Annexation and the Law in South Carolina

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I. INTRODUCTION

The purpose of this note is fourfold: to define and explain what annexation is intended to accomplish, to discuss the South Carolina annexation procedure, to compare the procedure of other states, and to give our comments, criticisms, and recommendations.

Simply stated, annexation is a method whereby a city or town extends its boundaries, and such extension can embrace unincorporated or incorporated contiguous or adjacent territory. Among the states there are a variety of annexation procedures and some of these will be discussed later.

Annexation is only one method of controlling and regulating the growth and development of residential, business, and industrial areas within the urbanized area and in the surrounding cities and towns. It has always been the most common method of adjusting local governmental boundaries in urban and metropolitan areas, but today annexation has declined as a method for solving large scale metropolitan problems, primarily because annexation has been unable to keep pace with the territorial expansion of metropolitan areas, due primarily to cumbersome annexation legal provisions. Other methods have taken the place of annexation in solving metropolitan problems, such as city-county consolidation, city-county separate federation, transfer and joint handling of functions, and metropolitan special districts. Even so, annexation has had its greatest general significance as a means of resolving problems involving a city and its adjacent unincorporated urban fringe, difficulties which cannot be ignored pending more comprehensive solutions.

By annexation the city or town seeks to provide services and controls, the lack of which are harmful to both city and fringe dwellers, and to correct many unsatisfactory conditions such as inadequate sewage facilities, health facilities, mud-rut streets in incomplete subdivisions, and intermixtures of industrial, commercial, and residential uses. Annexation has helped to eliminate havens for vice and gambling, to

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wipe out fire hazards, and to prevent further increase in governmental complexity.2

Annexation has been a useful device in Texas, Virginia, and California as a means of solving metropolitan problems,3 probably because the legislatures in those states are interested enough to attempt solutions. As previously stated, annexation is only one method of achieving proper urban development, but it is a very important one. It is generally recognized by the experts in the field of metropolitan government that proper planning is the key to proper metropolitan growth.4 Therefore, to insure this proper growth, cities and towns must be given liberal power to annex. It is imperative that existing problems be solved, but also it is important to prevent their further recurrence.5 The law has not kept up with municipal problems, many of the statutes being designed to protect selfish interests instead of the public interest. Some of the statutes were adequate for the America of the past, but not for the America of the present with its trend toward urban living; yet these statutes, for the most part, remain unchanged.

Annexation must be viewed, not as an isolated problem, but from the standpoint of the whole metropolitan development. As a tool of proper planning, it is important that it be made to work. The failure to plan is costly, as indicated by the following quotation:

Nearly every American city today is paying a heavy penalty for its shortsightedness in allowing individual interest to outweigh community interest in city planning; and the severity of the penalty is increasing as the city grows and its social and economic structure becomes more complex. Relief can be had only through a comprehensive process of genuine community planning that will so far as possible rectify the mistakes of the past and prevent their repetition in the future.6

If this were true in 1925, it is even more so today.

2. See Council of State Governments, The States and the Metropolitan Problem (1956) for an excellent discussion of annexation.
3. BROMAGE, MUNICIPAL GOVERNMENT AND ADMINISTRATION 96 (1957).
6. MAXEY, op. cit. supra note 4, at 180.
II. ANNEXATION CONSIDERATIONS

Apart from the costs of the annexation procedure, the general test for annexation should be whether the urbanized fringe territory can survive socially, financially, and politically without benefits from the annexing city or town. Theoretically, if they cannot, then they should be annexed. Furthermore, the territory should have a community of interest—economic, social, and cultural—with the central city. The basic reason or motive a city or town should have for annexing territory should be to provide for orderly growth and development of the entire urban area. Any city or town should function as a planned social, economic, and governmental unit and therefore needs to be able to plan the growth and development of any adjacent urbanized territory.7

In general, the persons who perform acts or make decisions in the annexation process need only to act in the good faith belief that annexation is necessary and to comply substantially with the statutory requirements.8

Before any annexation is attempted, the annexing city or town should report the facts for and against annexation. In this way the public is educated and no unjust fears will arise. Extensive use should be made of graphs, charts, and maps containing these features: building and population trends, existing and proposed subdivisions, possible natural barriers, distances of places in the territory from public buildings and places of work, transportation facilities, possible extension of city streets, possible park sites, and the type of commercial, industrial, residential, and public buildings already in the area. Also, a tentative schedule for the furnishing of services based on the opinions of city officials should be published.

III. AUTHORITY FOR ANNEXATION

A. Generally

In South Carolina annexation by municipalities of adjacent areas is governed by statutory law.9 The only limitation upon legislative power is a constitutional provision10 which

7. STOYLES, op. cit. supra note 1, at 12.
8. Id. at 7.
10. S. C. CONST. art. III, § 34. "The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes to wit: . . . . II. to incorporate cities, towns, villages, or change, amend, or extend charter thereof."
prohibits the Legislature from amending or extending municipal charters by special laws. The extensive power of the Legislature is illustrated by the following:

In the absence of constitutional limitations, it is generally considered that the power of a state legislature over the boundaries of the municipalities of the state is absolute and that the legislature has power to extend the boundaries of a municipal corporation, or to authorize an extension of its boundaries without the consent of the inhabitants of the territory annexed, or the municipality to which it is annexed, or even against their express protest.11

B. Special Laws

The Legislature has provided general laws whereby municipalities, by compliance with their provisions, can annex adjacent territory. Problems have often arisen when the Legislature has attempted to circumvent the constitutional prohibition (Article III, Section 34) against special laws. One of the purposes sought by this section was to make "uniform the statute of laws on like subjects"12 and in so doing, to check the growing evil of local and special legislation.13 However, whether a statute is a law of a general nature or of a special nature depends upon its subject matter and not upon its form. Hence, to come within this constitutional inhibition, it is not necessary that the statute be general in form.14 Even if a law is general in form but special in its application, this violates the constitutional inhibition of special legislation as much as one special in form.15 The Court has often sustained special provisions in general laws16 so long as the effect was not special. It has, nevertheless, found difficulty in determining what is a special provision in a general law.17 In 1954 this clause was applied to nullify an annexation statute purporting to set up a general method, but which was ap-

15. Town of Forest Acres v. Town of Forest Lake, supra note 11.
plicable in fact to only one, or all, the municipalities of a single county.\(^{18}\) The statute applied solely to Richland County, containing Columbia and four much smaller municipalities, among them the towns of Forest Acres and Forest Lake. In the case involving the latter two towns, the statute was declared unconstitutional as in violation of the prohibition against special legislation, there being no rational basis for such a classification.

In *Lancaster v. Town Council*\(^{19}\) the Court held that the Legislature could not ratify an annexation election, invalid because a majority of the freeholders had not signed the petition, as this was a prohibited special act. The Supreme Court also struck down a statute in *Thomas v. Macklen*\(^{20}\) which purported to be general, "applying to the incorporation of so-called resort communities" of a designated class, but which in fact applied only to Myrtle Beach.

The Legislature may classify for the purpose of legislation and thus overcome the restriction on special legislation, if some intrinsic reason exists why the law should operate upon some and not upon all, or should affect some differently from others. But this classification must be based upon differences which are either defined by the Constitution or else are natural or intrinsic, and which suggest a reason which may rationally be held to justify the diversity in the legislation.\(^{21}\) The classification must not be arbitrary, for the mere purpose of classification, but must be characterized by some substantial qualities or attributes which render such legislation necessary or appropriate for individuals of the class.\(^{22}\) Classification of municipal corporations is usually based on population.\(^{23}\) The Court in *Forde v. Owens*\(^{24}\) recognized that a classification based on population was a proper mode of classification. The Constitution\(^{25}\) directs the Legis-

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25. S. C. CONST. art. VIII, § 1. "The powers of each class shall be defined so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class."
lature to classify municipal corporations but does not specify the criteria.

While it is primarily for the Legislature to decide whether a general law can be made applicable in any specific case, the question is ultimately a judicial one, but the court will give due consideration to the judgment of the Legislature and will not disturb its decision if there is any reasonable hypothesis upon which it can be predicated.26

IV. ANNEXATION PROCEDURE

A. Generally

The power to extend municipal boundaries is given in South Carolina Code Section 47-11, which states: "Any city or town council may extend corporate limits of such city or town in the manner set forth in this article." The only method whereby a municipality or town can extend its limits is prescribed by this article,27 and an annexation election held under this article is not unconstitutional as a violation of due process of law by reason of additional taxation arising out of existing indebtedness of the municipal corporation.28

B. Freeholder Petition

The first step in the annexation procedure is the circulation of a petition in the area sought to be annexed.29 This section requires:

(1) that the petition be submitted to the city council signed by a majority of the freeholders of the area to be annexed;

(2) that the petition be accompanied by an adequate description of the area to be annexed; and

(3) a request that an election be ordered.

Under this section the initiative is given to the freeholders of the area sought to be annexed. In theory the city or town cannot initiate the annexation procedure, but in practice it

27. ATTY. GEN. OP., Nov. 25, 1957.
29. CODE OF LAWS OF SOUTH CAROLINA § 47-12 (1952). “To effect any such election a petition shall first be submitted to the council by a majority of the freeholders of the territory which it is proposed to annex, accompanied by an adequate description thereof praying that an election be ordered to see if such territory shall be included in the city or town.”
often does. Usually, interested citizens of an area, desiring that their area should become a part of the city or town, discuss the matter with city or town officials. If the officials are interested, they may then designate the area that the city or town wishes to annex and secure the cooperation of interested citizens of that area in obtaining the freeholder petitions. It would be foolish to attempt the difficult task of securing the signatures of a majority of the freeholders unless the city or town is interested, as they are not required to extend the municipal boundaries. The language of Section 47-11 is that “Any city or town may extend . . . .” (Emphasis added.) Whether or not an election shall be ordered is within the power of the city council.30

A majority of the freeholders must sign the petition. Only the freeholders of the area desiring to be annexed can petition the city or town council.31 If a majority of the freeholders are not secured, then the Legislature cannot confirm a subsequent election,32 as this would violate the constitutional prohibition against special legislation.33

In Harley v. City of Spartanburg,34 the Court said that the determination by the city council that a majority of the freeholders signed the petition was prima facie correct. The Court did not determine whether such findings were conclusive in the absence of fraud or abuse of discretion, but the Court went on to say: “We shall assume that applicants were at liberty to show that the certificate made by the City Council to the County Commissioners of Elections was erroneous.”34a There was evidence in this case that a freeholder list was carefully compiled and that such list was compared with the names in the petition. The Court assumed that a majority must have signed as such was found by the City Council. Such findings presupposed a finding of the total number of freeholders and the number who had signed. The Court suggested that it would be a good idea that totals be inserted in the minutes or in the certificate to the County Commissioners.

32. S. C. Const. art. I, § 34.
34a. Id. at 483.
In Harrell v. City of Columbia,\textsuperscript{35} the Court would not set aside an annexation election where a finding that a majority of the freeholders had signed the petition was not fully set out in the minutes of the City Council, where there were no charges or evidence of fraud, abuse or mistake.

The term freeholder has given courts much trouble.

A freehold is defined as any estate of inheritance or for life in either a corporeal or incorporeal hereditament existing in, or arising from, real property of free tenure. . . . Freehold estates of inheritance include estates in fee simple absolute, fee simple conditional, fee simple determinable and defeasible, and estates in fee tail . . . .\textsuperscript{36a}

Not only has it been difficult to determine who were the freeholders in a particular area, but the whole process of securing freeholder petitions is a difficult process. In the Harley case\textsuperscript{38} the Court held that the holders of an executory contract to purchase land were not freeholders. It recognized the fact that the decisions upon the question of who is a “freeholder” cannot be reconciled.\textsuperscript{37} The Court went on to say:

In concluding our discussion of the case, we desire to say that even if our calculation . . . had shown that the petition was a little short of the required number, we would hesitate under the circumstances of this case to set aside the finding of the City Council, which is \textit{prima facie} correct. [citing Rawl v. McCown\textsuperscript{38}] The possibility of a slight mistake on our part is too great. Probably no two persons would reach the identical result. . . . [M]athematical precision is improbable, if not impossible, in a case of this kind.\textsuperscript{39}

C. Area to Be Annexed

The territory which may be properly annexed to a municipality must be “adjacent” to the municipality, and by “adjacent” is meant that the proposed area must adjoin the

\textsuperscript{35} 216 S. C. 346, 58 S. E. 2d 91 (1950).
\textsuperscript{36a} 19 AM. JUR. Estates § 4 (1939). See 37 C. J. S. Freeholder for a further discussion of the term freeholder.
\textsuperscript{37} Harley v. City of Spartanburg, \textit{supra} note 34.
\textsuperscript{38} The term “freeholder” has received many definitions. See Campbell v. Moran, 71 Neb. 615, 59 N. W. 498 (1904); Gill v. Board of Commissioners of Wake County, 116 N. C. 176, 76 S. E. 203 (1912); Payne v. Fiscal Court of Carroll County, 200 Ky. 41, 252 S. W. 127 (1923).
\textsuperscript{39} 97 S. C. 1, 81 S. E. 958 (1914).
\textsuperscript{39} Harley v. City of Spartanburg, \textit{supra} note 34.
boundary of the municipality which proposes to annex the new territory.\textsuperscript{40} The territory to be annexed could be separated by a river or other natural boundary, however.\textsuperscript{40a}

In discussing what was an adequate description of the territory proposed to be annexed, the Court in the\textsuperscript{41} Harrell case said the words "'adequate description' . . . would imply a correct description, in sufficient detail, to put all parties in interest on notice of what was covered thereby." An adequate description may be made by reference to roads, drives, highways, and adjacent boundaries which are clearly expressed. It is not necessary that reference to a map or plat be made a part of the description.\textsuperscript{42}

It would seem that good policy would dictate that a map should be published in a newspaper of general circulation if the area to be annexed is within a metropolitan area. The Court has recognized that anyone misled or prejudicially affected by the method of description might have cause to complain.\textsuperscript{43} But even so, the Court would generally follow the rule that, "unless the result of an election is changed or rendered doubtful, it will not be set aside on account of mere irregularities or illegalities."

\textbf{D. Order of Election}

If the city or town council shall find that the requirement of section 47-12 is met, \textit{i.e.}, that a majority of the freeholders within the area proposed to be annexed signed the petition, then such fact shall be certified to the County Commissioners of Elections of the county in which the territory is situate, who shall then order an election to be held within the municipality and within the territory proposed to be annexed.\textsuperscript{44} As has been stated before, this Section does not specify the method to be used by the city or town council in making the determination of whether the petitions were signed by a majority of

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\item\textsuperscript{40} ATTY. GEN. Op. 216, 1954-1955. \textit{But see} 62 C. J. S. Municipal Corporations § 46 (1943) which states: "As used in annexation statutes, the word 'adjacent' has a broader meaning than 'contiguous;' 'contiguous lands' are such as are not separated from the corporation by outside lands, and 'adjacent lands' are those lying in close proximity to the territory of a municipality."
\item\textsuperscript{40a} 37 AM. JUR. Municipal Corporations § 27 (1939); 62 C. J. S. Municipal Corporations § 46 (1943).
\item\textsuperscript{41} Harrell v. City of Columbia, \textit{supra} note 35, at 352.
\item\textsuperscript{42} Harrell v. City of Columbia, \textit{supra} note 35.
\item\textsuperscript{43} \textit{Ibid.}, citing Wright v. State Board of Canvassers, 76 S. C. 574, 57 S. E. 536 (1907).
\item\textsuperscript{44} \textit{CODE OF LAWS OF SOUTH CAROLINA} § 47-14 (1952).
\end{enumerate}
\end{footnotesize}
the freeholders. Such determination is left to the discretion of the council.\textsuperscript{45} This Section, furthermore, does not require that a hearing be held before the election is ordered. The Court in the \textit{Harrell} case\textsuperscript{46} rejected the argument that it was a violation of due process not to provide for a hearing, the Court also stating that the petitioners could not complain of a denial of due process when they did not request a hearing. It is mandatory, however, that the elections for both the area to be annexed and the municipality be held at the same time.\textsuperscript{47}

E. \textit{Notice of Election}

Before the election can be called, the County Commissioners of Elections must give at least ten days notice, and such notice must be signed by the commissioners and posted in three conspicuous places within the municipality and also in three such places within the area proposed to be annexed. Such notice can be given by publication in a newspaper of general circulation within the municipality and the area to be annexed.\textsuperscript{48}

The notice should contain the date of the election, the territory or territories proposed to be annexed, the polling places, and the names of the managers and clerks. Substantial compliance with this Section is all that is necessary.\textsuperscript{49} In the \textit{Harrell} case\textsuperscript{50} there was sufficient compliance where the notice was published in a newspaper fifty-one days before the election, giving the date of the election and territories to be annexed, and four days before the election another notice was published setting forth the polling places and giving the names of the managers and clerks. Also in \textit{Truesdale v. Jones},\textsuperscript{51} where the statutory notice was given, the election was not invalidated where the direction to put the notice did not emanate from the proper authority. In that case the acting mayor of the town was given authority by the County Commissioners for placing the notices and thought that he had the legal authority. This probably accounted

\textsuperscript{45} Harley v. City of Spartanburg, supra note 34; Town of Forest Acres v. Town of Forest Lake, supra note 11.
\textsuperscript{46} Harrell v. City of Columbia, supra note 35.
\textsuperscript{47} ATTY. GEN. OP., Nov. 20, 1958.
\textsuperscript{48} CODE OF LAWS OF SOUTH CAROLINA § 47-15 (1952).
\textsuperscript{49} Truesdale v. Jones, 224 S. C. 237, 78 S. E. 2d 274 (1953).
\textsuperscript{50} Harrell v. City of Columbia, supra note 35.
\textsuperscript{51} Truesdale v. Jones, supra note 40.
for the decision. Typewritten signatures of the Commissioners of Elections on the posted notices were also held sufficient,52 but the better practice would be to have the actual signatures placed on the notices.

F. Conduct of Election

The annexation election is a special election and not a municipal election. Such election shall be conducted in accordance with sections 23-5, 7 except as provided by section 47-16.43 Electors within the municipality and the area to be annexed must have the same qualifications as those required of registered qualified electors for state and county general elections. The electors within the municipality vote at the usual voting precincts. The electors within the area proposed to be annexed vote in the precinct or precincts to be designated therein by the County Commissioners of Elections. An election held under this article is governed by Article II, Section 4 of the South Carolina Constitution relating to qualifications for suffrage.54

Generally, an election will not be declared invalid because of errors or irregularities which do not affect the result or bring it into doubt.55 In Truesdale v. Jones56 where the election managers were improperly appointed, such irregularity did not render the election void where there was no charge of improper conduct on their part and they acted in good faith believing they had been properly appointed.

G. Registration for the Election

The general provision for opening the registration books at the courthouse are contained in section 23-63 of the S. C. Code.57 The Constitution provides that the registration books shall close at least thirty days before an election, during which time transfers and registrations shall not be legal.58 This

52. Ibid.
57. “The books of registration shall be opened on the first Monday of each month, at the courthouse, for the registration of electors entitled to registration under the Constitution and under 23-62 and, during election years, shall be kept open for three successive days in each month. In every general election year, when the registration books are opened in the months of May and August, they shall be kept open continuously every day except Sunday, at the courthouse, up to and including the 15th days of such months.”
is further amplified in section 23-66 of the Code requiring that the books be closed thirty days before an election—general, special, or primary—and remain closed until after the election has taken place.

In *Fowler v. Town Council of Fountain Inn* 59 it was held that the registration books mentioned in art. II, § 4 of the Constitution meant county registration books in which electors in state and county elections are registered. It was contended in *Gunter v. Gayden* 60 that this section did not apply to municipal or special elections, but only to general elections, but the Court said that the language was broad enough to cover all elections.

In *Whitmire v. Cass* 61 it was held that art. VIII § 2 of the Constitution 62 relating to consent of electors to organization of a municipal corporation did not apply to annexation elections but only to the original organization or incorporation of a city or town.

The books must be closed thirty days before each election, but only as to that election. For any other election, or for the general registration of the electors of the State, they may be kept open during that period of time and certificates and transfers issued. 63 An anomalous situation arises, however, in view of the fact that the County Commissioners of Elections must give only ten days notice before calling for an annexation election. In the *Whitmire* case 64 the action was to restrain the City of Greenville from exercising jurisdiction over Northgate after the election resulted in a favorable vote on annexation. The election was ordered on December 9, 1947, to be held on December 30, 1947. There was an allegation that the registration books were not closed thirty days before the election, but the Court said there was no proof that the registration officials did not do their duty, or in the absence of evidence to the contrary, the presumption is that they did, namely, close the registration books in November. According to section 23-63, the books should have been opened in December. If such had been held true, the Court indicated that the election would have been invalid.

59. 90 S. C. 352, 73 S. E. 626 (1912).
60. Gunter v. Gayden, supra note 54.
62. “No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; . . .”
63. Gunter v. Gayden, supra note 54.
64. Whitmire v. Cass, supra note 61.
An annexation election is a special election and the law provides for no special registration.\(^{65}\) Therefore, the registration for the special election comes under general registration procedures with the possibility that there will be some electors who register before the annexation election is called but within the prohibited thirty day period. The Court in the *Whitmire* case\(^ {66}\) stated: "If the voter is given a reasonable opportunity to register, as was done here, he is not in a position to complain that any of his constitutional or statutory rights have been violated." Generally, the problem would not arise, as the proposed annexation would be discussed long before the election is held and those desiring to participate would have the opportunity to register in contemplation thereof, but there may be cases where such would not be true.

**H. Publication of Result**

The votes within the municipality and the area to be annexed must be counted separately and declared separately. The County Commissioners certify the results to the governing body of the municipality and if a majority of the votes cast in each area favor annexation, then the council shall publish the result and declare the annexed area a part of the city or town.\(^ {67}\)

The writers know of no case which sets down a rule as to how long the city may wait before declaring the annexed area a part of the city or town. A question would arise as to whether or not the city could prescribe a future time for the annexed area to become a part of the city. Good policy dictates that the annexing date be known before the election is held. The language of the statute would indicate that upon certification to the council by the County Commissioners of the result, the city has a reasonable time within which to publish the result and declare the annexed territory a part of the city or town.

**I. Filing Notice With Secretary of State**

All the statute requires is that: "Any city or town increasing its territory shall file a notice with the Secretary of State describing its new boundaries."\(^ {68}\)

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J. Time Limits for Contest of Election

Within sixty days after the result has been published or declared, notice of intention to contest such election must be filed with both the clerk of the city or town and with the clerk of the county court. Also, an action must be instituted within ninety days of such publication or declaration which includes the filing of the original summons and complaint with the clerk of court of the county in which the city or town is situate. A contest can be concerned with the entire annexation procedure, and if there is such a contest, this section must be complied with. Otherwise the annexation result becomes final. The time limits for contest have been held to be neither unreasonable nor arbitrary.

V. Other Provisions

It is provided that two cities, or a city and either a whole city or one consisting partially of unincorporated territory can consolidate, agreeing in writing that upon consolidation such writing shall constitute a binding contract. The stipulations must be printed in full on ballots used in the annexing area and the area to be annexed, or fully identified by reference to some easily accessible publication.

This statute permits a city in whole, or a city partially consisting of an unincorporated area to be annexed, but does not permit a part of a municipality to be annexed without complying with section 47-23 relating to detachment.

Alternative provisions provide for annexation where the entire area is owned by the municipality or county, or where it is owned by a corporation. Corporate limits can be reduced by complying with section 47-23.

"Municipality" is construed to mean any incorporated city or town located within the state, but does not include town-
There are additional provisions relating to Greenville that have constitutional sanction.

VI. ANNEXATION LAWS OF OTHER STATES

Among states which have shown the most success with annexation are Texas and Virginia. The reason for this is obviously in the liberality of their annexation laws.

The key factor in the extensive annexation movements in Texas is the authority conferred on home rule cities, including the state's leading cities, wherein there need be no consent of the property owners or voters of the area proposed for annexation. Most home rule cities may annex either through ordinance or by majority vote in the municipality. Neither method gives the area to be annexed a formal part in the proceedings.

Virginia has adopted an annexation law providing for judicial determination of annexation proposals. The most popular employment of this law is initiated by a city or town passing an ordinance which sets forth the necessity for and expediency of the proposed annexation, including the terms and conditions. After public notice is given, the proposal is placed before an "annexation court," specifically formed to decide the matter. If the court is satisfied that the annexation is necessary and expedient, it is mandatory for it to determine the terms and conditions and enter an order granting annexation.

Under the leading general annexation law of Tennessee, a municipality may initiate annexation of an adjoining territory whose annexation is "deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole," by giving notice of such intent. After a hearing, an annexation ordinance may be adopted, effective thirty days thereafter. At that time, the annexation will be deemed approved unless contested during the interim. An aggrieved property owner in the annexed area may contest its validity on the ground that it does not meet the above stated requirement.

81. Id. at 40-48; see also Bain, Terms and Conditions of Annexation Under the 1952 Statute, 41 VA. L. REV. 1129 (1955).
The court then decides the reasonableness of the ordinance.\textsuperscript{82}

In 1959 the Legislature of North Carolina enacted a comprehensive annexation law.\textsuperscript{83} The governing board of the municipality is given the power to annex contiguous areas by ordinance if certain prerequisites are met. These prerequisites, in effect, require that the municipality give some evidence that annexation is necessary and that the municipality has the ability to provide the necessary services. A public hearing is required to be held, after which, the ordinance can be adopted. An appeal can then be made to the courts by any property owner who feels that he will be materially injured by the annexation. The court will then review the action of the governing board, and either affirm the action of the governing board or remand the case to it for further proceedings. Under this procedure, no vote is required in either the municipality or the area proposed to be annexed.

Presently, cities and towns in Georgia apparently must rely on special legislation in order to accomplish annexation. Its constitution gives the legislature power to adjust municipal territory by special acts in broad "necessary and proper" phraseology.\textsuperscript{84}

VII. CRITICISMS OF SOUTH CAROLINA PROVISIONS FOR ANNEXATION

The requirement that a majority of the freeholders in the area to be annexed must petition the city or town council should be eliminated. Such a provision is obviously too cumbersome. The people in the outlying areas are granted the exclusive authority to initiate annexation. Furthermore, they are endowed with a conclusive veto over annexation proposals by the power to vote separately from city or town residents.\textsuperscript{85}

The proposition is not decided on the basis of the needs of the entire urban area, of which the city and the fringe are parts. The city is thus in an impossible position if it cannot persuade the fringe of the advantages it will obtain from annexation. Such efforts at persuasion often consume many years; meanwhile conditions

\textsuperscript{82} See TENN. CODE ANN. §§ 6-308 to -319 (Supp. 1953).
\textsuperscript{84} GA. CONST. art. III, § 7 (1945).
\textsuperscript{85} COUNCIL OF STATE GOVERNMENTS, op. cit. supra note 80, at 28.
in the fringe area grow worse and detrimentally affect the entire area occupied by the city and the fringe. Many times the efforts are unsuccessful. Under these circumstances the city is powerless.86

The burden of securing the actual signatures to such a petition is obvious. Other difficulties not apparent in the statute also exist, because very seldom are the tax books of a county set up in such a fashion as to reflect actual land holdings in any given area of relatively small size. Furthermore, the statute offers no specific definition of the term freeholder.87

Municipal expansion is too important to permit the initiative to be left with the fringe area. Generally, the situation has already reached the critical stage before the citizens are aroused into action. The fact that the whole process is time consuming and expensive is enough to deter even the most enthusiastic advocate.

VIII. COMMENTS

Cities that have accomplished the most in meeting metropolitan problems have done so under liberal annexation laws. First, most of them materialized under one of five types of legal provisions, none of which gave the residents or property owners of the territory under consideration for annexation a separate, controlling vote. (1) The city council of the annexing city passed an annexing ordinance. (2) The people of the city undertaking the annexation effort voted in favor of the proposal. (3) The election results in the city and in the area to be annexed were counted together. (4) The state legislature passed a special act. (5) A court rendered a decision favorable to annexation.88

Annexations were generally accomplished through comparatively few annexation actions and the central cities were able to accomplish large scale annexations. However, it took Fresno, California 150 annexation actions during seven years in order to obtain slightly more than five square miles of fringe area.89

86. Id. at 34.  
88. COUNCIL OF STATE GOVERNMENTS, op. cit. supra note 80, at 30-31.  
89. Id. at 34.
IX. PROPOSED METHODS OF ANNEXATION

1. Permit the state legislature to pass acts that enlarge the boundaries of a city so as to encompass the fringe. South Carolina has a constitutional prohibition against special laws;\(^9^0\) therefore this method could not be accomplished without a constitutional amendment. The question then is whether the decisions on such matters should be made by the legislature or by the people in the metropolitan areas under the aegis of general laws.

2. Require a vote in the city or town only or an overall combined vote of the city and fringe. One argument for a less costly procedure is that the city residents need not vote where there are separate votes in the city and fringe, but that the council ought to determine city action as it is responsive to the will of the city voters. Generally city voters have tended to favor annexation elections by overwhelming votes and it would seem that an unnecessary cost could be eliminated if a vote in the city or town were not required, especially where many elections are held. Where no separate vote is given to fringe areas, the argument has been advanced that unwarranted annexations might take place.

3. Refer annexation proposals to the county governing body, or to arbitration boards, or to state administrative agencies possessing quasi-judicial powers.\(^9^1\)

4. Refer annexation proposals to a special annexation court. Such action could be very effective if based on settled judicial principles.\(^9^2\)

5. Annexation by ordinance of the city council. This is the most far-reaching approach and is followed by home rule cities in Texas.\(^9^3\) Without some control annexation could be a sham. In some Texas areas cities have annexed with

90. S. C. CONST. art. III, § 34.
91. COUNCIL OF STATE GOVERNMENTS, op. cit. supra note 80, at 48-49.
92. For an excellent discussion of the Virginia procedure see COUNCIL OF STATE GOVERNMENTS, op. cit. supra note 80, at 40-48; see also Bain, supra note 81; Bromage, MUNICIPAL GOVERNMENT AND ADMINISTRATION 95 (1957). But see Bain, Annexation: Virginia's Not So Judicial System, 15 PUB. ADMIN. REV. 251 (1955).
93. For an excellent discussion of the Texas procedure see COUNCIL OF STATE GOVERNMENTS, op. cit. supra note 80, at 35-40. For a discussion of the California procedure see Municipal Incorporation and Annexation in California, 4 U. C. L. A. L. REV. 419 (1957); Bromage, op. cit. supra note 92, at 85-96.
impunity, fearing that the rival city will get more. Some cities have annexed buffer zones of small corridors, but in other cases this has not prevented jumping over these buffer zones. Protection to fringe areas could be afforded by a requirement that city council must obtain permission of a court, or permit the annexation to be effective unless challenged in court such as in Tennessee. The court could determine whether there was a reasonable necessity for the acquisition of the territory. The requirement of court approval for every annexation has been criticized as being too costly. An alternative would be to protect the fringe dwellers by permitting them to obtain an injunction such as in condemnation proceedings and requiring them to show that the annexation was not reasonable or justified.

In 1959 the South Carolina House of Representatives passed an annexation bill designed to improve the current procedure by eliminating the requirement of the freeholder petition. The initiative was given to the city council as well as to interested persons in the fringe areas. The final determination remained, however, with the council. This would have been a much needed forward step in the archaic South Carolina procedure, but this bill was permitted to die in the Senate Judiciary Committee in 1960, not because it was not a good bill, but because of a public versus private power controversy over Rural Electric Cooperative power lines within the municipality. Under the Rural Electric Cooperative Act, a cooperative does not have the power to furnish electricity to persons within an incorporated area containing in excess of 2500 persons unless it is agreeable to the municipality.93a Therefore, if a municipality annexes an area in which a cooperative is furnishing electricity, the cooperative must either reach agreement with the municipality, or dispose of its facilities.

Legislation was also introduced in 1960 to define more clearly the term "freeholder," limiting freeholder to a one-third or one-fourth interest for the purposes of annexation. Once again the Legislature indicated its indifference to municipal problems.

The American Municipal Association has developed certain basic principles for a good annexation law, some of which are summarized as follows (not in corresponding order):

1. Municipalities should have the authority to initiate and consummate, by council action, the annexation of unincorporated territory.

2. Annexation solely for the purpose of increasing municipal revenue, without an ability or intent to benefit the area by rendering municipal services, when and as needed, is indefensible.

3. Simple procedures should be provided for annexations where the initiative comes from outside areas and the municipality desires annexation.

4. Annexation statutes should provide simple, clear-cut procedures, uncomplicated by unnecessary detail.

5. Requirements for preponderant or compound majorities for initiation by, or consent to, annexation, which grant a minority the means to obstruct or defeat an annexation, are unjustified. So also are restrictions to prohibit the renewal of an attempt to annex during an arbitrary interval following lack of success with a prior effort.

6. Statutes should inhibit the creation of new municipalities within the urbanized area, inhibit the creation of special purpose districts therein, and provide for buffer zones of a certain radius around sizeable cities so as to prevent incorporations therein.

7. Consideration should be given to the growing tendency of county governments to render "municipal" services in built-up areas peripheral to established cities where such financing comes from general county revenues (raised primarily within the cities).

XI. RECOMMENDATIONS

1. Recommended that a Department of Municipal Affairs be created. Such department would be primarily con-

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94. See American Municipal Association, Basic Principles for a Good Annexation Law (1960). The specifications herein "... have been developed by a deliberative process involving some 25 knowledgeable and interested municipal officials and specialists in municipal law, professors of law and government, and state municipal league executives, brought together in three separate meetings for nearly thirty hours of serious and earnest discussion."
cerned with dissemination of information to urban areas. This would be justified because not all South Carolina counties are rich enough to have full time planning staffs. South Carolina can profit by the mistakes of other urban areas and thus provide for or insure proper growth and development of our cities, towns, and urban centers.

2. Recommended that a legislative commission be established to investigate the problems of our cities and urban areas for the purpose of recommending legislation to solve existing problems and to plan for the future. A legislative commission to study municipal financial affairs was created by the 1960 Legislature.

A. It is suggested that the Legislature look into the advisability of enacting constitutional amendments to permit special legislation as a means of solving metropolitan problems, similar to that given by the Constitution for county governments. This method would not be suggested were it not for the condition of the Constitution. The fact is that South Carolina is woefully behind in solving municipal problems. While it is true that liberal laws would aid future metropolitan development, many metropolitan problems cannot be solved quickly and adequately without resorting to special laws.

B. It is suggested that due consideration be given to the annexation procedure in Virginia providing for court approval for annexations or to the creation of a quasi-judicial agency.

3. Recommended that legislation be enacted providing that once an annexation procedure has been initiated, incorporation proceedings for the same area would be prohibited until a final determination of the annexation procedure and vice versa.

XII. CONCLUSION

All the authorities are agreed that proper planning is essential to the orderly growth and development of cities and metropolitan areas. "It aims to control and guide the development of the area in such a way as to make it serve its

"Planning for the future is equally essential to avoid waste of public funds through lack of research, imagination, and foresight."**97** "It is common knowledge that the costs involved in making good plans are only a fraction of the financial cost of the failure to plan."**98**

Since annexation has been a useful device in solving metropolitan problems, problems that have arisen for the most part because of improper planning, it would seem that South Carolina should liberalize its laws to meet the challenges afforded by urban growth. South Carolina, as it becomes more industrialized with its concurrent urbanization, will find itself faced with the same problems other states have faced, and the Legislature should tackle these problems, thus profiting by the mistakes of others, instead of following routes that can only cause pain to the State in the future. The real question for decision is whether the State will permit our cities to progress or allow them to deteriorate in the stagnation of archaic laws. And even more important, will the State shirk its responsibility, thus causing the cities to look to the federal government for relief in the areas the state has had traditional authority.

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97. *Bromage, op. cit. supra* note 92, at 399.