems appears possible by state participation in the annexation process."[139] The need for administrative expertise in this area, however, is questionable, especially when definitive nondiscretionary standards, such as those in the North Carolina statutes,[140] can be imposed upon a municipality allowed to annex directly by ordinance. Under such a set of standards, the only questions to be determined by the municipality and reviewed by the court would be whether the facts exist which bring the statute into operation. Once such factual questions relative to the character of the land to be annexed can be determined, without the use of a commission, the only area for the exercise of the commission's discretion would be the political desirability of the annexation, a question which is perhaps best left to the municipalities themselves. Abuses of a direct annexation system are prevented through court review of compliance with statutory standards and through provisions for mandamus to compel the municipality to carry through its plans for providing services to the area annexed.[141] Furthermore, a state-wide commission may have to consider several annexation proposals at the same time, which would slow down the process, whereas under a direct annexation system no such problem should result. Again, the commission's decision presumably would be appealable, as would be the municipality's action under a direct annexation system. The dual effect of definite procedural standards and the fact that a court reviewing the municipality's action would be confined to questions of fact should significantly reduce delay in appealing the municipality's action. For these reasons, a direct annexation system is preferable to a commission system, and it is recom-

138. N.C. Gen. Stat. Ann. § 160-453.18 (Repl. 1964).

139. The North Carolina system was recommended for adoption by other states in Graham, *Change in Municipal Boundaries,* 1961 U. Ill L.F. 452.

140. Antieau § 1.14(2).

141. N.C. Gen. Stat. Ann. § 160-453.16 (Repl. 1964). See notes 123-131 *supra* and accompanying text.

mended that the State Planning Office and the Governor's Advisory Committee study the advisability of recommending the adoption of a statutory scheme similar to that existing in North Carolina. Of course, it is not suggested that the North Carolina statutes represent the only answer to the problem, nor is it suggested that all provisions of the North Carolina statutes are compatible with conditions obtaining in New Mexico. At least, however, the North Carolina statutes represent a statutory scheme which appears to be preferable to other alternatives, and they represent a useful guideline from which statutory proposals for consideration by New Mexico's legislature could be drafted.

## CONCLUSION

Annexation is one solution for the problems facing a growing municipality that must expand its boundaries to provide more efficient governmental services. The actions taken by New Mexico's Twenty-Seventh Legislature indicate that New Mexico's present annexation laws are not sufficient to meet present needs. It is hoped that the State Planning Office and the Governor's Advisory Committee will seriously consider recommending the adoption of a statutory scheme similar to that of North Carolina.

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