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Municipal Annexation in Ohio

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I. INTRODUCTION

THE ADOPTION of aggressive municipal annexation programs by many cities in Ohio has often resulted in controversy. This is especially true in the City of Akron where recent attempts to annex large sections of neighboring townships have met with strong resistance from residents. The animosity created by this issue has made cooperation between the city and the townships virtually impossible, resulting in both an ineffective government and an inefficient use of resources. To resolve this conflict, the parties have engaged in protracted legal battles which test recent statutory changes in the law of annexation in Ohio. The outcome of these cases may lead to significant developments in the legal arsenal of annexation opponents. This comment will examine policy considerations both supporting and opposing annexation as well as the statutory scheme for annexation in Ohio, placing special emphasis on recent court tests.¹

II. ANNEXATION IN GENERAL: PROS AND CONS

Annexation is the addition of territory to a municipal corporation as an integral part. Generally, it involves joining all or part of the territory of an unincorporated, less populous or subordinate local unit to that of a larger unit, usually incorporated, offering a more complete array of municipal services.²

This definition captures what the proponents of annexation see as its major benefit: promotion of orderly urban growth.³ It embodies the concept that municipal boundaries do not stop municipal problems and that a certain amount of interdependence exists between the city and its environs.⁴ Proponents of annexation speak of the significant difficulties inherent in fragmented governmental units: conflicts in authority, duplication of services, dissipation of tax resources through inefficient spending policies and a general lack of cooperation.⁵ Moreover, annexation may be the only way to provide fringe areas with much needed municipal services such as sewers, water, and garbage disposal. One advocate identifies six specific reasons for annexing land bordering a core city:

1. The fringe area is needed by the city for continued orderly growth and the prosperity of the metropolitan area.

¹ I would like to thank Marvin G. Manes, Esq., of the firm Oestreicher, Sternberg & Manes for his support and confidence which have led to many of the ideas which form the basis of this comment.

² NATIONAL LEAGUE OF CITIES, *ADJUSTING MUNICIPAL BOUNDARIES* 1 (1966) (hereinafter cited as NATIONAL LEAGUE).

³ F. SENGSTOCK, *ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM* 5-6 (1960).

⁴ Comment, *Municipal Annexation in Tennessee*, 47 TENN. L. REV. 651 (1980).

⁵ SENGSTOCK, *supra* note 3, at 117.

2. Fringe lands are needed so that public service facilities such as water and sewer systems, street extensions, and recreational facilities may be planned and provided on a rational and economic basis.
3. The fringe area may be brought within and developed under city land use controls; *e.g.*, planning, zoning housing codes, and building regulations.
4. The fringe regions may be subject to city protective regulations and receive city police and fire services.
5. The fringe area may be subjected to city health and sanitation regulations and receive these services.
6. Residents of the fringe area actually benefit from many of the services and facilities provided by city government and should bear their full share of the costs.⁶

It must be acknowledged that when reasonable and well-planned annexation is accomplished for these reasons, it can truly benefit a metropolitan area. Notably absent from the prior list, however, is the use of annexation for the purpose of increasing the tax base of the city. One commentator has strong views on this subject:

So-called land grabs for additional tax revenues, for increasing the area or population of the city as an end in itself, and competitive annexation to thwart anticipated annexation by another jurisdiction, have usually proved to be unwise actions. Responsible city administrations recognize these reasons as specious and unsound and reject proposals based upon them"⁷

There is an additional argument made by the proponents of annexation which is especially relevant to this inquiry: it promotes the right of individuals to determine in which governmental unit their land is to be located.⁸ Owners of property adjacent to a municipal corporation often have a keen interest in seeking annexation: property values often increase through annexation because of increased potential for development and availability of services provided by the city.⁹ Many states, including Ohio,¹⁰ have recognized this right by providing for annexation on petition of a certain percentage of the owners of property contiguous to the municipal corporation.¹¹ Nonetheless, it is when the interests of those seeking annexation conflict with those of annexation opponents that tensions rise and legal battles occur.

⁶ NATIONAL LEAGUE, *supra* note 2, at 1-2. For a discussion of the last point see C. ADRIAN & C. PRESS, *GOVERNING URBAN AMERICA* 52-53 (4th ed. 1966).

⁷ NATIONAL LEAGUE, *supra* note 2, at 2.

⁸ SENGSTOCK, *supra* note 3, at 52-54.

⁹ *Id.* at 52-53. Conversely, owners of real estate may vehemently oppose annexation, especially when it will result in increased property taxes and insurance rates.

¹⁰ OHIO REV. CODE ANN. §§ 709.02-.12 (Page 1976 & Supp. 1980).

¹¹ SENGSTOCK, *supra* note 3, at 52.

If annexation can be so beneficial to a municipal area, why are residents of the fringe areas many times so vehemently opposed to it? At the center of this resistance are, most likely, the very sociological and political reasons that led the individual to decide to live in an area bordering the city. One prime reason, for example, is economic.¹² Property taxes are often much lower and the resident of a fringe area is not usually subject to the city's personal income tax. A second reason is political. Big city government is often viewed as corrupt and inaccessible.¹³ There is a strong desire for local control and a belief that local governments better serve the needs of their residents:

Local wishes may call for luxury services, for minimal services or for some level in between. Wealthy people do not want to be forced into a single mold by the creation of one legal entity for the whole area because they can afford, and often wish to have, luxury services which core-city government would not be likely to provide.

In contrast, one finds in modest suburbs a violent dislike and fear of the core-city. In these areas residents can barely afford to own their own homes. They want minimal services because they fear that even a small increase in costs through 'unnecessary' services, for example, might force them out of the homeownership category with all its prestige and psychological satisfaction. To these people, joining the core-city would mean buying a package of services that they feel they can do without and cannot afford.¹⁴

There is a third reason why fringe residents oppose annexation: they view their local community as a haven from such urban problems as crime and poverty. Proponents of annexation, on the other hand, often attach an insidious significance to such reasoning: "Very often the fringe is a haven of the middle class which seeks to avoid any moral responsibility that it may have toward the blighted areas of a city by retreating to the seclusion of outlying areas, securing to themselves freedom from the burden of increased taxation."¹⁵ Allegations of this kind have been prevalent in many annexation battles. By far the most extreme example is an accusation made by the City of Akron Law Director that township opposition to annexation is racially motivated.¹⁶ Whether or not based on reality, such comments do little to ease the already rampant animosity that exists in an annexation proceeding.

Consequently, it becomes clear that a reasonable, well developed long-range program of annexation may benefit the whole metropolitan area.

¹² *Id.* at 4-5.

¹³ *Id.* at 5. See also C. ADRIAN & C. PRESS, *supra* note 6, at 56.

¹⁴ C. ADRIAN & C. PRESS, *supra* note 6, at 56.

¹⁵ SENGSTOCK, *supra* note 3, at 5.

¹⁶ Akron Beacon Journal, Aug. 29, 1980, § B, at 3, col. 6. Mr. Robert Pritt, Director of Law, was quoted as saying, "They don't want black kids in their schools. That's the hidden agenda. They don't say it that way; they're too clever. They say 'our schools, our neighborhoods'."

When annexation serves the needs of both the annexing city by allowing orderly urban growth and the majority of fringe area by supplying needed services, it is difficult to hypothesize legitimate objections. When possible, of course, the rights of individual landowners to have their land annexed should be respected. Nonetheless, it is possible to conceive of a situation where the interests of individual landowners to self-determination conflict with the desires of other fringe residents to remain unassociated with the city. Imagine a large, highly developed parcel of land. The owner, in need of city services, petitions the city for annexation. His or her right to self-determination should certainly be respected. But what happens when the annexation of this territory causes a tax loss to the remaining portion of the township so that its ability to provide essential services is threatened? Thus, residents of the township may be faced with two options: seeking annexation themselves or doing without essential services. Such a conflict presents a strong test of the viability of a state's annexation method. In Ohio, such a situation is presently being litigated in two pending cases: *Carlyn v. Davis*¹⁷ and *In re Annexation of 247.5 Acres*.¹⁸ The outcome of these cases may well provide the direction for future annexations in Ohio. Before these cases are discussed, however, it is necessary to outline Ohio's statutory provision for annexation and examine in detail the provisions under which these cases are litigated.

III. THE STATUTORY SCHEME IN OHIO

Annexation in Ohio falls into three broad statutory categories: annexation of unincorporated territory to a municipal corporation on application by a majority of landowners in the territory sought to be annexed,¹⁹ annexation of unincorporated territory upon the application of the municipal corporation,²⁰ and annexation of all or part of a municipal corporation to another municipal corporation.²¹ The latter procedure, however, encompasses the consolidation or merger of municipal corporations and is beyond the scope of this comment.²²

Annexation by application of landowners represents the most streamlined and easily accomplished procedure. A petition, signed by a majority of owners²³ of territory adjacent to a municipal corporation is filed with the

¹⁷ No. 9819 (Summit Co. Ct. App., Feb. 25, 1981) *motion to certify filed*, No. 81-459 (March 20, 1981).

¹⁸ No. 9831 (Summit Co. Ct. App., April 15, 1981).

¹⁹ OHIO REV. CODE ANN. §§ 709.02-.12 (Page 1976 & Supp. 1980).

²⁰ *Id.* §§ 709.13-.21.

²¹ *Id.* §§ 709.22-.37.

²² Dwyer & Fordham, *Municipal Incorporation and Territorial Changes in Ohio*, 13 OHIO ST. L.J., 503, 517 (1952).

²³ "[O]wner' or 'owners' means any adult individual seized of a freehold estate in land who is legally competent and any firm, trustee or private corporation that is seized of a freehold estate in land . . ." OHIO REV. CODE ANN. § 709.02 (Page Supp. 1980).

board of county commissioners. The petition must contain a full legal description and an accurate map or plat of the territory to be annexed, a statement of the number of owners of real estate in the territory, and the name of the person or persons designated agent for the petitioners.²⁴ A public hearing on the petition is held, at which the board of county commissioners hears testimony and evidence offered by both proponents and opponents of the annexation.²⁵ After the hearing the board must grant the petition if it finds the following: the statutory requirements for the content of the petition and notice of the hearing have been met, the persons who signed the petition are owners and constitute a majority of landowners, the map is accurate, the territory is not unreasonably large, and the general good of the territory to be annexed is served by granting the petition.²⁶ If the petition is approved, the transcript of the proceedings is placed before the legislative authority of the annexing municipal corporation for acceptance.²⁷ Any interested person may file with the court of common pleas a petition seeking an injunction against the annexation.²⁸ Such a person must allege and prove by clear and convincing evidence that the board's decision is unreasonable or unlawful or that there was some error in the proceedings.

A municipal corporation may expand its borders by petitioning the board of county commissioners to allow it to annex unincorporated territory.²⁹ If the territory is owned by the municipal corporation, no further proceedings are necessary.³⁰ If not, an election of the annexation scheme by the voters in the territory sought to be annexed must be held.³¹ If the voters approve the proposal, the petition proceeds in the same manner as one filed by the owners.³² Such a petition, however, is still subject to the limited discretion of the board of county commissioners.

IV. UNREASONABLY LARGE AND THE GENERAL GOOD: ELEMENTS IN THE COMMISSIONER'S DISCRETION

In Part II of this comment, we examined some of the policy reasons

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* § 709.033 (Page 1976). For a full discussion of the board's findings see text Part IV *infra*.

²⁷ *Id.* § 709.04 (Page 1976).

²⁸ *Id.* § 709.07 (Page Supp. 1980). Prior to January, 1980, only "persons interested" could file for a petition for an injunction against the annexation. This phrase was defined as limited to residents of the area to be annexed. *Weber v. Williams*, 32 Ohio App. 2d 65, 288 N.E.2d 322 (Defiance Co. 1972). *Eaton v. Bd. of Comm'rs*, 45 Ohio App. 2d 316, 345 N.E.2d 87 (Summit Co. 1973). This meant that if territory had one owner and he petitioned for annexation, no one would have standing to test the board's decision to grant the annexation. The amendments expand the class of persons eligible to file the action to include any person who appeared at the public hearing.

²⁹ OHIO REV. CODE ANN. §§ 709.13-.15 (Page 1976 & Supp. 1980).

³⁰ *Id.* § 709.16 (Page 1976).

³¹ *Id.* § 709.17.

³² *Id.* § 709.16.

behind the decision whether or not to allow a municipal corporation to annex fringe areas. When it is necessary to allow a city to maintain orderly growth, when it will provide needed city services to outlying areas, or when individual owners of adjacent land seek it for legitimate purposes, annexation should be allowed as the best means of accomplishing these goals. Residents of fringe areas, however, have a legitimate interest in voicing their opposition, especially when the proposed annexation violates their right to decide where they want to live. In concluding Section II, we hypothesized a situation in which the interests of both proponents and opponents of annexation were in conflict: when the tax loss to the fringe government of a proposed annexation threatened the economic stability of a local government. Such a situation, we concluded, would be an important test of the viability of a state's approach to annexation. In Section III, we examined Ohio's statutory scheme for annexation.³³ In this Section, we shall attempt to correlate the previous sections by analyzing Ohio's statutory scheme to determine if the legitimate goals of annexation are embodied in the statutes and if adequate safeguards are provided to prevent abuse by overly-aggressive cities and to protect the rights of those who oppose annexation.

Several general propositions quickly emerge from a cursory examination of the Ohio statutory scheme. First, the Ohio General Assembly favors annexation. This is clear not only from the ease with which most annexations can be accomplished in Ohio, but also from an analysis of recent statutory changes which will be discussed below. Second, the rights of individual landowners to seek (or to approve) annexation are paramount. A petition for annexation filed by a majority of landowners is subject to very little discretion in the decision-making process of the board of county commissioners. Finally, at least on the face of the statute, there is very limited protection for the rights of those opposed to annexation. Their participation in the annexation proceedings is limited to an appearance at the public hearing to voice their objections and, under certain circumstances, the right to file a petition for an injunction against the annexation.³⁴ If any protection is afforded these individuals, it is embodied in the limited discretion which the board of county commissioners has in making its final decision of whether to approve an annexation petition.³⁵

In 1967 and 1969, the Ohio General Assembly made major revisions in the statutes governing incorporation and annexation. The general effect of these revisions has been to make annexation much easier and incorpora-

³³ For an excellent discussion of the approaches taken by other states to the problem, see SENGSTOCK, *supra* note 3, at 9-41; Comment, *Municipal Annexation: An Urban Dilemma*, 28 ALA. L. REV. 717, 720-33 (1977).

³⁴ OHIO REV. CODE ANN. § 709.07 (Page 1976 & Supp. 1980).

tion more difficult. This result embodies an important policy reason in favor of annexation: the avoidance of fragmented local governments and the encouragement of orderly urban growth. By making incorporation difficult and annexation easy, the General Assembly clearly intended that existing cities be allowed to grow and that areas ripe for incorporation be attached to these cities rather than separately incorporated. These changes were accomplished in several ways. First, the class of persons eligible to petition for annexation was expanded. Prior to 1967, only "adult freeholders residing in the territory"³⁶ could seek annexation. Thus, corporations and absentee owners were excluded.³⁷ Under the present statute any owner, including corporations and trustees, may file.³⁸ Second, and more important, the discretion of the board of county commissioners in annexation proceedings was severely curtailed. Under the prior statute the board, after the public hearing, could grant the petition if it found, *inter alia*, that "It is right that the prayer of the petition be granted."³⁹ Therefore, the board of county commissioners under the former annexation plan had almost unlimited discretion in approving the petition.⁴⁰ The enactment of section 709.033 of Title 7 of the Ohio Revised Code diminished the board's discretion. As the Ohio Supreme Court in *Lariccia v. Mahoning County Board of Commissioners*⁴¹ held, "That statute [R.C. 709.033] establishes specific standards to be applied to the evidence before it in annexation proceedings and grants to the board the discretion to make only those factual determinations specifically called for in the statute."⁴² The changes in the statutes on incorporation were equally restrictive.⁴³ Thus, the General Assembly clearly intended that, under most circumstances, petitions for annexation should be granted. When a board of county commissioners wishes to deny a petition, it can do so only within the realm of one of its discretionary findings. These factual findings are, therefore, the focus of the vast majority of legal tests of a board's decision. Through an analysis of these findings and the case law which has developed as a result, we can determine which policy considerations play important roles in Ohio annexation law.

The factual findings which the board of county commissioners must

³⁶ *Id.* § 709.02 (amended 1967).

³⁷ See *id.* § 709.02 (Page Supp. 1980). That section's definition of "owner" is set out in note 23 *supra*.

³⁸ *Id.* § 709.02 (Page Supp. 1980).

³⁹ *Lariccia v. Mahoning County Bd. of Comm'rs*, 38 Ohio St. 2d 99, 101, 310 N.E.2d 257, 258 (1974).

⁴⁰ *Dabkowski v. Baumann*, 175 Ohio St. 89, 97, 191 N.E.2d 809, 811 (1963).

⁴¹ 38 Ohio St. 2d 99, 310 N.E.2d 257 (1974).

⁴² *Id.* at 101, 310 N.E.2d at 258.

⁴³ Most notable of these restrictions is found in OHIO REV. CODE ANN. § 707.04 (Page 1976 & Supp. 1980) which suspends the operation of a petition for incorporation if the territory sought to be incorporated is suitable for annexation to a neighboring municipal corporation.

make before deciding an annexation petition are set forth in section 709.033 of Title 7 of the Ohio Revised Code:

After the hearing on a petition to annex, the board of county commissioners shall enter an order upon its journal allowing the annexation if it finds that:

- (A) The petition contains all matter required in section 709.02 of the Revised Code.
- (B) Notice has been published as required by section 709.031 [709.03.1] of the Revised Code.
- (C) The persons whose names are subscribed to the petition are owners of real estate located in the territory in the petition, and as of the time the petition was filed with the board of county commissioners the number of valid signatures on the petition constituted a majority of the owners of real estate in the territory proposed to be annexed.
- (D) The territory included in the annexation petition is not unreasonably large; the map or plat is accurate; and the general good of the territory sought to be annexed will be served if the annexation petition is granted.⁴⁴

* * * * *

The findings regarding the statutory requirements of the petition and notice, signatures on the petition, and accuracy of the map are administrative in nature so that little case law has developed concerning them.⁴⁵ The other two findings, whether the general good of the territory is served and whether the territory is unreasonably large, entail much more discretion on behalf of the board of county commissioners and, consequently have been more thoroughly litigated.

Of these two findings, the determination as to the general good has received the most attention from the courts. In *Larriccia v. Mahoning County Board of Commissioners* the court said, "That statute [709.033] directs that the ultimate focus of annexation proceedings be on 'the general good of the territory sought to be annexed,' and requires granting of the petition when it is shown that such benefit will result."⁴⁶ Over the years, several courts have interpreted the concept of general good so that it is possible to delineate their policy reasons behind its requirement.

⁴⁴ OHIO REV. CODE ANN. § 709.33 (Page 1976).

⁴⁵ There are some cases dealing with the accuracy of the map, although most arise in the context of a petition for incorporation. See, e.g., *Ohio Edison Co. v. McElrath*, 60 Ohio Op. 462, 137 N.E.2d 642 (1955); *Norfolk & Western Ry. v. Schaeffer*, 69 O.L.A. 591, 119 N.E.2d 150 (1950); [1971] Op. Att'y Gen. No. 71-069. For a discussion of interesting comments regarding methods used to determine the number of owners in the territory, see [1980] Op. Att'y Gen. No. 80-034; [1979] Op. Att'y Gen. No. 79-043; [1973] Op. Att'y Gen. No. 73-048, and n. 69 *infra*.

⁴⁶ 138 Ohio St.2d 99, 102, 310 N.E.2d 257, 259-4 (1974).

In *In re Long*⁴⁷ the court was presented with a petition for annexation filed by the sole owner of seventy-eight acres of unincorporated territory. The Board of Summit County Commissioners found that the general good of the territory would not be served by the annexation and denied the petition. On appeal, the court reversed the Board's decision, holding that "territory" is defined as the owners and inhabitants of the area and that the mere fact that the owner petitioned for annexation is strong evidence that the general good of the territory will be served:

The word 'good' when used as a noun means happiness, prosperity, or welfare. The word 'territory' being an inanimate object is certainly not capable then of having a 'general good' and therefore when we speak of territory as used in R.C. 709.033, the Legislature must have meant the owners and inhabitants of the territory.

The petitioner here is the sole owner and, therefore, his desires and intentions as to the happiness, prosperity and welfare of the territory should be given some weight and significance.⁴⁸

In *Eaton v. Summit County Board of Commissioners*,⁴⁹ the court discussed factors to be considered in determining whether the general good of the territory would be served. Opponents of the annexation introduced evidence that fire service to the annexed area would be inferior if annexation were allowed. Proponents, including the owners, testified that the general good would be served because annexation would permit the highest and best use of the land through access to utilities and municipal services.⁵⁰ The court found that the Board of Summit County Commissioners' decision denying the petition on the grounds that the general good was not served was not based on a preponderance of the evidence and affirmed the lower court's reversal of the denial.⁵¹

The petitioner in *Lariccia v. Mahoning County Board of Commissioners*⁵² sought annexation of his store from a "dry" township to a city so that he could sell alcoholic beverages. The court found that the fact that his business would increase was sufficient to justify a finding that the general good of the territory would be served. The court also found that testimony of individuals living outside of the territory to be annexed was of little relevance to the Board's determination.⁵³

Finally, in *Toledo Trust Co. v. Lucas County Board of Commission-*

⁴⁷ 26 Ohio Misc. 6, 268 N.E.2d 822 (C.P. Summit Co. 1970).

⁴⁸ *Id.* at 8, 268 N.E.2d at 823.

⁴⁹ 49 Ohio App. 2d 24, 358 N.E.2d 1377 (Summit Co. 1974).

⁵⁰ *Id.* at 26-27, 358 N.E.2d at 1379.

⁵¹ *Id.*

⁵² 38 Ohio St. 2d 99, 310 N.E.2d 257 (1974).

⁵³ 40 Ohio App. 2d 251, 253-54, 318 N.E.2d 871, 874 (1973).

ers,⁵⁴ the court again affirmed the lower court's reversal of the Board's denial of the petition for annexation. The Board of Commissioners of Lucas County found that "it is not to the best interest of the people of Sylvania Township to grant said petition."⁵⁵

The court acknowledged that such a finding did not satisfy the requirement that the Board determine whether the general good of the territory would be served by the annexation. The effect of annexation on the remaining portion of the Township is not relevant to the finding of general good. Rather, the scope of that determination is limited to the effect of the annexation on the territory to be annexed. Since the Board made no finding as to the general good and, in fact, heard no testimony relevant to such a determination, the court found that the fact that a majority of landowners signed the petition was sufficient to allow the annexation.⁵⁶

It is evident that several of the policy considerations discussed in Part II are embodied in the Ohio statutory requirement that the board, before it can approve a petition, find that the general good of the territory to be annexed is served. First of all, such a determination guarantees that the area to be annexed will benefit from the annexation given that services to the area will likely improve. As construed by the courts, however, this finding serves a second, perhaps more important function: it furthers the legislative intent that an owner have freedom to choose the governmental subdivision in which his property will be located.⁵⁷

From the holding in *In re Long* that "territory" means the owners of the area and the findings by the *Larriccia* and *Toledo Trust* courts that the testimony of persons living outside that area to be annexed is of little importance, it is clear that the judiciary has established what seems to be a strong rebuttable presumption that if a majority of landowners sign the petition, then the general good of the territory is served by permitting the annexation. Such a presumption makes it very difficult (if not impossible) for opponents of annexation to win on this issue.⁵⁸ If they are to have any success in stopping annexation, therefore, the battle must be won on the second of the board's discretionary findings: that the territory to be annexed is not unreasonably large.⁵⁹

The board's finding as to whether the territory is unreasonably large has been relegated by the courts to a minor role in annexation proceedings.

⁵⁴ 62 Ohio App. 2d 121, 404 N.E.2d 764 (Lucas Co. 1974).

⁵⁵ *Id.* at 123, 404 N.E.2d at 766.

⁵⁶ *Id.* at 123, 404 N.E.2d at 765.

⁵⁷ *Id.* at 124, 404 N.E.2d at 766.

⁵⁸ There are no reported cases in which an otherwise valid annexation has been reversed on this ground.

It has rarely been applied in reported cases. Only within the last year has this determination begun to emerge as a viable means to challenge annexation. Such a role is difficult to explain⁶⁰ since a reading of the statute would apparently mandate that it be given equal weight with the finding that the general good of the annexed territory is served. The board of county commissioners is statutorily required to make both findings and a negative determination on either is sufficient to defeat the annexation petition. Moreover, since the finding of general good is very limited in scope, it seems likely that the legislature intended that the unreasonably large determination cover those policy considerations not embodied in the other finding. If that is the case, then a broad interpretation of unreasonably large is necessary to accomplish such goals. Several possible interpretations are proposed in the following discussion.

The first reported case that discussed the finding of unreasonably large is *Dayton v. McPherson*.⁶¹ In a lengthy and well-reasoned opinion the court dealt with an attempt by the City of Vandalia to annex some 1460 acres, including the Dayton Municipal Airport, owned by the City of Dayton. Discussing whether the size of the territory made it unreasonably large, the court examined the nature of the territory and whether it served the expansionary needs of Vandalia:

Conceded, the acreage, per se, of the area to be annexed perhaps would not have been unreasonably large, had it been unimproved open country needed for municipal expansion and development within Vandalia's development capacity. However, the airport land and facilities developed to serve the highly specialized requirements of air passenger and freight transportation . . . was not susceptible to growth and development by Vandalia for residential, commercial and industrial purposes, or any municipal purpose other than an airport.

For these reasons it follows that the airport, regardless of its size, should not have been included in the annexation area, and its inclusion makes the area per se . . . unreasonably large for Vandalia to serve.⁶²

This is an excellent example of how the need for a rational, long-range approach to annexation can be embodied in the statutory requirements in Ohio annexation law. At issue was not whether the airport would be better served by Vandalia (although the court found that the benefit to the airport would be minimal), but whether this annexation was necessary to promote some legitimate purpose. Clearly, the only reason a city would attempt to annex a highly developed and valuable airport would be to increase its tax

⁶⁰ One possible explanation is that few annexations are on large enough a scale to warrant a finding that the territory is unreasonably large.

⁶¹ 29 Ohio Misc. 190, 280 N.E.2d 110 (C.P. Montgomery Co. 1970).

⁶² *Id.* at 219, 220, 280 N.E.2d at 120.

base. The court found this purpose unsuitable and, as a result, denied the petition on the grounds that the territory was unreasonably large.

In *In re Kucharski*,⁶³ on the other hand, the court found that the petition to annex 895 acres of undeveloped land to the City of Dayton was valid and that the territory was not unreasonably large. The Board of Commissioners of Montgomery County had based its decision that the territory was unreasonably large on findings that the territory was located at a considerable distance from the City, separated from it by a golf course, and that there was a lack of accessibility to the area for police, fire and trash collection. The court held that such reasons do not support a finding that the territory is unreasonably large.

The most expansive and liberal interpretation of unreasonably large is found in the unreported decision of *Herrick v. Summit County Board of Commissioners*.⁶⁴ In that case, a petition was filed seeking the annexation of approximately 445 acres from Twinsburg Township to the City of Twinsburg. The territory sought to be annexed consisted of choice residential property, owned solely by whites, and its annexation would leave the Township almost completely segregated and without means to support itself. The Board of Summit County Commissioners found the territory unreasonably large and the common pleas court agreed. The court of appeals affirmed, holding that the testimony of individuals living outside the area, although not relevant to the board's finding of general good under *Lariccia*, was germane to the finding of whether the territory is unreasonably large. The court, recognizing that the use of unreasonableness is a term of relation which connotes aspects of comparison, suggested a three-pronged analysis in determining whether territory is unreasonably large:

- (1) The geographic character, shape and size (acreage) of the territory to be annexed in relation to the territory to which it will be annexed (the city), and in relation to the territory remaining after the annexation is completed (the township). . . .
- (2) The ability of the annexing city to provide the necessary municipal services to the added territory. (Geographic as well as 'financial' largeness may be considered.)
- (3) The effect on the remaining township territory if annexation is permitted. If the territory sought to be annexed is so great a portion of the township's tax base that the annexation would render the remaining portion of the township incapable of supporting itself, then the Board might reasonably conclude the proposed annexation

⁶³ 56 Ohio App. 2d 121, 381 N.E.2d 1131 (Montgomery Co. 1977).

⁶⁴ No. 9425 (Summit Co. Ct. App. Jan. 23, 1980).

is unreasonably large, although such annexation would benefit the territory sought to be annexed.⁶⁵

This definition of unreasonably large would allow a board of county commissioners to consider all of the relevant facts necessary to make an informed decision on annexation. It permits the board to balance the wishes of the individual owners against the needs of the community in general and, thus, enables it to regulate annexations so that they proceed in an orderly and reasonable manner.

It is against this background that two important cases have recently been litigated: *Carlyn v. Davis*,⁶⁶ (hereinafter referred to as "*Goodyear Aerospace*") and *In re Annexation of 247.5 Acres*,⁶⁷ (hereinafter referred to as "*Gilchrist Road*"). These cases center around attempts by the City of Akron to annex large, heavily industrialized parcels of land in Springfield Township. The first of these was a petition, filed on behalf of the owner, Goodyear Aerospace, Inc., seeking the annexation to the City of its 111 acre industrial complex. The second was a petition, also filed on behalf of the owners, seeking the annexation of 247.5 acres of a highly developed warehouse complex on Gilchrist Road. After a long and involved legal battle over procedure,⁶⁸ on June 3, 1980, the Board of Summit County Commis-

⁶⁵ *Id.*, slip op. at 6.

⁶⁶ No. 9819 (Summit Co. Ct. App., Feb. 25, 1981) *motion to certify filed*, No. 81-457 (Mar. 20, 1981).

⁶⁷ No. 9831 (Summit Co. Ct. App., April 15, 1981).

⁶⁸ The history of the decisions of these petitions is extremely complicated. The two petitions were filed on January 22, 1979. On the same day, the Village of Lakemore filed a petition pursuant to OHIO REV. CODE ANN. § 709.15 (Page 1976) seeking annexation of all of Springfield Township, including the Goodyear Aerospace and Gilchrist Road parcels. Timely public hearings were held regarding Goodyear and Gilchrist. The Lakemore petition was set for public election in November, 1979. Meanwhile on June 1, 1979 the agent for petitioners filed a second petition with the Board (Gilchrist II) covering much of the same territory in Gilchrist I (a few objecting landowners were deleted and some new parcels were added). At that time the Board, despite statutory mandate to decide petitions within ninety days of the public hearing, decided to delay decisions on Goodyear and Gilchrist I until after the public election on the Lakemore petition. It also declined to take any preliminary action on Gilchrist II. The agent for petitioners filed a writ of mandamus with the court of appeals, which was granted. *Holcomb v. Bd. of Summit Co. Comm'rs I*, No. 9386 (Summit Co. Ct. App., filed Oct. 11, 1979). This decision was appealed by the Board. Meanwhile the Lakemore petition was passed by 90.5% of the voters of Springfield Township. A public hearing was held on the Lakemore petition. In May, 1980 the Supreme Court of Ohio affirmed the decision of the court of appeals granting the writ of mandamus. *Holcomb v. Bd. of Summit Co. Comm'rs I*, 62 Ohio St.2d 241, 405 N.E.2d 262 (1980). However, by this time the statutory time limits for all the petitions had passed, so the court ordered the Board to decide the petitions in the order in which they would have been decided had the statutes been followed. On June 3, 1980, the Board made the following decisions: it granted Goodyear, it denied Gilchrist I, it "filed" Gilchrist II and it granted Lakemore. The Agent for petitioners filed for an injunction against the Lakemore petition, arguing that Gilchrist II should have been set for hearing and decided before the Board took any action on Lakemore. The Court of Appeals sustained the Agent's position in *Holcomb v. Bd. of Summit Co. Comm'rs II*, No. 9822, Summit Co. Ct. App. filed Jan. 21, 1981), ordering the Lakemore petition enjoined until a decision was reached in Gilchrist II. Further complicating the matter was the fact that on January 1, 1981, the Summit County Charter went into effect, replacing the Board of Commissioners with a County Executive

sioners rendered its decisions. It approved the petition filed by Goodyear Aerospace, making all of the requisite factual findings, and it denied the Gilchrist Road petition, finding that the map was not accurate, that a majority of landowners had not signed the petition,⁶⁹ that the general good of the territory would not be served and that the territory was unreasonably large. In the Goodyear matter, the Trustees of Springfield Township filed a petition for an injunction against the annexation in the Summit County Court of Common Pleas.⁷⁰ In the Gilchrist matter, the petitioners filed an administrative appeal.⁷¹ In each case, the court affirmed the decision of the Board. Both rulings were appealed.⁷²

The heart of the opponent's argument in these two cases was that both territories should have been considered unreasonably large under the analysis found in the *Herrick* opinion. Their prime contention was economic: that the tax loss to the Township by either⁷³ of these proposed annexations would render it incapable of supporting itself. Substantial evidence was introduced in the lower court as to the economic value of these parcels. For example, in 1979, the total assessed real and tangible personal property value of the Goodyear Aerospace complex was approximately \$22,000,000.00, almost fifteen percent of the total assessed value of the entire Township. It generated over \$100,000.00 in tax revenue for the Township. The Gilchrist Road property was valued at over \$24,000,000.00 and produced nearly \$120,000.00 in tax dollars.⁷⁴ The opponents argued that the combination of

and a County Council. No one is quite sure who is to make annexation decisions. The Agent for petitioners and the City of Akron have also filed petitions for injunctions against the Lakemore petition, which are now pending in Summit County Common Pleas Court.

⁶⁹ An interesting point has emerged as to whether there was a majority of owners signing the petition. There were nine signatures of what the petitioners thought to be sixteen owners. Research by the opponents, however, yielded two more owners, one of whom was the Board of Summit County Commissioners themselves! The Board was record title holder to a small pump station in the territory to be annexed. The petitioners have argued that the Board should not be counted since it does not fit into one of the categories of owners defined in OHIO REV. CODE ANN. § 709.02 (Page Supp. 1980). Opponents have argued that the Board is an owner because it holds property in trust for the public. See note 23 *supra*, and [1980] Op. Att'y Gen. No. 80-034.

⁷⁰ OHIO REV. CODE ANN. § 709.07 (Page Supp. 1980); *Carlyn v. Davis*, No. 80-6-1596 (C.P. Summit Co., Aug. 11, 1980).

⁷¹ OHIO REV. CODE ANN. Ch. 2506 (Page Supp. 1979). *In re Annexation of 247.5 Acres*, No. 80-6-1560 (C.P. Summit Co., Aug. 11, 1980).

⁷² In *Carlyn v. Davis*, the Summit County Court of Appeals held that the Springfield Township Trustees did not have standing to file an action pursuant to OHIO REV. CODE ANN. § 709.07 (Page Supp. 1980) and, therefore, did not rule on the merits of petitioner's arguments. In *Gilchrist*, the court of appeals affirmed the lower court's ruling, holding that the Board of Summit County Commissioners were owners within the meaning of OHIO REV. CODE ANN. § 709.02 (Page 1976 & Supp. 1980) and that therefore the petition did not contain a majority of the owners. See note 69 *supra*.

⁷³ These cases were argued and briefed separately so that the combined economic effect of the two annexations was never considered.

⁷⁴ These figures were supplied by the office of the Summit County Auditor.

these figures with a dwindling of other revenues, especially those from the federal government, rendered the annexation unreasonably large. If the Township were to attempt to recover these losses through increased property tax rates, the effect on the taxpayers would be a double one. Not only would the tax rate have to be increased to compensate for the immediate loss of revenue, but any tax increase in the future would have to be proportionately higher in order to accommodate for the loss in the tax base. The residents of Springfield Township are largely lower-middle class, blue-collar workers already suffering from high inflation and unemployment. The annexation opponents argued that it would be unconscionable to require these people to financially support the decision of a few corporations to annex their land. They also argued that the Gilchrist property was already developed and, thus, unsuited to Akron's growth needs, so the holding of the court in *Dayton v. McPherson*, that similar territory was unreasonably large, should be followed.

The proponents countered these arguments in several ways. First, they argued that *Herrick* should be overruled because its holding conflicts with the holding of the supreme court in *Lariccia* that the emphasis in annexation proceedings be on the general good of the territory. Second, they contended that the opponents failed to show that annexation of either property would render the Township incapable of supporting itself. Third, it was maintained that even if the court were to find that the annexation would render the Township incapable of supporting itself, the language of *Herrick* makes the finding that the territory is unreasonably large discretionary.⁷⁵ Finally, they argued that the enactment of a new statute⁷⁶ by the General Assembly precluded the Board (or the courts) from considering economic evidence. This statute provides for payment to the township by a municipal corporation of any tax money generated by the annexed territory if the township has lost more than fifteen percent of its assessed value to annexation. These payments continue over a limited number of years and the percentage of tax money paid decreases over those years.⁷⁷ The proponents argued that by enacting this statute, the legislature removed any economic objections which a township may have to annexation. The problem with such a contention is that this statute is merely a stop-gap measure designed to ease the economic burden on the townships. Since, under the present governmental structure in Ohio, townships have virtually no means to quickly acquire new sources of income, they can only generate income through long-term

⁷⁵ The court stated, "[t]hen the Board might reasonably conclude the proposed annexation is unreasonably large." No. 9425 slip op. at 6 (Summit Co. Ct. App. filed Jan. 23, 1980).

⁷⁶ OHIO REV. CODE ANN. § 709.19 (Page Supp. 1980).

⁷⁷ For example, if a city annexes more than 15% of the assessed value of a township during one year, it must reimburse the township for the tax money lost by the annexation on the following scale: the first 3 years, 100%; the 4th year, 80%; the 5th year, 60%; the 6th year, 40%; and the 7th year 20%, OHIO REV. CODE ANN. § 709.19(b) (Page Supp. 1980).

development of township land.⁷⁸ Thus, if an annexation would bankrupt a township in 1980, it is very likely that it would bankrupt it in 1987 when the payments from the city ceased. If a board of county commissioners finds that a particular annexation is unreasonably large for the reasons described herein, it should deny the petition despite any payments which the township might otherwise have received.

There is more at stake in these cases than millions of dollars worth of property. If the court is willing to grant the board of county commissioners more discretion in annexation proceedings through an expanded definition of unreasonably large, then perhaps annexation will be less of a problem in Ohio. There is a strong need to allow the board to inject some local values into their decision-making process, especially when the parties seeking annexation are corporations with few ties to the community. Perhaps then cities would adopt long-range annexation programs and stop annexing territory for the sake of annexing. Such a situation could only benefit the whole state.

V. OTHER APPROACHES TO FIGHTING ANNEXATION

As seen from the foregoing discussion, legal attacks on annexation are generally losing propositions. Opponents of annexation have, consequently, turned to other spheres to fight annexation. One such sphere is the legislature. Although attempts to make wholesale revisions in the annexation law have generally failed,⁷⁹ recent legislative enactments have assisted townships. Provisions such as the tax revenue repayment provision discussed above, the expansion of the class of individuals eligible to seek an injunction against annexation,⁸⁰ and the permission given township trustees to expend general funds to hire an attorney to represent them in annexation proceedings⁸¹ are good examples. Townships have also attempted to fight annexation by merging with other townships or seeking wholesale annexation to neighboring villages. This allows for incorporation without the residents losing most of their local control. Since annexation from one municipal corporation to

⁷⁸ The warehouse complex from which the Gilchrist Road territory is sought to be annexed is a good example of such a development, having been nurtured and cultivated over a number of years.

⁷⁹ Recently introduced H.B. 16, 113th Ohio Gen. Assem., 2d Sess. (1980) is an example of an attempt at major revision. It provides:

- 1) All of the owners of property adjacent to the municipal corporation must sign the petition.
- 2) The agent must live in the territory to be annexed. This provision makes it impossible to annex undeveloped land.
- 3) County Commissioners would be given additional discretion to reject petitions as follows: Territory must adjoin the municipal corporation at more than one spot; an annexation cannot contain a narrow strip of land in order to join otherwise non-contiguous territory (cities have annexed railroad and utilities right of way to gain access to non-contiguous territory); and proposed annexation can separate any part of the township from the remainder of the township.

⁸⁰ OHIO REV. CODE ANN. § 709.07 (Page Supp 1980).

another is a difficult procedure,⁸² such measures can sometimes be an effective block against annexation. They are limited, however, by geographic realities.

There is a third weapon in the arsenal of annexation opponents which was only recently discovered and which has not yet been tested. On January 1, 1981, Summit County became the first entity in Ohio to adopt a charter pursuant to the Ohio Constitution.⁸³ Several interesting questions as to the effect of this charter on annexation in the county have been raised. First, do the provisions of the charter make the county a municipal corporation under Ohio law, so that all annexations in Summit County must proceed under the provisions for annexation from one municipal corporation to another? Second, does the charter allow the county to set its own standards for annexation? Third, is the annexation decision a legislative action such that it is subject to referendum and initiative by the voters? The answers to these questions may provide the townships with a very strong weapon in their attempt to hold back the tide of annexation.⁸⁴

VI. CONCLUSION

Annexation can be one of the most effective means to permit a city to expand its borders and to provide municipal services to outlying areas. Despite its benefits, however, in Ohio it remains a source of conflict between city and township. In some areas of this state, this conflict has degenerated into an irrational hatred between the parties, making efficient local government a virtual impossibility. Although neither party is without blame, the true source of difficulty in this area is the law itself. No one can fault city administrations, in attempting to provide for their own needs, for taking advantage of a statutory scheme that allows annexation to proceed virtually unchecked. At the same time, township officials should not be blamed for fighting annexation attempts which they see as contrary to the best interests of their constituents. Therefore, as long as the present statutory scheme remains intact, the battle will proceed unchanged. What is needed is a structure that allows annexation to proceed when it can aid the normal developmental needs of a city or when it will extend needed municipal services, but that prevents the annexation of land unsuited for development where the only reason for annexation is to increase the tax base of the city. It is these latter annexation attempts which the township officials are determined to stop. Obviously, the implementation of such a structure will not totally eliminate

⁸² OHIO REV. CODE ANN. §§ 709.22-37 (Page 1976 & Supp. 1980).

⁸³ Ohio Const. art. X, § 9.

⁸⁴ Some of these issues will be litigated in a recently filed declaratory judgment action, *Azar v. County of Summit*, No. 80-3-0733 (C.P. Summit Co., filed Mar. 27, 1981). This action was filed by the Trustees of Northampton Township as part of their opposition to a proposed annexation to the City of Akron of approximately 1600 acres, including the Blossom Music Center, summer home of the Cleveland Orchestra.

the animosity which exists as a result of annexation. Whenever municipal borders expand, there is bound to be resistance.

It is possible, however, that a scheme which curtails unwarranted annexations will force cities to adopt long-range programs to be completed with the cooperation of township and county governments. These changes can be accomplished in two ways. The first is legislative. A complete revision of the statutes, providing for more discretion at the county level as well as greater judicial scrutiny, is the best way to afford protection to the rights of all parties involved in annexations. Meanwhile, some changes can be made by the judiciary. If the courts were to allow the county commissioners to consider, when determining whether a territory is unreasonably large, such factors as the economic effect of the annexation, the susceptibility of the territory to development by the annexing city, and whether the annexation is in the best interests of the entire metropolitan area, then perhaps annexation will be less a source of conflict and townships and cities can begin to cooperate in local government.

There is a deeper issue involved here, however, which this comment has scarcely examined: the viability of the township as a form of local government in an urban society. Under the present system, townships are no more than caretakers of unincorporated territory, holding it until a city is ready to institute annexation proceedings. In a rural setting, there are few problems with this scheme. In recent years, however, many townships have become increasingly more urbanized. As a result, township governments have been called upon to provide much more in the way of municipal services. In order to generate revenue to provide these services they have sought to increase their tax base through the development of industrial and/or commercial complexes within township borders only to see those developments, upon completion, annexed by neighboring municipal corporations. In the end, it is the township resident who suffers when he or she pays for these developments through property taxes but receives no benefit from them when they are annexed. Townships could become a viable form of local government only if they are afforded some protection by the General Assembly.

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