

spotlight

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TEN MYTHS OF THE ANNEXATION PROCESS

The truth is, N.C.'s annexation law lets municipalities run wild

KEY FACTS: • The annexation law, despite hollow claims to the contrary, imposes few requirements on municipalities and offers little protection for citizens when it comes to forced annexation.

- Municipalities can forcibly annex areas that do not meet density requirements.
- Municipalities can forcibly annex areas that are not “urban.”
- The public hearing likely is the biggest sham of the entire process. Municipal leaders have no relationship with the affected property owners. The affected property owners have no way of holding municipal leaders accountable. As a result, municipalities have no reason to care about what those property owners say at the public hearings.
- Municipalities usually do not have to provide water and sewer services within two years. Affected property owners must know about an obscure requirement to request water and sewer within five days after the public hearing, otherwise it could take more than a decade (if not longer) before water and sewer service is provided.
- Municipalities can violate the law’s procedural requirements so long as a court finds that the violation does not “materially prejudice the substantive rights” of the property owners. Assuming property owners could even afford the considerable resources necessary to challenge a municipality in court, it would be unlikely for a court to find that a procedural violation caused the required material harm.

200 W. Morgan, #200
Raleigh, NC 27601
phone: 919-828-3876
fax: 919-821-5117
www.johnlocke.org

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the North Carolina legislature is considering imposing a moratorium on involuntary (forced) annexation through June 30, 2009.¹ The House Finance Committee recently overwhelmingly approved the measure by a bipartisan vote of 25-4.² Ultimately, both the House and Senate will have to agree that a moratorium is necessary.

This *Spotlight* is not about the merits of a moratorium, however. Instead, the purpose of this report is to show how the entire forced-annexation process

created by the annexation statute is a sham. The requirements imposed on municipalities and the protections for citizens are virtually non-existent. This report will dispel ten myths regarding the annexation process (specifically, the process for municipalities with 5,000 people or more)—by doing so, it will show that municipalities can basically do whatever they want when it comes to forced annexation.³

Myth 1: *Municipalities May Forcibly Annex Only Areas that Meet Strict Density Requirements*

Reality: There often are claims that a potential annexed area is required to have a total residential population of two- and three-tenths persons per acre. There is a slight problem with these claims—they are inaccurate. There is no such requirement. Municipalities *may* annex areas based on density. However, they also can annex areas that do not meet any density requirements at all.⁴

Myth 2: *Municipalities May Forcibly Annex Only “Urban” Areas*

Reality: A municipality can annex areas that are “non-urban,” including undeveloped land.⁵ For example, if a municipality is separated from an unincorporated urban area by undeveloped land, the municipality can annex the undeveloped land, in many instances, so that it can grab the unincorporated urban area.⁶ The annexation law calls the undeveloped land “necessary land connections.”⁷

Myth 3: *Affected Property Owners Are Provided Timely and Reasonable Notice Regarding a Forced Annexation*

Reality: A municipality can pass an annexation ordinance within only 70 days of passing a resolution of intent to annex.⁸ Practically, affected property owners would get notice about 20 days after the passage of the resolution—giving them at best 50 days’ notice until the ordinance is passed.⁹

Myth 4: *Property Owners Have Meaningful Recourse Through a Public Hearing*

Reality: The public hearing may be the biggest sham of the entire law. While municipalities do have to hold public hearings,¹⁰ these hearings are simply venting sessions. The municipality has no obligation or relationship to the affected property owners. The affected property owners have no way of holding the municipal leaders accountable. As a result, there is absolutely no reason that a municipality would care what the affected property owners have to say about an annexation.

Myth 5: *Municipalities Have to Provide Water and Sewer Service Within Two Years to All Forced-Annexation Victims*

Reality: Assuming that a municipality is going to provide water and sewer, affected property owners better be paying attention. Otherwise, they may not receive water and sewer for well over a decade, as is happening to thousands of property owners in Fayetteville.¹¹ A property owner must know to submit a form requesting water and sewer within five days after the public hearing.¹²

Municipalities rely on citizens being unaware of this requirement. As seen in Salisbury, where an annexation was dropped due to an influx of requests for water and sewer,¹³ municipalities do not want citizens to request water and sewer.

Also, the two-year requirement does not apply when there is problematic topography.¹⁴ In those instances, a municipality can “provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.”¹⁵ In other words, the municipality can provide water and sewer lines when it feels like it.

Myth 6: Municipalities May Forcibly Annex Only Contiguous Areas

Reality: As is typical of the law, nothing is as it appears. The definition of “contiguous” is not limited to contiguous areas.¹⁶ For example, an area is “contiguous” to a municipality if it is separated by land owned by another political subdivision.¹⁷ If Cary, for instance, wanted to annex an area, but Raleigh owned the land between Cary and the desired area, Cary could jump over Raleigh and grab the land.

Myth 7: Forced Annexation Victims Do Not Have to Pay Property Taxes Until They Receive the Promised Services

Reality: Annexation victims have to pay property taxes for services even if they are not receiving the services.¹⁸ The only recourse for affected property owners is to petition the Local Government Commission (LGC) and ask for an abatement of taxes.¹⁹ A very small refund may be provided if water and sewer services are not made available.

Individuals that did not want to be annexed have to spend the time and money to go to the LGC just to stop paying taxes they should not have been required to pay in the first place. Instead of having a common-sense provision that affected property owners (i.e., North Carolina citizens) do not have to pay taxes until all the services are provided, the citizens have to jump through hoops while municipalities get unjustly compensated. Worst of all, there are no penalties for these municipalities.

Myth 8: Annexation Victims Would Not Be Affected by Municipal Restrictions on Animal Ownership

Reality: The annexation law exempts large working farms from the animal restrictions that a municipality has in place.²⁰ However, for hobby farm owners and individuals who live in neighborhoods that permit horses (but their property would not qualify as a working farm), forced annexation may mean leaving communities or saying goodbye to life-long animal companions. This very issue is being played out in the Wilmington area.²¹

Myth 9: Municipalities Have to Meet Some Financial Standards to Forcibly Annex Areas

Reality: Despite the incredible investment and risk involved with a forced annexation, there are no financial standards imposed on municipalities. All that is required is “a statement showing how the proposed annexation will affect the city’s finances and services, including city revenue change estimates.”²²

If the statement shows the finances will be harmed, there is nothing in the law that would allow someone to stop the forced annexation. Of course, statements never would include anything negative since municipalities that want to annex areas are developing the statements. There are no means of oversight to review whether the estimates are reasonable.

Myth 10: The Annexation Law Provides Affected Property Owners Meaningful Recourse in Court

Reality: North Carolina citizens that never wanted to be forcibly annexed in the first place must have considerable resources to challenge a municipality in court. This obstacle by itself may ensure that a municipality can do whatever it wants.

The annexation statute permits the property owners to challenge procedural and other very limited matters.²³ They may not challenge the merits of the annexation.

As a practical matter, municipalities would have very little to worry about if they violated the law’s procedural requirements. If a municipality violates these requirements, that by itself would not be enough for a court to take corrective action. The court also would have to find that the procedural violations “materially prejudiced the substantive rights” of the property owners.²⁴ Such a finding would likely be rare.

Conclusion

There is one final myth that should be addressed: municipalities are the biggest problem when it comes to forced annexation. While municipalities do not deserve any awards, the reality is the annexation law itself is the biggest problem. The annexation statute goes out of its way to protect municipalities. There is something wrong with this picture. If the legislature provided at least some reasonable protections for citizens, municipalities would not be able to do whatever they wanted.

Daren Bakst, J.D., LL.M., is Legal and Regulatory Policy Analyst for the John Locke Foundation.

End Notes

1. General Assembly of North Carolina, Session 2008, House Bill 2367, www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=h2367&submitButton=Go.
2. Jordan Schrader, "Annexation moratorium advances," *Asheville Citizen-Times*, June 12, 2008, www.citizen-times.com/apps/pbcs.dll/article?AIID=200880612051.
3. The annexation statute has different standards for municipalities with fewer than 5,000 people and for those with more than 5,000 people. This paper focuses on the statutory language for municipalities with 5,000 people or more. There is very little difference between the requirements.
4. N.C. Gen. Stat. § 160A-48(c), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-48.html.
5. N.C. Gen. Stat. § 160A-48(d), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-48.html.
6. *Ibid.*
7. *Ibid.*
8. N.C. Gen. Stat. § 160A-49, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-49.html.
9. *Ibid.* Affected property owners must receive notice in a newspaper two weeks prior to what is called the public information meeting (which is no later than 45 days after the passage of the resolution of intent). Notice also must be mailed first class four weeks prior to the meeting. Practically, this means the first notice likely would come in the mail about 20 days after the passage of the resolution, and the newspaper notice would be about 31 days after passage of the resolution. This therefore means affected property owners would have at best about 50 days' notice before an ordinance could be passed.
10. *Ibid.*
11. See, e.g., Greg Barnes, "Annexation finally pays off for some," WTVD ABC11, March 9, 2007, abclocal.go.com/wtvd/story?section=triangle&id=5290345.
12. N.C. Gen. Stat. § 160A-47(3)(b), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-47.html. Please note that the water and sewer request provision is buried in the statute. It is not even located in the section dealing with the annexation procedures, as a reasonable person would expect.
13. Mark Wineka, "Salisbury drops controversial annexation plan," *Salisbury Post*, April 15, 2008, www.salisburypost.com/Area/041508-salisbury-annexation-stopped.
14. *Op. cit.*, note 12.
15. *Ibid.*
16. N.C. Gen. Stat. § 160A-53, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-53.html.
17. *Ibid.*
18. *Ibid.*
19. N.C. Gen. Stat. § 160A-49(k)-(l), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-49.html.
20. N.C. Gen. Stat. § 160A-49(f1), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-49.html.
21. Sam Scott, "Couples fear for farm if Wilmington absorbs Monkey Junction area," *Wilmington Star-News*, March 18, 2008, www.starnewsonline.com/article/20080318/NEWS/802928591.
22. N.C. Gen. Stat. § 160A-47(5), www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-47.html.
23. N.C. Gen. Stat. § 160A-50, www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-50.html.
24. *Ibid.*