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# Municipal Annexation: Florida's Continuing Problem

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# MUNICIPAL ANNEXATION: FLORIDA'S CONTINUING PROBLEM

As American metropolitan areas continue to grow, the countryside surrounding them is fast disappearing. Between the cities of Philadelphia and New York, a distance of eighty-three miles, there is almost no undeveloped countryside.[1] In the near future the cities of Miami and Jacksonville are expected to constitute one large "strip" city.[2] The countryside that once surrounded these and other American cities is being replaced by that typically American phenomenon known as "suburbia."

The inhabitants of suburbia share the city's street; they share the city's recreational facilities; they add to the city's traffic congestion and their cars take up needed parking places. Yet unless their particular suburb has been brought within the city's boundaries, the inhabitants of suburbia do not share the burdens of providing the city's services and coping with the city's problems. This, says the city dweller, whose tax dollars pay for the services and supply the revenue necessary to cope with the problems, is grossly unfair.

Furthermore, suburbia is not always the thriving community of the novelist's imagination. In many instances "suburbia" may be a community of shacks whose inhabitants live beyond the city limits in order to avoid nuisance, health, and sanitation laws. In these cases inadequate sewage and garbage disposal facilities often pose a health problem for the city dweller; poor drainage facilities create stagnant water in which mosquitoes and other disease-carrying insects breed; fires originating in the fringe area can easily spread to the city. It is little wonder that the city desires to bring such an area within its control.

On the other hand, the suburban community often is relatively independent of the city. The inhabitants may contract with private companies for trash and garbage collections services, provide their own recreational facilities, shop at nearby shopping centers, and, in general, provide for their own needs quite well. In this situation the desire of the city to bring the suburb within municipal boundaries often stems only from a desire to increase the city's revenue. When the suburban area's tax dollars are used to provide facilities from which the area derives no benefit, the inhabitants of suburbia will vehemently object, often with just cause.

When the city decides to take steps to bring fringe areas within its jurisdiction, the method most frequently used is annexation. Because of the competing interests of the city and the individual, mu-

1. Chase, *Future of the City*, 67 COMMONWEAL 39, 42 (1957).
2. U.S. News and World Report, Jan. 13, 1964, p. 83.

nicipal annexation has become a highly controversial area of law. This note will attempt to analyze Florida's various methods of annexation, point out the problem areas in Florida's law, and propose a possible solution to these problems. It should be remembered, however, that annexation is only one method of solving the urban-suburban conflict. As alternative solutions many municipalities have obtained extra-territorial jurisdiction,[3] employed limited annexation,[4] sold city services to the suburbs on a fee basis,[5] incorporated the suburbs into separate municipalities,[6] obtained intergovernmental agreements with other municipalities, set up a metropolitan form of government,[7] set up special districts, and even attempted some form of city-county consolidation. But annexation remains the most common and probably the most controversial method.

There are two basic methods of annexing land in Florida, by general law[8] and by special act of the legislature.[9] Both are totally inadequate in a state expanding at Florida's rate; the general laws because they frequently conflict, overlap, or leave unprovided-for gaps; the special acts because they place an essentially local problem in the hands of a body representing the entire state.

## FLORIDA'S GENERAL LAWS

Florida's general annexation laws anticipate four possible situations.

*Less Than Ten Registered Electors in the Area to be Annexed.* Under Florida Statutes, section 171.04, if the tract that is being annexed has less than ten registered electors, the annexing city may annex it simply by passing an ordinance. Before the expiration of

3. Granting extra territorial jurisdiction to the central city permits the compulsory regulation of property that is outside the city limits. Thus the central city may set zoning regulations, prohibit nuisances, et cetera.

4. This allows the city to obtain the necessary control over the fringe area without having the obligation to furnish extensive services to an area that may still be sparsely populated.

5. Gainesville [Fla.] utilizes this method by adding a surcharge to the bills of those fringe-area residents to whom electricity is sold.

6. This allows residents of the fringe area to obtain needed services and at the same time to retain a large measure of self-control. However, this is at best only a temporary solution to an area's growth problems since it results in a proliferation of small municipalities with no central planning authority and no central control.

7. This plan is presently in effect in Florida in Dade County.

8. FLA. STAT. ch. 171 (1963).

9. FLA. CONST. art. VIII, §8. This provision gives the legislature power to establish and abolish municipalities, to provide for their government, to prescribe their jurisdiction, and to alter and amend their boundaries at any time. See State *ex rel.* Johnson v. City of Sarasota, 92 Fla. 563, 109 So. 473 (1926).

thirty days from the date the ordinance was passed, any ten registered electors of the annexing town or any two owners of real estate in the area that is proposed to be annexed may object to the annexation by petitioning the circuit court in the annexing city.[10] The court then decides whether annexation should take place. However, if no objection is made within thirty days the annexation takes effect and the city's boundaries are extended.

*Ten or More Registered Electors in the Area to be Annexed.* If the tract of land that is being annexed contains ten or more registered voters an election is held in both the city and the area to be annexed. If approved by a majority of those voting in *each* area the proposed annexation is effected.[11]

*Annexing City of More Than Ten Thousand People.* Under Florida Statutes, section 171.05, if the *annexing* city has a population of more than 10,000 then a combination of ordinance and election must be used. The city council passes the ordinance and it is then submitted to a separate vote of the registered electors in the city and in the area to be annexed. The annexation must be approved "by a majority of the registered electors actually voting in such election in said territory and in said city or town."[12] This statute is applicable whether the area to be annexed is incorporated or unincorporated.

*Annexation of an Incorporated Area.* Finally, under Florida Statutes, section 171.09, if one incorporated city or town wishes to annex another incorporated city or town, the annexing city must pass an ordinance that must be approved by the city council in the municipality to be annexed. Each city then holds an election, and if two-thirds of the registered voters actually voting in each city approve the annexation it takes effect.

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10. The thirty-day limitation will not necessarily be so strictly applied as to bar an otherwise legitimate action, particularly where the annexing city itself has been at fault in giving notice to the landowner. In Town of Mangonia Park v. Homan, 118 So. 2d 585 (2d D.C.A. Fla. 1960) the city had failed to publish notice in a city newspaper because no newspaper was published in the city. The city also failed to post notice on the land to be annexed, as the statute requires. Since there were fewer than ten landowners in the area to be annexed it is unlikely that the failure to post notice caused any practical harm and the city did publish notice in a newspaper published in the same county and did post notice within the city. But the court held that the city had failed to comply with the statutory requisite for giving adequate notice and so the complainant's suit was allowed despite a lapse of well over thirty days from the time the ordinance was approved to the date of plaintiff's objection.

11. FLA. STAT. §171.04 (1963).

12. FLA. STAT. §171.05 (1963).

Under all four provisions, no matter how many voters live in the area to be annexed, the area must be contiguous to the city, and the tract must constitute a reasonably compact addition to the annexing city.[13] In Florida, interpretation of the word "contiguous" has been left to the judiciary. Other states have attempted to define and limit "contiguity" in their annexation statutes[14] and as a result their statutes have proved to be too inflexible to cope with varying situations.[15] Section 171.04, which provides for the first two methods discussed above, is inapplicable to any county having constitutional home rule and to any municipality located in a county with a population of more than 390,000 and less than 450,000.[16]

Even from a cursory reading of these four provisions it is obvious that defects exist in them. First, the method of classification of the statutes varies and this results in a conflict between section 171.04, which is based on the population of the *annexed* area, and section 171.05, which is based on the population of the *annexing* area. If the annexing area has a population of more than 10,000 and the annexed area has less than ten registered electors, it is questionable which of the two statutes applies. Because an election is required under section 171.05 and no election is needed under the applicable portion of section 171.04, the question of which statute applies is important, but neither the statutes nor the cases have answered this question.

The same conflict exists if the annexed area contains more than ten registered electors, but in this situation the method of election provided by section 171.04 is identical with that provided by section 171.05, and it would seem to make little practical difference which statute is applicable. Nevertheless existing uncertainty as to which of the two statutes is applicable in a given situation is certainly undesirable.

A conflict also exists between sections 171.05 and 171.09 because both apply to annexation of an incorporated area by a municipality with over 10,000 inhabitants. Because a two-thirds majority is required under section 171.09, and a simple majority under section 171.05, it is quite important to determine which statute is applicable. Again, the statutes make no provision for such a conflict.

Although more than one statute applies in the above situations, in others there is no general statute under which annexation could take place. For example, if a municipality of less than 10,000 inhabitants desired to annex a portion of another municipality, it would

13. FLA. STAT. §171.04 (1963).

14. *E.g.*, CAL. GOV'T CODE §35002.5.

15. See BUREAU OF PUBLIC ADMINISTRATION, UNIV. OF CAL., ANNEXATION? INCORPORATION? A GUIDE FOR COMMUNITY ACTION 28 (3d ed. 1959).

16. FLA. STAT. §171.04 (1963).

require a special act of the legislature because none of Florida's general laws would apply to this situation.

Section 171.04 provides that two or more landowners in an annexed territory of less than ten registered voters may petition the circuit court for a determination of the validity of the annexation. In order to obtain a hearing *two* owners must petition. This requirement seems to serve no purpose other than to limit the availability of a judicial remedy. It is not always an easy task for one landowner to find another owner willing to undertake the time, trouble, and expense involved in litigation. Apparently the purpose of this requirement is to eliminate "crank" complaints; however an unjust annexation could occur simply because of one owner's inability to find another landowner willing to protest the proposed annexation.

It is at least questionable whether landowners residing in an area of ten or more registered electors have a judicial remedy for an improper annexation of their lands under general law. Section 171.04 makes express provision for such a remedy when the area annexed contains fewer than ten registered electors, but there is no such provision when the area contains ten or more electors. The legislature having made an express provision for judicial remedy in the one situation and failing to do so in the other, it could be argued that a landowner in such an area would have no judicial remedy for an improper annexation of his land.

The portion of section 171.04 dealing with annexation of an area of land containing ten or more registered electors permits annexation only if approved by a majority of the voters in *each* area. Consequently the landowners in the area to be annexed are given a veto power over the annexation. Theoretically this may seem to be a desirable, democratic way of doing things. Frequently however, it merely prevents the annexing city from obtaining sorely needed tax revenue and allows a small minority to continue enjoying the city's benefits at little or no cost. In voting on annexation of their lands, the residents of suburbia have an understandable but unfortunate tendency to think in terms of next year's tax bill instead of the long-range benefit to the community. For this reason general laws that give the residents of suburbia a veto power have been ineffectual. It is also the reason that annexation has been accomplished almost exclusively by special laws that are usually effective without local aquiescence. For example, since its incorporation Tampa has annexed about sixty-five square miles of land. Of this amount, only four square miles, or a little over six per cent, have been gained through voluntary proceedings. The remainder was annexed by special acts.[17]

17. The history of annexation in Tampa is excellent testimony to the reliance that must be placed on special acts in Florida because of the ineffectuality of general laws which make annexation dependent on a vote. Annexation has been

For many years, the general statutes could not be used by most of Florida's municipalities. In *State ex rel. Davis v. City of Homestead*[18] the Florida Supreme Court held that a municipality established by a special act could not change its boundaries without express authorization from the legislature. The rationale of this decision was that allowing a municipality established by special act to change its boundaries by ordinance would amount to an amendment of a state act by a municipality.[19] Because the great majority of Florida municipalities were established by special act, the supreme court's holding prevented most Florida cities from using the general annexation laws. Consequently the cities became totally dependent on special acts of the legislature for municipal expansion. Florida Statutes, sections 171.04 and 171.05 were amended in 1957 to circumvent the holding in the *Homestead* case. Theoretically, the statutes are now applicable to all municipalities, whether the city boundaries were fixed by special or general act.[20] In fact, the statutes remain inapplicable to Jacksonville,[21] and to Dade, Hillsborough, and Pinellas municipalities of less than 10,000 people. Dade County is excluded from the statute because it has constitutional home rule, and the statute expressly excludes such counties from its provisions. Hillsborough and Pinellas counties are excluded because section 171.04 is inapplicable to cities located in counties having a popula-

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accomplished eleven times by special act since the city's incorporation. See Fla. Laws 1887, ch. 3779, at 191; Fla. Laws 1889, ch. 3950, at 183; Fla. Laws 1899, ch. 4883, at 333; Fla. Laws 1907, ch. 5857, at 700; Fla. Laws 1907, ch. 5859, at 704; Fla. Laws 1911, ch. 6402, at 838; Fla. Laws 1923, ch. 9920, at 2724; Fla. Laws 1923, ch. 9921, at 2727; Fla. Laws 1949, ch. 26270, at 2475; Fla. Laws 1951, ch. 27932, at 2738. This last act gives the city of Tampa permission to annex any adjacent territory simply by passing a resolution and has eliminated the necessity for passing many special acts in order to annex land. Since passage of this act only one other special act has been passed pertaining to Tampa annexation. Fla. Laws 1953, ch. 29548, at 3008.

Annexation under general law has been attempted six times, on Aug. 1, 1905; July 30, 1907; Oct. 1, 1907; Sept. 5, 1922; Nov. 27, 1924; and Dec. 15, 1926. Of these six attempts, only three were successful. In addition, two special acts have been passed that made annexation dependent on a referendum. See Fla. Laws 1947, ch. 24946, at 2988 and Fla. Laws 1951, ch. 27933, at 2740. Both of these acts were defeated in the election. Thus of the eight attempts at voluntary annexation made by the city of Tampa, only three have been successful.

18. 100 Fla. 354, 130 So. 28 (1930).

19. But the municipality could annex by general law if the legislature later validated the proceeding. See City of Sebring v. Harder Hall, Inc., 150 Fla. 824, 9 So. 2d 350 (1942).

20. "This section shall be applicable to municipalities regardless of whether their boundaries have been previously fixed by special act." FLA.. STAT. §§171.04, .05 (1963).

21. FLA. STAT. §171.08 (1963).

tion of more than 390,000 and less than 450,000.[22] The reason for the latter exclusions is unknown. Such exclusions serve no apparent purpose and only confuse an already muddled situation. They also make municipalities in three of the state's fastest growing counties dependent largely upon special legislation for a solution to their growth problems.

### SPECIAL ACTS

As a result of these defects in the general laws, most of Florida's annexation has been accomplished by special acts. The power to annex by special act is not expressly granted to the legislature, but is implied from article VIII, section 8 of the Florida Constitution.[23] Exclusive reliance on special acts is not a desirable solution to annexation problems. First, it places excessive power in the hands of the local legislative delegation. These elected representatives would normally introduce the proposed legislation. Thus, if these representatives do not desire to annex the land, for personal, political, or other reasons, the land will not be annexed, regardless of the city officials' desires and the needs of the city. Second, reliance on special acts limits direct annexation activity to the sixty-day session of the legislature held every two years. This does not allow annexation to take place when needed, but causes a delay until the next legislative session. Third, as the cases dealing with annexation by special act indicate, the legislature has not always been motivated by concern for the city's real needs or by the desires of those living in the annexed area. This has been evidenced in many cases by a great disparity between the size of the area annexed and the size of the annexing city. In 1925 a special act was passed allowing the city of Clearwater, a small municipality at that time, to annex an area containing 5,625 acres. This annexation was subsequently litigated in *State ex rel. Davis v. City of Clearwater*,[24] but it was affirmed by the Florida Supreme Court. In 1925 a special act was passed allowing the city of Avon Park, which at that time contained 1,440 acres of land, to annex an area of 23,040 acres, a ratio of approximately twenty-three new acres for each acre formerly within the city's boundaries. This special act, however, was invalidated by the Florida Supreme Court.[25]

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22. MORRIS, FLORIDA HANDBOOK 269 (1963).
23. See note 9 *supra*.
24. 106 Fla. 761, 139 So. 377 (1932).
25. State *ex rel.* Attorney Gen. v. City of Avon Park, 108 Fla. 641, 149 So. 409 (1933).

In *State ex rel. Davis v. Town of Lake Placid*,[26] the obvious lack of any valid purpose for annexation prompted Justice Ellis, referring to the size of the city of Lake Placid after it was enlarged by the legislature, to say:[27]

> [I]ts far-flung boundaries extended approximately nine miles east and west and nine and a half miles north and south. It is one and a half times greater than Richmond County, New York, with its 160,000 population; nearly four times greater in area than New York County, with its 1,800,000 population; greater than King's County with its 2,500,000 population; twice as great in area as Bronx County with its 250,000 population. The area is greater than any Florida city of 20,000 inhabitants or more, and greater than the District of Columbia or the city of Atlanta.

At the time of Justice Ellis' comments the Lake Placid area had a population between 400 and 500 persons.

On occasion, the legislature has been influenced more by the desires of special interest groups within the city than by the interests of the entire city. In the *Lake Placid* case a private corporation owned eighty per cent of the land within the new boundaries set by the special act. The municipal officials had entered into a contract with the company whereby the company was to develop 5,000 acres of the land into a health and recreation resort. "The purpose . . . was to enhance the value of the lands of the parties to the enrichment of the property owners who were parties to the agreement."[28] The bond issue, which the "municipality" desired to issue, amounted to $200,000. Of this amount, $117,000 was to be spent for a golf course, street lights, and parks; $8,000 was to be spent for a fire department; and $70,000 for waterworks. "All this ostensibly for the convenience, health, and welfare of a 'mere village with a few hundred inhabitants.' "[29] The unfortunate farmers whose lands had been included within the boundaries set by the special act did succeed in having the act invalidated.

When the legislature annexes an area by passing a special act it makes no difference that the inhabitants of the area do not give their consent or even that they register a positive protest.[30] The act may,

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26. 109 Fla. 419, 147 So. 468 (1933).

27. *Id.* at 421, 147 So. at 469.

28. *Ibid.*

29. 109 Fla. at 424, 147 So. at 470.

30. FLA. CONST. art. III, §21 allows annexation without a referendum. This constitutional amendment was passed in 1938, but case law prior to 1938 had reached the same result. See, *e.g.*, City of Fort Myers v. State, 129 Fla. 166, 176 So. 483 (1937).

however, if the legislature desires, make the annexation dependent upon a referendum.[31] This legislative omnipotence often seems inequitable, but in Florida the inhabitants of an area improperly annexed may institute judicial proceedings to determine the validity of a special act.[32]

Judicial review of legislative annexation is unusual, and Florida is in the distinct minority in providing this remedy. Most jurisdictions accept the doctrine that the state legislature has the unlimited right to pass any law for the annexation of territory,[33] even if the sole purpose of the annexation is to obtain additional revenue.[34] In such a jurisdiction the inhabitants of an area improperly added to the municipality have no judicial remedy and simply must live with the annexation.

Florida's acceptance of the minority view is understandable in light of the state's annexation history. During the "boom" of the 1920's the Florida Legislature went on an annexation rampage. Expecting large numbers of settlers from the north, the legislature passed numerous special acts annexing huge amounts of land surrounding many small municipalities.[35] The municipalities then issued bonds on the assumption that the bonds would be paid by taxes assessed on the newly annexed lands. When the population explosion failed to materialize the cities were left with many bonds outstanding and only a small number of people in the outlying areas to pay the taxes that would in turn pay off the bonds.[36] These people quite naturally objected to paying high taxes when their lands were miles away from the municipality and they were receiving no benefits from the municipal improvements that the bonds had financed. Thus in the early 1930's, the Florida courts were presented with a deluge of annexation cases in which the equities were quite clearly with the complaining landowner. Faced with this problem, the Florida Supreme Court, in *State ex rel. Davis v. City of Stuart*,[37] declined to follow the majority rule and instead held that the Florida courts could nullify a special annexation act if the act amounted to a

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31. Beaty v. Inlet Beach, Inc., 151 Fla. 495, 9 So. 2d 735 (1942).

32. State *ex rel.* Davis v. City of Stuart, 97 Fla. 69, 120 So. 335 (1929).

33. Texas *ex rel.* Pan Am. Prod. Co. v. Texas City, 157 Tex. 450, 303 S.W.2d 780 (1957).

34. *Ibid.*

35. *E.g.*, Fla. Laws 1927, ch. 12514, at 94; Fla. Laws 1925, ch. 10761, at 2423, ch. 10761, at 2425, ch. 10320, at 71.

36. *E.g.*, State *ex rel.* Attorney Gen. v. Avon Park, *supra* note 25, the court stated that prior to annexation the city contained 1,440 acres of land and a population of 1,534. The Special Annexation Act, which was being litigated, added 23,040 acres of land, but increased the population by only 1,500 persons.

37. 97 Fla. 69, 120 So. 335 (1929).

"palpably arbitrary, unnecessary, and flagrant invasion of personal and property rights. . . ."[38]

### CONTESTING THE VALIDLTY OF A SPECIAL ANNEXATION ACT

In attempting to invalidate a special annexation act, the landowner encounters two problems. He must select the proper procedure, and he must convince the court that the act annexing his land amounts to a palpably arbitrary, unnecessary, and flagrant invasion of personal and property rights.[39]

#### *Procedure*

There are three possible procedural methods that may be used to attack the validity of a special annexation act. The most frequently used is a quo warranto proceeding.[40] It is instituted in the name of the state[41] at the discretion of the attorney general.[42] A private party is not authorized to attack, in a collateral proceeding, the corporate existence of territory that has been annexed to a municipal corporation.[43] Institution of suit only at the discretion of the attorney general is ordinarily a disadvantage to the landowner, but this is not true in Florida. In other states the attorney general must be convinced that he is justified in maintaining a quo warranto proceeding before he will consent to the action.[44] But in Florida, if the attorney general refuses to bring a suit, any owner of land within the municipal boundary can institute the proceeding in the name of the state.[45] Hence the requirement that the attorney general file the suit seems to be of little practical importance, and there is no case on record in which a landowner has been denied a remedy because he was unable to persuade the attorney general to institute quo warranto proceedings.

If the owner of land has no adequate remedy at law, he may seek an injunction to prevent the collection of municipal taxes on lands that receive no benefit from the municipality.[46] An injunction cannot

38. *Id.* at 101, 120 So. at 346.

39. *Ibid.*

40. State *ex rel.* Johnson v. City of Sarasota, 92 Fla. 563, 580, 109 So. 473, 479 (1926).

41. The Riviera Club v. City of Ormond, 147 Fla. 401, 2 So. 2d 721 (1941).

42. State *ex rel.* Johnson v. City of Sarasota, *supra* note 40.

43. The Riviera Club v. City of Ormond, *supra* note 41.

44. See, *e.g.*, American Distilling Co. v. City Council of Sausalito, 34 Cal. 2d 660, 213 P.2d 704 (1950).

45. FLA. STAT. §165.30 (1963).

46. State *ex rel.* Attorney Gen. v. City of Avon Park, 108 Fla. 641, 149 So. 409 (1933); City of Sarasota v. Skillin, 130 Fla. 724, 178 So. 837 (1937).

be used to test the legal existence of a corporate franchise.[47] But by enjoining the collection of taxes, the landowner nullifies all practical effects of the annexation.

The third method is a petition to a circuit court for exclusion. This procedure is provided by statute[48] but is of limited value because under the statutory provisions it can only be employed if the annexing municipality contains less than 150 qualified electors.

In bringing an annexation suit, a judgment of ouster of the entire annexed territory must be sought. A landowner cannot merely seek ouster of his own land.[49] This is a reasonable requirement because, as one court has remarked, allowing a landowner to seek ouster only of his own lands would result in the creation of "municipal checkerboards."[50] The courts cannot draw new boundary lines after finding the special act to be void.[51] A court is limited to striking down boundary lines that have been unconstitutionally drawn and leaving to the legislature the task of establishing new ones.[52]

### *Estoppel by Acquiescence*

Having chosen the proper remedy, the complaining landowner may be barred from a hearing on the merits of his case by the doctrine of estoppel by acquiescence. Although the courts have given the name "estoppel" to this doctrine, it is a most unusual form of estoppel because neither a long period of acquiescence nor acts of acquiescence will necessarily invoke it. Rather, it is merely a judicial shortcut for determining the constitutionality of an annexation act. Theoretically, a landowner cannot acquiesce in boundaries established by a special act for a "substantial length of time" and then bring suit to have them declared illegal. A "substantial length of time" varies with the facts of each case. For example, in *State ex rel. Landis v. Haines City*[53] a delay of eight years barred the action in a situation in which the annexing act was not unconstitutional on its face. In another case an action brought in 1937 was barred because the annexation occurred in 1909.[54] In *State ex rel. Davis v. City of Coral Gables*[55] the annexation was accomplished by special act in 1925 and

47. State *ex rel.* Johnson v. City of Sarasota, 92 Fla. 563, 109 So. 473 (1926).
48. FLA. STAT. §171.02 (1963).
49. State *ex rel.* Attorney Gen. v. City of Avon Park, 108 Fla. 641, 149 So. 409 (1933).
50. *Id.* at 668, 140 So. at 420.
51. State *ex rel.* Davis v. City of Stuart, 97 Fla. 69, 120 So. 335 (1929).
52. State *ex rel.* Attorney Gen. v. City of Avon Park, *supra* note 49.
53. 126 Fla. 561, 169 So. 383 (1936).
54. Town of Lake Maitland v. State *ex rel.* Landis, 127 Fla. 653, 173 So. 677 (1937).
55. 120 Fla. 492, 163 So. 308 (1935).

the landowner waited six years to bring suit. The court found that by this delay the owner had lost any constitutional rights that he once had.

Even though the court in the *Coral Gables* case said that estoppel would be found even assuming the special act was unconstitutional, there is good authority for the proposition that delay will bar only close cases or cases in which the delay has resulted in changes in the circumstances of the parties.[56] For example, in the *Coral Gables* case bonds had been issued and purchased in reliance on the validity of the annexation. Estoppel may be found in a case in which reasonable men might differ on the question of benefits received by the annexed territory, but when the annexed land is so remote from any municipal facility that it could not conceivably receive any benefit from annexation, the reasoning of *Coral Gables* does not apply, and estoppel will not be found.[57] When the legislature has "palpably abused its prerogative" by incorporating lands in a municipality totally devoid of elements essential thereto, the act is considered to be void *ab initio* and delay alone will not bar the action.[58] But if benefits, even remote or prospective, do exist and incorporation is acquiesced in for a number of years, and particularly if obligations have been undertaken in reliance on the strength of the new territory, estoppel will be applied.[59] Thus the length of time during which the landowner acquiesced in the annexation is not the controlling factor. Nor will acts of the landowner, which evidence an acceptance of the annexation, necessarily bar the suit. In *City of Sarasota v. Skillin*[60] no estoppel was found despite the fact that the landowner had voted in municipal elections, paid municipal taxes, and platted his property.

Constitutionality of the annexing statute is the important factor in determination of "acquiescence." If it is clearly unconstitutional then the landowner will not be estopped regardless of his delay or his conduct. When applied in this manner the doctrine of estoppel by acquiescence is nothing more than a convenient method of disposing of an otherwise unmeritorious suit. No disadvantage results to the complainant since presumably he would have lost his suit anyway. In fact, it probably helps him because he is at least saved the time and expense of protracted litigation.

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56. State *ex rel.* Landis v. Town of Boca Raton, 129 Fla. 673, 177 So. 293 (1937).

57. *Ibid.*

58. State *ex rel.* Landis v. Town of Boynton Beach, 129 Fla. 528, 177 So. 327 (1937).

59. *Ibid.*

60. 130 Fla. 724, 178 So. 837 (1937).

*The "Unreasonable and Unnecessary" Doctrine*

Having chosen the proper remedy and avoided having his case dismissed by a finding of estoppel, the landowner now has the burden of showing that the extension of boundaries is unreasonable and unnecessary.[61] This is by far his most difficult task. The courts, theoretically at least, will not interfere with the legislature's decision except in clear cases demonstrating a "flagrant abuse of substantial property rights."[62]

The Florida courts have set forth a multiplicity of reasons for declaring various special acts invalid. Although the particular reasons vary with each case, from the many cases that have come before the courts a number of factors can be found that seemingly must be present in order to successfully attack a special annexation act.

First, one of the elements necessary to constitute a municipal corporation is the existence of a sufficiently populated area. Only then would municipal services benefit the area, and until it has attained such status there is no basis for annexing it.[63] When the population is very small and disproportionate to the size of the geographic area, exercise of the legislature's power to annex the area will, when combined with other factors, be held invalid.[64] The mere fact that municipal boundaries are extended to include a large area of uninhabited rural land will not per se render the annexation invalid,[65] but it is much more difficult to show an abuse of legislative discretion if the area is heavily populated. If the area contains a large population a sufficient "community of interest" probably exists between the annexed and the annexing areas and will justify the act. However, if such community of interest exists between the annexed area and some municipality other than the annexing community then the complainant is obviously in an advantageous position. For example, in *State ex rel. Davis v. City of Stuart*[66] the landowners showed that they were more closely allied with the town of Jensen than with the city of Stuart. The landowners sent their children to schools in Jensen, were provided with mail service by the post office in Jensen, received telephone service from Jensen, and were within the Jensen County Commissioner's district. Under these circumstances the court held that the special act was unconstitutional. In *Town of Mangonia Park v. Homan*[67] landowners in the area to be annexed had formulated

61. Gillette v. City of Tampa, 57 So. 2d 27 (Fla. 1952).
62. Nabb v. Andreu, 89 Fla. 414, 104 So. 591 (1925).
63. State *ex rel.* Landis v. Town of Boynton Beach, *supra* note 58.
64. State *ex rel.* Davis v. City of Clearwater, 106 Fla. 761, 139 So. 377 (1932).
65. State *ex rel.* Johnson v. City of Sarasota, 92 Fla. 563, 109 So. 473 (1926).
66. 97 Fla. 69, 120 So. 335 (1929).
67. 118 So. 2d 585 (2d D.C.A. Fla. 1960).

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plans, tentatively acceptable to the City of West Palm Beach, for a costly and elaborate industrial development ultimately to be annexed to West Palm Beach. Because of these plans the court found a much greater community of interest with West Palm Beach than with Mangonia Park, and the annexation was invalidated.

Second, the current use of the land is an important factor in any annexation suit. If the area is used chiefly for groves or farming then the annexation may be declared invalid because such land is not ordinarily within the meaning of the constitutional authority to annex.[68] If the land is wild and unimproved and put to no use at all, or if it is underwater,[69] then the legislature does not have the power to annex it, unless the city can show that the land is needed to meet foreseeable growth.[70]

Future growth was quite difficult to show in the 1930's when many of Florida's annexation cases were decided. The "boom" had just ended and the state's growth was at a standstill. But now, because of the dramatic growth that the state has enjoyed in the past twenty years, many cities can demonstrate future necessity with relative ease and, as a result, the argument that the annexed land is wild and unimproved has lost much of its force. In *Gillette v. City of Tampa*,[71] the Florida Supreme Court, after taking judicial notice of Tampa's rapid growth, stated that as long as there was a community demand for expansion, few areas were actually unsuitable for future residential or industrial use. The court approved the legislature's determination that the annexed area was amenable to municipal benefits although some of the area was swampy. The case indicates that today's complaining landowner must show more than a mere lack of population and wild, unimproved land in order to persuade a court that annexation of his land is unreasonable. Lack of population is still important in determining the constitutionality of a special annexation act, despite some of the broad language of *Gillette*. Justice Roberts recognized that "this court is committed to the rule that there must be a present showing of population, industrialization, or similar reasons to authorize the bringing of large areas of land into a municipality."[72]

A third factor that the courts will consider is the annexed area's need for services the municipality can provide.[73] The area should be

68. State *ex rel.* Davis v. City of Largo, 110 Fla. 21, 149 So. 420 (1953); State *ex rel.* Harrington v. City of Pompano, 136 Fla. 730, 188 So. 610 (1938).

69. Town of Belleair Beach v. Thacher, 109 So. 2d 171 (2d D.C.A. Fla. 1959).

70. State *ex rel.* Attorney Gen. v. City of Avon Park, 108 Fla. 641, 149 So. 409 (1933).

71. 57 So. 2d 27 (1952).

72. *Id.* at 29.

73. State *ex rel.* Landis v. Town of Boynton Beach, 129 Fla. 528, 177 So. 327

in a position to be benefited by city services such as police protection, sanitary improvement, lights, water, electricity, sewage disposal systems, et cetera. Until this status, or some appreciable degree of it, has been attained, there is no predicate for annexation.[74] If large expenditures would be required to benefit the property, a showing of potential benefit will not save the annexation act.[75] However, the benefits received may be present or remote. Even if the municipality is not presently serving the area, annexation will not be prevented if in the near future city services may be provided. Also, if most of the area is benefited in some way by annexation, even though relatively small areas are included that are not benefited, annexation will not be invalid.[76] Conversely, if small areas are benefited by annexation, but the major portion is not, the benefits to the small portion will not sustain the act.[77]

The annexing municipality should be able to demonstrate to the court that it too will be benefited by including the new area within its boundaries.[78] Increased revenue is not a sufficient benefit, and if this is the only basis for the proposed annexation the act will be declared invalid.[79] Obviously, if the benefits of annexation will inure primarily to a private corporation the act will be invalidated.[80]

Of the three factors mentioned the need of the municipality for the annexed area is probably the most important.[81] No case has been found in which a court invalidated an annexation because of individual hardship alone. On the other hand, there are many cases in which a court has upheld annexation despite its ill effect on a particular individual because the annexing city was able to demonstrate a genuine need.[82] As long as the municipality needs the annexed area, and can demonstrate this need by showing a history of physical growth and population expansion, it is unlikely that a court will set aside annexation. This need of the municipality is the one feature distinguishing *Gillette*[83] from most prior cases. *Gillette* involved swampy land that was sparsely populated and ill-adapted to urban living.

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(1937); State *ex rel.* Landis v. Town of Boca Raton, 129 Fla. 673, 177 So. 293 (1937).

74. *Ibid.*

75. Town of Satellite Beach v. State, 122 So. 2d 39 (2d D.C.A. Fla. 1960).

76. State *ex rel.* Attorney Gen. v. City of Avon Park, 108 Fla. 641, 149 So. 409 (1933).

77. State *ex rel.* Davis v. City of Largo, 110 Fla. 21, 149 So. 420 (1933).

78. State *ex rel.* Davis v. City of Stuart, 97 Fla. 69, 120 So. 335 (1929).

79. *Ibid.*

80. State *ex rel.* Davis v. Town of Lake Placid, 109 Fla. 419, 147 So. 468 (1933).

81. Gillette v. City of Tampa, 57 So. 2d 27 (1952).

82. *E.g.*, State *ex rel.* Landis v. City of Haines City, 126 Fla. 561, 169 So. 383 (1936); Town of Lake Maitland v. State *ex rel.* Landis, 127 Fla. 653, 173 So. 677 (1937).

83. 57 So. 2d 27 (1952).

But the city of Tampa was able to demonstrate that it needed the land for continued growth. None of the cities involved in annexation litigation in the 1930's were able to do this. As a result, annexation in *Gillette* was upheld, but in many other cases involving otherwise similar factual situations it was not.

## A Proposal

It has been shown that the present general laws are inadequate to cope with Florida's annexation problems and that special acts have not produced a desirable solution. Consequently, it is suggested that the present general laws be repealed and that one general annexation statute be enacted. This statute would provide for: passage of an ordinance annexing the desired area; a grace period before the ordinance takes effect, providing an interval so that objecting landowners could obtain judicial hearings; and annexation of the desired lands if no objection is made or if the objection is found to have no merit.

This procedure is known as "forcible" annexation. The main objection has been that it may easily be abused by municipal officials. The proposal answers this objection by providing judicial hearings similar to those already provided by Florida Statutes, section 171.04. Judicial review would be a check on the city's power to annex. This does not amount to giving a court the task of *making* annexation policy, as has been done in other states, notably Virginia.[84] It is simply an express authorization to the courts to assure that the city's annexation power is exercised reasonably. This proposal provides a remedy for the victim of an unjust and predatory annexation. It would eliminate the necessity of placing numerous standards and safeguards in the annexation statute itself and would alleviate the problem of attempting to anticipate all the potential problems implicit in the urban-suburban conflict.

Forcible annexation by city ordinance, with express provision for judicial review, is not a novel approach. It presently exists in Florida if the area to be annexed contains fewer than ten registered voters.[85] Statutes similar to the one proposed are in effect in Missouri,[86] and Nebraska.[87]

Forcible annexation may seem to be an undemocratic solution, but in reality giving veto power to the annexed area is itself quite undemocratic because it often allows a minority in the fringe area

84. Va. Code Ann. §§15-152.2-.28 (1956).
85. Fla. Stat. §171.04 (1963).
86. Mo. Ann. Stat. §81.080 (1949).
87. Neb. Rev. Stat. §14-117 (1943).

to overrule the desires of the majority in the municipality. Also, by making express provisions for a judicial hearing, many individual hardships connected with forcible annexation can be alleviated by the court if the situation warrants it.

## CONCLUSION

As Florida's population continues to increase, the problems created by heavily populated unincorporated areas or by many patches of small disconnected municipalities will also increase. The general statutes are inadequate, and reliance on special acts of the legislature is a haphazard approach. The best solution in light of the past experience of Florida's cities, notably Tampa, is to enact a general statute providing for forcible annexation at the instance of the municipality. A recent statement by the Supreme Court of Virginia suggests the inherent conflict between the individual and the city's need to extend its borders.[88]

> [I]t is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire, and health protection, and even tolerate the inadequacy of sewage, water, and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that *he* needs the city government, as it is that the area in which he lives needs it.

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88. County of Henrico v. City of Richmond, 177 Va. 754, 788-89, 15 S.E.2d 309, 321 (1941).