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The Minnesota Municipal Commission--Statewide Administrative Review of Municipal Annexations and Incorporations

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Notes

The Minnesota Municipal Commission — Statewide Administrative Review of Municipal Annexations and Incorporations

The Minnesota Municipal Commission is an administrative body with statewide authority to grant and deny municipal incorporations and annexations. The author of this Note examines the need for administrative review of such municipal activity; traces the background of the legislation leading to establishment of this Commission; analyzes the standards developed by the Commission; and finally, summarizes the impact the Commission has had on the development of cities in Minnesota. He concludes that the system has been relatively successful, but can still be improved.

I. INTRODUCTION

Solution of urban problems, while popularly thought to be the concern of city planners, engineers, and sociologists, requires a considerable measure of assistance from the law. The legal criteria and procedures for incorporating new municipalities and expanding old boundaries are significant elements in the improvement, or the worsening, of urban development. Unsophisticated, shortsighted criteria for incorporation and annexation, coupled with the growth of suburbs, has thrust many metropolitan areas into the unpleasant situation of an uncontrolled proliferation of incorporated suburban municipalities. Such municipalities, when not subject to areawide control, are frequently unable to meet the needs of their residents and are generally an impediment to orderly growth and good city planning.

The Twin Cities area of Minneapolis and St. Paul, Minnesota, offers a striking example of an advanced case of the disease of "urban sprawl" which afflicts nearly all modern cities. From 1950 to 1959 the area experienced the creation of thirty-six incorporated urban governments.¹ This rapid growth was facilitated by Minnesota's outdated procedures and criteria for incorporating local governments and annexing unincorporated areas to existing municipalities. In 1959, however, the Minnesota Legislature com-

1. Minnesota Municipal Commission, Report 3 (Feb. 1965).

pletely revamped the old methods and created one of the most progressive systems of incorporation and annexation in the United States.

The purpose of this Note is to analyze and evaluate the development, subsequent changes, operation, and impact of Minnesota's new system in order to provide a useful analysis for Minnesota practitioners, Minnesota legislators, and those persons in other states who are considering revision of their systems to ameliorate the problems of urban sprawl.

II. BACKGROUND

There are significant differences between incorporated municipalities and unincorporated areas. The incorporated municipality has much wider power to act through agents and can thus act in a broader range of activities.² This means greater ability to provide governmental services to local residents. In addition, the boundaries of an incorporated municipality are relatively immune to change, except by a voluntary merger of two or more municipalities.³ Unincorporated areas, in comparison, are quite vulnerable to change through annexation of all or part of their land to adjoining incorporated municipalities, subject only to approval of owners of the particular land being annexed.⁴

The normal method of unincorporated government is the town meeting, in which all resident voters are eligible to participate. At this meeting town officers are elected, the tax levy is established, and policy decisions are made.⁵ Of course, this system of government is unwieldy when a large population is involved. A further complication is that the town cannot levy special assessments against specific property that would be benefited by improvements such as street paving or connection to a public water supply — only a general levy is allowed under the usual town government.⁶ Other sources of revenue available to municipalities, but not to towns, are penal fines, various licensing fees, and a greater share of state taxes.⁷

To enable unincorporated towns to govern themselves better,

2. See SNIDER, *LOCAL GOVERNMENT IN RURAL AMERICA* 41 (1957); Note, 38 MINN. L. REV. 646, 647 (1954).

3. *Legislation & Administration, Stumbling Giants — A Path to Progress Through Metropolitan Annexation*, 39 NOTRE DAME LAW. 56, 67 (1963).

4. *Ibid.*

5. SNIDER, *op. cit. supra* note 2, at 220-22.

6. Note, 38 MINN. L. REV. 646, 647 (1954).

7. BERRY, *VILLAGE HANDBOOK FOR OFFICIALS OF MINNESOTA VILLAGES* 326 (1949); Note, 38 MINN. L. REV. 646, 647 (1954).

over the years the Minnesota Legislature has passed many special laws giving certain towns, groups of towns, and classes of towns powers beyond those which towns normally have.⁸ The difficulty with this piecemeal approach is that it leaves many growing areas without needed powers until they generate enough pressure to obtain special legislative assistance. Moreover it is a burden to the legislature, causing it to spend a disproportionate amount of time on local matters, when the time would be better spent on statewide affairs.⁹ Furthermore, even with these special powers, a township has less statutory authority than an incorporated village to manage and administer the needs of its residents.¹⁰ Finally, but of great importance, an unincorporated town may be reluctant to inaugurate needed services when adjoining incorporated municipalities can annex sections of the town with approval of just the owners of the land being annexed. When such annexations occur, the tax base of the town is reduced, and the improved area may be lost.

For such reasons incorporation is the preferred form of government for local areas of sizable population, and indeed is not uncommon among areas of very small population. The autonomy that accompanies incorporation, however, may create problems when several incorporated governments exist in proximity to one another since such municipalities often fail to plan together. This results in overlapping services, inadequate services, and inefficient government in general.¹¹ A partial solution to such problems can be effected by altering the traditional legal procedures and substantive standards for incorporation of new municipalities and annexation to existing municipalities.

8. See MINN. STAT. ch. 368 (1961).

9. See SNIDER, *op. cit. supra* note 2, at 69; Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 655 (1964).

10. Compare MINN. STAT. ch. 412 (1961), with MINN. STAT. ch. 368 (1961).

11. Individual commentators, citizen study groups and legislative study groups have turned out voluminous amounts of material on this problem. The overwhelming conclusion is that better local government will be achieved if each municipality cedes some of its powers to a larger authority. See COUNCIL OF STATE GOVERNMENTS, *STATE RESPONSIBILITY IN URBAN REGIONAL DEVELOPMENT* 18 (1962); GREER, *THE EMERGING CITY* 60-63 (1962); Citizens League of Minneapolis, *Report of the Minnesota Municipal Subcommittee* 16 (March 6, 1963); COMMISSION ON MUNICIPAL LAWS, *REPORT TO THE MINNESOTA LEGISLATURE* 6-8 (1961); Mandelker, *Standards for Municipal Incorporations on the Urban Fringe*, 36 TEXAS L. REV. 271, 275, 295 (1958); *Legislation & Administration, Stumbling Giants—A Path to Progress Through Metropolitan Annexation*, 39 NORTE DAME LAW. 56 (1963).

The traditional method of incorporating a new municipality has been to obtain the consent of its residents and to satisfy mere formalities. Little thought is given to the welfare of surrounding areas.¹² Such an approach, coupled with complicated annexation laws¹³ and the suburbanite's attraction toward either incorporating his area into a municipality or remaining separate from the central city without incorporation,¹⁴ has led to the creation of many small, independent suburbs in close proximity.

Several devices have been utilized to remedy defects in the traditional incorporation and annexation laws. One is to prohibit the incorporation of any area within a specified distance of an existing municipality.¹⁵ This is an easily applied means of preventing a proliferation of suburbs in a metropolitan area. Suburban residents are pressured into seeking and accepting

12. Mandelker, *supra* note 11, at 276-81. Incorporation implies a fixing of boundaries and a solidifying of a center of local government authority. V. Jones, *The Organization of a Metropolitan Region*, 105 U. PA. L. REV. 538 (1957); Reiss, *The Community and the Corporate Area*, 105 U. PA. L. REV. 443, 447 (1957).

13. The sheer bulk and complexity of the traditional statutes has raised problems. See, e.g., CAL. GOV'T CODE §§ 35000-35326; FLA. STAT. §§ 165.01-.04, 171.04-.09 (1965); OHIO REV. CODE ANN. §§ 707.02-16 (Page Supp. 1965); OHIO REV. CODE ANN. §§ 709.02-31 (Page 1954). See generally DIXON & KERSTETTER, *ADJUSTING MUNICIPAL BOUNDARIES: THE LAW AND PRACTICE IN 48 STATES* 1-340 (1959); Mandelker, *Municipal Incorporation on the Urban Fringe: Procedures for Determination and Review*, 18 LA. L. REV. 623 (1958); Note, U.C.L.A.L. REV. 419-38 (1957).

Prior to 1959 Minnesota had twenty-two statutes pertaining to annexation. See generally Note, 39 MINN. L. REV. 553 (1955). For no apparent reason the annexation powers conferred upon different classes of cities differed. For example, only fourth class cities could annex land in adjoining counties; cities, but not villages, could annex land owned by state institutions. COMMISSION ON MUNICIPAL ANNEXATION AND CONSOLIDATION, REPORT TO THE MINNESOTA LEGISLATURE 11 (1959).

14. Explanations for the suburbanite's insistence on remaining separate from the central city are varied. Factors often mentioned are lower taxes, desire for a small unit of local government, general distrust of "big-city government" and desire of those in power in the suburb to keep their positions. See generally Mandelker, *supra* note 11; Moak, *Some Practical Obstacles in Modifying Governmental Structure To Meet Metropolitan Problems*, 105 U. PA. L. REV. 603 (1957); Owsley, *An End to Freeloading*, 46 NAT'L MUNIC. REV. 181 (1957); Wright, *Are Suburbs Necessary?*, 35 MINN. L. REV. 341 (1951).

15. See, e.g., ARIZ. REV. STAT. ANN. § 9-101.01 (Supp. 1965); IND. ANN. STAT. § 48-103 (1963).

MINN. STAT. § 414.02(1) (1961), confers jurisdiction, which it would not otherwise possess, upon the Municipal Commission when a proposed municipality is within four miles of an existing municipality.

annexation to obtain desired urban services. A measure of flexibility may be afforded by permitting incorporation of an area within the specified distance with the consent of the existing municipality, or without its consent if it fails to initiate annexation proceedings and the area in question requires urban government.¹⁶ Nevertheless this device is still too arbitrary to be effective. An unusual topographical feature, such as a bay, river, or mountain, may make separate incorporation the only reasonable solution. Moreover, if the specified distance is too short, encouragement may be given to incorporation of suburban areas just beyond the statutory zone. If the distance is too long, incorporation may be denied to a genuinely separate community.

The creation of myriad municipalities in the metropolitan area might also be avoided by allowing existing municipalities to annex contiguous unincorporated areas by ordinance.¹⁷ Consequently an existing municipality would be able to expand to include the growing metropolitan area surrounding it. This system, however, has certain serious defects. The residents of both the annexed area and the unincorporated area surrounding it need not be consulted, although both groups may well have interests adverse to those of the annexing municipality.¹⁸ As a result the annexing municipality could take any amount of surrounding land in whatever configurations it desired.¹⁹ In addition, the advantages of

16. This system is in effect in Arizona. See ARIZ. REV. STAT. ANN. § 9-101.01(B) (Supp. 1965).

17. Texas formerly allowed its home rule cities to annex by ordinance without obtaining the consent of the populace of the area to be annexed. O'Quinn, *Annexing New Territory: A Review of Texas Law and the Proposals for Legislative Control of Cities Extending Their Boundaries*, 39 TEXAS L. REV. 172 (1960). See also *Forbes v. City of Houston*, 304 S.W.2d 542 (Tex. Civ. App. 1957), *cert. denied*, 357 U.S. 905 (1958); *City of El Paso v. Tuck*, 282 S.W.2d 764 (Tex. Civ. App. 1955), *cert. denied*, 352 U.S. 828 (1956). TEX. REV. CIV. STAT. ANN. art. 1175, 1182a (1963) now provides for an election in the area to be annexed. See generally Sandalow, *supra* note 9, at 694 n.198.

Nebraska provides by statute that cities of the metropolitan class (population of 200,000 or more) may annex by ordinance either unincorporated areas or municipalities (if less than 10,000 population). NEB. REV. STAT. § 14-117 (1962). However, this does not apply to the annexation of agricultural lands. See *Wagner v. City of Omaha*, 156 Neb. 163, 55 N.W.2d 490 (1952).

18. See Sandalow, *supra* note 9, at 694-95. See generally COUNCIL OF STATE GOVERNMENTS, *THE STATES AND THE METROPOLITAN PROBLEM* 25-52 (1956).

19. *Lefler v. City of Dallas*, 177 S.W.2d 231 (Tex. Civ. App. 1943); *DIXON & KERSTETTER, op. cit. supra* note 16, at 292. Submerged oil lands

this system are materially diminished if the central city is already surrounded by previously incorporated suburbs.²⁰

Another method of incorporation is for a state legislature to empower state courts to regulate the substantive aspects of annexation and incorporation. In Virginia, for example, both annexation and incorporation must be approved by a court.²¹ As an independent third party, the court considers the needs of the area rather than the wishes of the individual parties.²² In incorporation proceedings, for instance, the division of a homogeneous area into several municipalities has been denied.²³

Although a system of court approval such as that used in Virginia has apparently worked well,²⁴ most experts agree that, while court regulation of annexation and incorporation is better than no review, an expert administrative body is preferable.²⁵ Several states have established administrative agencies to regu-

were annexed in State *ex rel. Pan Am. Prod. Co. v. City of Texas City*, 157 Tex. 450, 303 S.W.2d 780 (1957). See also Note, 39 TEXAS L. REV. 458 (1961).

20. Usually incorporated areas cannot be annexed. See *City of W. Univ. Place v. City of Bellaire*, 198 S.W.2d 766 (Tex. Civ. App. 1946); *City of Houston v. City of Magnolia Park*, 276 S.W. 685 (Tex. Comm'n App. 1925).

21. VA. CODE ANN. §§ 15.1-966, 15.1-1-1033 (1964). See generally Bain, *Annexation: Virginia's Not-So-Judicial System*, 15 PUB. ADMIN. REV. 251, 258 (1955).

22. Bain, *supra* note 21, at 258. If an individual from an isolated area complains that he does not need or desire municipal services, the court will defer to his wishes. "[B]ut when the movement of 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 that the area in which he lives needs it." *Town of Narrows v. Giles County*, 184 Va. 628, 638, 35 S.E.2d 808, 812 (1945). See also Note, 36 VA. L. REV. 971 (1950).

23. *Board of Supervisors v. Duke*, 113 Va. 94, 73 S.E. 456 (1912).

24. See Bain, *supra* note 21. Missouri has a similar system of court review. MO. REV. STAT. § 71.015 (1959). See Note, 1961 WASH. U.L.Q. 159, 162.

25. The main advantage of substantive review of annexations and incorporations by a court is that the court is an impartial "outsider" and will decide the petition on its merits, uninfluenced by the emotional factors and individual interests which affect the local residents. The main disadvantage of court decisions is that a court lacks the opportunity to develop the expertise that a specially appointed commission can develop. SENGSTOCK, ANNEXTION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM 41 (1960); cf. Mandelker, *Municipal Incorporation and Annexation: Recent Legislative Trends*, 21 OHIO ST. L.J. 285, 303 (1960). Furthermore, a court may be hindered by formal procedures, e.g., stare decisis or technical rules of evidence, which do not lend themselves well to the type of inquiry and decisions required on annexation and incorporation questions. Bain, *supra* note 21, at 258, 261.

late annexation and incorporation.²⁶ In a most important departure from the traditional method, these agencies attempt to determine the suitability of proposed incorporations and annexations by applying substantive standards rather than merely determining whether prescribed formal requirements have been satisfied.²⁷ The composition and geographical jurisdiction of these bodies vary widely,²⁸ but basically they have either statewide or local jurisdiction.

A local general-function body such as the county board is apt to be less effective in the regulation of annexation and incorporation than is a statewide special-function unit. Because it is busy with other tasks of government, a local unit is likely to concern itself only with those proposals which are presented to it, rather than positively initiating incorporation and annexation proceedings. Furthermore, since a local body will handle relatively fewer proceedings, it would have less chance to develop any expertise on the subject of urban growth. Also a statewide commission is more likely to be staffed with higher quality personnel than those in multiple local commissions.²⁹ While it

26. See ALASKA CONST. art. X, § 12; ALASKA STAT. §§ 07.10.010-140, 44.19.250, 44.19.260 (1962); CAL. GOV'T CODE §§ 54773-99.2; MINN. STAT. ANN. § 414.01 (Supp. 1965); WIS. STAT. §§ 66.014-.016 (1965). *But see* ALASKA STAT. §§ 29.25.030, 29.70.010-.230 (1962).

27. See Mandelker, *supra* note 11.

28. California has established state administrative bodies in each county. See Gother, *A Study of Recent Amendments to California Annexation Laws*, 11 U.C.L.A.L. REV. 41 (1963); 4 SANTA CLARA LAW. 125 (1963).

Indiana has conferred this power upon county boards and city councils. IND. ANN. STAT. §§ 48-102, 48-108, 48-109 (1963).

Wisconsin utilizes a combination of courts and a state regional planning director—the court makes an initial determination of the legality of the proposal on the basis of population, density, and area, and the director then determines the viability of the proposed municipality and its impact on the surrounding area. WIS. STAT. ANN. §§ 66.014-.016 (1963). A neighboring municipality may submit an annexation resolution to the court in an incorporation proceeding. WIS. STAT. § 66.014(6) (1963). Only the voters and property owners can initiate an independent annexation proceeding, and here again, the planning director determines whether it is in the public interest. WIS. STAT. § 66.021 (1963). This system has a serious weakness; the planning director lacks power to initiate proceedings or to effectively consider alternative solutions.

Alaska and Minnesota have established state administrative bodies. See ALASKA STAT. §§ 07.10.010-140, 44.19.250, 44.19.260 (1962); MINN. STAT. ANN. § 414.01 (Supp. 1965).

29. There are several reasons for this: With fewer positions to fill, the appointing authority can be more selective; higher salaries will probably be paid; and statewide positions generally bestow more prestige.

is true that a local body will often possess a greater understanding of local conditions and political factors than would a state agency, this factor may be less a virtue than a detriment if the local body succumbs to local pressures which are inconsistent with orderly municipal planning.

Thus a state special-function body appears to be a better regulator of annexation and incorporation than a local general-function body. A special state agency, concerned exclusively with problems of urban growth, will most likely develop greater expertise and a larger body of precedents to refine the bare statutory standards.³⁰

III. MINNESOTA'S NEW SYSTEM

Prior to 1959 Minnesota adhered to traditional methods of incorporation and annexation and was correspondingly beset with many attendant problems. The 1957 Minnesota Legislature recognized these problems and created a commission to study the laws relating to incorporation and annexation.³¹ This commission made a thorough study and presented the 1959 legislature with a report outlining the problems and recommending legislation.³² This legislation, which was enacted with only minor changes,³³ is commonly referred to as chapter 414.

Enaction of chapter 414 had a twofold effect: It established new substantive and procedural standards for incorporation, annexation, consolidation, and detachment; and it created an administrative agency, the Minnesota Municipal Commission, with statewide authority to administer these standards. The underlying purpose of chapter 414 was to facilitate the orderly growth of Minnesota municipalities and to alleviate the problems of urban sprawl.³⁴

30. See Jones, *Local Government Organization in Metropolitan Areas: Its Relation to Urban Redevelopment*, in *THE FUTURE OF CITIES AND URBAN REDEVELOPMENT* 477, 566-67 (Woodbury ed. 1953).

31. Minn. Laws 1957, ch. 833.

32. MINN. COMM'N ON MUNICIPAL ANNEXATION AND CONSOLIDATION, REPORT (1959). [hereinafter cited as MINN. COMM'N REP.].

33. Similar recommendations were made by the Minnesota Supreme Court in *State ex. rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 40-41, 95 N.W.2d 294, 302-03 (1959). See generally Note, *Village Incorporation in Minnesota: Practical Considerations and the "Properly Conditioned" Test*, 38 MINN. L. REV. 646, 660 (1954).

34. MINN. COMM'N REP. 6

A. THE MINNESOTA MUNICIPAL COMMISSION

1. *Membership*

The Commission consists of three regular members appointed by the Governor. In addition, for purposes of acting on incorporation or annexation proceedings, the county which contains the greatest area of land being considered is represented by two members of the board of county commissioners, making the Commission a five-member body.³⁵ The three regular members are part-time employees of the state, paid on a per diem basis while working on Commission business. A full-time executive secretary, appointed by the Commission, handles correspondence and other administrative affairs.

The membership of the Commission has been the subject of hot debate and proposed legislation.³⁶ Main points of contention concern the amount of representation by local interest groups, and the permissible number of lawyers as regular members.

Legislation has been adopted limiting the number of "city" members on the Commission.³⁷ In order to insure adequate representation of rural interests, the 1965 legislature amended chapter 414 to require that one of the three regular members be from a city of the first class (*e.g.*, Minneapolis or St. Paul), one from the Twin Cities metropolitan area other than a first class city, and one from outside the metropolitan area. Supporters of this amendment argued that suburban residents will have greater confidence in the Commission if its members are not predominantly city men, and will thus be more likely to vote in favor of the Commission's decisions.³⁸ This argument seems unpersua-

35. MINN. STAT. ANN. § 414.01(2) (Supp. 1965).

36. H.F. No. 253, §§ 1 & 2, 64th Sess. Minnesota Legislature (1965).

37. Prior to the 1965 legislative session the *Subcommittee to Study the Functions of the Municipal Commission, Legislative Research Committee, Minnesota Legislature*, held hearings to determine what recommendations should be made concerning chapter 414. Testimony given in these hearings will be hereinafter cited as *Subcommittee Minutes*.

Proponents of the membership alterations felt that rural interests needed more representation. Senator Thuet, *Subcommittee Minutes* 12 (January 15, 1964); Representative Jude, *Subcommittee Minutes* 13 (January 15, 1964); Representative Jacobson, *Subcommittee Minutes* 2 (April 21, 1964); Representative Renner, *Subcommittee Minutes* 1 (May 8, 1964).

38. Senator Zwach, *Subcommittee Minutes* 7 (May 8, 1964); Representative Anderson, *Subcommittee Minutes* 7 (May 8, 1964); cf. John Klein, *Subcommittee Minutes* 13-14 (January 15, 1964); Senator Thuet, *Subcommittee*

sive in view of the many factors which make up suburban opposition to annexation.³⁹ In any event, the new membership requirement will narrow the field from which the Governor can select qualified members.

Proposals to increase the number of local *ad hoc* members have been made. In many situations this could result in the local representatives gaining control over the regular membership. This would seriously undercut the value of the statewide nature of the Commission. The present Commission makeup — two *ad hoc* local representatives and three regular members — affords ample opportunity for local interests to be heard; yet they cannot control the Commission without persuading at least one regular member to support their position.

Thus far the regular members of the Commission have been three lawyers out of seven appointments.⁴⁰ Proposed legislation would limit Commission membership to one lawyer.⁴¹ Proponents of such an amendment feel that members with varied professional backgrounds should be represented because of the many factors to be considered in the complex decisions the Commission must make.⁴² Opponents point out that such a restriction on lawyers would limit the number of qualified people the Governor could choose from, and would also unjustifiably discriminate against lawyers.⁴³ It is true that many factors must be considered by the Commission. A person with a specialized background such as engineering, architecture, or social work may be particularly qualified in specific areas. A lawyer, however, because of his training and experience in dealing with varied fact situations, is at least as well equipped to objectively assimilate all evidence for and against a proposed annexation or incorporation. Professional experts in other fields can all be heard at the public

Minutes 5 (May 28, 1964); LEGISLATIVE RESEARCH COMMITTEE, REPORT ON MINNESOTA MUNICIPAL COMMISSION, Publication 101 (January 1965).

39. See note 14 *supra*.

40. Letter from Irving R. Keldson, Executive Secretary of the Minnesota Municipal Commission, to the University of Minnesota Law School, May 4, 1966, on file in the University of Minnesota Law Library.

41. H.F. 253 § 1, 64th Sess., Minnesota Legislature (1965). This was deleted by amendment on the house floor. At present there is no restriction on the number of lawyers on the Commission.

42. Senator Thuet, *Subcommittee Minutes 1* (April 21, 1964). Representative Jacobson, *Subcommittee Minutes 2* (April 21, 1964).

43. Citizens League of Minneapolis, Report on the Minnesota Municipal Commission 2, 21 (March 17, 1965).

hearings, irrespective of the number of lawyers on the Commission.

2. *Duties of the Commission*

The duties of the Commission are to hear petitions for incorporations, annexations, consolidations, and detachments; to approve or reject these petitions; and, after each federal or state census, to review all townships with a population greater than 2,000 (exclusive of municipalities therein) to determine what form of government will best suit such townships. The Commission has an affirmative duty to order an annexation or incorporation election if it believes a change in local government is in the best interests of the area.⁴⁴

3. *Powers of the Commission*

The broad powers of the Commission granted by chapter 414 have been most controversial. The Commission is empowered to change the boundaries of an area proposed for incorporation or annexation;⁴⁵ to reject a proposed incorporation, annexation, consolidation, or detachment;⁴⁶ and to initiate annexations and incorporations.⁴⁷

From 1961 to 1963 the Commission had the power, referred to as the "no vote provision," to order annexation of unincorporated land to incorporated municipalities in the Twin Cities metropolitan area without the vote of the landowners or residents of the area to be annexed. This power was eliminated by the legislature in 1963,⁴⁸ and has not been restored despite recommendations to do so during the 1965 session.⁴⁹

B. INCORPORATION

Section 2 of chapter 414 provides the exclusive method for incorporation of a village in any county containing a city of the first or second class,⁵⁰ in any county within a metropolitan area,

44. MINN. STAT. ANN. § 414.05 (Supp. 1965).

45. MINN. STAT. ANN. §§ 414.02(3), .03(4) (Supp. 1965).

46. MINN. STAT. ANN. §§ 414.02(3), .03(4), .04(3), .06(4) (Supp. 1965).

47. MINN. STAT. ANN. § 414.05 (Supp. 1965).

48. Minn. Laws, ch. 621 (1963).

49. See note 73 *infra*.

50. Minnesota cities are classified as follows: First class—more than 100,000 inhabitants; second class—between 20,000 and 100,000 inhabitants;

or in any other area within four miles of the boundary of an existing municipality.⁵¹ In other areas the board of county commissioners will administer incorporation proceedings, applying the standards and procedures of section 2.⁵² The incorporation proceeding consists of four basic steps: A petition to the Commission; a public hearing held by the Commission; a decision by the Commission to approve or reject the petition; and, if the petition is approved, an election within the area to be incorporated.

An incorporation petition must represent an unincorporated area containing a resident population of not less than 500, and must include some that has been properly platted.⁵³ In addition, it must be accompanied by a population census of the area,⁵⁴ and must include certain information such as the valuation of platted and unplatted land, the proposed name of the village, a brief description of the existing facilities for water supply, sewage disposal, police and fire protection, and a map setting forth the boundaries of the proposed municipality. The petition must be signed by at least 100 resident freeholders.

After receipt of a proper petition, the Commission secretary must schedule a public hearing in the county containing the greatest area of land to be incorporated, and must give public notice of this hearing.⁵⁵ The length and number of hearings is not specified, nor is the Commission specifically given discretion as to this matter. The practice of the Commission, however, is to extend the hearings until all interested parties are heard.⁵⁶ Chapter 414 originally required full Commission attendance at all public hearings. But, because some hearings failed to warrant the attention of the full Commission, particularly uncontroversial hearings in rural areas,⁵⁷ the 1965 legislature amended chapter

third class—between 10,000 and 20,000 inhabitants; and fourth class—less than 10,000 inhabitants. MINN. STAT. ANN. § 410.01 (Supp. 1965).

51. MINN. STAT. ANN. § 414.02(1) (Supp. 1965).

52. *Ibid.*

53. Prior to 1959 the minimum population required was 100. Minn. Laws 1949, ch. 119, § 1.

54. MINN. STAT. ANN. § 414.02(1) (Supp. 1964). This section was amended in 1965 to allow limited use of federal census figures or the latest Metropolitan Planning Commission estimate of population. Minn. Laws 1965, ch. 899, § 6.

55. MINN. STAT. ANN. § 414.02 (2) (Supp. 1965).

56. Letter from Irving R. Keldson, Executive Secretary of the Minnesota Municipal Commission, to the University of Minnesota Law School, May 4, 1966, on file at the University of Minnesota Law Library.

57. Irving Keldson, *Subcommittee Minutes* 7 (Feb. 29, 1964).

414 to allow hearings to be conducted by one member or the executive secretary.⁵⁸

The sources of information available to the Commission at the public hearings have been a subject of considerable discussion and legislative inquiry. To decide an incorporation, annexation, consolidation, or detachment petition, the Commission relies on the adversary system to produce information relevant to an intelligent decision. Commission members and others have suggested this system is sometimes inadequate,⁵⁹ thus perhaps other sources of information should also be made available. The legislature could remedy any possible inadequacy of information by staffing the Commission with city planning experts who could make an independent study of the problems presented, furnishing funds for the Commission to hire expert consultants, making provisions for the Commission to "borrow" expert help from other state agencies, or any combination of these. The Commission and others consider furnishing funds to be the best solution.⁶⁰ Chapter 414 does empower the Commission to contract with planners and to subpoena witnesses and documents, but it does not provide funds to carry out such functions.⁶¹

After the public hearing, the Commission may either approve or reject the petition or it may revise the boundaries of the area to be incorporated and approve the area so altered. A Commission decision to allow incorporation must be based on the established statutory standards. These standards require findings that the area would be better served by incorporation than by the existing unincorporated form of government, and that annexation to an adjoining municipality is not preferable to separate incorporation.

With the power to alter proposed boundaries, the Commission can combine unincorporated suburban areas into a unit of efficient size and thus prevent the formation of several independent municipalities. This power can be used to prevent gerrymandered boundary lines and to provide enough area for future expansion. In addition, adjacent areas may be included even though their residents prefer separate or no incorporation if overall planning considerations dictate that these areas should be

58. Minn. Laws 1965, ch. 899, § 4, amending MINN. STAT. ANN. § 414.01 (Supp. 1964).

59. See Citizens League of Minneapolis, *op. cit. supra* note 43, at 15.

60. *Id.* at 2, 14-15; Boizi, *Subcommittee Minutes* 8 (Jan. 30, 1964); Robert Johnson, *Subcommittee Minutes* 8-9 (March 17, 1964).

61. MINN. STAT. ANN. § 414.01(8) (Supp. 1965).

included in the proposed incorporation.⁶² Although a majority vote within the entire area approved by the Commission is required for final incorporation, any area added by the Commission cannot decide for itself to stay out.⁶³

The power to alter boundaries of a proposed incorporation was severely limited by the 1965 legislature. If an entire township, excepting previously incorporated areas, is designated in the petition as the area to be incorporated, the Commission cannot add more than five percent to the proposed area.⁶⁴ This limitation can seriously curtail the effectiveness of the Commission in carrying out one of its primary purposes — preventing the proliferation of small suburban municipalities. Nonetheless, if the Commission feels that township lines are improper boundaries for a proposed area, it can still deny the incorporation petition on the grounds that annexation to an adjoining municipality would better serve the area. If annexation is unrealistic, however, and the incorporation standards are met, the Commission will be forced to grant the incorporation virtually as requested. There remains the possibility of a second petition by qualified petitioners which seeks to incorporate the area in the first petition plus any surrounding area which the Commission would prefer to have added to the area proposed by the first petition. If the Commission can induce such an event, it can approve the second petition as the better of the two, provided it was submitted within one year of the initial public hearing for the first petition. Of course, a stalemate can still result since the voters in the area of the approved second petition must still elect incorporation. A stalemate of this nature actually happened in the Woodbury-Cottage Grove situation.⁶⁵ The Commission denied a petition by residents of Cottage Grove Township for separate incorporation. Then residents of Woodbury Township together with other Cottage Grove residents petitioned for incorporation of Woodbury and Cottage Grove as one unit, and the Commission approved.⁶⁶ When the required election was held, however, the combined incorporation was voted down,

62. MINN. COMM'N REP. 18.

63. One attempt by the Commission to increase an area proposed for incorporation was thwarted by a district judge. See text accompanying notes 92-94 *infra*.

64. Minn. Laws 1965, ch. 899, § 9.

65. Woodbury and Cottage Grove are contiguous townships in Washington County abutting the east boundary line of Ramsey County. Both contain residential areas which are suburbs of St. Paul.

66. Petition To Incorporate the Village of Washington, Minn. Mun. Comm'n I-7 (1963).

largely on the strength of a very high percentage of "no" votes in Cottage Grove.⁶⁷ As a result, the formation of a municipal government was delayed for some time in a rapidly growing suburban area of the type which normally would be incorporated.⁶⁸

An election must be provided for in the Commission's order approving an incorporation petition. The election must take place in the area to be incorporated between twenty and forty days after entry of the Commission's order. This election must be supervised by the Commission through appointed election judges.

C. ANNEXATION

1. *Unincorporated areas*

An annexation petition may be initiated by the annexing municipality, by the township containing the proposed area to be annexed, or by a certain number of freeholders in the area to be annexed. Section 3 classifies all annexations of unincorporated areas into three types: Annexation by an ordinance of the annexing municipality without approval by the Commission or the voters of the area to be annexed; annexation requiring approval of the annexing municipality and the Commission but not requiring an election; annexation requiring approval of the annexing municipality and the Commission plus approval by a majority of voters in the area to be annexed.

Annexation solely by ordinance of the annexing municipality can be accomplished if the land to be annexed is owned by and abuts the annexing municipality; or if the land to be annexed is completely surrounded by the annexing municipality; or if the land to be annexed is seventy-five percent or more surrounded on three sides by the annexing municipality and the township does not object. Finally, annexation may be accomplished by ordinance if the land to be annexed abuts the annexing municipality, is platted—or if unplatted, is less than 200 acres—and meets the following requirements: A majority of owners⁶⁹ petitioned the annexing municipality; no written ob-

67. St. Paul Dispatch, Nov. 6, 1963, p. 14.

68. Cottage Grove was recently incorporated by special act of the legislature. Minn. Laws 1965, ch. 450. Woodbury is still unincorporated.

69. The Minnesota Supreme Court has held that for purposes of approving an annexation under § 414.03(7), vendees under contracts for deed of land in the area to be annexed are "owners." This determination was based on a theory of beneficial ownership rather than legal title. *State ex rel. Blee v. City of Rochester*, 260 Minn. 151, 109 N.W.2d 44 (1961).

jection is filed by the county board, town board, or the governing body of any other municipality abutting the land to be annexed; and the governing body of the annexing municipality determines that annexation will be in the best interests of the area affected.⁷⁰

Annexations requiring approval of the annexing municipality and the Commission, but not an election, are those which could have been accomplished solely by ordinance, but were objected to by the town board, county board, or the governing body of any other abutting municipality; and those initiated by a petition signed by a majority of landowners, in area and number, where the area to be annexed contains unplatted land and exceeds 200 acres.

Annexations requiring approval of the annexing municipality and the Commission, together with an election in the area to be annexed, arise in two situations: Those in which the petition has been signed by less than a majority of landowners in area and number; and those which have been initiated by the Commission under section 5 of chapter 414.

From 1961 to 1963 the Commission was empowered to order annexations without an election.⁷¹ Attempts have been made to restore this "no vote provision" to chapter 414. Many experts feel that sizable annexations in growing urban areas will not be achieved as long as the local residents of the area to be annexed have the right to veto the annexation.⁷²

Supporters of the no vote provision argue that the welfare of the surrounding metropolitan area is involved, not just the welfare of the area to be annexed. Consequently, to allow the

70. Significantly, annexations under the "200 acre provision" may be overturned by the courts even though the Commission has no authority to review the petitions. In *Town of Burnsville v. City of Bloomington*, 268 Minn. 84, 128 N.W.2d 97 (1964), the supreme court affirmed a district court decision that an annexation by Bloomington of certain unincorporated land within Burnsville was invalid. The supreme court rested its holding on alternate grounds. First, the city of Bloomington violated its own procedural rules when, in order to avoid publicity, it used emergency procedures to summarily pass the ordinance approving the annexation. Second, the court found that, contrary to chapter 414, the city had not acted in the best interests of the "territory affected." The court construed "area affected" as including the larger area out of which the annexed area is taken and said that the interests of this larger area must be considered.

71. This power was not in the original version of chapter 414. It was added by amendment in Minn. Laws 1961, ch. 645, § 3 and then removed in Minn. Laws 1963, ch. 621, § 2.

72. Citizens League of Minneapolis, *op. cit. supra* note 43, at 19.

voters of the area being annexed to block the proposed annexation will permit a private decision on a public question. It is felt the Commission, as an impartial third party, is better able to weigh all relevant factors and make a decision in the public interest.⁷³ Proponents of the current "right to veto provision," on the other hand, view the no vote provision as a threat to the right of individuals to choose their own form of government.⁷⁴ Except for the 1961-63 period, this viewpoint has prevailed. Notably, the Commission's power to veto a proposed incorporation affords a means of inducing annexations which counters the effect of the elimination of the no vote provision to some extent.

A hearing must be held for all annexations which require Commission approval except when the petition has been signed by a majority of the landowners, in area and number, of the area to be annexed.⁷⁵ This hearing is conducted under the adversary system. Thus all proponents and opponents of the proposed annexation are allowed to present their views.

When its approval is required, the Commission shall, after receiving the petition and holding a hearing, approve the annexation if the area involved is now, or may reasonably be expected to be, of an urban or suburban character.⁷⁶ Chapter 414 provides the Commission with certain guidelines for making its determination.⁷⁷ If the possibility of increased revenue appears to be the

73. In 1963 the Citizens League of Minneapolis recommended that the "no vote" provision be retained and in 1965 it recommended that the provision be restored. Citizens League of Minneapolis, *op. cit. supra* note 43, at 4. Testifying in favor of the "no vote" provision were: James W. Hawks, Reynold Boizi and Harold Larson, *Subcommittee Minutes* 6-8 (Jan. 30, 1964); Thomas E. Mealy, *Subcommittee Minutes* 13 (Jan. 30, 1964); Joseph Robbie, *Subcommittee Minutes* 7-8 (March 17, 1964). On the national level, commentators have argued that a statewide body should have final authority to decide annexations. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, GOVERNMENTAL STRUCTURE, ORGANIZATION, AND PLANNING IN METROPOLITAN AREAS 19-21 (1961); *Legislation & Administration, Stumbling Giants—A Path to Progress Through Metropolitan Annexation*, 39 NOTRE DAME LAW. 56, 93-94 (1963).

74. Paul Hauge, *Subcommittee Minutes* 9-10 (Jan. 30, 1963). The "no vote" provision was even analogized to communist and fascist philosophy. Representative Klause, *Subcommittee Minutes* 3 (Jan. 30, 1964).

75. MINN. STAT. ANN. § 414.03 (3) (Supp. 1965).

76. MINN. STAT. ANN. § 414.03(4) (Supp. 1965).

77.

[T]he commission shall make findings as to the following factors: (1) The relative population of the annexing area to the annexed territory. (2) The relative area of the two territories. (3) The relative assessed valuation. (4) The past and future probable expansion of the

primary motive of the annexing municipality, and such increase is not reasonably related to the benefits to be received by the annexed area, the Commission shall deny the petition.⁷⁸ As with incorporation proceedings, before approving an annexation petition the Commission has the authority to alter the boundaries of the area to be annexed.

After approval of the petition, the Commission will direct an annexation election if required.⁷⁹ If the majority of votes cast at this election are for annexation, or if no election is required, the Commission shall execute an annexation order.

2. *Incorporated areas*

Section 4 provides for annexation of adjoining municipalities in counties containing a first or second class city or in counties within the Twin Cities metropolitan area, and for "consolidation" of municipalities in any other area.⁸⁰ Both of these procedures in effect bring about a merger of two or more contiguous incorporated communities. In considering a merger, the Commission lacks the power to alter boundaries.⁸¹ In view of the Commission's strong preference for reducing the number of incorporated muni-

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 of the township form of government to cope with problems of urban or suburban growth in the area proposed for annexation.

MINN. STAT. ANN. § 414.03(4) (Supp. 1965).

78. MINN. STAT. ANN. § 414.03(4) (Supp. 1965).

79. MINN. STAT. ANN. § 414.03(5) (Supp. 1965). If the petition for annexation was initiated by a majority of the land owners, in area and number, no election is necessary. However, if not initiated by a majority of the owners, the annexation may be approved at the election by a majority of the voters in the annexed area. There is no reason to believe that the interests of the majority of voters will always coincide with those of the majority of owners. This anomaly was brought out in the legislative hearings but was not corrected in the final enactment.

80. MINN. STAT. ANN. §§ 414.04(1), (5) (Supp. 1965).

81. MINN. STAT. ANN. § 414.04(3) (Supp. 1965).

palties, disapproval of any merger seems unlikely, even if a different boundary configuration appears preferable.

Consolidation of municipalities outside the metropolitan area or in any county not containing a first or second class city can be accomplished without Commission approval. Such consolidation, however, must be approved by the governing council of each municipality. After this approval, the proposed consolidation must also be approved at a general or special election by a majority of voters in each municipality.⁸²

The election requirements of a section 4 annexation, unlike those of a section 4 consolidation, are unclear. The relevant provision first states the Commission's order shall be final; then it goes on to provide for an election in each municipality.⁸³ Only the annexation of the Village of Island Park to the Village of Mound has been accomplished under this section; no election was held.⁸⁴ That annexation, however, took place in 1960; in 1961 the apparent requirement of section 4 for an election only when three or more municipalities were being merged was changed to require an election even when only two were involved.⁸⁵ Considering that the major impetus for repeal of the no vote provision was the desire of local residents to choose their own form of local government, perhaps section 4 should be construed to require voter approval of any annexation subject to its provisions.

Subdivision 3 of section 4 directs the Commission to order each municipality to remain separately liable for its debts outstanding at the time of annexation. Subdivision 4 provides that the annexing municipality shall assume all bonds and obligations of the annexed municipality *unless the Commission provides otherwise*. When read together these two provisions are quite confusing. If the Commission must order each merging municipality to remain separately liable for its debts, then subdivision 4 appears useless, since by legislative mandate the Commission has "provided otherwise." The only way subdivision 4 would seem to have any effect is if the phrase "bonds and obligations" is read more broadly than "debts outstanding." In any case, this unfortunate instance of ambiguous draftsmanship should be clarified by future legislation.

82. MINN. STAT. ANN. § 414.04(5) (Supp. 1965).

83. MINN. STAT. ANN. § 414.04(3) (Supp. 1965).

84. Petition for the Annexation of the Village of Island Park to the Village of Mound, Minn. Mun. Comm'n A-60-60 (1960).

85. Minn. Laws 1961, ch. 645, § 4(3).

In the *Island Park-Mound* annexation the Commission resolved this ambiguity by declaring that each municipality must remain liable for its debts. Further, it granted the newly merged municipality the power to assess each merging municipality separately to meet the debts outstanding at the time of merger. The Commission felt this was the most equitable solution. Since this solution will be most conducive to voter approval of future section 4 mergers, the Commission's approach was probably correct.⁸⁶

D. COMMISSION REVIEW OF URBAN TOWNSHIPS

Section 5 requires the Commission to review every Minnesota township with a population greater than 2,000, exclusive of incorporated areas, after every federal or state census. Following such a review, the Commission must determine if incorporation, annexation, or continuance as a township would best serve the area. If the Commission determines that incorporation or annexation is in order, it initiates proceedings substantially similar to those contained in sections 2 and 3.⁸⁷

This duty of review gives the Commission an opportunity to show unincorporated urban areas how they may be better served by annexation or incorporation.⁸⁸ Consequently urban townships are alerted to the important need of planning for future orderly growth. This review procedure should result in preparation to meet the problems attendant to urban growth.⁸⁹

86. See Irving Keldson, *Subcommittee Minutes* 8 (Jan. 15, 1964); Curran, *The Metropolitan Problem: A Solution From Within?*, 16 NAT'L TAX J. 213 (1963). The *Island Park-Mound* method of assessment, however, is not without problems. See Curran, *supra* at 214; Moak, *Some Practical Obstacles in Modifying Government Structure to Meet Metropolitan Problems*, 105 U. PA. L. REV. 603, 613 (1957).

87. MINN. STAT. ANN. §§ 414.05(1)-(4) (Supp. 1965). The Minnesota Supreme Court recently held that an annexation initiated by the Commission under § 5 requires an election just as does an annexation initiated by residents. *Minnesota Municipal Comm'n v. Town of White Bear*, 268 Minn. 383, 129 N.W.2d 560 (1964). This holding is contrary to the Commission's interpretation as stated in *Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake*, Minn. Mun. Comm'n A-22-60, at 4 (1960) (memorandum opinion).

88. The Commission has conducted thirty-two reviews; eight of these have resulted in proceedings for annexation or incorporation. See Records on file in the Minnesota Municipal Commission office, St. Paul, Minnesota. For a good example of such a review see *Review of Status of the Town of Eden Prairie*, Minn. Mun. Comm'n 55-10 (Aug. 30, 1962).

89. James W. Hawks, *Subcommittee Minutes* 6 (Jan. 30, 1964); Erik Rocks, *Subcommittee Minutes* 6 (Jan. 30, 1964); Terrance O'Toole, *Subcommittee Minutes* 14 (Feb. 29, 1964).

E. DETACHMENTS

Section 6 provides for detachment of land from an incorporated municipality where the land is adjacent to the municipal boundaries, unplatted, and used exclusively for agricultural purposes. Any detachment must be approved by the Commission. Detachment will be denied if the land is needed for reasonably anticipated development of the municipality, if the symmetry of the municipality will be unreasonably altered, or if the land is not used exclusively for agricultural purposes. The Commission may alter the boundary of the area to be detached by excluding land not meeting the necessary criteria.⁹⁰

F. APPEALS FROM COMMISSION ORDERS

Section 7 provides for appeal to a state district court from a Commission order. The possible grounds of appeal give the district courts wide latitude to review orders of the Commission.⁹¹

In a recent appeal pursuant to section 7 a district court judge ordered the Commission to remove that part of Eagan Township which the Commission had added to an area proposed for incorporation.⁹² The judge stated that the Commission had acted "in unreasonable disregard of the best interests of the territory affected."⁹³ No other reasons were given by the judge. When the Commission appealed to the Minnesota Supreme Court, it was denied standing to appeal on the specious ground that no right of the Commission had been affected.⁹⁴ The right to appeal has subsequently been given to the Commission through legislation.⁹⁵

90. MINN. STAT. ANN. § 414.06(4) (Supp. 1965).

91. Appeal may be made on the following grounds:

1. That the commission had no jurisdiction to act;
2. That the commission exceeded its jurisdiction;
3. That the order of the commission is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected;
4. That the order is based upon an erroneous theory of law.

MINN. STAT. ANN. § 414.07 (Supp. 1965).

92. *Town of Eagan v. Minnesota Municipal Comm'n*, Docket No. 60818, First Judicial Dist. of Minnesota, June 30, 1964. For the Commission's order, see Incorporation of the Town of Burnsville and Certain Added Property in the Townships of Lebanon and Eagan, Minn. Mun. Comm'n I-3 (1964).

93. *Town of Eagan v. Minnesota Municipal Comm'n*, *supra* note 92, at 3-4.

94. *Town of Eagan v. Minnesota Municipal Comm'n*, 269 Minn. 239, 130 N.W.2d 525 (1964).

95. Minn. Laws 1965, ch. 834; MINN. STAT. ANN. § 414.08 (Supp. 1965).

If in a future case the Minnesota Supreme Court were to affirm a decision such as that made by the district court judge in the case involving Eagan Township, it would curtail the effectiveness of the Commission. In *Eagan* it seems that the district court judge exceeded the normal scope of judicial review of administrative agency action. Significantly, during the incorporation proceedings the Commission unanimously agreed that part of Eagan township should be included.⁹⁶ Yet a single district judge was allowed to prevail over the considered opinion of this five man body, created by the legislature for the express purpose of deciding such questions.

IV. STANDARDS APPLIED BY THE COMMISSION

Since its creation in 1959, the Commission has considered numerous incorporation, annexation, and detachment petitions. In deciding these petitions, the Commission has issued explanatory memorandum opinions. Together with the facts and dispositions of the petitions, these opinions have created a "body of law" deriving from, and elaborating upon, the standards contained in chapter 414.

In accordance with the statutory mandate requiring denial of an incorporation petition if annexation would better serve the petitioned area,⁹⁷ the Commission has repeatedly expressed a very strong preference for annexation.⁹⁸ In fact, once the Commission finds the area in question is urban or suburban in character, only the most impractical annexation petitions will be denied.⁹⁹

In considering incorporation or annexation petitions, the Commission appears to employ a two-step process. First, it determines whether an incorporated form of government ought to be sub-

96. In the Matter of the Incorporation of the Town of Burnsville and Certain Added Property in the Townships of Lebanon and Eagan, Minn. Mun. Comm'n I-3 (1964). There was some disagreement over exactly how much of Eagan Township should be included. *Ibid.*

97. MINN. STAT. ANN. §414.02(3) (Supp. 1965).

98. *E.g.*, Petition for Annexation of Lincoln Township to the Village of Mahtomedi, Minn. Mun. Comm'n A-290, at 7 (1964); Petition of the City of Bloomington to Annex the Township of Burnsville, Minn. Mun. Comm'n A-273, at 9 (1963). "We subscribe to the idea that the annexation of property as it becomes platted and built-up is the best method of providing governmental services to newly developed urban property." Petition for Annexation of Lincoln Township, *supra* at 7-8.

99. For an example of the general rule favoring annexation, see Petition of the City of Bloomington to Annex the Township of Burnsville, Minn. Mun. Comm'n A-273 (1963).

stituted for the existing township form, *i.e.*, whether the area in question is, or is about to become, urban or suburban. If the area is not yet suited for municipal government, the petition can be denied without further inquiry. However, if the petitioned area is properly conditioned for municipal government, the Commission will then determine the best method of achieving that form. In making this second determination, the Commission may choose from various alternatives: Annexation or incorporation as petitioned; annexation or incorporation with the boundaries of the petitioned area altered as the Commission sees fit; denial of an incorporation petition on the ground that immediate annexation to an adjoining incorporated municipality is preferable; denial of an incorporation petition on the ground that an existing and expanding municipality will soon engulf the petitioned area.

For incorporation petitions the Commission has developed one standard for rural areas and another for metropolitan areas. This dual standard is evidenced by a comparison of Commission action on two incorporation petitions; the Village of St. Francis petition was approved,¹⁰⁰ and the Village of Orchard Gardens petition was denied.¹⁰¹ St. Francis and Orchard Gardens are small communities 25 and 10 miles from Minneapolis respectively. Without considering the territory surrounding these two communities, they appear to warrant the same treatment: Both were identified as independent communities which had been in existence for several decades; both were made up largely of unplatted land; neither had significant industrial or business activity; and neither could reasonably be annexed to an adjoining municipality at the time the petitions were filed. Consideration of the surrounding territory, however, demonstrates that St. Francis is far enough removed from the city of Minneapolis to lie outside the metropolitan area. On the other hand, Orchard Gardens is closer to Minneapolis and directly in the path of present suburban growth. In the words of the Commission, St. Francis was described as a "settled community in a rural setting,"¹⁰² while Orchard Gardens was said to be "within the heart of the Twin Cities metropolitan area."¹⁰³

Although not explicitly included in the statutory standards for incorporation, this dual standard finds ample justification

100. Incorporation of the Village of St. Francis, Minn. Mun. Comm'n I-6-62 (1962).

101. Petition for Incorporation of the Village of Orchard Gardens, Minn. Mun. Comm'n I-5-61 (1961).

102. Minn. Mun. Comm'n I-6-62, at 1 (1962) (memorandum opinion).

103. *Id.* at 3.

in both court decisions¹⁰⁴ and the general purpose of chapter 414. Although the Commission lacks the power to unilaterally order large incorporations, it is charged with the duty of fostering orderly and beneficial urban growth. Thus the Commission should deny incorporations of small communities on the metropolitan fringe if they are in the path of expanding urbanization. Consideration of the future growth pattern of a metropolitan area will lead the Commission to make a sounder decision on whether to approve incorporation of a small urban or suburban community. Such consideration is unnecessary when the community is in a rural setting.

In applying this dual standard, however, the Commission has confused the meaning of "urban or suburban." Instead of uniformly applying the first part of the two-step test, *i.e.*, isolating the finding of "urban or suburban" without considering the nature of the surrounding area, the Commission has fused the two determinations into one by applying the dual standard at the first step. In the *Orchard Gardens* opinion it appears that the community was urban or suburban in character.¹⁰⁵ Thus it would have been granted separate incorporation if it had been further removed from the metropolitan area. Yet the Commission classified the area as "not now, nor . . . about to become, an urban or suburban unit adequate to perform governmental services needed by the people living in the area."¹⁰⁶ The Commission should have conceded the area was suited for incorporated government, and denied incorporation on the ground that Orchard Gardens should be annexed to a nearby growing municipality in the future, or included in a petition for incorporation of a larger area. Instead the Commission found Orchard Gardens was not urban or suburban, thereby distorting the meaning of "urban or suburban" in order to support its denial of in-

104. "[D]ecisions involving mining and metropolitan areas are of little help in determining the problems that arise in a primarily agricultural community." *State ex rel. Township of Copley v. Village of Webb*, 250 Minn. 22, 29, 83 N.W.2d 788, 794 (1957). See also *State ex rel. Burnquist v. Village of St. Anthony*, 223 Minn. 149, 26 N.W.2d 193 (1947); 38 MINN. L. REV. 646 (1954); *cf. State ex rel. Simpson v. Village of Alice*, 112 Minn. 330, 127 N.W. 1118 (1910) (dual standard applied when mining lands are involved).

105. Indeed, in another decision the Commission states that both of the two townships in which Orchard Gardens is located are suburban in character. *Separate Petitions To Incorporate the Entire Townships of Burnsville, Eagan, Lakeville and Inver Grove*, Minn. Mun. Comm'n, interim memorandum opinion 10 (May 1, 1962).

106. Minn. Mun. Comm'n I-5-61, at 3 (conclusions of law).

corporation. In fact, this denial was based on a finding that separate incorporation was not the best method for Orchard Gardens to be brought under municipal government.

A better approach to the first step of determining if an area is suited for incorporated government would be to use the same standards in both metropolitan and rural areas. After making this initial determination, the dual standard could then be applied to the second step determination of choosing the best method of achieving incorporated government.

Perhaps in *Orchard Gardens* the Commission felt impelled to cloud the meaning of "urban or suburban" in order to remain within the scope of the incorporation provision. A literal reading of chapter 414 *requires* the Commission to approve an incorporation petition if the area is urban or suburban in character, *unless* annexation to an adjoining municipality would be better.¹⁰⁷ This provision creates obvious problems when there is no suitable adjoining municipality at the time the petition is considered, yet the area proposed for incorporation is within the path of metropolitan growth. One way to avoid this dilemma of statutory interpretation would be to construe the exception — "the petition shall be denied if it appears that annexation to an adjoining municipality would better serve the interests of the area"¹⁰⁸ — to apply even if annexation would be better *in the future*. Under such a construction, communities such as Orchard Gardens would come within the exception to mandatory approval of urban or suburban areas. It will be preferable for such communities to be annexed to an established expanding municipality as soon as the municipality can provide the necessary services.

Many factors are relevant in a determination of whether an unincorporated area is properly conditioned for municipal government. Among them are population growth, financial stability, business and industrial activity, business and industrial growth, agricultural use of the area, new construction of residential dwellings, nature of population in the area, schools and churches in the area, need for municipal services such as sewer and water, need for regulations such as zoning control and building ordinances, and need for protective bodies such as police and fire departments.

107. "[T]he Commission *shall approve* the petition for incorporation if it finds that the property to be incorporated is now, or is about to become, urban or suburban in character." MINN. STAT. ANN. § 414.02(3) (Supp. 1965). (Emphasis added.)

108. *Ibid.*

When considering incorporation petitions, the Commission basically follows the "Minnetonka Village test."¹⁰⁰ This test, which was initially enunciated by Justice Mitchell in an early leading case,¹¹⁰ consists of a threefold standard: (1) There must be a compact center or nucleus of population on platted lands; (2) the unplatted lands must be in such close proximity to the platted lands as to be suburban in character; (3) the unplatted lands must have some unity of interest with the platted lands in the maintenance of village government.¹¹¹ The Minnetonka test was later expanded by judicial decision to include unplatted, undeveloped land which, although not suburban in character at the time of the proposed incorporation, is nonetheless about to undergo a transition from rural to suburban character.¹¹² Such land is needed by the incorporating area to provide room for reasonably foreseeable community growth. Both the language of chapter 414¹¹³ and the opinions of the Commission¹¹⁴ adopted this expansion of the original Minnetonka test. As with incorporation petitions, allowing for reasonable future growth is an important consideration in annexation proceedings.

Using section 5 of chapter 414 as a keystone, the Commission has affected a significant and sound modification to the judicial Minnetonka test. Section 5, which provides for review of townships having a population in excess of 2,000,¹¹⁵ popularly referred

109. See *Incorporation of the Village of Minnetrista*, Minn. Mun. Comm'n I-1-60 (1960); *Petition for Incorporation of the Remaining Unincorporated Area of the Township of Dayton*, Minn. Mun. Comm'n I-2-60 (1960).

110. *State ex rel. Childs v. Minnetonka Village*, 57 Minn. 526, 59 N.W. 972 (1894).

111. Although the *Minnetonka Village* case concerned incorporation standards the Commission also used the test created therein as the touchstone for annexation proceedings. See *Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake*, Minn. Mun. Comm'n A-22-60 (1960); *Petition for Annexation of Adjoining Unincorporated Territory to the City of Albert Lea*, Minn. Mun. Comm'n A-79-60 (1960).

In a later decision, the supreme court clarified the use of this test for annexation proceedings. *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 95 N.W.2d 294 (1959).

112. *Id.* at 36, 95 N.W.2d at 300; *State ex rel. Northern Pump Co. v. Village of Fridley*, 233 Minn. 442, 47 N.W.2d 204 (1951).

113. "[T]he Commission shall approve the petition for incorporation if it finds that the property to be incorporated is now, or is about to become, urban or suburban in character." MINN. STAT. ANN. § 414.02 (3) (Supp. 1965). (Emphasis added.)

114. *Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake*, Minn. Mun. Comm'n A-22-60 (1960).

115. See notes 87-88 *supra* and accompanying text.

to as "urban towns," states that an urban town "shall be deemed to be urban or suburban in character for the purpose of incorporation or annexation."¹¹⁶ The Commission has properly seized upon this presumption to enable it to include even agricultural land in a proposed annexation if such land is needed to promote symmetry, or to provide an otherwise urban area with an abutting connection to the annexing municipality.¹¹⁷ The tangled situation which arose in White Bear Township is a good example of the importance of this presumption of urban or suburban character. Shortly before the enactment of chapter 414, the Minnesota Supreme Court denied annexation of a predominantly suburban area adjoining the highly gerrymandered municipality¹¹⁸ of White Bear Lake.¹¹⁹ This denial was based on the fact that the portion of land which abutted the annexing municipality was used exclusively for agricultural purposes and evidenced no sign of urban development in the reasonably foreseeable future.¹²⁰ In short, a substantial suburban area was denied annexation because it was geographically separated from the annexing municipality by a much smaller area of farmland.¹²¹

116. MINN. STAT. ANN. § 414.05(2) (Supp. 1965).

117. "Section 5 is a clear delegation of authority to the Minnesota Municipal Commission to exercise discretion in determining the point at which part or all of an urban town as therein defined can be better served by annexation or incorporation than by remaining a part of township government." Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake, Minn. Mun. Comm'n A-22-60, at 8 (1960) (memorandum opinion).

118. Testimony by a county official evidenced a chaotic boundary situation. The unincorporated area of White Bear Township includes seventeen separate islands of unincorporated property, none connected with each other, and all under the same township government. It is impossible to determine whether two sections of land are under township or municipal government. And seven of the unincorporated islands are entirely surrounded by the City of White Bear Lake. *Id.* at 5-6 (memorandum opinion).

Under a § 5 review conducted in 1963, the Commission found gerrymandering of White Bear Township was so bad that three different official maps introduced into evidence conflicted on their placement of boundary lines. Review of Township of White Bear, Minn. Mun. Comm'n S5-11, at 2-3 (1963) (memorandum opinion).

119. State *ex rel.* Town of White Bear v. City of White Bear Lake, 255 Minn. 28, 95 N.W.2d 294 (1959).

120. The entire area in question, however, was conceded by the court to be "lying wholly within the metropolitan area of St. Paul and Minneapolis." *Id.* at 33, 95 N.W.2d at 298.

121. "Since the westerly 320 acres are clearly not suburban in character, the north annexation area *in its entirety*, under our present archaic annexation procedures, fails to qualify for annexation as not being so conditioned as properly to be subjected to city government." *Id.* at 38, 95 N.W.2d at 301.

After chapter 414 was passed, residents of White Bear Lake petitioned the Commission to approve annexation of this same area.¹²² Notwithstanding the exclusive agricultural use of some of the land, the Commission approved annexation of the entire area in order to provide it with a contiguous border to the annexing municipality and to promote symmetry of the gerrymandered annexing municipality. While the approved annexation was ultimately defeated at the polls, the Commission's opinion serves clear notice that a liberal standard will be applied when the area in question consists of, or is part of, an urban town within the definition of section 5.

Qualification as a section 5 urban town is also an important factor in obtaining Commission approval of an incorporation petition.¹²³ In fact, the Commission has employed this presumption of urban or suburban character as an important factor in distinguishing some of its incorporation decisions.¹²⁴

In order to minimize the number of governmental units in a metropolitan area, the Commission has explicitly stated that it favors large incorporations over small ones.¹²⁵ Indeed, some petitions from suburban areas have been denied primarily because the Commission desired a much larger municipality than would be created by the proposed area.¹²⁶ And it appears that at least one area of questionable suburban character was approved mainly because it comprised a whole township.¹²⁷

122. Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake, Minn. Mun. Comm'n A-22-60 (1960).

123. See Petition for Incorporation of the Remaining Unincorporated Area of the Township of Dayton, Minn. Mun. Comm'n I-2-60 (1960); Petition for Incorporation of the Village of Minnetrista, Minn. Mun. Comm'n I-1-60 (1960).

124. "[W]e now hold that different criteria apply to the incorporation of urban towns as defined in Section 5 than to other attempted incorporations." *Id.* at 3 (memorandum opinion). Dayton Township is distinguished from Minnetrista Township in Petition for Incorporation of the Remaining Unincorporated Area of the Township of Dayton, Minn. Mun. Comm'n I-2-60 (1960).

125. Petition for Incorporation of the Village of Washington, Minn. Mun. Comm'n I-7-63 (1963); Separate Petitions to Incorporate the Entire Townships of Burnsville, Eagan, Lakeville and Inver Grove, Minn. Mun. Comm'n, interim memorandum opinion (May 1, 1962).

126. See Petition for Incorporation of the Village of Cottage Grove, Minn. Mun. Comm'n I-4-63 (1963); Petition for Incorporation of the Village of Orchard Gardens, Minn. Mun. Comm'n I-5-61 (1962).

127.

We would not hesitate to deny the incorporation of Minnetrista

The Commission gives considerable weight to significant "natural" boundaries such as geographical features, units of local government, or a community with common interests. The denial of a petition by the city of Bloomington to annex Burnsville Township¹²⁸ clearly illustrates this preference. Bloomington is physically separated from Burnsville by the Minnesota River and its huge river valley. This geographical feature makes it difficult for residents of one area to commute easily to the other. The two communities are also located in different counties; consequently, they are subject to different welfare systems, law enforcement bodies, court systems, tax assessing procedures, etc. Finally, there is no "community of interest" between the two areas since they are separated by school district lines, postal zones, church affiliations, and other significant community borders—tangible and intangible. Because of these factors, the Commission denied the petition as an exception to the general rule favoring annexation.

The Commission has also fostered the preservation of "natural" boundaries by using its power to alter the petitioned area to the desired size. If better natural boundaries exist than those delineated by the petitioning parties, certainly this is an appropriate situation to use the power of alteration. For instance, in one case the Commission deleted an island in the Mississippi River that was geographically more suited to be attached to an area not included in the proposed incorporation.¹²⁹

On the other hand, the Commission will not automatically approve township lines simply because they have been conveniently utilized in the past.¹³⁰ Township boundaries were originally

based upon the present record were this not an effort to incorporate an entire township lying within the metropolitan area, presently exercising special village powers, in the direct path of future developers and subdividers and in a metropolitan climate where the urgent issue of the day is the purity of the water supply and the choice of weapons of government necessary to protect the public health and safety.

Petition for Incorporation of the Village of Minnetrista, Minn. Mun. Comm'n I-1-60, at 8 (1960) (memorandum opinion). Except for the fact that the proposal did not include the entire township, the *Orchard Gardens* situation seems indistinguishable from the *Minnetrista* situation.

128. Petition of the City of Bloomington to Annex the Township of Burnsville, Minn. Mun. Comm'n A-273 (1963).

129. Petition for Incorporation of the Village of Washington, Minn. Mun. Comm'n I-7-63, at 16 (1963).

130. See Petition for Incorporation of the Village of Eagan, Minn. Mun. Comm'n I-8-63 (1963).

created for the purpose of a comprehensive land survey, and should not prevail over more sensible boundaries.¹³¹

The Commission attaches a great deal of significance to the motives of the petitioners. For example, certain incorporation petitions have been motivated by a defensive desire either to avoid annexation to adjoining municipalities or to prevent incorporation of smaller portions within the petitioning area.¹³² The Commission has expressly declared its strong opposition to such defensive incorporations,¹³³ which have already made their illogical contribution to the jigsaw nature of much of the Twin Cities metropolitan area. Similarly, incorporation petitions motivated by the desire of petitioners to obtain a liquor license, or those intended to preserve rural living in an urban setting, will probably be denied.¹³⁴

In applying annexation standards, the Commission is under a direct statutory duty to deny approval if it finds the petition was primarily motivated by a desire to increase the taxing revenues for the annexing municipality, and such an increase bears no reasonable relation to the benefits obtained by the annexed area.¹³⁵ The Commission's approval of an annexation by the city of Albert Lea of an area containing a large meatpacking plant¹³⁶

131.

In a metropolitan region which has 130 existing cities and villages within a 50 mile radius of the metropolitan center, . . . with 82 remaining townships, . . . to incorporate each remaining township separately solely to observe boundaries which are the accident of mathematics and survey and have never been subjected to the vote of the people would be folly.

Id. at 7.

132. Because of the Commission's inability to prevent "piecemeal annexations," these defensive attempts to incorporate are understandable. In fact, most were prompted by an attempt by the City of Bloomington to annex a large power plant in Burnsville. The assessed value of this power plant constituted over eighty per cent of the assessed value of the entire township of Burnsville. Until the courts declared this annexation void, see note 70 *supra*, it appeared that Bloomington had made a successful raid on most of Burnsville's tax revenue.

133. Petition for Incorporation of the Village of Eagan, Minn. Mun. Comm'n I-8-63, at 6-7; Separate Petitions to Incorporate the Entire Townships of Burnsville, Eagan, Lakeville, and Inver Grove, Minn. Mun. Comm'n, interim memorandum opinion 6-8 (May 1, 1962).

134. *Id.* at 7; see Petition for Incorporation of the Village of Orchard Gardens, Minn. Mun. Comm'n I-5-61 (1962).

135. See note 77 *supra*.

136. Petition of the City of Albert Lea To Annex Adjoining Unincorporated Territory, Minn. Mun. Comm'n A-79-60 (1960) [hereinafter cited as *Petition of Albert Lea*].

evidences a narrow interpretation of this statutory mandate. The meatpacking company opposed annexation, arguing that it needed nothing from the city. It already operated its own water and sewer system and provided its own fire and police protection.¹³⁷ The Commission disposed of this argument by stating that the intangible benefits received by the meatpacking company, derived largely through its employees who benefited from city services and the mere existence of a nearby city, justified the tax increase which accompanied annexation.¹³⁸ The township containing the meatpacking plant also opposed annexation, arguing that it could adequately serve the area proposed for annexation.¹³⁹ The Commission countered by pointing out that the annexation standards of chapter 414 require approval if "the property to be annexed is now, or is about to become, urban or suburban in character."¹⁴⁰ Accordingly, it was immaterial that the township or the meatpacking plant itself was able to meet the needs of the area in question.¹⁴¹

Although the incorporation standards contain identical language,¹⁴² in considering incorporation petitions the Commission has relied on the township's ability to provide needed services as a ground to deny incorporation.¹⁴³ Thus, the Commission will not consider the township's ability to provide services in *annexation* petitions, while it will take such ability into account in deciding an *incorporation* petition. This dual approach, although

137. *Id.* at 6 (memorandum opinion).

138. *Id.* at 6-8. The Commission had ample judicial authority for its interpretation of "benefits received" as a justification for taxes levied. The same problem was often raised in the formation of Minnesota mining towns on the iron range. The Minnesota Supreme Court established that sparsely inhabited iron mining areas could be included in incorporations or annexations, even though the motive was obviously to increase to increase tax revenue. Simply stated, the theory was that the mining area, in reality the company, benefited from the existence of the town and should help support it. *State ex rel. Hilton v. Village of Kinney*, 146 Minn. 311, 178 N.W. 815 (1920) (annexation of land about to be mined); *State ex rel. Smith v. Village of Gilbert*, 127 Minn. 452, 149 N.W. 951 (1914) (annexation of mining land); *State ex rel. Simpson v. Village of Alice*, 112 Minn. 330, 127 N.W. 1118 (1910) (new incorporation including mining land).

139. *Petition of Albert Lea 4* (memorandum opinion).

140. MINN. STAT. ANN. § 414.03(4) (Supp. 1965).

141. *Petition of Albert Lea 4-6*. See also *Petition for Annexation of Adjoining Unincorporated Property to the City of White Bear Lake*, Minn. Mun. Comm'n A-22-60, at 14 (1960) (memorandum opinion).

142. MINN. STAT. ANN. § 414.02(3) (Supp. 1965).

143. *Petition for Incorporation of the Remaining Unincorporated Area of the Township of Dayton*, Minn. Mun. Comm'n I-2-60 (1960).

perhaps seemingly inconsistent, is proper. It advances the basic purposes of chapter 414 to prevent unnecessary new municipalities and to foster the growth of existing cities by expanding their boundaries.

The Commission will deny an incorporation petition if the proposed area is financially unable to support a municipal government.¹⁴⁴ Unless an adequate tax base exists, the proposed area cannot operate under a realistic budget. An example of an unrealistic budget arose in the *Orchard Gardens* petition. Along with other budgetary shortcomings, the proposed municipality required more than one-fourth of its revenue to come from liquor licenses.¹⁴⁵

The Commission has expressed strong disapproval of "piecemeal annexations,"¹⁴⁶ which can be accomplished without Commission consent if the area to be annexed is platted, or if unplatted is less than 200 acres.¹⁴⁷ This method of annexation defeats the general purpose of orderly metropolitan growth by allowing a plethora of small annexations without administrative review. During a recent two year period, for instance, forty-two piecemeal annexations occurred in a single township.¹⁴⁸ In the case of a gerrymandered municipality, the Commission will probably welcome a petition for annexation of even unplatted agricultural land, if inclusion of such land will provide needed symmetry to the municipality.

Finally, the Commission has been very reluctant to detach property from an incorporated municipality.¹⁴⁹ It appears safe

144. Separate Petitions to Incorporate the Entire Townships of Burnsville, Eagan, Lakeville, and Inver Grove, Minn. Mun. Comm'n, interim memorandum opinion 9-11 (May 1, 1962).

145. Petition for the Incorporation of the Village of Orchard Gardens, Minn. Mun. Comm'n I-5-61, at 3 (1962) (memorandum opinion).

146. Separate Petitions to Incorporate the Entire Townships of Burnsville, Eagan, Lakeville and Inver Grove, Minn. Mun. Comm'n, interim memorandum opinion 4-5 (May 1, 1962); Petition for Incorporation of the Village of Minnetrista, Minn. Mun. Comm'n I-1-60, at 4-5 (1960) (memorandum opinion).

147. For a detailed description of procedures in a piecemeal annexation, see text accompanying note 70, *supra*.

148. Separate Petitions to Incorporate the Entire Townships of Burnsville, Eagan, Lakeville and Inver Grove, Minn. Mun. Comm'n, interim memorandum opinion 3-4 (May 1, 1962).

149.

In the present period of rapid urban growth which bulges the existing limits of our cities and villages, detachment proceedings are not the order of the day. We also recognize that in the rural areas

to assume that detachment will be granted only in cases that fall squarely within the statutory standards. If any of the conditions for detachment are doubtful, the Commission will seize upon the smallest deficiency to deny detachment.¹⁵⁰ The Commission has even implied that a legislative change, further limiting detachment, might become necessary.¹⁵¹

V. IMPACT OF CHAPTER 414

In the seven years chapter 414 has been in effect, Minnesota has experienced a sharp, and welcome, decrease in the number of new incorporated municipalities per year, and a corresponding increase in annexation activity. In the Twin Cities metropolitan area, the Commission has approved four out of twelve incorporation petitions and one consolidation, resulting in a net increase of three incorporated municipalities. This compares with thirty-six new incorporations in the nine year period prior to creation of the Minnesota Municipal Commission.

Over 900 separate annexation petitions have been filed. The vast majority of these have been under the "200 acre provision" for piecemeal annexation. This large number of piecemeal annexations derives in part from stalemates created in some communities after voter rejection of large annexations. Recognition of the need for more and better city services and the futility of attempts to incorporate caused small sections of unincorporated suburban areas to seek annexation under the 200 acre provision. One remedy to such disorderly municipal expansion is to restore to the Commission the power to order large annexations without an election as long as the annexing municipality agrees. This would remove the power to veto such annexations from the hands of the residents of the area being annexed.

The Commission has considered sixty detachment petitions, mostly concerning farm land seeking detachment from a rural

or outside the developed metropolitan region, the move to the cities has reduced the population and tax bases of many of our farm or semi-rural villages. We hesitate to approve any action which causes these villages further problems resulting from reduced revenue.

Petition for Detachment of Property From the Village of Norwood, Minn. Mun. Comm'n, Memorandum 1 (April 25, 1962).

150. See Petition to Detach Certain Parcels of Land From the Village of New Germany, Minn. Mun. Comm'n D-15-61 (1961). The Commission denied the detachment because the land to be detached, although containing only four homes on eight acres, was not used exclusively for agriculture.

151. Petition for Detachment of Property From the Village of Norwood, Minn. Mun. Comm'n, Memorandum 2-3 (April 25, 1962).

municipality. Such detachments are apparently not objectionable to the Commission if the land is being used exclusively for agricultural purposes.

In addition to its primary functions of approving or rejecting petitions, and reviewing unincorporated urban towns, the Commission has accomplished an important and beneficial secondary effect. It has created an increased awareness in many communities of the need for city planning and of the possibility of cooperation with surrounding municipalities or towns to develop long range solutions to problems of urban growth. An example of this is the merger of two Minneapolis suburban communities, Mound and Island Park. After discussions with the Commission, a cooperative effort of residents of Island Park and their neighbors from the adjoining municipality of Mound resulted in the annexation of Island Park to Mound.

The hearings attendant to petitions before the Commission frequently result in a constructive exchange of ideas and a stimulation of urban planning. Recently, after initial hearings on a proposed new incorporation, the petitioners withdrew the initial petition and submitted a new petition containing a much larger area which encompassed surrounding communities not included in the initial petition.

CONCLUSION

The legislative treatment of chapter 414 since its enactment in 1959 mirrors the forces for and against a strong Municipal Commission. At one extreme are those who favor a "rubber stamp" Commission which would merely review incorporations and annexations for required formalities. This group feels that residents have an undeniable right to choose the boundaries and form of government for their community. At the other extreme are those who see the Commission as the solution to myriad municipal problems. They feel that an effective Commission, using its expertise to decide what is best for a given area, must have the power to determine municipal boundaries, and to decide the best form of government for any unincorporated community. This view holds that our democratic philosophy of government does not require that small groups of residents should be permitted to form their own local government in disregard of the interests of surrounding communities. The present structure of chapter 414 is a compromise between these two views. But most signifi-

cantly, it is a vast improvement over previous methods of handling annexations, incorporations, and related proceedings in Minnesota.

This improvement, however, only partially accomplishes the best solution. Future legislation should alter the Commission's role to enable it to affirmatively construct meaningful urban communities. In particular the following steps should be taken: Annexation of unincorporated suburban communities should not be subject to veto by an election in the area being annexed; piecemeal annexations should be subject to the approval of the Commission; and the restriction on the Commission's power to alter boundaries when an entire township seeks incorporation should be removed. In addition, the legislature should give serious consideration to the possibility of requiring the merger of small adjoining incorporated communities, either by Commission order or special legislation.

It is fallacious to believe that the traditional right to be governed by publicly elected officials means that any group of metropolitan residents, no matter how small, has the right to create its own unit of autonomous local government in disregard of the interests of surrounding communities and of the problems of urban sprawl. This fallacy should be clearly recognized so that it no longer can be allowed to throw up impediments to the orderly growth of metropolitan areas. Minnesota, through its creation of an administrative agency to apply the standards of chapter 414, has taken a giant step in removing some of these impediments.