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The Fringe Problem

> "In considering the annexation of territory, it may be likened in rural parlance, to a well-fed milk cow whose head is feeding from the manger, which is the parent city supplying the feed, but whose body is largely in the areas proposed to be annexed, and whose milk is yielded and drawn therein. Continuing the analogy, it would seem desirable to have the whole cow under one jurisdiction that she might be properly looked after, nourished, stabled, and cared for, and if veterinary services be needed, instead of having two veterinarians, one for the head and one for the body, not always working together or in harmony, have one veterinarian whose skill and ability would best promote, not only the particular but the general welfare of the cow." *Henrico County v. Richmond*, 177 Va. 754, 760, 15 S.E.2d 309 (1941).

World War II aggravated one of our most troublesome municipal problems—the growth of urban fringe areas around the outskirts of towns and cities. Many municipalities are finding their natural development either frustrated or completely strangled by choker necklaces of satellite settlements. Parent cities are surrounded by slum areas which they cannot control and wealthy suburban sections which they cannot tax. For it is common that the poorest and the most prosperous tend to live in the outskirts—the former to avoid the sanitation and anti-nuisance standards of urban life, the latter to escape their share of the cost of government in the mother city where they earn their livelihood. In short, for all practical purposes of everyday life, the fringe is a part of the mother city's social and economic existence, yet it is beyond her regulatory and taxing jurisdiction. Thus the suburbanites are able to enjoy the benefits of urban life and to avoid many of its burdens. Conversely, city dwellers bear the major cost of municipal facilities which the outsiders enjoy and are also compelled to pay county taxes—often a major share of them

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—that inure primarily for the benefit of fringe dwellers. Only if the whole metropolitan region can be treated as the socio-economic unit, which in fact it is, can fringe slums be controlled and tax burdens equalized.

Of course these evils show up most clearly in large metropolitan areas, but in fact the problem is ubiquitous. Indeed it is so common that a standard pattern of its origins and growth may be discerned.[1] First a few scattered families move into what is essentially rural territory at the outskirts of a healthy town or city. Such rudimentary services as counties normally provide are adequate for a time. Then as population density in the area increases the need for urban-type police and fire protection, garbage collection, sanitary and storm sewers, building inspection, zoning protection, traffic control and recreation and health facilities begins to be felt. Gradually the fringe-dwellers realize that they are in fact an urban community in need of urban services. But the county is not fitted either psychologically or structurally to provide them. The result is a slow multiplication of special districts and private or semi-private agencies each providing a separate facility until the suburbanite begins to wonder whether he is not paying too much for too little. Soon here and there segments of what is really a single urban center splinter off to incorporate as separate municipalities.

Meanwhile the fringe becomes more and more a menace to the healthy growth of the mother town. It is not merely physical confinement that is involved. Suburban slums magnify the costs and problems of municipal fire, police and health departments. The area as a whole loses its fair share of such federal and state funds as are allocated on a municipal population basis. Plush satellite settlements not only drain cream off the municipal tax base, but deprive the city of something which in the long run is more important. As a character in Livingston Biddle's *Main Line* puts it, "The old families, the ones who helped build up this metropolis—where do most of them live now? Out . . . in some nice cozy suburb. Sure the men work in the city, but they've lost touch with it, with what goes on inside. And by and large they don't care. . . ."

The final stage in the fringe cycle comes with the sudden realization by the community as a whole that it has a fringe problem. But by then it is usually one that can no longer be solved short of the most heroic measures. Bureau of the Census figures tell the whole bleak story in direct and simple terms. "Urbanized areas" outside of our cities are growing in population more than twice as fast as our cities

1. See Roterus and Hughes, *Governmental Problems of Fringe Areas*, 30 PUBLIC MANAGEMENT 93, 94 (1948).

themselves![2] One basic solution for such difficulties is an annexation program commensurate with the needs of our expanding communities. Ideally, of course, municipalities would keep ahead of the problem by annexing shelter belts to anticipate all possible suburban growth. This unfortunately is seldom done. As a result, most lively towns and cities are faced with established out-skirt communities, the annexation and integration of which raise serious legal and fiscal difficulties.

Tennessee Annexation Law

In the past the extension of municipal boundaries in Tennessee has been accomplished largely by private act of the state legislature. But a recent constitutional amendment clearly forecloses that device with respect to home-rule municipalities and possibly with respect to all others as well.[3] But even if ultimately it is held that non-home-rule towns and cities may still have their boundaries extended by private act, the new restrictions on all such measures would seem as a practical matter to impede that limited avenue of escape. Nor is there any real hope for relief in existing general legislation.[4] For under it neither a municipality, nor any of its residents, may initiate annexation proceedings. That may be done only by petition of fifty resident freeholders of the area to be annexed. Not only does this preclude annexation of totally uninhabited shelter belts in anticipation of fringe problems, it virtually guarantees that areas selected for annexation will have to be mapped out for gerrymandering purposes rather than for the needs of the urban community. This difficulty of course may be compounded to the extent that fringe area property is held by corporations and by non-resident freeholders. Moreover it is clear that the interests of the limited class eligible to petition will not necessarily coincide with municipal interests, nor even with the interests of most fringe-dwellers. Of course municipalities may veto annexation petitions, so apparently may the "electors" of the affected out-skirts.[5] But no multiplication of negatives can be expected to meet the affirmative needs of all interested parties. Finally there are no statutory provisions in Tennessee annexation law for the handling

2. For an interesting summary of the figures see Jones, *Metropolitan and Urbanized Areas*, THE MUNICIPAL YEAR BOOK *1953* 27 (1953).

3. Amendment No. 7 (1953), authorizing optional home rule for cities, provides that the "General Assembly shall by general law provide the exclusive methods by which . . . municipal boundaries may be altered." Perhaps this limitation will be held to apply only to home rule cities. Thus other municipalities could have their boundaries altered by private act subject to the limits provided in Amendment No. 6 (1953). See Hunt, *Constitutional Law—1954 Tennessee Survey*, 7 VAND. L. REV. 763, 768-71 (1954).

4. TENN. CODE ANN. §§ 3320, 3321 (Williams 1934).

5. What "qualified voters" and "electors" are referred to in Section 3321 of the Code of Tennessee? Is an absolute majority required or merely a majority of those who vote?

of public property or obligations relating to territory passing by annexation from a county or special district to a municipality.

Annexation Laws in Other States

While a few states still rely upon the private act system, most of them provide for the extension of municipal boundaries by general legislation. The typical approach is a two step system of petition and approval, each of which may be accomplished by one, or a combination, of the following: a city, a specified part of its qualified voters, or all or part of the property owners, residents or qualified voters of the area to be annexed. The stumbling block is that usually in one form or another the outsiders have the power to kill any proposal—and experience suggests that in exercising it they are more apt to think in terms of next year's tax rate than of the long-range welfare of the entire urban community.[6]

As though in answer to such difficulties the State of Virginia has shunted the whole vexing problem of municipal boundary extension over to its courts.[7] Proceedings may be instituted either by city ordinance or by a majority of the qualified voters in the territory to be annexed. The matter is then heard by a specially constituted court consisting of the circuit judges of the county and city involved plus a third judge from a "remote" circuit to be designated by the state's Chief Justice. "Such court shall hear the case upon the evidence introduced in the manner in which evidence is introduced in common law cases, and shall ascertain and determine the necessity for and expedience of annexation, considering the best interests of the county, the city and the best interests, services to be rendered and needs of the area proposed to be annexed and the best interests of the remaining portion of the county, and whether the terms and conditions set forth in the ordinance are reasonable and fair, and whether fair and just provisions are made for the future management of such territory and the rendering of needed services."[8]

The court may issue an order granting, denying or *modifying* the proposed annexation terms in accordance with its findings in relation to the indicated standards. But in addition "The court shall so draw the lines of annexation as to have a reasonably compact body of land, and shall also see that no land shall be taken into the city which is not

6. KNEIER, CITY GOVERNMENT IN THE UNITED STATES, 355-57 (1947). For an analysis of "Laws of the States Relating to the Annexation of County Territory—A Summary Statement," see study under that title by John Harris, published in 1952 by the Bureau of Public Administration of The University of Tennessee (mimeographed). Provisions with respect to the handling of the public property and obligations of the annexee government relating to the territory removed from it are sparse. Where the matter is dealt with at all, there is apt to be no more than a provision for some form of pro-rata allocation of county indebtedness to annexing municipalities.

7. VA. CODE §§ 15-125 through 15-161, 15-358 (1950).

8. *Id.*, § 135.

adapted to city improvements, unless necessarily embraced in such compact body of land, or which the city shall not need in the reasonably near future for development. In making its decision as to the character and extent of annexation the court shall take into consideration as well, not only the development of the city but also the loss of revenue to the county and the effect that annexation may have upon the revenues of the city and of the county."[9]

Clearly much more is involved here than judicial review. The Virginia legislature has simply delegated its primary annexation authority to the judiciary. While Virginia judges have been willing to accept and exercise it, such unmitigated devolution of non-judicial power to the courts in other jurisdictions would certainly invite trouble.[10]

But while Virginia's system is the most elaborate, other states, notably Arkansas, Nebraska and Wyoming, have Virginia-type legislation giving courts primary annexation authority with respect to some or all municipalities. In each case interested parties may petition specified regular courts. The Arkansas statute requires the granting of such petitions as meet specified, objective conditions, if to do so "be deemed right and proper, in the judgment and discretion of the court. . . ."[11] The Nebraska statute provides with respect to cities of the first class that, "If the court find the allegations of the petition to be true [with respect, inter alia, to the "material benefits and advantages to be derived from . . . annexation"], and that such territory, or any part thereof, not smaller in area than as hereinbefore required, would receive material benefit by its annexation to such city, or that justice and equity require such annexation . . . a decree shall be entered accordingly."[12] In Wyoming the court "shall hear the testimony offered for or against annexation, and if, after inspection of the [required] map and the testimony heard, [it] is of the opinion that the prayer of such petition should be granted, it shall make an order to that effect. . . ."[13]

Another somewhat unusual way to deal with extra-municipal urban growth has been tried in Nebraska, Texas and Missouri. In the two

9. *Ibid.*

10. See Norfolk County v. Portsmouth, 124 Va. 639, 98 S.E. 755 (1919) and *compare* Rutland v. Augusta, 120 Kan. 42, 242 Pac. 456 (1926); North v. Bd. of Education, 313 Ill. 422, 145 N.E. 158 (1924); *In re* Beneke, 105 Minn. 84, 117 N.W. 157 (1908); Searle v. Yensen, 118 Neb. 835, 226 N.W. 464 (1929); *In re* Incorporation of N. Milwaukee, 93 Wis. 616, 67 N.W. 1033 (1911); Udall v. Severn, 52 Ariz. 65, 79 P.2d 347 (1938).

11. ARK. STAT. ANN. § 19-103 (1947).

12. NEB. REV. STAT. § 16-108 (1943).

13. WYO. COMP. STAT. § 29-1207 (1945). See also OKLA. STAT. §§ 11-485, 11-486 (1951), which authorize judicial intervention at the instance of suburbanites whose petition to a city for annexation has not been granted. "If upon hearing the court shall find that the request of petitioners ought to be granted and can be so granted without injustice to the inhabitants or persons interested, the court shall so order."

latter states home-rule cities, at least, may annex unincorporated, adjacent territory by charter amendment.[14] In addition Texas home-rule cities whose charters so provide[15] and Nebraska cities of the metropolitan class[16] may acquire territory by simple ordinance. If some cities are to be trusted with such powers there seems to be no reason in principle for denying it to others. The Texas "experiment" has caused substantial local controversy, but there is reason to believe the unilateral annexing power of its home-rule cities has not been abused.[17] New brooms are apt to be "controversial" merely because they are new—just as they are apt at first to be used with unaccustomed enthusiasm. It is noteworthy that despite the clamor of "suburban dwellers opposed to city taxes; economic interests antagonistic to regulation and more taxes; and petty politicians who have a stake in the local *status quo*",[18] the Texas legislature, although it has had ample opportunity to limit the annexing power of home-rule cities, has not yet seen fit to do so.[19] Absence of comparable "controversy" in Missouri and Nebraska suggests that Texas "difficulties" are more closely associated with strains and insecurities resulting from its peculiar post-war urban-industrial boom than with its annexation procedures as such.

But notwithstanding the lack of express statutory provision for it, the self-extension power of Texas, Missouri and Nebraska cities is subject to judicial review on "reasonableness" grounds. In all three states the courts have recognized that annexation is essentially a political question and have shown a high degree of deference for municipal (*i.e.* political) action.[20] As the Missouri Supreme Court has said, "It was not for the trial court to decide whether, upon the facts shown to exist, the extension of the boundaries was necessary, but to determine whether or not, upon the facts shown to exist, reasonable men would differ as to the necessity of the extension. If the question of whether or not the territory involved should be included within the city limits was fairly debatable, that is, if there was substantial evidence each way so that reasonable men would differ about

14. Eastham v. Steinhager, 111 Tex. 597, 243 S.W. 457 (1922) and State *ex inf.* Taylor *ex rel.* Kansas City v. North Kansas City, 360 Mo. 374, 228 S.W. 2d 762 (1950).

15. City of Houston v. Texas, 142 Tex. 190, 176 S.W.2d 928 (1943).

16. NEB. REV. STAT. § 14-117 (1943). Omaha apparently is the only city in this class.

17. See Spain, *Recent Municipal Annexation in Texas*, 29 SOUTHWESTERN SOCIAL SCIENCE Q. 299 (1949) and *Politics of Recent Municipal Annexation in Texas*, 30 *Id.* 18 (1949).

18. Spain, *Recent Municipal Annexation in Texas*, 29 SOUTHWESTERN SOCIAL SCIENCE Q. 299 (1949).

19. ". . . the Legislative Council of Texas has been requested to study the problem of city expansion and report its findings to the legislature in 1955." Claunch, *Land Grabbing—Texas Style*, 42 NAT. MUNIC. REV. 494, 496 (1953).

20. City of Houston v. State, 142 Tex. 190, 176 S.W.2d 928 (1943); State *ex inf.* Taylor *ex rel.* Kansas City v. N. Kansas City, 360 Kan. 374, 228 S.W.2d 762 (1950); Wagner v. Omaha, 156 Neb. 163, 55 N.W.2d 490 (1952).

its necessity, then the decision of that question was for the city council and the city electorate and not for the court. When the evidence shows a fairly debatable question about the matter, then neither way the question might be decided would be unreasonable."[21]

Similarly Florida, Indiana, Kentucky, Mississippi, New Mexico and Ohio permit unilateral annexation by some or all cities, but unlike Nebraska, Missouri and Texas have express statutory provisions for some form of judicial review. In Indiana all but first-class cities may annex by ordinance, but any aggrieved person may file a remonstrance in court stating "the reason why such annexation ought not in justice take place." After a hearing without a jury the court "shall give judgment upon the question of such annexation according to the evidence which either party may introduce relevant to the issue. If the court should be satisfied . . . [that] less than fifty-one (51) per cent of the persons owning property in the territory sought to be annexed, have remonstrated, and that the adding of such territory to the city will be for its interest and will cause no manifest injury to the persons owning property in the territory sought to be annexed . . . annexation shall take place." If the court should find that fifty-one per cent or more owners of property in the annexee territory have remonstrated, annexation shall not take place "unless the court shall find . . . that the prosperity of such city and territory will be materially retarded and the safety of the inhabitants and property thereof endangered without such annexation."[22]

The general pattern of Kentucky procedure is similar to Indiana's; their provisions for judicial review are virtually identical.[23] Mississippi legislation authorizes appeals to the courts to "be tried on an issue to be made up there, and the question shall be whether the proposed . . . extension . . . be or be not unreasonable."[24] In New Mexico territory "contiguous on two (2) or more sides of any municipality . . . platted into tracts containing five (5) acres or less . . . substantially built up, and [having] two (2) or more business or commercial establishments thereon and [whose] inhabitants . . . are enabled to secure the benefits of city or town government in police and fire protection, or could be furnished with light and water by said city or town, or under a franchise granted thereby" may be annexed by resolution of such municipality. But any aggrieved owner of property in the territory in question may have a court hear evidence and "determine whether the conditions hereinabove set forth exist, and enter its judgment accordingly. . . ."[25] Florida and Ohio legisla-

21. State *ex inf.* Mallet *ex rel.* Womack v. Joplin, 332 Mo. 1193, 1205, 62 S.W.2d 393, 398 (1933).
22. IND. ANN. STAT. § 48-702 (Burns 1950).
23. KY. REV. STAT. § 81.110 (1948).
24. MISS. CODE ANN. § 3379 (1942).
25. N. MEX. STAT. ANN. § 14-603 (1941).

tion authorizes injunctions or the equivalent upon petition of interested persons to stop annexation proceedings, but no standards for such judicial action are provided.[26]

Clearly most of these provisions supply very little guidance for the reviewing courts to which they are addressed. Indeed for the most part the standards provided are susceptible of so many different meanings in the context in which they are used as to raise serious doubts as to whether they do not constitute an unconstitutional delegation of legislative power to the judiciary.[27] Nor is there a ready cure. For, at best, any attempt to be more precise would risk trouble at the other extreme—failure to anticipate and provide for the myriad and viable considerations implicit in the fringe problem. But the difficulty is more than a mere matter of draftsmanship. Annexation requires the resolution of conflicts of values, the elements of which are largely imponderable. Essentially what is involved are the peculiar attitudes, fears, hopes and fancies of the various elements in each particular county-fringe-town composit. Such matters are inherently political in nature. To attempt by some form of words to convert them into legal issues is to repudiate the essence of the separation of powers. To be sure some aspects of annexation clearly are susceptible of settlement by the judicial process. The point is simply that the basic "ought it be done" question is inherently political in nature.

Suggestions for New Annexation Legislation

In addition to private legislation still relied upon in a few jurisdictions, we have noted three basic approaches to the discrepancy between the "real" and the legal boundaries of American cities. The most common system makes annexation depend upon the separate approval of both the city and the fringe area in question. This permits the tail to wag the dog for in the typical setting it allows the few (fringe voters or property owners) to block the wishes of the many. Democratic decency requires the opposite; just as it requires that such issue be decided by voters rather than property holders! As the highest court of Virginia has said, ". . . it 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 sew-

26. FLA. STAT. § 171.04 (1951); OHIO REV. CODE §§ 709.07-709.09 (Baldwin 1953). See also Pa. Laws 1953, c. 145.

27. A lower Ohio court has held under the provisions above referred to that the weighing of the various factors in connection with a proposed annexation of territory is a political rather than a judicial function and in a suit to enjoin annexation the court will not consider the merits, but only the legality of the proceedings. Pikleheimer v. Urner, 29 Ohio N.P. (N.S.) 547 (19—).

age, 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 [or threatens to make 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."[28]

To subject annexation proposals to popular vote and to give the same weight to each city and fringe area ballot of course will normally give the city view an advantage. But this approach is not necessarily hopeless from the outsider's point of view. For it means that when city voters are closely divided, *i.e.*, when their answer to the particular problem at issue is not clear, the outsiders may hold the balance of power. To be sure annexation proposals may be rigged, *i.e.*, gerrymandered, to reduce the effectiveness of the suburban vote. This might be obviated by a requirement that suburban communities be taken as a whole or not at all, or that only a limited number of annexations per city would be permissible in a given period of time. But such limitations would be dangerous. The former would present vexatious problems of definition and enforcement and might impose burdens that no city could wisely undertake. The time limitation would make for inflexibility and would give the enemies of annexation a dangerous weapon—innocuous annexations could be used to block important ones. Experience teaches that to put such weapons in suburban hands is to perpetuate fringe evils. On these premises Proposal I (see Appendix) is presented as an orthodox-type annexation measure. It will be noted that while in one version referendum elections are compulsory, in the alternate provision they are required only if requested by petition of one-third of the voters of the territory to be annexed. Thus in the absence of substantial resistance by the affected suburbanites voting expenses could be avoided. For comment on the settlement-of-disputes provisions of this proposal see below.

Of course such legislation would be subject to whatever degree of judicial review courts might see fit to impose. If it be deemed desirable to limit or foreclose judicial intervention, provisions to that effect could be included for such weight as they might carry in court. The provision with respect to smaller and larger municipalities is designed to forestall suburban attempts to ward off annexation by counter-annexation nuisance tactics.

For reasons already indicated delegation of primary annexation power directly to the judiciary, as in Virginia, would be vulnerable in many jurisdictions. But even if the courts in other states might

28. Henrico County v. Richmond, 177 Va. 754, 15 S.E.2d 309, 321 (1941).

prove willing to accept and exercise such power, they should not be asked to do so. For to embroil them in what are essentially political controversies is to enervate both the judicial and political processes —especially is this a danger when judges are chosen by popular election (as they are not in Virginia).

There are, however, sound reasons for giving the judiciary a check-rein upon excessive municipal exuberance in the annexation process. It is not a matter of giving to any court the responsibility for *making* annexation policy, but of authorizing courts to see to it that policy functions are exercised within the bounds of reason. The latter, perhaps, may be considered a question of law, just as a question of law is raised for court decision when jury findings of fact are challenged as beyond rational limits. Here too the law's ubiquitous "reasonable man" may find a market for his services. Indeed Nebraska, Missouri and Texas have pointed the way. Proposal II (see Appendix) reflect an attempt to capture in statutory terms the essence of their experience. The strictly limited access to the courts permitted in these provisions would seem to be in accord with widely established practice.[29] Proposals I and II differ not only with respect to annexation itself, but also as to the handling of incidental disputes, *i.e.*, the allocation of public assets, liabilities and functions between an annexing municipality and any other affected town, city, county or special district. In each case the respective parties are called upon to settle such matters by mutual agreement. Failure to do so within a specified time would require settlement by arbitration in accordance with the Rules of the American Arbitration Association. This device is suggested as being more expeditious and less costly than resort to the courts. If strictures like those of Section 9359(2) of the 1932 Code of Tennessee with respect to the settlement of real estate titles by arbitration be deemed relevant, language could be inserted in the present proposals to make it clear that the term "property" includes real property. The basic difference between the settlement provisions in Proposals I and II is that the former is somewhat more detailed particularly with respect to the handling of utility and other special districts. It would accordingly leave less leeway for *ad hoc* adjustments. The introductory clause in Section 4 of Proposal I is bracketed to suggest that it might be omitted in the interest of avoiding possible undue delegation of legislative power. The second bracketed clause would not appear to be vulnerable on those grounds, but could be omitted, if the first bracketed clause is included. The provisions with

29. "Most courts . . . express the view that, where proceedings are not wholly void, a change of corporate boundaries by annexation . . . may not be collaterally attacked." 2 MCQUILLIN, MUNICIPAL CORPORATIONS, 374 (1949) and cases there cited. There appear to be no Tennessee cases in point. *Cf.* McCallie v. Chattanooga, 40 Tenn. 317 (1859); Morris v. Nashville, 74 Tenn. 337 (1880).

respect to the extinguishment of special districts would not seem to raise an "impairment of the obligation of contract" or related problem.[30]

Proposal III (see Appendix) undertakes to avoid both judicial review and referendum elections. It would permit annexation by ordinance subject to the right of specified objectors to contest the reasonableness thereof by arbitration. This approach, of course, could be supplemented by such incidental-dispute-settlement provisions as are found in the foregoing proposals.

Proposal IV (see Appendix) is similar to Proposal II except that it requires settlement of property and other disputes *prior* to annexation itself and then permits the "annexing" municipality to drop the entire project, if the settlement terms are found to be undesirable. *Quaere,* whether an arbitral tribunal would undertake to issue an award that would become effective only at the option of one of the parties and whether such an award, if issued, would be sufficiently "mutual" and "final" to be valid?

Another device for dealing with the fringe problem would be to permit a city to designate a specified area for future annexation and to extend urban regulations and services into it seriatim in accordance with a pre-arranged program. This staggered approach—to be considered essentially as an adjunct to other systems—would minimize the shock for all concerned and would in fact only rationalize and "legalize" what often happens in practice. This could be named the onion approach, a layer at a time of municipal services and regulations being extended into a so-called "service annex" until it and the parent city were fully merged on the scheduled annexation day. Such gradual, or deferred, annexation might be initiated and confirmed in the same manner as other municipal extensions except that at the outset the annexing city would be required to furnish a work-plan for the gradual extension of all of its normal operations into the new area. Of course, such a plan ought not to be considered as imposing a rigid set of contractual obligations. Play should be allowed for unexpected contingencies, but such things as land use controls, health and safety regulations, fire and police protection, water supply, public thoroughfares (including storm sewers, street lights and drainage) and sanitation programs could be forecast with reasonable accuracy for completion over a period ranging from a few to as many as twelve or fifteen years.

The financing of such a system during the change-over interval could be met by reasonable service charges, revenue bonds (perhaps convertible into general obligations of the whole community at the

30. First Suburban Utility Dist. v. McCanless, 177 Tenn. 128, 133, 146 S.W.2d 948, 950 (1941).

date of annexation) and, if necessary, by general obligation bonds of the annexing municipality. To expedite the whole integration process, the "service annex" could be treated as a separate city ward for the election of a "councilman" to meet with the regular city council for discussion (if not voting) purposes.[31]

31. Another alternative for handling urban growth problems would be the administrative process. This does not appear to have been tried in the United States, but much can be said for the submission of annexation controversies for investigation, hearing, findings of fact and conclusions by a non-partisan state administrative tribunal of trained specialists. If the judicial and legislative processes are not fully satisfactory in this field, Dean Landis reminds us that the administrative process is this generation's answer to their inadequacies. LANDIS, THE ADMINISTRATIVE PROCESS 46 (1938). In any case the administrative approach has been tried in England and the standards laid down for the guidance of its Local Government Boundary Commission may be instructive here. Issued by the Minister of Health, Nov. 15, 1945, and approved by resolution of the House of Commons Dec. 10, 1945, and the House of Lords Dec. 13, 1945. Reproduced in THE FUTURE OF CITIES AND URBAN REDEVELOPMENT 569-70 (Woodbury Ed. 1953).

APPENDIX

This appendix consists of four possible approaches to the annexation problem. It will be noted that each proposal consists of two essentially different parts—one dealing with annexation, the other with the settlement of disputes arising out of annexation. In most instances the various provisions in these four proposals are interchangeable and may be used in different combinations.

I

Section 1. Upon its own initiative or upon petition of interested persons any municipality may by resolution, after notice and public hearing thereon, propose extension of its corporate limits by the annexation of territory adjacent to its existing boundaries. Such resolution, describing the territory proposed for annexation, shall be published by posting copies of it in at least three public places in the territory proposed for annexation and in a like number of public places in the municipality proposing such annexation, and by publishing notice of such resolution at or about the same time in a newspaper of general circulation, if there be one, in such territory and municipality.

At least sixty and not more than ninety days after such publication the proposed annexation of territory shall be submitted at the expense of the proposing municipality for approval or disapproval to the qualified voters who reside in the territory proposed for annexation and in the proposing municipality. If a majority of all such voters voting thereon shall approve, annexation as proposed shall become effective sixty days after the election date.

[In the alternative the following paragraph might be substituted for the preceding one. The result would be to eliminate referendum elections except when they are called for by petition.

If within sixty days after such publication, one-third of the qualified voters residing in such territory proposed for annexation sign and present to the proposing municipality a petition requesting an election thereon, such proposed annexation of territory shall at least thirty and not more than ninety days thereafter be submitted for approval or disapproval to the qualified voters who reside in the territory proposed for annexation and in the proposing municipality. If a majority of all such voters voting thereon shall approve, the annexation as proposed shall become effective sixty days after the election date. In the absence of a petition for election as herein authorized, such annexation as proposed shall become effective at the expiration of the period within which such petitions may be presented.]

Section 2. Nothing herein shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory

within the corporate limits of a larger municipality, the terms "smaller" and "larger" having reference to population.

Section 3. Disputes incidental to an annexation of territory and relating to the adjustment or allocation of public functions, rights, duties, property, assets or liabilities between an annexing municipality and any other town, city, or county shall be resolved by written agreement; provided that, any such dispute not so resolved within a period of one hundred and eighty days after such annexation shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 4. [Unless the parties agree otherwise in writing] annexation by any municipality of all or any part of the territory served by any utility, sanitary, school or other public service district shall, effective two years thereafter, [or at an earlier date specified by the annexing municipality,] extinguish such district and the annexing municipality shall succeed to all of its functions, rights, duties, property, assets, liabilities and records, including any authority which such district may have had to collect taxes, fees or other charges to maintain its operations or extinguish its obligations.

[In the alternative Section 4 might provide, as follows, merely for *partial* or *pro rata,* rather than complete, extinction of utility and other districts affected by municipal boundary extensions:

Alternate Section 4. Annexation by any municipality of all or any part of the territory served by a utility, sanitary, school or other public service district shall correspondingly extinguish such district, whereupon the annexing municipality shall succeed to a fair and equitable share of its assets, liabilities, rights, duties, functions and records, including any authority which such district may have had to collect taxes, fees or other charges to maintain its operations or meet its obligations. If within three months after such annexation the parties have not agreed in writing as to what constitutes such fair and equitable share, the matter shall be referred for settlement by arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.]

Section 5. If any provision of this Act shall be held invalid, the remaining provisions shall nevertheless continue in operation. If the application of any provision of this Act to any particular parties or circumstances shall be held invalid, such provision shall nevertheless continue in operation with respect to other parties and circumstances.

II

Section 1. Upon its own initiative or upon petition of interested persons any municipality may by ordinance, after notice and public hearing thereon, extend its corporate limits by such annexation of territory as may reasonably be deemed necessary for the welfare of the residents of the affected territory and municipality as a whole; provided that, no ordinance which would extend the corporate limits of any municipality shall become operative until sixty days after publication thereof.

Section 2. Any aggrieved resident of territory which is the subject of an annexation ordinance may prior to the operative date thereof file a suit in the nature of a *quo warranto* proceeding in accordance with the provisions of this Act and of Part III, Title 2, Chapter 9, Code of Tennessee 1932 to contest the validity thereof on the ground that it may not reasonably be deemed necessary for the welfare of the residents of the affected territory and municipality as a whole and so constitutes an exercise of power not conferred by law.

If more than one such suit is filed, all of them shall be consolidated and tried as one in the first court of appropriate jurisdiction in which suit is filed. If on the evidence introduced upon the issue [of law] so joined, the court shall find that the contested ordinance is so clearly unreasonable that no fair-minded men could support it, an order shall be issued vacating the same. In the absence of such finding an order shall be issued sustaining the validity of such ordinance which shall then become operative thirty-one days after such judgment is entered unless an abrogating appeal has been taken therefrom.

If suit is not filed as herein authorized, or if filed, is dismissed without judgment on the merits, or if no appeal is taken from a judgment sustaining the validity of such ordinance, the same shall then become operative and shall not be subject to contest or attack on the merits in any legal or equitable proceeding for any cause or reason.

If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same; otherwise it shall become operative forthwith by court order and shall not be subject to contest or attack on the merits in any legal or equitable proceeding for any cause or reason.

Section 3. Nothing herein shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory within the corporate limits of a larger municipality, the terms "smaller" and "larger" having reference to population.

Section 4. Upon adoption of an annexation ordinance as hereinabove authorized an annexing municipality and any affected instrumentality

of the State of Tennessee shall attempt to reach agreement in writing for allocation to the annexing municipality of whatever public functions, property, assets, duties or liabilities of such state instrumentality that justice and reason may require in the circumstances; provided that, any such agreement shall recognize the exclusive right of the annexing municipality, if and to the extent that it may choose, to perform, or provide for, all customary municipal or utility functions in any territory which it annexes. Subject to such exclusive right any such matters upon which the respective parties are not in agreement in writing on the operative date of such annexation ordinance shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 5. The term "instrumentality of the State of Tennessee" as used herein shall include any town, city, county, utility, sanitary, school or other public service district within the State of Tennessee.

Section 6. If any provision of this act shall be held invalid, the remaining provisions shall nevertheless continue in operation. If the application of any provision of this Act to any particular parties or circumstances shall be held invalid, such provision shall nevertheless continue in operation with respect to other parties and circumstances.

III

Section 1. Upon its own initiative or upon petition of interested persons any municipality may by ordinance, after notice and public hearing thereon, extend its corporate limits by such annexation of territory as may reasonably be deemed necessary for the welfare of the residents of the affected territory and municipality as a whole; provided that, no ordinance which would extend the corporate limits of any municipality shall become operative until ninety days after publication thereof.

Section 2. At any time within ninety days after such publication any town or city with respect to any of its territory proposed for annexation, or any county with respect to any of its unincorporated territory proposed for annexation may contest, or upon written petition of at least one-third of the qualified voters residing in such territory must contest, such proposed annexation on the merits by initiating an arbitration in accordance with the Rules of the American Arbitration Association. The issue to be so arbitrated shall be whether the proposed annexation is so clearly unreasonable that no fair-minded men could find on balance that the welfare of the whole affected area would be prompted by it. If the award be in the affirmative, such annexation proposal shall be vacated, and shall not be

initiated again until after a period of twelve months. If the award be in the negative the proposed annexation shall be operative forthwith and shall not thereafter be contested on the merits for any reason. Judgment upon any award rendered in accordance with the provisions hereof may be entered in any court having jurisdiction thereof. The method herein provided for contesting the validity of any annexation proposal shall be exclusive of all other methods of contest on the merits.

Section 3. If no town, city or county shall in accordance with the provisions of this act contest a proposed annexation of territory, such annexation as proposed shall become operative at the expiration of the period within which such contests may be initiated and shall not thereafter be contested on the merits for any reason.

[These provisions should be supplemented by something similar to the provisions in the foregoing proposals relating to settlement of subsidiary disputes, the outlawing of annexation proceedings by a satellite city against its parent, and separability.]

IV

Section 1. Upon its own initiative or upon petition of interested persons any municipality may by ordinance, after notice and public hearing thereon, designate for annexation any territory that reasonably may be deemed necessary for the welfare of the residents of the affected territory and municipality as a whole. No such ordinance shall be contested on the merits in any judicial proceedings for any reason or cause. Upon adoption of such an ordinance it shall be the duty of the designating municipality and any affected instrumentality of the State of Tennessee to negotiate for an agreement in writing for a fair and reasonable allocation between the respective parties of those public functions, properties, assets, duties or liabilities of such affected instrumentality of the state which pertain to the territory designated for annexation; provided that, any such agreement shall recognize the exclusive right of the designating municipality, if and to the extent that it may choose, to perform or provide for all municipal and utility functions in the designated territory upon annexation thereof. Subject to such exclusive right any matters upon which the respective parties are not in written agreement six months after adoption of the designating ordinance shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. But no such agreement or arbitral settlement shall become effective until the annexation to which it relates becomes operative as hereinafter provided, at which time judgment upon such arbitral award may be entered in any court having jurisdiction thereof.

Section 2. Within sixty days after such agreement or arbitral settle-

ment the designating municipality may by ordinance annex the territory so designated; provided that, no such annexation ordinance shall become operative until sixty days after publication thereof.

Section 3. Any aggrieved person may prior to the operative date of any such annexation ordinance file a suit in the nature of a *quo warranto* proceeding in accordance with the provisions of this Act and of Part III, Title 2, Chapter 9, Code of Tennessee 1932 to contest the validity thereof on the ground that it may not reasonably be deemed necessary for the welfare of the residents of the affected territory and municipality as a whole and so constitutes an exercise of power not conferred by law.

If more than one such suit is filed, all of them shall be consolidated and tried as one suit in the first court of appropriate jurisdiction in which suit is filed. If on the evidence introduced upon the issue [of law] so joined, the court shall find that the contested ordinance is so clearly unreasonable that no fair-minded men could support it, an order shall be issued vacating the same. In the absence of such finding an order shall be issued sustaining the validity of such ordinance which shall then become operative thirty-one days after such judgment is entered unless an abrogating appeal has been taken therefrom.

If suit is not filed as herein authorized, or if filed, is dismissed without judgment on the merits, or if no appeal is taken from a judgment sustaining the validity of such ordinance, the same shall then become operative and shall not be subject to contest or attack on the merits in any legal or equitable proceeding for any cause or reason.

If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same; otherwise it shall become operative forthwith by court order and shall not be subject to contest or attack on the merits in any legal or equitable proceeding for any cause or reason.

Section 4. Nothing herein shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory within the corporate limits of a larger municipality, the terms "smaller" and "larger" having reference to population.

Section 5. The term "instrumentality of the State of Tennessee" as used herein shall include any town, city, county, utility, sanitary, school or other public service district within the State of Tennessee.

Section 6. If any provision of this act shall be held invalid, the remaining provisions shall nevertheless continue in operation. If the application of any provision of this Act to any particular parties or circumstances shall be held invalid, such provision shall nevertheless continue in operation with respect to other parties and circumstances.