

employee is an officer, director, agent, or member of, or owns a controlling interest in any corporation, firm, partnership, or other business entity which is subject to the regulation of, or which has substantial business commitments from any state agency, county, city, or other political subdivision of the state, he shall file a sworn statement disclosing such interest with the department of state, if he is a state officer or employee, or if he is an officer or employee of a county, city, or other political subdivision of the state he shall file the sworn statement with the clerk of the circuit court of the county in which he is principally employed.

073-115—April 13, 1973

MUNICIPALITIES

EXTENSION OF MUNICIPAL SERVICES TO AREA ANNEXED BY ORDINANCE PENDING JUDICIAL ATTACK ON VALIDITY OF ANNEXATION ORDINANCE

To: Jack Poorbaugh, Representative, 77th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Assuming that a municipality has adopted ordinances of annexation pursuant to §171.16, F. S., and that suit has been brought under §171.04, F. S., to contest those annexation ordinances on the ground, among other things, that the property annexed was not contiguous with the city at the time it was proposed to be annexed and that the area so proposed to be annexed does not form a reasonably compact area when added to the municipality, can the municipality extend municipal services, including police, fire, garbage collection, and health and sanitation, to the area proposed to be annexed during the pendency of the suit and prior to any final adjudication?

SUMMARY:

The procedure prescribed by §171.04(1), F. S., for attacking a municipality's annexation of territory containing less than ten registered voters has been invalidated by the Florida Supreme Court and cannot be used to attack the validity of, or to obtain a stay of, annexation proceedings or of an annexation ordinance adopted under the authority of §171.16, *id.* However, proceedings in *quo warranto* or for an injunction and declaratory relief, in a proper case, are available to attack the validity of such ordinance or annexation proceedings.

Section 171.16, F. S., (1972 Supp.) [§1, Ch. 72-2, Laws of Florida], provides a supplemental method of annexation of contiguous unincorporated property to a municipality. This statute (the validity of which has not as yet been tested in the courts) authorizes a municipality to adopt an ordinance annexing contiguous unincorporated territory merely upon the petition of the owner or owners of the property sought to be annexed, after publication of the proposed ordinance once a week for four consecutive weeks. Section 171.04(1), *supra*, formerly provided a procedure for annexation by a city of contiguous unincorporated territory containing less than ten registered voters and provided that, pending judicial action on objections to such annexation registered by a petition filed in the circuit court, "all further action in the premises by the said city or town shall thereupon be stayed until the further order of the said court." However, this

portion of §171.04(1), *supra*, was invalidated by the Florida Supreme Court in *Auburndale v. Adams Packing Association*, 171 So.2d 161 (Fla. 1965), on the ground that the statute gave the court the power to substitute its will as to the advisability of annexation for that of the municipality's legislative body and was an unconstitutional delegation of legislative power to the judiciary. In these circumstances, it cannot validly be assumed that objectors to annexations made pursuant to §171.16, *supra*, may avail themselves of the procedure prescribed by §171.04(1), *supra*, and of the "stay" provisions of that section. Thus, unless the court has entered an order temporarily enjoining the furnishing of or extension of municipal services to the areas described in and annexed by the presumptively valid annexation ordinance, the city may extend such services to the annexed area, despite the pending litigation.

It might be noted, however, that the processes of the court are available to attack the validity of a municipal ordinance in a proper case, and that a temporary injunction may be issued by the court, enjoining the city from taking any action under the authority of the ordinance attacked in such proceedings, pending the final outcome of the case. *See Bass v. Addison*, 40 So.2d 466 (Fla. 1949), in which the court declined to overturn a temporary injunction issued by the lower court in a suit in equity brought by a taxpayer, challenging the validity of incorporation proceedings taken under the authority of a general law, Ch. 165, F. S.; and *Gillette v. City of Tampa*, 57 So.2d 27 (Fla. 1952), where the court entertained a suit for declaratory relief and an injunction to determine the validity of and to enjoin annexation proceedings taken under the authority of a special act providing an overall plan for extending the boundaries of the City of Tampa. *See also Smith v. Ayres*, 174 So.2d 727 (Fla. 1965); and *Town of Davie v. Hartline*, 199 So.2d 280 (Fla. 1967).

The proper method of seeking relief by way of a judgment of ouster where a municipality has undertaken unlawfully to exercise jurisdiction or control over land is a *quo warranto* proceeding. *See Caldwell v. Losche*, 108 So.2d 295 (2 D.C.A. Fla., 1959). However, the jurisdiction of equity may be invoked in a proceeding for declaratory relief and an injunction when the attorney general has refused to authorize the use of his name in such proceedings and the injured party would be without a remedy at law. *Bass v. Addison*, *supra*; *Farrington v. Flood*, 40 So.2d 462 (Fla. 1949). *See also Town of Davie v. Hartline*, *supra*, in which a suit for declaratory decree was brought to determine that properties were illegally annexed under §171.04, *supra*. And it may be that, even in a *quo warranto* proceeding, the court would enter a temporary restraining order under its constitutional "all writs" power, §5 of revised Art. V, State Const., to preserve the status quo pending a determination of the suit on the merits. *Cf. Stewart v. Thursby*, 137 So. 7 (Fla. 1931); *Astca Inv. Co. v. Lake County*, 98 So. 824 (Fla. 1922); *State ex rel. Pettigrew v. Kirk*, 243 So.2d 147 (Fla. 1970).

073-116—April 13, 1973

MUNICIPALITIES

APPLICABILITY OF REFERENDUM PROVISIONS OF CHARTER ACT OF CITY OF DAYTONA BEACH TO ACTION OF CITY COMMISSION

To: John C. Chew, City Attorney, Daytona Beach

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Does a motion duly adopted by the Daytona Beach City Commission to close the mayor's office in city hall and not to have a