

Annexation of business area, county's objections

Number: INFORMAL

Date: May 28, 1998

The Honorable Joseph R. Spratt
Representative, District 77
205 South Commerce Avenue, Suite B
Sebring, Florida 33870

RE: ANNEXATION--COUNTIES--municipal annexation of predominately business area, county's role. s. 171.0413, Ch. 171, Fla. Stat.

Dear Representative Spratt:

You state that you have been contacted over the last year with various inquiries regarding annexation. Constituents have expressed their concern about the manner in which local governments have been conducting the annexation process. You therefore ask whether the county has any role in a municipality's annexation of property and what relief there is for individuals who may own businesses but do not reside in the area to be annexed.

Chapter 171, Florida Statutes, is the "Municipal Annexation or Contraction Act." [1] The purposes of the act are to establish uniform procedures for adjusting municipal boundaries through annexation or contraction of corporate limits and to set forth criteria for determining when annexation or contraction is appropriate. [2] To accomplish this purpose, the act provides general law standards and procedures for adjusting the boundaries of Florida municipalities and acts as a preemption to the state regarding legislation in this area. [3]

Section 171.0413, Florida Statutes, provides that a municipality may annex contiguous, compact, unincorporated territory by using the procedures described in the statute. The statute requires the governing body of a municipality to adopt a nonemergency ordinance proposing the annexation of the territory. [4] The ordinance does not become effective, however, until at least ten days after it has been approved by a majority of the registered electors in the area proposed to be annexed. [5] Section 171.0413(2), Florida Statutes, provides:

"Following the final adoption of the ordinance of annexation by the governing body of the annexing municipality, the ordinance shall be submitted to a vote of the registered electors of the area proposed to be annexed. If the proposed ordinance would cause the total area annexed by a municipality pursuant to this section during any one calendar year period cumulatively to exceed more than 5 percent of the total land area of the municipality or cumulatively to exceed more than 5 percent of the municipal population, the ordinance shall be submitted to a separate vote of the registered electors of the annexing municipality and of the area proposed to be annexed. The referendum on annexation shall be called and conducted and the expense thereof paid by the governing body of the annexing municipality."

If a majority of the electors in the area to be annexed vote against annexation (or if the issue is

submitted to electors in the area to be annexed and to electors of the annexing municipality but does not receive a majority vote by both groups of electors), the ordinance has no legal efficacy and the area may not be the subject of another annexation attempt for at least two years.[6]

You indicate that in some cases, the land being considered for annexation is owned by individuals or corporations that are not registered electors of the area. Subsection (5) of section 171.0413, provides:

"If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of more than 50 percent of the land in such area consent to such annexation. Such consent shall be obtained by the parties proposing the annexation prior to the referendum to be held on the annexation."[7]

You also express your concern about county input into the process. While Chapter 171, Florida Statutes, does not require the county to approve a municipality's annexation of property, section 171.081, Florida Statutes, establishes the rights of any party affected by such annexation:

"No later than 30 days following the passage of an annexation or contraction ordinance, any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any action instituted pursuant to this section, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees."

Section 171.031(5), Florida Statutes, defines the term "Parties affected" to mean "any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area." Thus, the county in which the property seeking to be annexed by the municipality is located would be a proper party to seek certiorari review of city's annexation ordinance.[8]

I trust that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 171.011, Fla. Stat.

[2] Section 171.021, Fla. Stat. *And see SCA Services of Florida, Inc. v. City of Tallahassee*, 418 So. 2d 1148 (Fla. 1st DCA 1982), *rev. den.*, 427 So. 2d 737 (Fla. 1983) (statutes provide clearly defined and exclusive method by which annexation can be accomplished).

[3] See s. 171.022(2), Fla. Stat., stating that the provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974 (the effective date of Chapter 171, Florida Statutes), are repealed except as provided in Chapter 171. *And see* Art. VIII, s. 2(c), Fla. Const. (municipal annexation of unincorporated territory, merger of municipalities, and exercise of extraterritorial powers by municipalities shall be as provided by general or special law); and s. 166.021, Fla. Stat., stating that municipalities have home rule powers except, among others, on the subjects of annexation, merger, and the exercise of extraterritorial power which require a general law or special law. *But see* Art. VIII, s. 11(1)(c), (5) and (6), Fla. Const., giving Dade County jurisdiction over its municipal annexations.

[4] Section 171.0413(1), Fla. Stat.

[5] *Id.*

[6] Section 171.0413(2)(e), Fla. Stat.

[7] *And see* s. 171.0413(6), Fla. Stat., providing:

"Notwithstanding subsections (1) and (2), if the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. In addition to the requirements of subsection (5), the area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If a referendum of the annexing municipality is not required as well pursuant to subsection (2), then the property owner consents required pursuant to subsection (5) shall be obtained by the parties proposing the annexation prior to the final adoption of the ordinance, and the annexation ordinance shall be effective upon becoming a law or as otherwise provided in the ordinance."

See also Op. Att'y Gen. Fla. 86-73 (1986) (where owners of more than 70 percent of land proposed to be annexed are not registered electors, owners of more than 50 percent of such land must consent to annexation prior to the referendum on annexation).

[8] *See City of Tampa v. Hillsborough County*, 504 So. 2d 10 (Fla. 2d DCA 1986) (County was proper party to seek certiorari review of city's annexation ordinance where it was a governmental unit with jurisdiction over the area to be annexed and owner of 106.7 acres of land included in the annexation area); *City of Sunrise v. Broward County*, 473 So. 2d 1387 (Fla. 4th DCA 1985) (County's allegation that it believed that it would suffer material injury through loss of tax revenue caused by annexation of portion of unincorporated part of county into city satisfied second criterion of s. 171.081 authorizing any "party affected," who believes he will suffer material injury by reason of failure of city to comply with statutory procedure for annexation, to seek certiorari review of proposed ordinance).