

# Washington Law Review

---

Volume 37 | Number 3

---

9-1-1962

## Annexation by Municipal Corporations

John E. Iverson

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Property Law and Real Estate Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

John E. Iverson, Comment, *Annexation by Municipal Corporations*, 37 Wash. L. Rev. 404 (1962).  
Available at: <https://digitalcommons.law.uw.edu/wlr/vol37/iss3/4>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

# COMMENT

## ANNEXATION BY MUNICIPAL CORPORATIONS

Problems caused by the growth of urban fringe areas have increased, particularly since World War II. As the population of these areas increases, so does the need for public services and the attendant need for effective local government. County government in Washington has remained generally unchanged since its inception one hundred years ago. Conceived in contemplation of a rural, lightly populated area requiring only a minimum of services, county government was not designed to deal with urban problems. As a result, the task of providing governmental services has been assumed by existing municipalities, which, in order to gain the requisite jurisdiction over fringe areas, must annex them. Annexation often brings higher taxes, zoning restrictions, and other municipal control, causing dissention among the inhabitants of the area proposed to be annexed.

The purpose of this Comment is to discuss certain problems and considerations raised by annexation, with particular emphasis upon the applicable Washington law. The comment is divided into a discussion of five general areas: 1) The procedure for accomplishing annexation; 2) Land which may properly be annexed; 3) Remedies available for attacking annexation; 4) Circumstances in which annexation may be collaterally attacked; and 5) The doctrine of *de facto* corporation.

---

<sup>1</sup> In three situations, the annexation of unlimited area which is *contiguous* and *unincorporated* is contemplated:

1. RCW 35.13.015—*resolution method*—initiated by legislative body of the annexing municipality.
2. RCW 35.13.020-120—*election method*—initiated by qualified voters residing in the area proposed to be annexed.
3. RCW 35.13.130-170—*petition method*—initiated by owners of property in area proposed to be annexed.  
Six statutes deal with special circumstances:
4. RCW 35.10.010—consolidation of *contiguous* cities or towns.
5. RCW 35.11.010—third class city or town *contiguous* to first class city.
6. RCW 35.13.180—*contiguous or non-contiguous* territory to third class city or town, for municipal purposes.
7. RCW 35.13.190—federal land, *contiguous* and unincorporated, by municipalities other than of the first class, limited to four miles.
8. RCW 35.13.185—federal land, *contiguous* and unincorporated, by first class cities, without limitation.
9. RCW 35.12—all or part of another city or suburb with not over 2,000 inhabitants or any unincorporated territory, initiated by voters of municipality.

For an outline of procedure to be followed in some of these situations, see BUREAU OF GOVERNMENTAL RESEARCH & SERVICES, UNIVERSITY OF WASHINGTON, HANDBOOK FOR WASHINGTON THIRD CLASS CITIES, Rept. No. 134 (1956).

## PROCEDURE

Washington statutes provide for the annexation of territory in nine different situations.<sup>1</sup> They provide four methods for initiating annexation proceedings, three of which are more often used:<sup>2</sup>

*Resolution Method.*<sup>3</sup> The legislative body of a municipality may file a copy of a resolution to annex with the Board of County Commissioners.

*Election Method.*<sup>4</sup> RCW 35.10, 35.11 and 35.12 require a petition signed by qualified voters of the municipality, equal in number to one-fifth of the votes cast at the last municipal election, to be filed with the municipality's legislative body. RCW 35.13.020-.120 requires a petition signed by qualified voters resident of the proposed territory, equal to twenty percent of the votes cast at the last general election, to be filed with the Board of County Commissioners, provided it has been first filed and approved by the annexing municipality.

Unlike the petition method, both the resolution and the election methods require an annexation election. RCW 35.10 and 35.12 submit the question to the inhabitants of the municipality as well as those of the territory proposed to be annexed. RCW 35.11, 35.13.015, and 35.13.020-.120 permit a vote by only the inhabitants of the territory proposed to be annexed.

*Petition Method.*<sup>5</sup> A petition, signed by landowners whose property holdings constitute not less than seventy-five percent of the assessed value of the territory proposed to be annexed, may be filed with the legislative body of the annexing municipality. Following a public hearing and approval, the municipality may pass an ordinance annexing the territory.

After the annexation proceedings have been initiated by one of the preceding methods, the following steps are usually taken: (Since the steps taken pursuant to other chapters are similar, those required by RCW 35.13 are used as examples.)

1. The petition must pass the approval of a review board, called to determine whether the annexation is in the public interest.<sup>6</sup>

2. Following the review board's approval, a hearing on the petition

---

<sup>2</sup> The fourth method (RCW 35.13.180-190) permits limited annexation of territory for municipal purposes or from the federal government by simply passing an ordinance.

<sup>3</sup> RCW 35.13.015.

<sup>4</sup> RCW 35.10; RCW 35.11; RCW 35.12; RCW 35.13.020-.120.

<sup>5</sup> RCW 35.13.130-170.

<sup>6</sup> RCW 35.13.171-174.

for annexation is called and notice of it is published in a newspaper printed and published in the annexing municipality. If the petition complies with the requirements of law, it is approved and a date for election is set. (Under the petition method, the next step is number six.)<sup>7</sup>

3. Notice of election is given by posting in four public places within the area to be annexed, and publication for at least two weeks prior to the date of election in a newspaper printed and published within the limits of the territory proposed to be annexed, or if there is no such newspaper, a newspaper published in the municipality, or if there is none, a newspaper of general circulation published in the county.<sup>8</sup>

4. An election is held in accordance with general election laws in which only qualified or registered voters may participate.<sup>9</sup>

5. The returns are canvassed. They are transmitted to the legislative body of the annexing municipality.<sup>10</sup>

6. The municipality adopts an ordinance annexing the territory.<sup>11</sup>

#### ANNEXABLE LAND

Municipal corporations' power to annex is derived from the legislature.<sup>12</sup> Since the Washington Constitution prohibits special legislation, Washington annexation laws are very broad and ambiguous, and their requisites for annexability can only be determined by resort to a study of the applicable case law. The various judicial interpretations of the statutory requisites to annexability are discussed in this section.

As a general rule, territory may be annexed if it shares a unity of interest with the annexing municipality so as to form a community. Annexation resulting in a plurality of interests is undesirable since the existence of divergent factors weakens effective municipal government and detracts from the benefits to be gained from annexation.

*Contiguity.* Generally, only territory which is adjacent or contiguous to a municipality may be annexed. Courts have enforced this requirement, even where it is not expressly set out by statute.<sup>13</sup> With one

<sup>7</sup> RCW 35.13.040.

<sup>8</sup> RCW 35.13.080.

<sup>9</sup> RCW 35.13.070.

<sup>10</sup> RCW 35.13.090-.100.

<sup>11</sup> RCW 35.13.100.

<sup>12</sup> WASH. CONST. art. XI, § 10, which states that municipal corporations shall be subject to and controlled by general laws, provides the manner in which the legislature may grant such power.

<sup>13</sup> McGraw v. Merryman, 133 Md. 247, 104 Atl. 540 (1918).

exception,<sup>14</sup> Washington statutes limit annexation to contiguous territory.<sup>15</sup> The definition of contiguity includes both physical contiguity and homogeneity. Tracts are generally required to be so situated with reference to the municipality that they may reasonably be expected to receive the ordinary benefits of local government. It is also generally required that they be reached without traveling outside of the municipal boundaries.<sup>16</sup>

It is sufficient if all of the tracts to be annexed are contiguous to each other and one of them is contiguous to the municipality.<sup>17</sup> However, where annexation of one tract, contiguous to another tract, the annexation of which is not yet completed, is attempted, courts have differed in their conclusions as to whether it is sufficiently contiguous for annexation purposes. The California court has held that such annexations are invalid because a California statute requires contiguity at the time the petition is filed.<sup>18</sup>

On the other hand, the Pennsylvania court has held an annexation valid under circumstances in which an appeal concerning the first annexation was pending at the conclusion of the subsequent annexation proceedings.<sup>19</sup> Developing a theory of "intercontiguity," the court recognized that the prior annexation had been affirmed on appeal, and that the result was contiguity between the two territories and the municipality, in fact. South Carolina concurs in the theory of intercontiguity, provided the annexation proceedings are carried out simultaneously so that there is at no time a lack of contiguity.<sup>20</sup> Unlike California, South Carolina had no statute requiring contiguity at the time of filing the petition for annexation.

Should this problem arise in Washington, any solution will be complicated by the inconsistent language of the Washington statutes. RCW 35.13.010 states that "any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become part of the city or town by annexation," apparently requiring contiguity at

<sup>14</sup> RCW 35.13.180. "City and town councils of second and third class cities and towns may by a majority vote annex new territory outside the city or town limits whether contiguous or noncontiguous, for park, cemetery, or other municipal purposes."

<sup>15</sup> RCW 35.10.010; RCW 35.11.010; RCW 35.12.010; RCW 35.13.015; RCW 35.13.020-.120; RCW 35.13.130-.170; RCW 35.13.185; RCW 35.13.190.

<sup>16</sup> 2 McQUILLIN, MUNICIPAL CORPORATIONS § 7.20 (3d ed. 1949).

<sup>17</sup> *Evansville v. Page*, 23 Ind. 525 (1864); *Hurla v. City of Kansas City*, 46 Kan. 738, 27 Pac. 143 (1891).

<sup>18</sup> *McDowell & Craig v. City of Santa Fe Springs*, 54 Cal. 2d 33, 4 Cal. Rep. 176, 351 P.2d 344 (Sup. Ct. 1960); *City of Port Hueneme v. City of Oxnard*, 52 Cal. 2d 838, 341 P.2d 325 (Sup. Ct. 1958).

<sup>19</sup> *In re Lancaster City Ord. No. 20-1952*, 374 Pa. 543, 98 A.2d 33 (1953).

<sup>20</sup> *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961).

the time of annexation. RCW 35.13.130, however, states that "a petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body to which annexation is desired," apparently requiring contiguity at the time the petition is filed. It is suggested that if the Washington court were to face the problem, it would follow the reasoning of either the Pennsylvania or the South Carolina court, unless the problem arises out of circumstances similar to those under which the California cases were decided. The California decisions were tempered by a judicial attempt to slow down the rapid, competitive pace of annexations by California municipalities at that time.

If land intervenes between the municipality and the territory to be annexed, the territory is generally held not to be contiguous.<sup>21</sup> Also, where the territory and the municipality touch only at corners, and persons cannot pass from one to the other without passing outside the municipal boundaries, the tracts are not contiguous.<sup>22</sup> Where rivers intervene, courts have had little difficulty finding land on the opposite bank to be contiguous because adequate means of communication and a unity of interests ordinarily exist.<sup>23</sup> Where these qualities are lacking, however, as between tracts located on opposite sides of a bay, courts have not found the requisite contiguity.<sup>24</sup> Washington statutes specifically provide that land shall be deemed contiguous, even though separated by water, or tide or shore lands on which no bona fide residence is maintained.<sup>25</sup> These statutes have never been interpreted in Washington. Although they appear to settle the question of contiguity conclusively, it seems that the court would construe them in the light of the communication and unity of interest requirements. It is suggested that the statutes were intended to resolve the problem arising from the fact that municipal boundaries located on a body of water may only front the water.<sup>26</sup> Without the statutes, whether land located on opposite shores of an intervening body of water could be considered contiguous

---

<sup>21</sup> Although no such provision has been found in the Washington statutes, the statutes of some states define contiguity to permit the intervention of small parcels of land.

<sup>22</sup> *Wild v. People ex rel. Stephens*, 227 Ill. 556, 81 N.E. 707 (1907); *Linn County Bank v. Hopkins*, 47 Kan. 580, 28 Pac. 606 (1892).

<sup>23</sup> *Vestal v. City of Little Rock*, 54 Ark. 321, 15 S.W. 891 (1891); *McGraw v. Merryman*, 133 Md. 247, 104 Atl. 540 (1918); *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961).

<sup>24</sup> *United States ex rel. Horigan v. Heyward*, 98 F.2d 433 (5th Cir. 1938); *Ocean Beach Heights, Inc. v. Brown Crummer Inv. Co.*, 87 F.2d 978 (5th Cir. 1937), *rev'd*, 302 U.S. 614 (1938).

<sup>25</sup> RCW 35.10.010; RCW 35.13.010.

<sup>26</sup> RCW 35.21.160 extends municipal jurisdiction over adjacent waters. See RHYNE, *MUNICIPAL LAW* § 2-30 (1957).

would remain unsettled. Thus, they could be considered to be directed only to the problem of physical contiguity.

Proposed annexations which would produce unusual configurations, such as "shoestring" and "mushroom" effects, have received divergent treatment by the courts. Representative of one approach, the California courts have ruled that the determination of boundaries is a political and not a judicial question.<sup>27</sup> They have decided that the only judicial question is whether contiguity exists at any point. Following this rationale, courts have allowed "shoestring"<sup>28</sup> and "mushroom"<sup>29</sup> effects, and have sanctioned the occurrence of unincorporated islands, resulting from municipalities surrounding but not annexing unincorporated territory.<sup>30</sup> Although there are no Washington cases considering this question, the Attorney General has adopted a similar rule.<sup>31</sup> The California legislature reacted to its court's ruling in 1951 and 1955 by limiting the use of "strips"<sup>32</sup> and by prohibiting the occurrence of unincorporated islands.<sup>33</sup>

If there is a valid reason for annexations of this type, they should be allowed. For example, in *Village of Saranac Lake v. Gillispie*,<sup>34</sup> the court held that annexation of a disposal plant one-half mile away and connected by a pipe under a ten foot strip of land was proper. Annexation might also be reasonable where the unusual configurations have

<sup>27</sup> *People ex rel. Forde v. Town of Corte Madera*, 115 Cal. App. 2d 32, 251 P.2d 988 (1952); *City of Burlingame v. San Mateo County*, 90 Cal. App. 2d 705, 203 P.2d 807 (1949); *People ex rel. Peck v. City of Los Angeles*, 154 Cal. 220, 97 Pac. 311 (1908); *People ex rel. Russell v. Town of Loyaltan*, 147 Cal. 774, 82 Pac. 620 (1905).

<sup>28</sup> *Park v. Hardin*, 203 Ark. 1135, 160 S.W.2d 501 (1942) (four mile strip one-quarter mile wide); *People ex rel. Forde v. Town of Corte Madera*, 115 Cal. App. 2d 32, 251 P.2d 988 (1952) (strip one mile long and one-hundred and fifty feet wide); *City of Burlingame v. San Mateo County*, 90 Cal. App. 2d 705, 203 P.2d 807 (1949) (one-hundred foot wide strip in horseshoe shape enclosing an unincorporated island); *People ex rel. Peck v. City of Los Angeles*, 154 Cal. 220, 97 Pac. 311 (1908) (sixteen mile strip one mile wide).

<sup>29</sup> *Wild v. People ex rel. Stephens*, 227 Ill. 556, 81 N.E. 707 (1907) (one-half mile strip fifty feet wide connecting outlying lands); *State ex rel. City of West Orange v. City of Orange*, 300 S.W.2d 705 (Tex. Civ. App. 1957) (one mile strip of highway used to connect territory); *City of Wichita Falls v. Bowen*, 143 Tex. 45, 182 S.W.2d 695 (1944) (airport three or four miles from city connected by annexed highway); *Laffer v. City of Dallas*, 177 S.W.2d 231 (Tex. Civ. App. 1943) (area connected by three-quarter strip ten feet wide).

<sup>30</sup> *City of Burlingame v. San Mateo County*, 90 Cal. App. 2d 705, 203 P.2d 807 (1949); *Spaulding School Dist. v. City of Waukegan*, 18 Ill. 2d 526, 165 N.E.2d 283 (1961).

<sup>31</sup> OPS. ATT'Y GEN. 269 (Wash. 1951-53) (city may annex land one-half mile away which is connected by a strip of land which is a highway).

<sup>32</sup> CAL. GOV. CODE § 35002.5 (territory not contiguous if the only contiguity is based on a strip over three-hundred feet long and less than two-hundred feet wide, such width exclusive of highways).

<sup>33</sup> CAL. GOV. CODE §§ 35158, 35326 (prohibiting annexations leaving unincorporated islands).

<sup>34</sup> 261 App. Div. 854, 24 N.Y.S.2d 403 (1941).

been caused by natural land obstacles such as swamps or mountains. However, unreasonable annexations of odd-shaped territory have been noted as a subterfuge for defeating the homogeneity aspect of contiguity.<sup>35</sup> The court in *People v. Village of Streamwood*<sup>36</sup> held that the annexation of a maze of roads seventy-five miles in length was a sham since the roads were not reasonably contiguous and because the municipality could not reasonably serve the annexed area.

A judicial requirement of reasonable contiguity seems to be a better solution than statutory limitation. As pointed out in one text,<sup>37</sup> the California statutes limiting contiguity are too inflexible to cope with every possible situation. Annexations similarly shaped and prompted by similar motives may be accomplished under the present California statute by juggling the shape slightly so as to defeat one requirement of the limitation. Thus, a shoestring annexation 201 feet wide and over 300 feet long is not controlled by the statute which states that territory is not contiguous if based on a strip over 300 feet long and less than 200 feet wide.<sup>38</sup> On the other hand, a judicial requirement that there be reasonable contiguity can be more usefully applied to accomplish desired annexations. In *In re Westmoreland, Inc.*,<sup>39</sup> the Illinois court followed a rule sufficiently flexible to permit a finding that a strip of land shaped like a "C" was reasonably contiguous, since touching the municipality for 660 feet was contiguity for a reasonable, substantial distance.

*Reasonableness.* The concepts of contiguity and reasonableness run hand in hand; land may not be annexed without the presence of both aspects. Because annexed territory is subject to municipal controls and taxes, annexation without justification is a denial of due process.<sup>40</sup> Generally, annexation is not reasonable where the annexed territory will

---

<sup>35</sup> *Park v. Hardin*, 203 Ark. 1135, 160 S.W.2d 501 (1942); *Brown v. City Council of Long Beach*, 258 Pac. 693 (Cal. App. 1927); *People ex rel. Lemoore Land & Fruit Growing Co. v. City of Lemoore*, 37 Cal. App. 79, 174 Pac. 93 (1918); *People ex rel. Adamowski v. Village of Streamwood*, 15 Ill. 2d 595, 155 N.E.2d 635 (1959); *Wild v. People ex rel. Stephens*, 227 Ill. 556, 81 N.E. 707 (1907); *State ex rel. Danielsens v. Village of Mound*, 234 Minn. 531, 48 N.W.2d 855 (1951).

<sup>36</sup> 15 Ill. 2d 595, 155 N.E.2d 635 (1959).

<sup>37</sup> Bureau of Public Administration, University of California, Berkeley, *Annexation? Incorporation? A Guide for Community Action* 28 (1959).

<sup>38</sup> CAL. GOV. CODE § 35002.5 (territory not contiguous if the only contiguity is based on a strip over three-hundred feet long and less than two-hundred feet wide, such width exclusive of highways).

<sup>39</sup> 15 Ill. 2d 51, 145 N.E.2d 257 (1957).

<sup>40</sup> *Chesapeake & Ohio Ry. v. City of Silver Grove*, 249 S.W.2d 520, 522 (Ky. 1952); RHYNE, MUNICIPAL LAW § 2-4 (1957).



not receive a reciprocal benefit from annexation.<sup>41</sup> Thus, where land is separated by a body of water which substantially interferes with communication, it is improper to annex it.<sup>42</sup> Annexation is also not reasonable where land has been annexed for revenue purposes only,<sup>43</sup> or where a municipality already has a surplus of land used for municipal purposes.<sup>44</sup> On the other hand, territory may be annexed if it is needed for municipal growth although it is now vacant, is farm land, or would not receive benefit by annexation.<sup>45</sup>

A special review board, composed of designated public officials and convened by the mayor of the annexing municipality, is given the duty of determining whether proposed unincorporated territory is appropriate for annexation,<sup>46</sup> by RCW 35.13.171. The review board's approval is a condition precedent to any action by the Board of County Commissioners or municipality on a petition for an election to vote upon annexation or for passage of an annexation ordinance. In 1961 the Washington legislature adopted the following factors as a guide, not a limitation, on the review board's determination of whether the proposed annexation is in the public interest:

1. The immediate and prospective populations of the area to be annexed;
2. The assessed valuation of the area to be annexed, and its relationship to population;
3. The history of and prospects for construction of improvements in the area to be annexed;
4. The needs and possibilities for geographical expansion of the city;
5. The present and anticipated need for governmental services in the

---

<sup>41</sup> *City of Pine Bluff v. Mead*, 177 Ark. 809, 7 S.W.2d 988 (1928); *People ex rel. Adamowski v. Village of Streamwood*, 15 Ill. App. 2d 595, 155 N.E.2d 635 (1959); *State ex rel. Danielsen v. Village of Mound*, 234 Minn. 531, 48 N.W.2d 855 (1951); *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 Pac. 505 (1927).

<sup>42</sup> *Ocean Beach Heights, Inc. v. Brown Crummer Inv. Co.*, 87 F.2d 978 (5th Cir. 1937), *rev'd*, 302 U.S. 614 (1938); *Vestal v. City of Little Rock*, 54 Ark. 321, 15 S.W. 891 (1891). Where there is a lack of unity because of intervening water, courts have denied annexation on both the grounds of contiguity and reasonableness.

<sup>43</sup> *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 Pac. 505 (1927).

<sup>44</sup> *Incorporated Town of North Judson v. Chicago & E. Ry.*, 72 Ind. App. 550, 126 N.E. 323 (1920).

<sup>45</sup> *Port of Tacoma v. Parosa*, 52 Wn.2d 181, 324 P.2d 438 (1958); *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 Pac. 505 (1927); *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219 (1896); *Ferguson v. City of Snohomish*, 8 Wash. 668, 36 Pac. 969 (1894).

<sup>46</sup> In annexations of other than unincorporated areas, as a practical matter the question of reasonableness does not arise. For this reason, the proceedings are conducted solely by the Board of County Commissioners or by the municipality. In these circumstances, the question of reasonableness is usually inherent in the statute. For example, RCW 35.13.172 dispenses with review when the area and the property valuations are below a certain limit.

area proposed to be annexed, including but not limited to water supply, sewage and garbage disposal, zoning, streets and alleys, curbs, sidewalks, police and fire protection, playgrounds, parks, and other municipal services, and transportation and drainage;

6. The relative capabilities of the city, county, and other political subdivisions to provide governmental services when the need arises;
7. The existence of school districts and special districts within the area proposed to be annexed, and the impact of annexation upon such districts;
8. The elimination of isolated unincorporated areas existing without adequate economical governmental services;
9. The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing service to the area.<sup>47</sup>

Similar criteria have been judicially developed in other jurisdictions.<sup>48</sup>

*Inter-County Annexation.* RCW 35.13.010 permits "any portion of a county not incorporated as a part of a city or town [to] . . . become part of the city or town by annexation." The statute is ambiguous as to whether municipalities are limited to the county in which they are situated or are permitted to annex territory in other counties. Other jurisdictions have forbidden inter-county annexations.<sup>49</sup> Allowing municipalities to extend their territory into multiple counties, it is argued, multiplies inconveniences and governmental problems such as determining which Board of County Commissioners should be petitioned for the annexation of territory located in the two counties. Also, municipalities should not be able to do by annexation what is not allowed upon incorporation.<sup>50</sup>

A Nebraska case,<sup>51</sup> however, held that a statute limiting annexation to contiguous territory was broad enough to allow inter-county annexa-

<sup>47</sup> RCW 35.13.173.

<sup>48</sup> *Vestal v. City of Little Rock*, 54 Ark. 321, 15 S.W. 891 (1891), states that territory may be annexed in the following situations:

1. Territory platted and held for sale or use as town lots;
2. Territory, platted or not, held to be bought and sold as urban property when values correspond;
3. Territory furnishing abode for densely settled community or representing growth of the municipal corporation beyond its legal boundaries;
4. Territory needed for proper town purposes, *i.e.*, streets, sewer, gas, water and police protection;
5. Territory valuable for prospective urban uses except:
  - a. where used for agriculture and valuable because of that and not because of its proximity to the municipal corporation;
  - b. vacant and without special value as being adaptable to a municipal corporation.

<sup>49</sup> *County of San Mateo v. City Council of Palo Alto*, 168 Cal. App. 2d 220, 335 P.2d 1013 (1959); *Tabor & N. Ry. v. Dyson*, 86 Iowa 310, 53 N.W. 245 (1892); *Town of Elsmere v. Tanner*, 245 Ky. 376, 53 S.W.2d 522 (1932).

<sup>50</sup> *Tabor & N. Ry. v. Dyson*, 86 Iowa 310, 53 N.W. 245 (1892).

<sup>51</sup> *Village of Wakefield v. Utecht*, 90 Neb. 252, 133 N.W. 240 (1911).

tions without special legislative approval. Similarly, Washington statutes show no legislative intention to forbid inter-county annexations.<sup>52</sup> RCW 35.04.010 permits the incorporation of inter-county municipalities; RCW 35.04.180 permits consolidation and annexation by municipalities—whether the territory lies in one or more counties. It follows logically that the Washington legislature also intends to approve of inter-county annexations by *single* county municipalities.

*Concurrent Jurisdiction.* It is a generally recognized principle that two municipalities cannot exercise the same or similar powers, privileges, or jurisdiction over the same territory at the same time.<sup>53</sup> When a proceeding for the annexation of a given area has been initiated, such area cannot during the process be separately incorporated.<sup>54</sup> Further, when a certain area is in the process of incorporation, it cannot be annexed by a municipality until after the incorporation proceeding is terminated.<sup>55</sup>

RCW 35.13.050 and RCW 35.13.175 are the only statutes which state when a proceeding has commenced so as to prevent other municipalities from proceeding to annex the same territory. They provide that upon the filing of a petition or a resolution with the Board of County Commissioners, the Board and other public officials shall not act upon subsequent petitions or resolutions. However, these statutes are limited to annexation proceedings. Therefore, at some future date Washington must determine the point at which incorporation proceedings have commenced sufficiently to preclude other municipalities from acting. Legislation is needed to express, for example, whether an incorporation proceeding commences upon the filing of a petition for election or during the period of its circulation. A possible solution would be to deem proceedings commenced upon the first signing of a petition or resolution. A petition not filed within six months could be declared void, as has been done in California.<sup>56</sup> This solution would neither punish prompt petitioners nor allow them to unreasonably delay proceedings.

#### AVAILABLE REMEDIES FOR ATTACKING ANNEXATION

*Quo Warranto.* Quo warranto is often said to be the proper remedy

<sup>52</sup> OPS. ATT'Y GEN. 37 (Wash. 1959-60).

<sup>53</sup> 1 McQUILLIN, MUNICIPAL CORPORATIONS § 3.02 (3d ed. 1949); 1 DILLON, MUNICIPAL CORPORATIONS § 354 (5th ed. 1911).

<sup>54</sup> People *ex rel.* City of Pasadena v. City of Monterey Park, 40 Cal. App. 715, 181 Pac. 825 (1919).

<sup>55</sup> 1 McQUILLIN, *op. cit. supra* note 53, at § 7.22.

<sup>56</sup> CAL. GOV. CODE § 35001.

for attacking the validity of an annexation.<sup>57</sup> Since it is a state action, it is a direct attack, as distinguished from a collateral attack,<sup>58</sup> and, except for statutory prohibitions, may be used to attack annexations regardless of the existence of a de facto corporation. Very few cases deal squarely with the question of whether quo warranto is the proper proceeding or whether the state has capacity to bring it, but the rule is often stated as a dictum.<sup>59</sup> However, since municipal corporations obtain their existence from the state, it is logical that the state should be competent to question the validity of their acts.

Quo warranto is properly employed only where annexation proceedings are completed, while other remedies must be used where the proceedings are incomplete or still pending.<sup>60</sup> A state cannot question by what authority a municipal corporation acts until it has completed the annexation proceedings and has attempted to act by asserting jurisdiction over its territory.

For the individual, the disadvantage of quo warranto as a remedy is its discretionary character. The Attorney General must be convinced that he is justified in maintaining the quo warranto proceeding before he will bring it.<sup>61</sup> In addition, the courts must be shown that there is sufficient public interest in the proceeding to prevent it from being barred. RCW 7.56.020, which states that a person, in his own relation, may bring quo warranto whenever he claims an *interest* in the corporation, does not apply when challenging the validity of an annexation. The person, by bringing the information, denies the existence of the requisite "interest." For these reasons, other remedies are sought to attack the validity of an annexation.

*Injunction.* The most frequently used remedy is the injunction. It may be used where the annexation proceedings are incomplete or still pending as well as where the proceedings are complete but the municipality has not attempted to exercise its jurisdiction. It may not, however, be used where a de facto corporation exists. The use of injunctions and restraining orders has been permitted in Washington,

<sup>57</sup> *American Distilling Co. v. City Council of Sausalito*, 34 Cal. 2d 660, 213 P.2d 704 (1950); *State ex rel. Harrington v. City of Pompano*, 136 Fla. 730, 188 So. 610 (1939); *State ex rel. Burnquist v. Village of North Pole*, 213 Minn. 297, 6 N.W.2d 458 (1942); *Lefler v. City of Dallas*, 177 S.W.2d 231 (Tex. Civ. App. 1943).

<sup>58</sup> *Ibid.*

<sup>59</sup> *American Distilling Co. v. City Council of Sausalito*, 34 Cal. 2d 660, 213 P.2d 704 (1950); *Kuhn v. City of Port Townsend*, 12 Wash. 605, 41 Pac. 923 (1895); *Ferguson v. City of Snohomish*, 8 Wash. 668, 36 Pac. 969 (1894).

<sup>60</sup> *American Distilling Co. v. City Council of Sausalito*, *supra* note 59.

<sup>61</sup> *State ex rel. Cummings v. Blackwell*, 91 Wash. 81, 157 Pac. 223 (1916).

<sup>62</sup> *Paine v. Port of Seattle*, 70 Wash. 294, 316, 126 Pac. 628, 637 (1912).

to prevent the issuance and sale of bonds<sup>62</sup> and a tax levy,<sup>63</sup> both of which were the municipality's first exertion of jurisdiction after the completion of the annexation proceedings, and against the canvassing of election returns,<sup>64</sup> which was a step in the annexation process.

Timely injunctions were permitted, in these cases, to challenge both the authority to annex and procedural irregularities. As evidenced by their frequent use, courts freely entertain injunction proceedings. This is probably because often no other remedy is available until the proceedings are completed,<sup>65</sup> and after the proceedings are completed, except for quo warranto, the petitioner is virtually without recourse.

*Mandamus, Prohibition and Certiorari.* As is an injunction, mandamus, prohibition and certiorari are collateral remedies and may be brought under the same limited circumstances.<sup>66</sup> Mandamus and prohibition are proper remedies to compel the termination of annexation proceedings prior to the time that quo warranto becomes available;<sup>67</sup> certiorari is the proper remedy to test the validity of the annexation proceedings and the jurisdiction of the annexing officials.<sup>68</sup> Mandamus might be used to compel the canvassing of votes where it is contended that there were not sufficient votes. It might also be used in a negative sense as has been done in Washington<sup>69</sup>—to compel an official not to canvass an election return. Prohibition, however, would be the correct procedure and should, therefore, be more often used to prevent unlawful continuation of annexation proceedings. Certiorari may be granted in Washington to review municipal corporation proceedings.<sup>70</sup>

*Declaratory Judgment.* Declaratory judgment is a new addition to

<sup>62</sup> Drum v. University Place Water Dist., 144 Wash. 585, 258 Pac. 505 (1927). See also, Sharkey v. City of Butte, 52 Mont. 16, 155 Pac. 266 (1916); Thurber v. Henderson, 63 Ore. 410, 128 Pac. 43 (1912); Leach v. Port of Tillamook, 62 Ore. 345, 124 Pac. 642 (1912); City of Waco v. Higginson, 226 S.W. 1084 (Tex. Civ. App. 1920); Lum v. City of Bowie, 18 S.W. 142 (Tex. 1891).

<sup>64</sup> Smith v. Board of County Comm'rs Skagit County, 45 Fed. 725 (N.D. Wash. 1891); Davis v. Gibbs, 39 Wn.2d 481, 236 P.2d 545 (1951); Wilton v. Pierce County, 61 Wash. 386, 112 Pac. 386 (1910).

<sup>65</sup> Sharkey v. City of Butte, 52 Mont. 16, 155 Pac. 266 (1916); Smith v. Board of County Comm'rs Skagit County, *supra* note 64.

<sup>66</sup> County of San Mateo v. City Council of Palo Alto, 168 Cal. App. 2d 220, 335 P.2d 1013 (1959); Jefferson Union School Dist. v. City Council of Sunnyvale, 129 Cal. App. 2d 264, 277 P.2d 104 (1955); American Distilling Co. v. City Council of Sausalito, 34 Cal.2d 660, 213 P.2d 704 (1950).

<sup>67</sup> American Distilling Co. v. City Council of Sausalito, *supra* note 66.

<sup>68</sup> County of San Mateo v. City Council of Palo Alto, 168 Cal. App. 2d 220, 335 P.2d 1013 (1959); City of Anaheim v. City of Fullerton, 102 Cal. App. 2d 395, 227 P.2d 494 (1951); City of Burlingame v. San Mateo County, 90 Cal. App. 2d 205, 203 P.2d 807 (1949).

<sup>69</sup> State *ex rel.* O'Connell v. Yelle, 51 Wn.2d 620, 320 P.2d 1086 (1958).

<sup>70</sup> The court in State *ex rel.* Great No. Ry. v. Herschberger, 117 Wash. 275, 201 Pac. 2 (1921), granted a "writ of review" following an election and order by the Board of County Commissioners for the incorporation of a municipality.

the field of possible remedies. At first it received an unfavorable reception by the courts; it was bound by the limitations of the other collateral remedies.<sup>71</sup> However, it has now been used instead of quo warranto. The Oregon court, in *Portland Gen. Elec. Co. v. City of Estacada*,<sup>72</sup> held that declaratory judgment may be used although quo warranto might also be proper. In Arizona, declaratory judgment was successfully used by an individual to test the constitutionality of the statute authorizing annexation, but, upon a finding that the statute was valid, further challenge was precluded.<sup>73</sup> This decision appears correct since it does not extend the present restrictions on collateral attack by individuals. On the other hand, declaratory judgment has been used by a municipality<sup>74</sup> and by a county<sup>75</sup> to challenge the validity of an annexation proceeding. It is suggested that unlike collateral attacks by individuals, declaratory judgment actions should be extended to governmental bodies since they represent more of the population and have equal status with the municipality being attacked. A declaratory judgment action was permitted in California<sup>76</sup> because California municipalities are given statutory authority to bring quo warranto, and entertaining declaratory judgment did not enlarge the court's jurisdiction. Accordingly, the City of Seattle has been permitted to use the declaratory judgment action in Washington,<sup>77</sup> to determine the validity of certain contracts by challenging the validity of the municipality.

#### CIRCUMSTANCES IN WHICH COLLATERAL ATTACK IS PERMITTED

It is often stated that where an annexation proceeding has been carried to completion by a municipality acting under at least the color of authority, mere irregularities in the procedure will not clothe a private individual with capacity to collaterally attack such annexa-

---

<sup>71</sup> *Selser v. City of Stuart*, 135 F.2d 211 (5th Cir. 1943), cert. denied, 320 U.S. 769 (1943); *Skinner v. City of Phoenix*, 54 Ariz. 316, 95 P.2d 424 (1939).

<sup>72</sup> 194 Ore. 145, 241 P.2d 1129 (1952).

<sup>73</sup> *Skinner v. City of Phoenix*, 54 Ariz. 316, 95 P.2d 424 (1939).

<sup>74</sup> *San Ysidro Irrigation Dist. v. Superior Court*, 16 Cal. Rep. 609, 365 P.2d 753 (1961); *State ex rel. City of West Orange v. City of Orange*, 300 S.W.2d 705 (Tex. Civ. App. 1957); *Municipality of Metropolitan Seattle v. City of Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960); *Town of Blooming Grove v. City of Madison*, 275 Wis. 328, 81 N.W.2d 713 (1957); *Town of Madison v. City of Madison*, 269 Wis. 609, 70 N.W.2d 249 (1955).

<sup>75</sup> *Potvin v. Village of Chubbuck*, 76 Idaho 453, 284 P.2d 414 (1955).

<sup>76</sup> *San Ysidro Irrigation Dist. v. Superior Court*, 16 Cal. Rep. 609, 365 P.2d 753 (1961).

<sup>77</sup> *Municipality of Metropolitan Seattle v. City of Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960).

tion.<sup>78</sup> The proper remedy in these circumstances must be a direct proceeding by the state in the nature of a writ of quo warranto. The following discussion will show under what circumstances an individual may collaterally attack annexations, and the remedies available to him.

Annexation is treated as if it were the incorporation of a new municipality consisting of the territory within the new boundaries. Therefore, an attack upon the extension of corporate limits is believed to be an attack upon the corporation's very existence.<sup>79</sup> Public policy demands that only the state should be permitted to directly attack the municipal existence by a quo warranto proceeding since it is the traditional proceeding used to question public existence. Collateral attacks, on the other hand, are conclusive only as to the individual attacking, and therefore cause a multiplicity of actions. Because of the reliance upon the general acceptance of municipal existence,<sup>80</sup> and because collateral attacks usually result from a failure to contest annexation before completion, the courts generally seek to limit uncertainty by prohibiting collateral attacks.

The rule against collateral attack is not applicable when annexation is attacked on jurisdictional grounds or on the ground that the proceedings are void *ab initio*.<sup>81</sup> Because no de facto corporation has been created, such proceedings are always subject to attack. Equally obvious, a suit seeking judicial declaration that particular property is actually not within the boundaries of an annexation does not invoke the rule.<sup>82</sup> Such a suit admits the validity of the annexation and seeks only an interpretation of it.

At an early date, the Washington court appeared to hold that an individual never had capacity to collaterally attack a municipal cor-

---

<sup>78</sup> *Dixon v. City of Bremerton*, 25 Wn.2d 508, 171 P.2d 243 (1946); *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219 (1896) (individual never has capacity to collaterally attack municipality); *Kuhn v. City of Port Townsend*, 12 Wash. 605, 41 Pac. 923 (1895); *Ferguson v. City of Snohomish*, 8 Wash. 668, 36 Pac. 969 (1894).

<sup>79</sup> However, a few jurisdictions (not including Washington) find that challenging a change of boundaries is not on the same plane as an attack against corporate existence. These jurisdictions demand direct proceedings only in the latter case. *Dees v. City of Lake Charles*, 50 La. Ann. 356, 23 So. 382 (1898); *Stoltman v. City of Clayton*, 205 Mo. App. 568, 226 S.W. 315 (1920); *Lum v. City of Bowie*, 18 S.W. 142 (Tex. 1891).

<sup>80</sup> *Kuhn v. City of Port Townsend*, 12 Wash. 605, 41 Pac. 923 (1895).

<sup>81</sup> *Sharkey v. City of Butte*, 52 Mont. 16, 155 Pac. 266 (1916); *Griffing Park v. City of Port Arthur*, 36 S.W.2d 593 (Tex. Civ. App. 1931); *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 Pac. 505 (1927); *Wilton v. Pierce County*, 61 Wash. 386, 112 Pac. 386 (1910).

<sup>82</sup> *Las Animas & S.J. Land Co. v. Preciado*, 167 Cal. 580, 140 Pac. 239 (1914). *Contra*, *Saylor v. Town of Wallfins*, 220 Ky. 651, 295 S.W. 993 (1927).

poration.<sup>83</sup> However, subsequent Washington cases<sup>84</sup> have drawn from equitable principles and have held that property owners have a sufficient interest, arising from the threat of taxation and the exercise of other municipal powers, to enable them to collaterally attack in two circumstances. The first is the situation in which the proceeding has not been completed. For example, in *Davis v. Gibbs*,<sup>85</sup> the court enjoined city officials from canvassing the votes in a special annexation election. The second situation is after the completion of the annexation proceedings but before or at the first exercise of the corporate franchise. For lack of user, a de facto corporation has not arisen at this point, and therefore, there is no reason to prohibit the individual from proceeding. This rule, as first announced in other jurisdictions,<sup>86</sup> was followed in *Drum v. University Place Water Dist.*,<sup>87</sup> in which the court enjoined the district by levying taxes against the petitioner's land.

#### DOCTRINE OF DE FACTO CORPORATION

The doctrine of de facto municipal corporations is similar to the concept of private de facto corporations. In both cases the organization has operated as though it were a valid corporation. Except for the doctrine, having failed to comply with governing law, it would be legally non-existent and its acts inoperative. The doctrine was developed to validate municipal action taken in these circumstances. Similar to reincorporations of private corporations, it is applicable to municipal annexations as well as incorporations. As a result, the principle that the propriety of a de facto annexation cannot be collaterally attacked by an individual, in the absence of statutory permission, has been established.

The doctrine is examined in this comment because the selection of a proper procedure by which to attack an annexation depends upon whether a de facto corporation exists. The test for de facto existence

<sup>83</sup> *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219 (1896); *Ferguson v. City of Snohomish*, 8 Wash. 668, 36 Pac. 969 (1894).

<sup>84</sup> *Smith v. Board of County Comm'rs Skagit County*, 45 Fed. 725 (N.D. Wash. 1891); *Davis v. Gibbs*, 39 Wn.2d 481, 236 P.2d 545 (1951); *Wilton v. Pierce County*, 61 Wash. 386, 112 Pac. 386 (1910). The same is true in other jurisdictions. *American Distilling Co. v. City Council of Sausalito*, 34 Cal. 2d 660, 213 P.2d 704 (1950); *City of Sarasota v. Skillin*, 130 Fla. 724, 178 So. 837 (1937); *Sharkey v. City of Butte*, 52 Mont. 16, 155 Pac. 266 (1916); *Red River Valley Brick Co. v. City of Grand Forks*, 27 N.D. 8, 145 N.W. 725 (1914).

<sup>85</sup> 39 Wn.2d 481, 236 P.2d 545 (1951).

<sup>86</sup> *People v. Hausen*, 276 Ill. 204, 114 N.E. 596 (1916); *Hemple v. City of Hastings*, 79 Neb. 723, 113 N.W. 187 (1907); *In re Village of Spring Valley*, 189 Misc. 324, 71 N.Y.S.2d 848 (1947); *Jarl Co. v. Croton-on-Hudson*, 234 App. Div. 788, 253 N.Y. Supp. 999 (1931), *aff'd*, 258 N.Y. 303, 179 N.E. 708 (1932).

<sup>87</sup> 144 Wash. 585, 258 Pac. 505 (1927).



is, in fact, only an examination of the materiality of the alleged irregularities of an annexation proceeding. In this section, various irregularities are examined to provide a guide for determining materiality.

A defacto municipal corporation may be found where all of the following factors exist:

1. A charter or general law which delegates authority to annex territory;
2. An attempt to annex thereunder; and
3. Actual user of the corporate franchise.<sup>88</sup>

The rule derived from the first of these factors is that an attempt to annex without authority from the state is void *ab initio*. Thus, the question of de facto corporation does not arise where a municipality attempts annexation under an unconstitutional statute since, not being law, the statute delegates no authority. This can arise in two situations: Where the statute under which the municipality is incorporated is unconstitutional, and where the statute authorizing the annexation is unconstitutional. The Washington court has been confronted with the first situation.<sup>89</sup> The court invalidated an annexation by the municipality under the powers of a de facto corporation because the municipality had been incorporated by special law which is prohibited by the Washington Constitution.

On the other hand, it is argued that a municipality unchallenged by the state should be deemed a de facto corporation, although operating under an unconstitutional statute, for the reason that men have acted in reliance on its validity and should be protected on that account.<sup>90</sup> The Washington court appears to have applied this reasoning in one case.<sup>91</sup> The court found that a de facto corporation existed although the city proved that it had incorporated under an unconstitutional statute. The doctrine was applied to prevent the city from denying that its tax claim against an individual who had relied on its corporate existence had been barred by the Statute of Limitations.<sup>92</sup>

The Washington rule is that before there can be substantial compli-

<sup>88</sup> *Tulare Irrigation Dist. v. Shepard*, 185 U.S. 1, 13 (1902); *Drum v. University Place Water Dist.*, 144 Wash. 585, 258 Pac. 505 (1927).

<sup>89</sup> *Denver v. Spokane Falls*, 7 Wash. 226, 34 Pac. 926 (1893).

<sup>90</sup> 1 DILLON, *MUNICIPAL CORPORATIONS* § 67 (5th ed. 1911).

<sup>91</sup> *City of Ballard v. West Coast Improvement Co.*, 15 Wash. 572, 46 Pac. 1055 (1896).

<sup>92</sup> The *Spokane Falls* and *West Coast Improvement Co.* cases are inconsistent. They are, however, old cases and most likely will not arise again. Perhaps the most logical distinction is that in the *West Coast Improvement Co.* case the municipality attempted to use the unconstitutionality to defeat an otherwise valid defense that the statute of limitations barred its foreclosure on street assessments.

ance, there must be some attempt to comply with the statute.<sup>93</sup> In one case,<sup>94</sup> the court found that a notice printed in a newspaper outside the territory proposed to be annexed was substantial compliance where there was no available newspaper within it. The court held that the statute's purpose was to furnish the voters with adequate notice, to be accomplished in a manner as consistent with the literal terms of the statute as possible.

Substantial compliance has also been found in Washington where no notice of the opening of the registration poll books was given, but where there was proof that all but a few hundred of the total voters in the territory had voted;<sup>95</sup> where surplus instructions on how to vote were added to the ballot, but which the court found aided rather than misled the voting;<sup>96</sup> and where the commissioners designated polling places as required by statute but failed to give notice of them, the court finding no statutory duty to do so.<sup>97</sup> Also, on proof that no one had been misled, substantial compliance has been found although a ballot erroneously stated the date on which the commissioners adopted the boundaries, as required by statute;<sup>98</sup> and where the number of inhabitants was omitted from a petition.<sup>99</sup>

On the other hand, there is a lack of substantial compliance when a procedure's quality of fairness is affected by irregularities. For this reason, the failure to correctly describe the boundaries of a proposed municipality has been deemed a material irregularity.<sup>100</sup> The court held that the statutory requirement that a notice describe the boundaries was to afford those affected by the proceeding an opportunity to appear and be heard. The irregularity denied them this right. In *Brown's Estate v. City of West Seattle*,<sup>101</sup> municipal officials proceeded with a special election for annexation despite the issuance and publication of a restraining order. This was held to be grounds for invalidating the election unless the officials could show that there had been a full, free and fair expression by the voters at the election.

---

<sup>93</sup> *Davis v. Gibbs*, 39 Wn.2d 481, 485, 236 P.2d 545, 547 (1951).

<sup>94</sup> *Brown's Estate v. City of West Seattle*, 43 Wash. 26, 85 Pac. 854 (1906).

<sup>95</sup> *Paine v. Port of Seattle*, 70 Wash. 294, 308, 126 Pac. 628, 633-34 (1912).

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> *Municipality of Metropolitan Seattle v. City of Seattle*, 57 Wn.2d 446, 451, 357 P.2d 863, 867 (1960).

<sup>99</sup> *Smith v. Board County Comm'rs Skagit County*, 45 Fed. 725 (N.D. Wash. 1891).

<sup>100</sup> *State ex rel. Great No. Ry. v. Herschberger*, 117 Wash. 275, 201 Pac. 2 (1921).

<sup>101</sup> 43 Wash. 26, 85 Pac. 854 (1906).

<sup>102</sup> *Davis v. Gibbs*, 39 Wn.2d 481, 236 P.2d 545 (1951).

<sup>103</sup> *Wilton v. Pierce County*, 61 Wash. 386, 112 Pac. 386 (1910).

Substantial compliance is also lacking where no attempt to proceed properly has been made. Thus, the Washington court has found no substantial compliance where publication of statutory notice was possible but not carried out;<sup>102</sup> and where, although more convenient for the voters, voting precincts were re-established contrary to general election laws.<sup>103</sup> In other jurisdictions, where annexation was attempted without the approval of the voters of the proposed territory,<sup>104</sup> and where carried out contrary to a constitutional prohibition against amending a charter more often than every two years,<sup>105</sup> substantial compliance has been found not to exist.

Although a portion of a proceeding may be materially irregular, the entire proceeding need not be invalid. It was held in *State ex rel. Cummings v. Blackwell*<sup>106</sup> that an incorporation proceeding was not invalid because territory was included which should not have been included. Thus, an annexation which includes territory not annexable—for instance, an annexation ordinance which inadvertently includes more territory than described in the petition for annexation—would be void as to the excess but not as to the territory described by the petition. This rule, however, appears to be limited to the physical quantities of the annexation proceeding, as exemplified by the *Blackwell* case, since no other cases have been found regarding this point.

Regarding the third factor, an action collaterally attacking an annexation may be barred by estoppel, laches, prescription, or statutory prohibition. Of these four grounds, only estoppel and laches are applicable to the doctrine of de facto corporation. However, the latter two are also discussed here because their effect of barring collateral attack is similar. Thus far, the Washington court has invalidated attacks on all but the last ground. Where the appellant participated in the annexation proceedings, acquiesced in the result reached and for three years recognized the jurisdiction of the city, he was barred from asserting his rights, the court reasoning that to allow an attack after such long acquiescence would create excessive confusion.<sup>107</sup> Collateral attacks have been barred by estoppel and laches in subsequent Washington cases<sup>108</sup> as well as in other jurisdictions.<sup>109</sup>

<sup>104</sup> *Leach v. Port of Tillamook*, 62 Ore. 345, 124 Pac. 642 (1912).

<sup>105</sup> *City of Waco v. Higginson*, 226 S.W. 1084 (Tex. Civ. App. 1920).

<sup>106</sup> 91 Wash. 81, 157 Pac. 223 (1916).

<sup>107</sup> *Kuhn v. City of Port Townsend*, 12 Wash. 605, 41 Pac. 923 (1895).

<sup>108</sup> *Dixon v. City of Bremerton*, 25 Wn.2d 508, 171 P.2d 243 (1946); *Frace v. City of Tacoma*, 16 Wash. 69, 47 Pac. 219 (1896).

<sup>109</sup> *People v. McKinnie*, 277 Ill. 342, 115 N.E. 526 (1917) (city for several years made street and sewer improvements and exercised general jurisdiction); *Saylor v.*

Prescription is an exceptional instance in which, even though a de facto corporation does not exist, collateral attack is barred.<sup>110</sup> Prescription is to be distinguished from estoppel and laches since it acts to bar collateral attacks on corporations void *ab initio*, whereas the latter bars attacks only on de facto corporations. Thus, a Missouri court<sup>111</sup> held that a collateral attack on a city which had exercised its jurisdiction for twenty-five years was barred, although there was no record of an ordinance extending its boundaries. The Washington court has reversed the concept and barred the city from denying that it was a municipality although it asserted that the statute under which it had incorporated had been declared unconstitutional.<sup>112</sup>

There is no statute of limitations in Washington which bars proceedings brought to challenge annexations. California, on the other hand, has a statute which bars proceedings brought later than three months after annexation proceedings have been completed. Under this statute, the California court<sup>113</sup> held that even the state was barred from bringing quo warranto. The court reasoned that since quo warranto proceedings were the only way to attack the validity of an annexation, the statute, by necessary implication, applied to the state. This, however, is not the usual result; the common law rule was that the state cannot be barred by a statute of limitations, from seeking a writ of quo warranto.<sup>114</sup> Sometimes, however—because individuals initiate quo warranto proceedings by petitioning the Attorney General—a distinction has been drawn between a proceeding in which the public is interested and one purely in the interest of the relator,<sup>115</sup> and where the latter exists, the state is given no greater powers than the relator has when he is collaterally attacking annexation. Under such circumstances the state may be barred on grounds of estoppel, laches, and the statute of limitations.

---

Town of Wallins, 220 Ky. 651, 295 S.W. 993 (1927) (suit to correct town boundaries not begun until seven years had elapsed after incorporation); State v. Village of College View, 88 Neb. 232, 129 N.W. 296 (1911) (relator permitted streets to be graded and sidewalks to be installed).

<sup>110</sup> Prescription, analogous to adverse possession, arises from long, continued user and conduct as a municipality.

<sup>111</sup> Central Missouri Oil Co. v. City of St. James, 232 Mo. App. 142, 111 S.W.2d 215 (1937).

<sup>112</sup> City of Ballard v. West Coast Improvement Co., 15 Wash. 572, 46 Pac. 1055 (1896).

<sup>113</sup> People v. Los Angeles, 93 Cal. App. 532, 269 Pac. 934 (1928). See also People *ex rel.* Forde v. Town of Corte Madera, 115 Cal. App. 2d 321, 251 P.2d 988 (1952).

<sup>114</sup> People v. Anderson, 239 Ill. 266, 87 N.E. 1019 (1909); State v. School Dist. No. 9 of Tillamook County, 148 Ore. 273, 36 P.2d 179 (1934).

<sup>115</sup> *Ibid.*

## SUMMARY

Urban growth has not yet become a problem in Washington, but it is likely that it will in the near future. As its population grows, annexations will occur more frequently. If its population should increase as rapidly as has been the case in California, problems of annexability and procedural irregularities will undoubtedly occur under the present Washington annexation statutes. The court will someday have to define the limits of the word "contiguous" as annexations of mushroom-shaped territory are challenged and inter-county annexations are attacked. The various 1961 legislative criteria for determining whether annexations are in the public interest have not been interpreted, and whether one criterion is more important than another is unknown.

The majority of annexation cases in Washington have arisen because of procedural irregularities. The court has basically blocked out the doctrine of substantial compliance. The irregularity must not have occurred by deliberate disregard for the procedure prescribed by statute nor have resulted in unfair treatment. It must have been done in a bona fide attempt to comply with statutory procedure.

One attempting to collaterally attack an annexation must be prepared to show that a de facto corporation has not been created. He must be prepared to meet the defenses of estoppel, laches and prescription. Before an annexing municipality exercises its corporate franchise, it may be challenged by proceedings in the form of injunction, mandamus, prohibition and certiorari. On the other hand, the remedies available for attacking a de facto corporation are limited. Quo warranto is the traditional proceeding. Declaratory judgment has been allowed in some cases, but except for declaratory judgments brought by governmental bodies such as counties and municipalities, it has been and should be deemed a collateral attack.

JOHN E. IVERSON