

Annexation Guidebook for the CJAA

2015



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Foreword

The following is a guidebook on the topic of annexation in Arkansas. This publication is designed to provide the basics, the steps, the issues, and the relevant case law to help guide the handling of annexation cases. Additionally, incorporation and detachment are briefly discussed.

Be sure to seek and consult with your county attorney on these legal matters/proceedings and forward them a copy of the information provided in this CJAA document.

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Annexation Generally

By: Lindsey Bailey

I. Annexation by Election

Arkansas Code Sections 14-40-301 et. seq. set forth the circumstances and procedures for a city to annex an unincorporated territory by election.

Section 14-40-302 provides that lands that are subject to annexation include any lands that meet any of the following requirements: (1) Platted and held for sale or use as municipal lots; (2) Whether platted or not, if the lands are held to be sold as suburban property; (3) When the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary; (4) When the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; or (5) When they are valuable by reason of their adaptability for prospective municipal uses.

Contiguous lands ***may not*** be annexed if they: (1) At the time of the adoption of the ordinance, have a fair market value of lands used only for agricultural or horticultural purposes and the highest and best use of the lands is for agricultural or horticultural purposes; (2) Are lands upon which a new community is to be constructed with funds guaranteed, in whole or in part, by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970; (3) Are lands that do not include residents, except as agreed upon by the mayor and county judge; or (4) Are lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the mayor and county judge.

If any lands are annexed that are being used exclusively for agricultural purposes, the lands may continue to be used for such purposes so long as the owner desires and the lands shall be assessed as agricultural lands.

A municipality having a population of fewer than 1,000 cannot annex in any one calendar year contiguous lands in excess of ten percent of the current land area of the municipality.

Additionally, whenever practicable, a municipality shall annex lands that are contiguous and not in a manner that creates enclaves.

First, the city shall propose an ordinance that includes: 1) an accurate description of the land that is to be annexed, 2) a schedule of the services to be extended to the land within three years of the final annexation, and 3) a fixed date for the annexation election. The ordinance must be approved by a two-thirds vote of the city's governing body. This election may be either a special election or the next general election, and voters of the annexing municipality and the area to be annexed shall be allowed to participate in the election. If done by special election, it shall be called by ordinance or by the mayor of the annexing town according to state law. If a majority of qualified voters elects to annex the land, then within fifteen days after the election, the county clerk must certify and record the election results and file a certified copy of the results with the Secretary of State's office.

Generally, the annexation will become effective thirty days after the land description and map are filed by the county clerk. An exception exists if the annexation is appealed to circuit court, and then it shall be effective when the judgment of court is final. If a majority of qualified voters does not vote for the annexation, then the annexation ordinance becomes null and void.

Prior to an annexation election, the city clerk will provide the county clerk and county election commission where the land to be annexed is located with copies of the annexation ordinance and maps or plats of the area to be annexed at least sixty days before the election. No less than forty-five days before the election, the city clerk must identify all people who live within the area to be annexed and the county clerk must assist the city clerk in identifying the names and addresses of all qualified voters living in that area. All qualified voters living in the area to be annexed are entitled to vote in the annexation election.

The city clerk has a duty to post at least one notice by insertion into a newspaper with general circulation in the municipality. The county clerk must mail the people identified to her by the city clerk as living in the area to be annexed notice of voter registration deadlines no less than forty days before the election. Additionally, the county clerk must prepare a list of qualified voters by precinct in the area to be annexed and give that list to the election officials at the time the ballot boxes are delivered for the election.

If either the city or county clerks fail to perform their duties under this section of the code, any interested party may file a writ of mandamus against the clerk to compel the performance of his or her duties. If the party can show that the failure to perform substantially prejudiced the party, then the annexation can be found void.

If the annexation becomes final, as soon as practical, the city legislating body will attach the annexed territory to one or more wards by ordinance. Within thirty days of the assignment of wards, the county clerk must determine the affected voters' precinct, enter that information into the voting records, and give notice to those affected.

If more than one city proposes to annex the same area of land by election, then both cities must hold an election. If only one city gets a majority of voters to vote for the annexation, then that city will annex the land. However, if both cities' voters vote for annexation, then a third election will be held in which only the qualified voters of the area to be annexed may vote for into which city they wish to be annexed, and the city receiving the most votes in this election will be the city who is awarded the annexation. For more specific circumstances regarding this type of special election, see Arkansas Code Section 14-40-303(f).

An interested party who alleges that the annexation does not conform to the law set forth in this section may file an action to nullify the election with the circuit court of the county where the property is located within thirty days of the election. The circuit court will then decide whether the proper annexation election standards were followed.

One instance where a 14-40-302 annexation was held to be invalid by the Arkansas Supreme Court was a 2009 case, *City of Centerton v. City of Bentonville*, 375 Ark. 439. In this case, the City of Centerton sought to annex pursuant to 14-40-302 two unincorporated and surrounded areas of land known as "West Island" and "East Island." Both areas are completely surrounded by Centerton and Bentonville. Bentonville filed suit, claiming that West Island did not adhere to the land requirements set

forth in 14-40-302, and the circuit court ruled in its favor. *At least one of the listed criteria for annexation set out in this section must be met before an area may be annexed, whether by ordinance with an election, by ordinance only, or by petition of landowners.* Additionally, if part of the proposed area for annexation does not meet one of the five requirements, then the entire area proposed for annexation is void. *Id.* at 443.

The circuit court found that part of the West Island did not meet any of the criteria required for annexation, and the Supreme Court affirmed their decision. Centerton claimed that in order to take in the whole surrounded island, they had to take that area in. The annexation was held improper, even though to get the land that Centerton wanted, they had to also annex the land that did not fit the requirements for annexation, because there was no “municipal purpose” for annexing that part of the property. Thus, the entire annexation of West Island was “void in toto.” The court also stated that extending water services was not a sufficient “municipal purpose” to validate the annexation.

II. Annexation by Ordinance Only

Under Sections 14-40-501 et. seq., when a municipality has completely surrounded an unincorporated area, the municipality ***may*** propose an ordinance calling for the annexation of the surrounded land (or if the land is surrounded by the city on three sides and the fourth side is a state, a military base, a state park, a national forest, a lake, or a river). If two or more cities surrounded an unincorporated area of land, then unless the cities agree otherwise, the land sharing the greatest distance or perimeter with the unincorporated area can propose an ordinance for annexation of the land.

This ordinance should include a description of the land to be annexed as well as a general description of the services to be provided to the annexed land. Land may only be annexed under this section if the land to be annexed complies with the standards set forth in Section 14-40-302 (outlined in Part I of this memo). Additionally, privately-owned lakes larger than six acres that are used exclusively for recreational purposes and the land adjacent to them up to twenty acres used exclusively for recreational purposes do not qualify for annexation by ordinance only.

Within sixty days of a proposal of an annexation ordinance, a hearing must be held. At least fifteen days before the hearing, the governing body of the city must publish a notice of the hearing with a legal description of the land proposed to be annexed, and notify by certified mail all property owners within the area proposed to be annexed of their right to appear and be heard at the hearing.

At the governing body’s next scheduled meeting following the public hearing, the body may bring the proposed ordinance for annexation up for a vote (except such a vote may not occur within fifty-one days of a special election for annexation of part or all of the same area). If a majority of the total number of the governing body votes for the annexation ordinance, then a *prima facie* case for annexation is established, and the city should proceed to extend services to the area annexed. This decision of the governing body will be final unless an action against annexation is brought in the circuit court where the land is located within thirty days after the passage of the ordinance.

Again, under this section, whenever practicable, cities should annex lands that are contiguous, and not in a manner that creates enclaves.

III. Annexation by Landowner Petition

Pursuant to Arkansas Code Section 14-40-601, “[w]hen a majority of the real estate owners of any part of a county contiguous to and adjoining any city or incorporated town desires to be annexed to the city or town, they may apply by **attested** petition in writing to the county court of the county in which the city or town is situated.” The petition should name the person(s) authorized to act on behalf of the petitioners and also include a schedule of services to be extended to the area within three years after the annexation is final. Under this section the petition must be brought by “a majority of the total number of real estate owners in the area affected if the majority of the total number of owners own more than one-half of the acreage affected.”

When such a petition is presented to the county judge, the county clerk will file it, and the judge must set a date for hearing within thirty days of the filing of the petition. Between the filing of the petition and the hearing, the petitioners must publish notice of the hearing in a newspaper with general circulation around the county in which the property is located, and the notice should be published in the paper weekly for three consecutive weeks. If there is no such newspaper, then the notice must be posted in a public place for at least three weeks before the hearing is held. The notice should include the substance of the petition as well as the time and place of the hearing. The procedures for the hearing must follow the guidelines set forth in Arkansas Code Section 14-38-103 to the extent that it does not conflict with this section of the code.

After a hearing, if the county judge is satisfied that all of the allegations made in the petition are true, that the signature requirements have been fulfilled, that an accurate description of the map of the land to be annexed has been filed, and that the petitioners’ request is right and proper, then the county judge shall enter an order granting the petition for annexation, and the order shall be recorded by the county clerk.

***City of Centerton v. City of Bentonville* cites the 2008 case of *City of Jacksonville v. City of Sherwood* (375 Ark. 107, 111), and makes clear that an annexation is only “right and proper” if it meets at least one of the criteria set out in 14-40-302(a), set forth in Part I of this memo. The Arkansas Supreme Court has found that “the criteria applies regardless of whether the annexation proceeding was initiated by city or by adjoining landowners,” and that “[w]here at least one of the criteria of section 14-40-302(a) is met, the petition of adjoining landowners is ‘right and proper’ under section 14-40-603(a).**

No further action should be taken on an ordered annexation for thirty days after the judge’s order is recorded. Within that thirty days, ***any interested person*** may file an action with the circuit court to challenge the judge’s order for annexation and provide the city seeking to annex the land with notice of their action. Section 14-40-604 provides that “[i]f the court or judge hearing the proceeding shall be satisfied that the requirements for annexation as set out in this subchapter have not been complied with, that the territory proposed to be annexed is unreasonably large, or that the territory is not properly described, the court or judge shall make an order restraining any further action under the order of the county court and annulling it. However, such proceeding shall not bar any subsequent petition.” In other words, if the circuit court judge finds the annexation was in fact improper under the petition that was filed with the county judge, then no other appeals can be brought on that petition. However, another petition could be subsequently filed in compliance with the annexation requirements for later consideration.

If the circuit court determines “that the order of the county court was proper, then the order of the county court shall be affirmed, and the proceedings to prevent the annexation shall be dismissed.” *Id.*

Additionally, if no challenges are brought to the circuit court within thirty days to challenge the order for annexation, then the county judge’s order will be final, and the annexing municipality may accept the annexed land by ordinance or resolution. If the municipality accepts the territory, the county clerk must certify one copy of the plat of the annexed territory, one copy of the order of the court, and the resolution or ordinance of the council. The clerk shall then forward a copy of each document to the Secretary of State, who shall file and keep them. Second, the clerk shall forward one copy of the plat of the annexed territory and one copy of the order of the court to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and keep them and notify all utility companies having property in the municipality of the annexation. Third, the clerk shall forward a certified copy of the order of the court to the council.

As soon as the annexing municipality passes a resolution or ordinance accepting the territory, it shall be deemed within the limits of that town or city, and the inhabitants residing there “shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or incorporated town.” Ark. Code Ann. § 14-40-606.

Within eight years after an annexation by landowner petition has been granted, and the land remains within the annexing municipality, “the person owning all lands originally annexed into the city or town may be authorized to detach those annexed lands from the city or town under the provisions of this section, so long as the city or town has not provided utility services to those lands.” Ark. Code Ann. § 14-40-608. The landowner should notify the municipality that they wish to detach from the city, and the city may then pass an ordinance or resolution detaching the requested property from the city within thirty days. Proper notification by a landowner to the annexing city shall be an affidavit filed with the city clerk that stating that: “(i) His or her land was annexed; (ii) His or her land is located inside the city or town along the municipal boundary; and (iii) He or she desires the annexed land to be detached from the municipality.” *Id.* The affidavit should also include a plat of the land sought to be detached, a copy of the order of the county court granting the city annexation, and a copy of the ordinance or resolution accepting the land annexation.

If the governing body of the city approves the ordinance or resolution to detach the property, then the city clerk must certify and send one copy of the plat of the detached territory, one copy of the ordinance detaching the territory, and one copy of the qualifying affidavit to the county clerk. Then the county clerk must forward a copy of each document to the Secretary of State, which will file and keep them. Additionally, the county clerk must forward one copy of the plat of the detached territory and one copy of the ordinance detaching the territory to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and keep them and notify all utility companies having property in the municipality of the detachment proceedings.

IV. Amendments to Annexation Law from the 2013 Legislative Session by: Lindsey Bailey

A. Act 1071 of 2013

Section 1 added 14-40-504 to the Arkansas Code which prohibits enclaves with regards to annexations by city ordinance:

(a) As used in this section, “enclave” means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town.

(b) Whenever practicable, a city or incorporated town shall annex lands that are contiguous and in a manner that does not create enclaves.

Section 2 added language to 14-40-601 allowing that a petition by landowners for annexation *may include* a schedule of services of the annexing municipality that will be extended to the area within three years after the annexation becomes final.

B. Act 1072 of 2013

Section 1 added some types of land are not suitable for annexation under 14-40-302(b)(1). Lands that “do not include residents” (except as agreed upon by the mayor and county judge), and “lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed (except as agreed upon by the mayor and county judge) are not suitable for annexation.

Section 2 added the same language about prohibiting enclaves whenever practicable to 14-40-302, making the creation of enclaves also generally prohibited for annexations by elections.

C. Act 1502 of 2013

This Annexation and Detachment Transparency Act creates an additional subchapter, to be codified in the Arkansas Code as 14-40-2201 & 14-40-2202.

14-40-2201 provides that beginning March 1, 2014, and every year thereafter, a municipality must annually file with the city clerk and county clerk a written notice describing any annexation elections that have become final *within the last eight years*. The notice should include the schedule of services to be provided to the inhabitants of the annexed land and a statement as to whether or not the scheduled services have been provided to the inhabitants of the annexed land. If the scheduled services have not been provided to the inhabitants within three years after the finalization of the annexation, then the notice shall include a status of the extension of the services as well as a statement of the rights of the inhabitants to seek detachment. A city is not permitted to have any further annexation elections if they are pending scheduled services from previous annexations that have not been provided in three years as required by law.

14-40-2202 provides that in all annexations initiated by election or by landowner petition, after the territory is declared part of the annexing municipality, the inhabitants of the annexed land shall have all the rights and privileges of the inhabitants of the municipality. They must also be provided with the scheduled services within three years after the finalization of the annexation. The schedule of services to be provided to the area must be filed by the mayor of the municipality with the city clerk and county clerk.

If three years after the finalization of the annexation, the scheduled services have not been extended to the area and property boundaries of the new inhabitants, then the written notice of the status of the extension of services shall include a written plan for completing the extension of services

and estimated date of completion, as well as a statement of the right of inhabitants to seek detachment from the municipality. If a city or town has pending scheduled services that have not yet been extended to an annexed property, then it cannot proceed with any additional annexation elections.

V. Amendments to Annexation Law from the 2015 Legislative Session by: Kevin Liang

A. Act 109 of 2015

Section 1 added an additional exception to the annexation of unincorporated areas under 14-40-501, annexation of existing enclaves by ordinance. Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality. Act 109 creates an exception to the “completely surrounded” requirement for when an unincorporated area is only surrounded on three sides because the fourth side is a lake, or a river. (To existing code which includes: state line, state park, military base and national forest.)

B. Act 991 of 2015

Section 1 added A.C.A. § 14-40-409 to the Arkansas Code which amended the law concerning annexations by a 100% petition. If an individual (not corporation or entity) who owns property in a county that is contiguous to a city or town, he or she may petition the governing body of the city or town to annex the property that is contiguous to the city or town. The petition must be in writing, assessed by the property owner or owners, contain an accurate description of the relevant property or properties and include a schedule of services of the annexing city or town that will be extended to the area within three years after the date the annexation becomes final.

The petition must be filed with the county assessor and the county clerk, and within fifteen days of the filing, the county assessor and the county clerk must: verify the identity of the petitioner or petitioners; verify that there are no property owners included in the petition that do not wish to have their property annexed; verify that the property or properties are contiguous with the city or town; and verify that no enclaves will be created if the petition is accepted by the city or town.

After the verification of the petition by the county assessor and the county clerk are completed, the county assessor and the county clerk must present the petition and verifications to the county judge who must review the petition and verifications for accuracy. Within fifteen days the judge must: review the petition and verifications for completeness and accuracy; determine that no enclaves will be created by the annexation; confirm that the petition contains a schedule of services; and issue an order articulating these findings and forward the petition and order to the contiguous city or town.

By ordinance or resolution, the city or town may grant the petition and accept the property for annexation to the city or town. If the contiguous property is accepted, the clerk or recorder of the city or town must certify and send one copy of the plat of the annexed property and one copy of the ordinance or resolution to the county clerk. The county clerk then must forward a copy of each document received

to the Secretary of state and the Director of the Tax Division of the Arkansas Public Services Commission. *For a complete list of procedural requirements please refer to A.C.A. § 14-40-40.

C. Act 845 of 2015

Section 1 added 14-40-207, Annexation of territory under municipal territorial jurisdiction. 14-40-207 states that if a municipality declares its intent by resolution or ordinance to annex a specifically defined territory, or portion of the territory, over which it is exercising territorial jurisdiction under A.C.A. § 14-56-413, the municipality, must initiate annexation proceedings within five years of the stated intent. During the five years, the municipality may continue to exercise its territorial jurisdiction including the defined territory specified within its intent to annex.

If the municipality does not initiate annexation proceedings of the territory specified within its intent to annex within five years of the effective date of the resolution or ordinance, the municipality is prohibited from again exercising territorial jurisdiction over the territory specified within its intent to annex for the next five years.

D. Act 882 of 2015

Section 1 added 14-40-2006, Provision of municipal services. In a municipal services matter under this subchapter, if a city or incorporated town from which the inhabitants detached determines that the scheduled services are available or became available to the detaching inhabitants by the city or incorporated town to which the inhabitants were annexed into, the inhabitants must automatically be detached and annexed back into the original city or incorporated town after the expiration of one hundred eighty days following the date the schedule of services became available to the inhabitants and the inhabitants have not used the services.

E. Act 914 of 2015

Section 1 added 14-38-116, map required with Arkansas Geographic Information Systems Office upon incorporation or unincorporation. Before an entity undertakes an incorporation or unincorporation proceeding under 14-38-116, the entity must coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant incorporated or unincorporated areas.

Section 2 added 14-40-101, map required with Arkansas Geographic Information Systems Office upon annexation, consolidation or detachment. Before an entity undertakes an annexation, consolidation, or detachment proceeding under this chapter, the entity shall coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant annexation, consolidation, and detachment areas.

**CITIZENS RIGHTS AND PROTECTIONS CONCERNING REGULATIONS BY CITIES
OF UNINCORPORATED AREAS & CORRECTION OF POOR ANNEXATION
PRACTICES**

By: Mark Whitmore, AAC Chief Legal Counsel

The General Assembly enacted a series of laws during the 2013 regular session addressing adverse impacts to Arkansans from regulations imposed by cities upon lands in the unincorporated areas of the county and from annexations. These changes in the law will greatly benefit Arkansans.

EXTRA-TERRITORIAL JURISDICTION

Only a few states authorize cities to regulate lands outside the city limits. Areas outside cities where a city may exercise planning jurisdiction are frequently referred to as “extra-territorial planning jurisdiction” (“ETJ”). ACA 14-56-413 authorized cities of the first class, cities of the second class and incorporated towns the power to exercise up to 5 miles extra-territorial planning jurisdiction. In contrast, the area of the extra-territorial planning jurisdiction in those states with ETJ are reasonable {Arizona 2miles; Illinois 1.5 miles; Nebraska 2 miles}; and often enhanced based upon city population {North Carolina 1 to 3 miles depending on population; Wisconsin 1 to 4 miles depending on population}. Arkansas is a rural state. No state provides an extra-territorial jurisdiction of 5 miles to cities regardless of population--to the extent of Arkansas law. Rural Arkansans choose to reside in rural areas in part to be free from regulations by cities. Since large metropolitan cities like Chicago, Phoenix and Charlotte have found no need for 5 miles of ETJ, why would Camden, Van Buren or Hot Springs need 5 miles ETJ?

HB 1773 , now **Act 1053 of 2013**, sponsored by Representative Bruce Cozart and Senator Jake Files brings Arkansas into line with other states with extra-territorial planning jurisdiction. It limits the planning jurisdictions by population to: 1 mile for cities all cities less than 60,000; 2 miles for cities of 60,000 population to 150,000; and 3 miles for cities over 150,000 population. Cities that annex and move their boundary will get a new mile or miles depending on population. **Act 1053 of 2013** will prevent a city from imposing burdensome, unnecessary and costly regulations on rural lands miles outside cities. Research and testimony demonstrated that small cities were exercising 5 miles ETJ without any possible foreseeable need. Some of these cities had not grown in decades; and some cities were enforcing the ETJ selectively.

Imposing urban road standards upon rural areas may stifle growth and development. Urban/city road standards (ranging from curb, gutter, storm drainage, asphalt overlays to sidewalk or street light requirements) should be reserved for urban areas. County road standards are sufficient and more suitable for rural for roads and rural Arkansas. Roads built to county roads standards handle drainage better and are less costly to build and maintain. Furthermore, roads in the unincorporated areas of the county must comply with rural road standards for the county judge to consider accepting a road for perpetual maintenance as public roads under ACA 27-67-207 and ACA 14-17-208.

HB 1773, now **Act 1053 of 2013**, also helps bring Arkansas law back into line with the Arkansas Constitution and laws of Arkansas. ACA 14-56-413 was amended in 1965 purporting to grant cities exclusive planning authority in the ETJ. Amendment 55 of the Arkansas Constitution was adopted by the people in 1974 along with implementing legislation in 1977 including: ACA 14-14-1101 and 14-14-1102 which confide in the county judges the authority to administer the plan of public roads and responsibility for the maintenance, construction,

including drainage, operation of public road **throughout** the unincorporated areas of the county, including the ETJ area. Likewise, ACA 14-14-801 et seq grants the legislative authority of the county to the Quorum Court, not city councils. ACA 14-56-413 conflicted with Amendment 55 and implementing legislation. As per Attorney General Opinion No. 2006-050, the foregoing and following, cities under ACA 14-56-413 did not have exclusive authority to regulate in the ETJ. See also: *City of Jacksonville v. City of Sherwood*, 375 Ark. 107 (2008) held that the territorial planning jurisdiction of a city was not exclusive; *Arkansas Soil and Water v. City of Bentonville*, 351 Ark. 289 (1979) held that the city did not have exclusive planning the state and district water plan are in force.

More important than what the law has been since Amendment 55, **Act 1053 of 2013** responds by making the law what it should be. **Act 1053** reduces the extra-territorial planning jurisdiction authorized to be used by cities to reasonable limits and includes differentiation based upon population. **Act 1053** will allow tens of thousands of residents and landowners in rural Arkansas outside the reduced ETJ (miles away from urban city lands) to be free to develop their lands without undue burdens from potential city regulations.

ANNEXATION: IMPROVED PRACTICES & CITIZENS RIGHTS AND PROTECTIONS

During the 2013 regular session the General Assembly also enacted several laws addressing certain poor annexation practices and providing inhabitants of the annexed areas certain rights and protections. Sheriffs, firemen and other first responders demonstrated to the satisfaction of the General Assembly that some poor annexation practices create safety risks and undue burdens. One poor annexation practice is the creation of “enclaves” or holes of unincorporated areas within a city. The Arkansas Geographic Information showed that the problem with enclaves is widespread. They discovered a total of 258 enclaves in 87 cities. Other states have enacted these laws requiring cities to annex without creating enclaves. Current law, ACA 14-40-501 et seq., already allows cities by ordinance to eliminate existing enclaves. **Act 1071** will prevent the creation in the future of more enclaves. The General Assembly responded to these problems by passing **SB 530** sponsored by Senator Bill Sample, now **Act 1071**. **Act 1071** directs cities in the future to annex lands that are contiguous and “*in a manner that does not create enclaves*”.

Similarly, first responders are tasked unnecessarily where a city annexes small strips along highways for miles outside the actual city growth area or part of a street. These strips and part of road annexation practices like enclaves create: serious safety risks for the general public; confusion for dispatchers and first responders; result in waste of first responder resources; and cause multiple law enforcement agencies or fire departments to respond to the same emergency. Some cities will annex areas of commercial businesses far from the actual city growth for revenue purposes or annex small strips which encompass only part of a street. The General Assembly responded to these problems by passing **SB 531** sponsored by Senator Bill Sample, now **Act 1072**. During a meeting of the CJAA last Fall the vast majority of county judges reported that the poor practice of strip annexations of businesses only and parts of streets is widespread and statewide. As per **Act 1072** annexations by elections under ACA 14-40-302 will in the future require that lands annexed not just be a set of business, but affirmatively include residences (except as agreed upon by the mayor and county judge) and that annexations encompass the entire width of a public road right-of-way (except as agreed upon by the mayor and county judge).

County judges preside over voluntary annexations which are submitted by petition to county court. Unfortunately, it is commonplace for parties to appear at the county court hearing and assert that signatures on the petitions are forgeries. Contesting signatures can result in years of litigation. Section 2 of **Act 1071** now requires the signatures on the petition be attested. This will help catch fraud before the county court.

It is also common for citizens that have lands annexed by election or by voluntary annexation to not receive city *services scheduled* within the 3 years required by law. Section 2 of **Act 1072** partially addressed this issue by making explicit that a voluntary petition for annexation in county court *may* include the petitioner's (understanding of) the *schedule of services* to be provided to the area by the city. If the city objects to the *schedule of services* in the petition, they can appear at the annexation hearing and object; or when the order of annexation is forwarded to the city, the city can refuse to enter an ordinance confirming the annexation. Then the petitioner can thereupon decide to adjust or delete the *schedule of services* accordingly or decide not to pursue the annexation.

SB 861 sponsored by Senator Missy Irvin and Representative Micah Neal, now **Act 1502 of 2013**, provides explicit rights to the inhabitants of the annexed areas including having: all rights of citizens of the city; the right to have the *scheduled services* extended within 3 years after the annexation is final; **specific written notice** in all annexations setting forth a plan on completing the extension of services; and a written notice of the rights of the inhabitants to seek detachment. **Act 1502** to be codified as ACA 14-40-2201 further provides that starting March 1, 2014 and each successive year thereafter a city shall file an **annual written notice** with the city clerk and county clerk. The notice shall describe any annexations that have become final in the past 8 years and include: the *schedule of services* to be provided; identify the services to date provided; identify the services to date not provided; and if the services on *schedule of services* have not been provided in the requisite 3 years required by law the notice shall include the rights of the inhabitants of the annexed area to seek detachment. "Detachment" is a proceeding in county court to return the lands annexed back into the unincorporated areas of the county. **Act 1502** also provides that; "A city or incorporated town shall not proceed with annexation elections if there are pending *scheduled services* that have not been provided in the requisite 3 years mandated by law.

These laws on annexation will greatly enhance citizens' rights and their access to information and documentation of the status of .extension of the *scheduled services*. The law even places a moratorium upon further annexation, where a city fails to discharge the duty to extend services to the annexed lands within the 3 years. Once education and compliance to these laws is well-known, best practices by cities in annexations will be the rule. The creation of enclaves and annexation of small strips or parts of roads will be fewer. Failing to extend *scheduled services* in the time required by law, should become a rare exception.

These areas of Arkansas law were in serious need of attention by the General Assembly. The General Assembly responded and enacted the laws referenced above to empower landowners.

These accomplishments will hopefully be as lasting as they are substantial.

Annexation Statutes

Chapter 40 Annexation, Consolidation, and Detachment By Municipalities

14-40-201. Territory contiguous to county seat.

In counties having two (2) levying courts or in counties having a population of not less than thirteen thousand two hundred fifty (13,250) and not more than fourteen thousand (14,000) according to the most recent federal census where territory contiguous to the county seat needs fire, police, water, and sanitary services of that town to protect the public health, safety, and convenience of inhabitants of both the town and its contiguous territory, the council of any such incorporated town or city of the second class shall have the power to annex the territory contiguous thereto by ordinance, passed and published in the manner provided by law for the passage and publication of ordinances.

14-40-202. Territory annexed in different judicial district.

(a) In any county in this state in which there is more than one (1) judicial district of its county court with a separate levying or quorum court in and for each of the districts, lands lying in one (1) of the districts may be annexed to a city or incorporated town lying in another of the districts, and be and become a part of the city or incorporated town, if otherwise the lands may be annexed, in the manner provided by law.

(b) For the purposes of this section, the county court of the district in which the city or incorporated town is located is vested with jurisdiction over that portion of the county where lie the lands to be annexed in the hearing and determination of the annexation.

(c) Appeals from any orders therein of the county court shall be taken to the circuit court of the same district, all as in the manner provided by law.

(d)

(1) In the event of any such annexation, any lands so annexed shall thereafter be and become, for all purposes provided by law, including local option election status, a part of the same district in which the city or incorporated town is located.

(2) Thereafter the county, circuit, and district courts of the district shall have and exercise jurisdiction over the annexed lands and the residents thereof the same as if the lands had been located in the district when it was created.

14-40-203. Assignment of annexed territory to ward.

(a) When any territory shall have been annexed to any incorporated town or city, it may be, and it is, the duty of the town or city council of the incorporated town or city to attach and incorporate the annexed territory to and in one (1) or more wards of the incorporated town or city lying adjacent

thereto, which may be done by ordinance duly passed by a majority of the members elected to the council.

(b) The territory so assigned and attached to a ward shall immediately be considered and become a part thereof as fully as any other part of it.

14-40-204. Annexation of city-owned parks and airports.

(a)

(1) From and after the passage of this subsection, all city-owned parks and city-owned airports in cities of populations between forty thousand (40,000) and eighty thousand (80,000) in counties whose population is one hundred forty thousand (140,000) or over are annexed to the cities owning the parks and airports.

(2) This subsection shall apply to other cities and counties in the future meeting the population requirements, as shown by the federal census.

(b) All city-owned parks owned by cities in this state having a population of not less than six thousand (6,000) and not more than six thousand four hundred fifty (6,450) and located in counties having a population of not less than twenty-two thousand six hundred (22,600) and not more than twenty-two thousand eight hundred (22,800), according to the most recent federal census, are annexed to the cities owning the parks.

14-40-205. Territory within one-half mile of state park.

(a) None of the annexation laws of this state shall have any application in the area within one-half mile of the boundaries of any state park located in a county with a population in excess of three hundred fifty thousand (350,000) persons unless the annexation is approved by a majority of the voters residing within such one-half mile area, the area to be annexed is on the opposite side of a navigable river from the state park, or the area to be annexed is on the opposite side of and south of an existing railroad right-of-way from the state park.

(b)

(1) Any order of the county court issued in contradiction hereof is void if the order is issued after August 1, 1997.

(2) However, if any county court order was issued after August 1, 1997, annexing an area on the opposite side of and south of an existing railroad right-of-way from a state park, then the county court order is declared valid and not void.

14-40-206. Territory annexed with prior county permit or approval in use.

If a county had issued a permit or approval for construction, operation, or development before a municipal annexation proceeding begins for a project in the area that the municipality intends to annex, the municipality shall honor and give full effect to county permits and approvals on lands to be annexed.

14-40-301. Construction.

The provisions of this subchapter shall not be construed to give any municipality the authority to annex any portion of another city or incorporated town.

14-40-302. Authority -- Exceptions.

(a) By vote of two-thirds (2/3) of the total number of members making up its governing body, any municipality may adopt an ordinance to annex lands contiguous to the municipality if the lands are any of the following:

- (1) Platted and held for sale or use as municipal lots;
- (2) Whether platted or not, if the lands are held to be sold as suburban property;
- (3) When the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary;
- (4) When the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; or
- (5) When they are valuable by reason of their adaptability for prospective municipal uses.

(b) (1) Contiguous lands shall not be annexed if they:

(A) At the time of the adoption of the ordinance, have a fair market value of lands used only for agricultural or horticultural purposes and the highest and best use of the lands is for agricultural or horticultural purposes;

(B) Are lands upon which a new community is to be constructed with funds guaranteed, in whole or in part, by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970;

(C) Are lands that do not include residents, except as agreed upon by the mayor and county judge; or

(D) Are lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the mayor and county judge.

(2) Any person, firm, corporation, partnership, or joint venturer desiring to come within this exclusion must have received from the United States Department of Housing and Urban Development a letter of preliminary commitment to fund the new community under one (1) of the federal acts.

(3) If any lands are annexed that are being used exclusively for agricultural purposes, the lands may continue to be used for such purposes so long as the owner desires and the lands shall be assessed as agricultural lands.

(c) However, a municipality having a population of fewer than one thousand (1,000) persons shall not annex in any one (1) calendar year contiguous lands in excess of ten percent (10%) of the current land area of the municipality.

(d)

(1) Whenever practicable, a city or incorporated town shall annex lands that are contiguous and in a manner that does not create enclaves.

(2) As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town.

14-40-303. Annexation ordinance -- Election -- Procedures.

(a) The annexation ordinance shall:

(1) Contain an accurate description of the lands desired to be annexed;

(2) Include a schedule of the services of the annexing municipality that will be extended to the area within three (3) years after the date the annexation becomes final; and

(3) Fix the date for the election provided in this section.

(b)

(1) The annexation ordinance shall not become effective until the question of annexation is submitted to the qualified electors of the annexing municipality and of the area to be annexed at the next general election or at a special election. The special election shall be called by ordinance or proclamation of the mayor of the annexing municipality in accordance with § 7-11-201 et seq.

(2)

(A) If a majority of the qualified electors voting in the election vote for the annexation, no later than fifteen (15) days following the election, the county clerk shall certify the election results and record the same, along with the description and a map of the annexed area, in the county records, and file a certified copy thereof with the Secretary of State.

(B) The annexation shall be effective, and the lands annexed shall be included within the corporate limits of the annexing municipality thirty (30) days following the date of recording and filing of the description and map, as provided in this section, or in the event an action is filed with the circuit court as provided in § 14-40-304, on the date the judgment of the court becomes final.

(3) If a majority of the qualified electors voting on the issue at the election vote against the annexation, the annexation ordinance shall be null and void.

(c) (1) (A) The city clerk shall certify two (2) copies of the annexation ordinance and a plat or map of the area to be annexed and convey one (1) copy to the county clerk and one (1) copy to the county election commission at least sixty (60) days before the election.

(B)

(i) No later than forty-five (45) days prior to the election, the city shall identify all persons who reside within the area proposed to be annexed, and the county clerk shall assist the city in determining the names and addresses of all qualified electors residing within that area.

(ii) The failure to identify all persons residing within the area proposed to be annexed or the failure to determine the names and addresses of all qualified electors residing within that area shall not invalidate or otherwise affect the results of the election.

(C) All of the qualified electors residing within the territory to be annexed shall be entitled to vote in the election.

(D) The city clerk shall give notice of the election by publication by at least one (1) insertion in some newspaper having a general circulation in the city.

(2)

(A) The county clerk shall give notice of the voter registration deadlines at least forty (40) days before the election by ordinary mail to those persons whose names and addresses are on the list provided by the city clerk.

(B) The county clerk shall prepare a list by precinct of all those qualified electors residing within the area to be annexed who are qualified to vote in that precinct and furnish that list to the election officials at the time the ballot boxes are delivered.

(3) If the county clerk or the county election commission shall fail to perform any duties required of it, then any interested party may apply for a writ of mandamus to require the performance of the duties. The failure of the county clerk or the county election commission to perform the duties shall not void the annexation election unless a court finds that the failure to perform the duties substantially prejudiced an interested party.

(d) If the annexation is approved and becomes final, as soon as practical after the annexation the governing body of the city shall attach and incorporate by ordinance the annexed territory to and in one (1) or more wards of the city lying adjacent thereto, and the territory so assigned and attached to a ward shall thereafter be considered and become a part thereof as fully as any other part of the city.

(e) From the map or plat provided by city ordinance of the wards assigned, the county clerk shall proceed to ascertain and determine the voters' proper precinct and shall enter the same upon the voter registration records of those inhabitants of the territory so annexed and give notice of that change within thirty (30) days after the adoption of the city ordinance assigning the territory to wards.

(f)

(1) In the event that within thirty (30) days of the date that one (1) city calls for an annexation election, another city calls for an annexation election on all or part of the same land proposed to be annexed by the first city, then both annexation elections shall be held, provided that the second city must call for its annexation election to be held on the next available date in accordance with § 7-11-201 et seq. before or after the holding of the first city's election.

(2)

(A) If the annexation election held first is approved by the voters, the results of it shall be stayed until the second annexation election is held.

(B)

(i) If only one (1) of the annexation elections is approved by the voters, then the city that called that election shall proceed with the annexation of the land.

(ii)

(a) Except as provided in subdivisions (f)(2)(B)(ii)(b) and (c) of this section, if both annexation elections are approved by the voters, then a third election shall be held three (3) weeks after the second annexation election. The provisions of § 7-11-201 et seq., governing the procedures and dates on which special elections may be held shall not apply to the third annexation election provided in this subsection.

(b) If the date of the third election falls upon a legal holiday, the election shall be held four (4) weeks after the second annexation election.

(c) If the date of the election under subdivision (f)(2)(B)(ii)(b) of this section is a legal holiday, the election shall be held five (5) weeks after the second annexation election.

(iii) Notice of the third election shall be published in a newspaper circulated in the area to be annexed during the period following the second election.

(iv) Only the residents of the area proposed to be annexed by both cities shall vote in the third election.

(v) The issue on the ballot in the third election shall be into which of the two (2) cities the residents of the area want to be annexed.

(vi) The area shall be annexed into the city receiving the most votes in the third election.

(vii) In the event of a tie vote in the third election, the area shall be annexed to the city that had the highest percentage vote in favor of the annexation in the first or second election.

(3) If the city that does not get to annex the area voted on by both cities included land in its annexation election other than the land voted on by both cities, then that land shall be annexed into the city if it is still contiguous to the city after the other land is annexed to the other city, but the land shall remain part of the county if it is not so contiguous.

14-40-304. Judicial review.

(a) If it is alleged that the area proposed to be annexed does not conform to the requirements and standards prescribed in § 14-40-302, a legal action may be filed in the circuit court of the county where the lands lie within thirty (30) days after the election to nullify the election and to prohibit further proceedings pursuant to the election.

(b) In any such action filed in the circuit court of the county where the lands lie, the court shall have jurisdiction and the authority to determine whether the procedures outlined in this subchapter have been complied with and whether the municipality has used the proper standards outlined in § 14-40-302 in determining the lands to be annexed.

14-40-401. Authority.

(a) The General Assembly finds that there are areas within adjoining counties that are so necessary to the satisfactory conducting of a city's business that there is a need to annex land lying in the adjoining county into the city. This law will aid the residents to receive needed services to improve the quality of life in the unincorporated area.

(b) Any lands contiguous to a municipality having a population of seventy-five thousand (75,000) or less, although located in an adjoining county, may become annexed to the municipality in the manner provided in this chapter.

14-40-501. Authority -- Exceptions.

(a) (1) (A) (i) Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality.

(ii) Subdivision (a)(1)(A)(i) of this section shall include situations in which the incorporated limits of a municipality have surrounded an unincorporated area on only three (3) sides because the fourth side is a boundary line with another state, a military base, a state park, or a national forest.

(B) If the incorporated limits of two (2) or more municipalities have completely surrounded an unincorporated area, the governing body of the municipality with the greater distance of city limits adjoining the unincorporated area's perimeter may propose an ordinance calling for the annexation of the land surrounded by the municipalities, unless it is agreed by the adjoining municipalities that another of the adjoining municipalities should propose an ordinance calling for the annexation.

(2) The ordinance will provide a legal description of the land to be annexed and describe generally the services to be extended to the area to be annexed.

(b)

(1) The unincorporated area to be annexed shall comply with the standards for lands qualifying for annexation which are set forth in § 14-40-302.

(2) Privately owned lakes exceeding six (6) acres of water surface which are used exclusively for recreational purposes and lands adjacent to them not exceeding twenty (20) acres in size which are used exclusively for recreational purposes in relation to the lake shall not qualify for annexation under the provisions of this subchapter.

14-40-502. Hearing -- Notice.

(a) A public hearing shall be conducted within sixty (60) days of the proposal of the ordinance calling for annexation.

(b) At least fifteen (15) days prior to the date of the public hearing, the governing body of the municipality shall publish a legal notice setting out the legal description of the territory proposed to be annexed and notify by certified mail all the property owners within the area proposed to be annexed of their right to appear at the public hearing to present their views on the proposed annexation.

14-40-503. Procedure for annexation.

(a) (1) (A) Except as provided in subdivision (a)(1)(B) of this section, at the next regularly scheduled meeting following the public hearing, the governing body of the municipality proposing annexation may bring the proposed ordinance up for a vote.

(B) An ordinance shall not be enacted within fifty-one (51) days of a scheduled election to consider annexing all or part of the area in question.

(2) If a majority of the total number of members of the governing body vote for the proposed annexation ordinance, then a prima facie case for annexation shall be established, and the city shall proceed to render services to the annexed area.

(b) The decision of the municipal council shall be final unless suit is brought in circuit court of the appropriate county within thirty (30) days after passage to review the actions of the governing body.

14-40-504. Enclaves prohibited.

(a) As used in this section, "enclave" means an unincorporated improved or developed area that is enclosed within and bounded on all sides by a single city or incorporated town.

(b) Whenever practicable, a city or incorporated town shall annex lands that are contiguous and in a manner that does not create enclaves.

14-40-601. Application by petition.

(a) When a majority of the real estate owners of any part of a county contiguous to and adjoining any city or incorporated town desires to be annexed to the city or town, they may apply by attested petition in writing to the county court of the county in which the city or town is situated, shall name the persons authorized to act on behalf of the petitioners, and may include a schedule of services of the annexing municipality that will be extended to the area within three (3) years after the date the annexation becomes final.

(b) The "majority of real estate owners" referred to in this section means a majority of the total number of real estate owners in the area affected if the majority of the total number of owners own more than one half (1/2) of the acreage affected.

14-40-602. Hearing on petition.

(a)

(1) When the petition shall be presented to the county court, the clerk shall file it, and the court shall set a date for a hearing on the petition.

(2) The date for the hearing shall not be less than thirty (30) days after the filing of the petition.

(b) (1) (A) Between the time of the filing of the petition and the date of the hearing, the petitioners shall cause a notice to be published in some newspaper of general circulation in the county.

(B) The notice shall be published one (1) time a week for three (3) consecutive weeks.

(2) If there is no newspaper of general circulation in the county, notice shall be posted at some public place within the limits of the incorporated town or city for at least three (3) weeks before the date of the hearing.

(3) The notice referred to in this subsection shall contain the substance of the petition and state the time and place appointed for the hearing thereof.

(c) The hearing procedure set forth in § 14-38-103 shall be followed in the proceedings concerned in this section insofar as such procedure is not in conflict with any provision expressly set out in this subchapter.

14-40-603. Order for annexation.

(a) After the hearing, if the county court shall be satisfied that the allegations of the petition were sustained by the proof, if the court shall be satisfied that the requirements for signatures under § 14-40-601 have been complied with, and if the court shall be satisfied that the limits of the territory to be annexed have been accurately described and an accurate map thereof made and filed, and that the prayer of the petitioner is right and proper, then the court shall enter its order granting the petition and annexing the territory.

(b) The order shall be recorded by the clerk of the county.

14-40-604. Proceedings to prevent annexation.

(a)

(1) No further action shall be taken for a period of thirty (30) days after the order for annexation has been entered. Within that time any person interested may institute a proceeding in the circuit court to have the annexation prevented.

(2)

(A) If the court or judge hearing the proceeding shall be satisfied that the requirements for annexation as set out in this subchapter have not been complied with, that the territory proposed to be annexed is unreasonably large, or that the territory is not properly described, the court or judge shall make an order restraining any further action under the order of the county court and annulling it. However, the proceeding shall not bar any subsequent petition.

(B) If the court or judge shall determine that the order of the county court was proper, then the order of the county court shall be affirmed, and the proceedings to prevent the annexation shall be dismissed.

(b) When any complaint shall be made in accordance with this section to prevent an annexation of territory, notice thereof shall be given to the city or incorporated town authorities and the agent of the petitioners.

14-40-605. Confirmation of annexation.

(a) If no notice shall be given within thirty (30) days from the making of the order of annexation by the county court, the proceeding before the court shall in all things be confirmed, if the city or incorporated town council shall accept by ordinance or resolution the territory.

(b)

(1) If the council accepts the territory, the county clerk shall duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court and the resolution or ordinance of the council. The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them. The clerk shall forward one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and preserve them and shall notify all utility companies having property in the municipality of the annexation.

(2) The clerk shall forward a certified copy of the order of the court to the council.

14-40-606. Rights and privileges of new inhabitants.

As soon as the resolution or ordinance declaring the annexation has been adopted or passed, the territory shall be deemed and taken to be a part and parcel of the limits of the city or incorporated town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or incorporated town.

14-40-608. Right to detach certain lands after annexation proceeding.

(a) Within eight (8) years after an annexation proceeding is completed under the provisions of this subchapter and the land remains the boundary of the city or town, the person owning all lands originally annexed into the city or town may be authorized to detach those annexed lands from the city or town under the provisions of this section, so long as the city or town has not provided utility services to those lands.

(b)

(1) When a qualifying landowner notifies the municipality that he or she wishes to detach his or her land from the city or town under this section, the governing body of the municipality may pass an ordinance within thirty (30) days to detach the annexed, qualifying land from the municipality.

(2) (A) In order to notify the city or town, the landowner shall file an affidavit with the city clerk or recorder stating that:

- (i) His or her land was annexed;
- (ii) His or her land is located inside the city or town along the municipal boundary; and
- (iii) He or she desires the annexed land to be detached from the municipality.

(B) The affidavit shall be filed along with a certified copy of the plat of the annexed land he or she desires to be detached and a copy of the order of the

county court approving the annexation and the resolution or ordinance of the municipal governing body accepting the annexation.

(c) If the municipal governing body approves the ordinance to detach the territory, the clerk or recorder of the municipality shall duly certify and send one (1) copy of the plat of the detached territory, one (1) copy of the ordinance detaching the territory, and one (1) copy of the qualifying affidavit to the county clerk.

(d)

(1) The county clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them.

(2) The county clerk shall forward one (1) copy of the plat of the detached territory and one (1) copy of the ordinance detaching the territory to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and preserve them and shall notify all utility companies having property in the municipality of the detachment proceedings.

14-40-1201. Petition for consolidation.

(a) (1) (A) Beginning July 1, 1995, when the inhabitants of any city or incorporated town adjoining or contiguous to another smaller municipal corporation of any class in the same county shall desire that the city or incorporated town annex to it or consolidate with it the smaller municipal corporation, they may apply, by a petition in writing signed by a number of qualified electors from each of the municipal corporations equal to not less than fifteen percent (15%) of the total vote cast for the office of mayor in the respective city or town in the last preceding general election, to the city or town council of the larger municipal corporation.

(B) Municipal corporations separated by a river shall be deemed contiguous.

(2) The petition shall:

(A) Describe the municipal corporations to be consolidated; and

(B) Name the persons authorized to act in behalf of the petitioners presenting the petition as provided in this section.

(3)

(A) Beginning July 1, 1995, the petitions shall be filed with the city clerk or town recorder of each municipal corporation, who shall determine the sufficiency of the petitions in each municipality.

(B)

(i) If any petition is determined insufficient, he or she shall notify the petitioners in writing without delay, and the petitioners shall be permitted ten (10) days from the notification to solicit additional signatures or to prove any rejected signatures.

(ii) If the city clerk or town recorder of the respective municipalities decides the petitions are sufficient, he or she each shall notify the petitioners in writing and shall present the petitions to the city or town council of the larger municipal corporation.

(b) (1) (A) When the petition is presented to the council, the council shall pass an ordinance in favor of the annexation and approving and ratifying the petition.

(B) If the council fails to pass the ordinance required under subdivision (b)(1)(A) of this section, then any interested party may apply for a writ of mandamus to require the performance of the requirement.

(2) In that event, it shall be the duty of the persons named in the petition authorized to act in behalf of the petitioners to file the petition, together with a certified copy of the ordinance, in the office of the county clerk of the county in which the municipal corporations are situated.

14-40-1202. Special election called.

(a) (1) (A) Upon presentation of the petition to the county court by the authorized persons, the court shall at once order and call a special election, to be held in accordance with § 7-11-201 et seq., in both of the municipal corporations on the question of the annexation and the name of the proposed consolidated municipality.

(B) The court shall give thirty (30) days' notice of the election by publication one (1) time a week in some newspaper with a bona fide circulation in the territory and by notices posted in conspicuous places in the territory.

(2) The court shall appoint one (1) judge and one (1) clerk in each ward or other division of each municipal corporation, and the mayor and city council of each of the municipal corporations shall select two (2) judges and one (1) clerk for each of the wards or other divisions having the qualifications of electors, to act as judges and clerks of election within the respective wards.

(3) The court shall fix all polling places at which the voting shall take place.

(b)

(1) The election shall be held and conducted in each corporation in the manner prescribed by law for holding elections for cities or incorporated towns, so far as they are applicable. Election expenses are to be paid by the larger city or incorporated town.

(2)

(A) All elections held under this subchapter are made legal elections.

(B)

(i) The elections shall be governed by and subject to all the laws relating to general elections so far as applicable.

(ii) All judges, clerks, and persons voting in the elections shall be subject to the penalties prescribed by the general election laws of the state for any violation of the general election laws to the same extent as though the elections were specifically included in the general election laws of the state.

(3) The returns of the elections shall be made to the court and the result thereof declared by the court.

(c) In order to provide for an orderly transition of affairs if the petition calls for a delay in the implementation of the consolidation, the consolidation shall not take effect until the date specified in the petition, except that the consolidation shall be delayed not longer than eighteen (18) months from the date the election results are declared by the court.

14-40-1203. Election results.

(a) At any election held under this subchapter, all qualified electors who are residents of either municipality shall be allowed to vote on the adoption or rejection of the proposed annexation or consolidation and the name of the proposed consolidated municipality.

(b) (1) (A) (i) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall be in favor of the consolidation or annexation, then the county court shall declare, by an appropriate order, the annexation or consolidation consummated unless the petition has requested a delayed date for implementation of the consolidation.

(ii) If the petition calls for a delay in the implementation of the consolidation and if a majority of the votes cast in each of the respective municipalities is in favor of the consolidation, then the county court shall order the annexation or consolidation consummated on the date specified in the petition, except that the date shall not be more than eighteen (18) months after the date election results are declared by the court.

(B)

(i) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall be in favor of the same name of the municipality, then the county court shall declare, by appropriate order, the name of the consolidated municipality.

(ii) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall not be in favor of the same name of the municipality, then the county court shall declare, by appropriate order, the name of the consolidated municipality to be the name of the larger municipality.

(C)

(i) Upon the making of the order, the smaller municipal corporation and the territory comprising it shall, in law, be deemed and be taken to be included and shall be a part of the larger municipal corporation.

(ii) The inhabitants thereof shall in all respects be citizens of the larger municipal corporation.

(2) If a majority of the votes of either municipal corporation shall be against annexation, then the city or incorporated town shall not be again permitted to attempt the consolidation for two (2) years.

14-40-1204. Contest of election.

Any elector shall have the right to test the legality and fairness of the election and the declared results in a proceeding before the circuit court without being required to give bond for costs. However, no such contest shall interfere with the consolidation until finally decided.

14-40-1205. Division of smaller municipality into wards.

(a) As soon as practicable after the annexation, the council of the larger city or incorporated town shall form by ordinance the territory of the smaller municipality into such number of wards as shall seem to be to the best interest of the combined city or incorporated town, or shall change the number and boundaries of all the wards of the entire city or incorporated town, or any part of them, as shall seem to be to the best interests of the combined city or incorporated town. In such way, however, the wards shall have as nearly an equal population and assessed valuation of property as practicable and as, in the opinion of the council, would best subserve the true interest of the citizens and taxpayers of the combined city or incorporated town.

(b) The territory and inhabitants of the smaller municipal corporation shall receive that fair and just representation in the city council as the size, population, and assessed valuation of property demands, as compared with the representation accorded to other wards of the city or incorporated town.

(c) If inhabitants of the smaller municipal corporation feel aggrieved at the number of wards, or in any manner dissatisfied with the division of the territory into wards, upon petition of fifty (50) qualified electors, the circuit court is authorized to make changes in the number of wards as the justice of the case requires, in the manner provided in § 14-43-311, so far as applicable.

14-40-1206. Plat of consolidated municipality.

(a) The council of the larger city or incorporated town shall cause a plat to be made of the entire city or incorporated town after the annexation thereto and the division into wards of the smaller municipal corporation.

(b)

(1) A certified copy of the plat shall be filed and recorded in the office of the circuit court and ex officio recorder of the county and with the Secretary of State.

(2)

(A) Thereafter, the plat shall stand, be, and remain the division of the city or incorporated town into wards, and the number and boundaries thereof, until such time as it may be afterwards changed according to law.

(B) However, no change in the boundaries of the wards of the larger city or incorporated town shall determine or affect the time of service of any previously elected alderman of any ward in the larger city or incorporated town.

14-40-1207. Special election of aldermen or all city officials.

(a) (1) (A) Except as provided under subdivision (a)(1)(B) of this section, the city or town council shall call a special election of aldermen, to be held at such times and places as the council may direct pursuant to a proclamation issued by the mayor in accordance with § 7-11-101 et seq., in the wards of the smaller municipality and for the election of aldermen from any other new wards that may be created by the council out of territory included in the larger city or incorporated town before the annexation, as provided in this subchapter.

(B) If the petition calls for a citywide election for all officials of the new consolidated city or incorporated town, then the city or town council shall call a special election pursuant to a proclamation issued by the mayor in accordance with § 7-11-101 et seq. for all city or town officials to be held at the times and places as it may direct throughout each ward of the consolidated city or incorporated town.

(2) If the implementation of the consolidation of the cities or towns is delayed, the special election for new aldermen or all city officials shall be held at least forty-five (45) days before the effective date of the consolidation.

(b) Each ward of the consolidated city or incorporated town shall have two (2) aldermen, to be elected in the same manner and for the same term as aldermen are elected in cities and incorporated towns.

14-40-1208. Existing officers, etc.

(a) The term of office of all officers, aldermen, and employees of the smaller municipality and all laws in force in the smaller municipality shall cease upon and after the consolidation.

(b)

(1) Any mayor who is forced from office because of a merger of two (2) or more municipalities under this subchapter is presumed to meet the minimum service period under § 24-12-123.

(2) If the mayor who is forced from office has less than ten (10) years of actual service as mayor, then he or she is entitled to a prorated retirement benefit in an amount equal to the percentage of the mayor's actual amount of service divided by the minimum ten (10) years of service required under § 24-12-123.

14-40-1209. Public property.

All public property of the smaller municipality shall belong to the consolidated city or incorporated town.

14-40-1210. Payment of existing debts.

(a)

(1) The debts of each municipality owing prior to or at the time of the consolidation shall be paid by the consolidated municipality by appropriating the revenues derived from year to year from the territory and the inhabitants of what was formerly the larger municipality to the payment of the debts of the larger municipality owing before the consolidation.

(2) In like manner, the debts of the smaller municipality owing prior to and at the time of the consolidation shall be paid by appropriating the revenues derived from what was formerly the smaller municipality in such manner as to do the least injustice to the inhabitants of each former municipality in the way of a decrease in the improving or bettering of the territory as it formerly existed.

(b) In appropriating the revenues of either municipality to pay its own debts existing prior to the consolidation, neither the territory nor inhabitants of what was formerly the larger or smaller municipality shall be discriminated against in the distribution of police protection, board of health service, fire protection, public lighting, or other like public service.

14-40-1211. Prior debts not preferred.

(a) Creditors of either municipal corporation, on account of obligations made prior to consolidation, shall not be paid sooner or shall not be permitted to enforce the collection of their debts sooner against the consolidated city or incorporated town than the separate municipality prior to consolidation could have paid its own debts or could have been forced to do so.

(b) In any proceeding in court, by mandamus or otherwise, against a consolidated city or incorporated town to enforce the obligations created by either municipal corporation prior to consolidation, no greater part of the revenue of the consolidated city or incorporated town shall be subject to be applied by the court at the instance of the creditor to the payment of the obligations than could have been subjected against the revenues of the particular city or incorporated town creating the obligation prior to consolidation if the particular municipal corporation having so created the obligation had not been annexed.

14-40-1212. Rights of annexed territory to benefits of its revenues.

(a) The wards formed out of the territory comprising the former territory of the smaller municipal corporation annexed under the provisions of this subchapter shall always receive betterments and improvements in an amount equal to the amount of revenue derived by the consolidated municipality from the territory and inhabitants of the smaller municipal corporation, after having deducted the pro rata share of the territory of the running expenses necessary to be expended in maintaining the government of the entire city or incorporated town and after having taken into consideration the amount of revenues necessarily appropriated to pay the indebtedness due by the smaller municipality before consolidation, until the indebtedness is paid. In addition, those wards shall always receive their fair and equitable proportion of the police, board of health, fire protection, and lighting service of the larger city or incorporated town. They shall in all other ways receive fair and liberal treatment and their fair proportion of the expenditure of moneys made by the larger city or incorporated town.

(b)

(1) Aldermen representing the wards composing the territory of the smaller municipal corporation before consolidation shall have a right, at all times, to demand of the city council the benefit of the revenue collected from the wards, as provided for in this section.

(2) On the refusal of the council, the aldermen shall have a right to enforce the revenue rights by mandamus or other appropriate proceedings.

(c) In the event the aldermen, or fifty (50) qualified electors of the territory annexed, feel aggrieved in reference to the amount of revenue expended on the territory or as to the other rights guaranteed in this section to the annexed municipality, they may submit the matter to the circuit court, which is authorized by appropriate orders to compel the consolidated city or incorporated town to give the former territory of the smaller municipal corporation the full benefit of its revenue as provided in this section.

14-40-1213. Franchises, contracts, and other obligations.

No franchises, contracts, or other obligations of an extraordinary nature, or other than those necessary for the ordinary and usual running of the affairs of either municipal corporation, which have been granted, made, or created by either municipal corporation after the passage of an ordinance favoring annexation, and prior to the consummation of the annexation, shall be valid and binding against the

consolidated municipality, or any part thereof, in the event that a consolidation is effected within sixty (60) days after passage of the ordinance, unless they shall be afterward ratified by the consolidated city or incorporated town.

14-40-1801. Proceedings generally.

(a) Whenever any municipal corporation shall desire to throw any portion of the territory lying within its corporate limits outside of the limits and remit it back to the county in which the municipal corporation is situated, it shall be lawful for the council of the municipal corporation to submit the question to the qualified electors of the municipal corporation at an election to be held for that purpose. The election shall be held after giving notice of such election four (4) weeks by advertisement in one (1) of the papers published in the municipal corporation or, if there is no paper published in the municipal corporation by advertisement posted in two (2) of the most public places in the municipal corporation.

(b) If a majority of the votes cast on that question shall be in favor of throwing the territory outside of its municipal corporate limits, the municipal corporation shall present to the county court a petition praying for such change in its territorial limits, and the hearing shall be had on the petition as is prescribed in § 14-38-103.

(c) Alternatively, upon petition of the landowners affected and provided the territory is unimproved and uninhabited wetlands, the city council may resolve to request the county court to exclude the territory from the limits of the municipal corporation and remit it back to the county and a hearing shall be had on the petition as prescribed in § 14-38-103.

14-40-1802. Order for exclusion.

(a) After hearing the petition, if the county court shall be satisfied that a majority of the qualified electors of the corporation are in favor of the exclusion of the territory mentioned in the petition from within its limits, or alternatively that the city council has resolved to request that the territory be excluded from the limits of the municipal corporation and remitted back to the county, that the territory to be excluded has been accurately described, and that it would be proper and right to grant the petition, it shall make an order excluding the territory in the petition mentioned from the limits of the municipal corporation and remitting it back to the county.

(b)

(1) It shall be the duty of the clerk of the court to make out a certified copy of the order and to deliver it to the recorder of his or her county, whose duty it shall be to record the order in the proper book of records in his or her office.

(2) It shall also be the duty of the recorder to make out and forward to the Secretary of State a certified copy of the record.

14-40-1803. When effective -- Limitation.

(a) After the record shall have been filed and a copy forwarded to the Secretary of State, the territory shall cease to be a part of the municipal corporation.

(b) The limits of cities of the first and second class shall not be reduced to an area less than they were on January 1, 1872.

14-40-1901. Designation by resolution.

(a) Whenever it appears that the official corporate limits as shown by the records of the Secretary of State for any city or incorporated town have for more than ten (10) years included an area or territory that has not been recognized by city or incorporated town officials and assessed for taxation as a part of the city or incorporated town during the period, because of error or otherwise, and which has not been legally detached from the city or incorporated town, then the city or incorporated town council may designate and determine by resolution for any portion of the area or territory which it believes is unsuitable for urban development in the foreseeable future, that it is no longer necessary for corporate purposes, and that it desires to officially detach the designated area or territory outside of its corporate limits, retaining the remainder of the unrecognized territory therein.

(b) A certified copy of the resolution shall then be filed with the county court of the county where the city or town is situated or the county where the area or territory affected is situated, together with a petition that a hearing be held by the court to determine whether the designated portions of the area or territory shall be officially excluded from the city or incorporated town limits.

14-40-1902. Hearing and determination.

(a) Upon the filing of the petition, the county court shall set a date for hearing thereon, not less than fifteen (15) days nor more than thirty (30) days after the first publication of notice of the filing of the petition. Notice of the filing shall be published once each week for not less than two (2) weeks in a newspaper having a general circulation in the city or incorporated town.

(b)

(1) After hearing the petition, if the court shall be satisfied that the designated area or territory has not been recognized by city or incorporated town officials and has not been assessed for taxation as a part of the city or incorporated town for more than ten (10) years, that it is no longer suitable for urban development, that the territory to be excluded is accurately described, and that the welfare of the inhabitants and property owners of both the city or incorporated town and of the area or territory affected will be best served, it shall make an order excluding designated area or territory described in the petition or such portions thereof as it determines should be so excluded from the limits of the city or incorporated town and remitting it back to the county.

(2) The clerk of the county shall certify a copy of the order to the recorder of the county, to be recorded by him or her, and shall likewise cause a certified copy to be forwarded to the Secretary of State, to be otherwise filed as provided by law.

14-40-1903. Public utility service.

Any public utility serving the area detached shall have the right to continue to serve in the detached area on the same basis as service had been previously rendered prior to the action of the city or incorporated town council in adopting the resolution detaching the territory, except that no franchise tax shall be payable thereafter to the city or incorporated town.

14-40-2001. Purpose.

It is the purpose of this subchapter to assist landowners to obtain municipal services by making the services reasonably available. However, nothing in this subchapter shall relieve a landowner from the obligation to pay regular fees and costs for connecting to services or from the obligation to pay the regular cost of the services.

14-40-2002. Annexation into adjoining municipality.

(a)

(1) A landowner or group of landowners seeking additional municipal services may have its land detached from the municipality in which it is located and annexed into another municipality that borders the land.

(2) However, before annexation is allowed, the municipality in which the land is located shall have an opportunity to provide the additional services.

(b) The following procedure shall apply:

(1) The landowner or landowners shall file a statement with the municipality in which the land is located listing the additional municipal service or services being sought and stating that:

(A) The municipality is not providing services necessary to create improvements, provide employment or additional employment, subdivide, or otherwise maximize the use and value of the property;

(B) All the land in the request must compose one (1) area that is contiguous to another municipality;

(C) The additional services are available in another municipality that borders the land subject to the request; and

(D)

(i) The municipality is requested to make a commitment to take substantial steps, within one hundred eighty (180) days after the statement is filed, toward providing the additional services and, within each thirty-day period thereafter, to continue taking steps to demonstrate a consistent commitment to provide

the service within a reasonable time, as determined by the kind of services requested.

(ii) The commitment must be made in writing to the landowner within thirty (30) calendar days of the filing of the statement, or the landowner may seek to have the land detached from the municipality and annexed into the other municipality.

(iii) The landowner must take appropriate steps to make the land accessible to the service and comply with reasonable requests of the municipality that are necessary for the service to be provided;

(2) The landowner or landowners may request the annexation of the land into the other municipality and thereby detach the land from the boundaries of the municipality in which the land is currently located if:

(A) The municipality in which the land is located fails to execute a commitment to services within thirty (30) days after the statement is filed; or

(B) The municipality executes the commitment to services but fails to take the action required under subdivision (b)(1)(D) of this section;

(3)

(A) The land shall be annexed into the other municipality if, after a request by the landowner or landowners, the governing body of the municipality into which annexation is sought indicates by ordinance, resolution, or motion its commitment to make the services available and its approval of the request for annexation.

(B)

(i) The annexation shall be void and the land shall be returned to the original municipality if the annexing municipality fails to take substantial steps within one hundred eighty (180) days after the passage of the ordinance, resolution, or motion to make the services available and, within each thirty-day period thereafter, continues taking steps demonstrating a consistent commitment to make the additional service available within a reasonable time, as determined by the kind of services requested.

(ii) The landowner must have taken appropriate steps to make the land accessible to the service and complied with the reasonable requests of the municipality that are necessary for the service to be provided.

(iii) However, if the requested services are not available within twelve (12) months after the property is accepted by the annexing jurisdiction or substantial steps are not taken to make the services available within this time period, then the detachment and annexation shall be void and all property returned to its original jurisdiction; and

- (4) The land shall remain in the original municipality until it is annexed into the other municipality.
- (c) Land annexed pursuant to this section shall not be eligible for reannexation under this section for a period of two (2) years.
- (d) This section shall apply to residential, commercial, industrial, and unimproved land.
- (e) For the purposes of this section, "services" means electricity, water, sewer, fire protection, police protection, drainage and storm water management, or any other offering by the municipality that materially affects a landowner's ability to develop, use, or expand the uses of the landowner's property.

14-40-2003. No split or island.

- (a) In no event shall the provisions of this subchapter allow a municipality to be split in half or to have any of its land separately encircled, thereby creating an island of that city within the boundaries of another city.
- (b) Any detachment and annexation occurring that creates a split or island shall be void and all properties returned to their original municipality.

14-40-2004. Hearing in circuit court -- Appeal.

- (a)
 - (1) The circuit courts of the state shall have exclusive jurisdiction to hear all matters related to this subchapter.
 - (2) The circuit court of the county in which the municipalities are located or, in the event that the municipalities are located in different counties or judicial districts, the circuit court of the county or judicial district that has within the county's or judicial district's boundaries the smallest of the two (2) municipalities in population according to the latest federal decennial census, shall have exclusive jurisdiction to hear all matters related to this subchapter.
- (b) (1) (A) Upon petition of either affected municipality, the landowner or group of landowners, or its representatives, the circuit judge shall hold a hearing or series of hearings related to the provisions of this subchapter.
 - (B) The municipalities, the landowner who requested annexation, and a landowner who began owning land after the annexation request are parties to the hearings.
 - (2) The circuit judge shall make findings as are necessary to determine whether there has been substantial compliance or noncompliance with the requirements of this subchapter.
- (c) The petition under subdivision (b)(1) of this section shall be filed no later than twenty (20) days after the adoption or rejection of the ordinance, resolution, or motion bringing the subject property into the annexing jurisdiction.

(d) In the event an action is brought in circuit court by any party, the time period for the requested services to be available as provided in § 14-40-2002(b)(3)(B)(iii) shall be tolled until entry of a ruling by the circuit judge and the conclusion of any appeals from that court.

14-40-2005. Filing.

(a) All documents produced by landowners, municipalities, or others relating to detachment and annexation as enumerated in this subchapter shall be filed with the circuit clerk with copies served upon the municipality and landowners.

(b)

(1) The circuit clerk shall establish a system of filing for these matters upon action's having been taken by a landowner or group of landowners pursuant to the provisions of this subchapter.

(2) The circuit clerk's file shall be considered the official record of all matters and proceedings under this subchapter.

14-40-2101. Simultaneous detachment and annexation by two cities.

(a) When the boundaries of two (2) municipalities are contiguous to and adjoining one another, and one (1) municipality desires to detach and annex territory in another municipality, then the governing body of the municipality desiring to detach and annex territory may propose an ordinance calling for the simultaneous detachment of the lands from the one (1) municipality and the annexation of the lands into its municipal limits. The municipality desiring to annex land in the adjoining city, after the passage of the ordinance calling for detachment and annexation, shall send the ordinance to the governing body of the city or town in which the lands are located.

(b)

(1) The ordinance will provide a legal description of the lands proposing to be detached and annexed and describe generally the reasons for proposing the action.

(2) The governing body of the city or town in which the lands are located shall conduct a public hearing within sixty (60) days of the proposal of the ordinance calling for the detachment and annexation.

(3) At least fifteen (15) days prior to the date of the public hearing, the governing body of the proposing municipality shall publish a legal notice setting out the legal description of the territory proposed to be detached and annexed. Municipal officials of the proposing city or town, officials of the city or town in which the lands are located, and property owners within the area proposed to be detached and annexed may appear at the public hearing to present their views on the proposal.

(c)

(1) At the next regularly scheduled meeting following the public hearing, the governing body of the municipality in which the lands are located may bring the proposed ordinance up for a vote to concur in the detachment and annexation.

(2) If a majority of the total number of members of the governing body vote for the proposed detachment and annexation ordinance, then a prima facie case for detachment and annexation shall be established, and the proposing municipality shall proceed to render services to the newly annexed area.

(d) The decision of the municipal governing bodies shall be final unless suit is brought in the circuit court of the appropriate county within thirty (30) days after passage of the ordinance to review the mutual actions of the governing bodies.

(e)

(1) As soon as the ordinance proposing the detachment and annexation is final, the territory shall be deemed and taken to be a part and parcel of the limits of the city or town annexing it, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or town.

(2) The governing body of the annexing city or town shall direct the municipal clerk or recorder to duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the proposing ordinance as adopted by both governing bodies to the county clerk.

(3) The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them.

14-40-2201. Annexation and provision of scheduled services.

(a)

(1) Beginning March 1, 2014, and each successive year thereafter, the mayor or city manager of a city or incorporated town shall file annually with the city clerk or recorder, town recorder, and county clerk a written notice describing any annexation elections that have become final in the previous eight (8) years.

(2) The written notice shall include:

(A) The schedule of services to be provided to the inhabitants of the annexed portion of the city; and

(B) A statement as to whether the scheduled services have been provided to the inhabitants of the annexed portions of the city.

(b) If the scheduled services have not been provided to the new inhabitants within three (3) years after the date the annexation becomes final, the written notice reporting the status of the extension of scheduled services shall include a statement of the rights of inhabitants to seek detachment.

(c) A city or incorporated town shall not proceed with annexation elections if there are pending scheduled services that have not been provided in three (3) years as prescribed by law.

14-40-2202. Inhabitants of annexed area.

(a) In all annexations under § 14-40-303 and in accordance with § 14-40-606, after the territory declared annexed is considered part of a city or incorporated town, the inhabitants residing in the annexed portion shall:

(1) Have all the rights and privileges of the inhabitants of the annexing city or incorporated town; and

(2)

(A) Be extended the scheduled services within three (3) years after the date the annexation becomes final.

(B) The mayor of the municipality shall file a report with the city clerk or recorder, town recorder, and county clerk of the extension of scheduled services.

(b) If the scheduled services have not been extended to the area and property boundaries of the new inhabitants within three (3) years after the date annexation becomes final, the written notice reporting the status of the extension of scheduled services shall:

(1) Include a written plan for completing the extension of services and estimated date of completion; and

(2) Include a statement of the rights of inhabitants to seek detachment.

(c) A city or incorporated town shall not proceed with any additional annexation elections if there are pending scheduled services that have not been extended as required under this subchapter.

Relevant Annexation Case Law in Arkansas

CRITERIA SUITABLE FOR ANNEXATION

The conditions under which the municipal limits may be extended and territory annexed, and the nature of that territory, are well outlined. The rule under A.C.A. § 14-40-302 is that municipal limits may be extended to take in contiguous lands if:

- (1) Platted and held for sale or use as municipal lots;
- (2) Whether platted or not, if the lands are held to be sold as suburban property;
- (3) When the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary;
- (4) When the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; or
- (5) When they are valuable by reason of their adaptability for prospective municipal uses.

Those five criteria are disjunctive, and the annexation may be proper when any one of the five conditions is met; if one of several tracts is found to be improperly included in an annexation proposal, the entire annexation must fail. *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740 (1989).

Annexation is not prohibited solely because a tract is rather rugged or heavily wooded with sparse population. It is proper for a city to annex property if it is needed for the purpose of making improvements and if the value of the land is derived from actual and prospective use for city purposes. *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740 (1989). It has occasionally been said that if some part of the contemplated addition fails to meet the requirements for inclusion within the municipal limits, the entire proposed annexation should be rejected. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987); *City of Little Rock v. Findley*, 224 Ark. 305, 272 S.W.2d 823 (1954).

Where the favorable results of an election on the question of annexation bound the court to grant a petition for annexation unless cause for denying it was shown, the burden lay upon protestants to show why the territory should not be annexed.

IMPROPER:

City of Centerton v. City of Bentonville, 375 Ark. 439 Annexation Improper- (Invalid Factors)

In this case, the City of Centerton sought to annex pursuant to 14-40-302 two unincorporated and surrounded areas of land known as “West Island” and “East Island.” Both areas are completely surrounded by Centerton and Bentonville. Bentonville filed suit, claiming that West Island did not adhere to the land requirements set forth in 14-40-302, and the circuit court ruled in its favor. At least one of the listed criteria for annexation set out in this section must be met before an area may be annexed, whether by ordinance with an election, by ordinance only, or by petition of landowners. Additionally, if part of the proposed area for annexation does not meet one of the five requirements, then the entire area proposed for annexation is void.

Town of Houston v. Carden, 332 Ark. 340 Annexation Improper- (Invalid Factors)

Appellant town challenged the decision of the Perry County Circuit Court (Arkansas), which entered an order annulling an annexation by the town of adjoining land in an action filed by appellee owners of the adjoining land.

One of the owners had received a permit to operate a hog farm in the annexed area, but under a town ordinance she could not do so. Proponents of the annexation had argued that the best use of the area was not agricultural and that the hog farm would depreciate property values. The circuit court specifically found that there was no evidence the town needed the annexed land for any proper town purpose or business purposes, no evidence of crime in the town or surrounding areas, and no evidence that the annexed land had a higher or better use for municipal purposes. On review, the court affirmed. The court found that prevention of a hog farm was not a prong for annexation and stopping foul odors was not a reason for proper annexation of property. The court determined that the circuit court was correct in being skeptical about the propriety of the annexation. Regardless of the interest of the town in preventing foul odors, the court held that the circuit court correctly concluded that that purpose alone could not be the sole reason for upholding the annexation of the entire area. The order annulling the annexation of land was affirmed.

Saunders v. City of Little Rock, 257 Ark. 195 Annexation Improper (Agriculture)

At a special election, the voters of the city approved the annexation of the land pursuant to 1971 Ark. Acts 298. The property owners sought to have the annexation declared illegal and void because the land was used exclusively for agricultural purposes contrary to the provision contained in Ark. Stat. Ann. § 19-307.1. In reversing and remanding the decision with direction to annul the annexation, the court found that the annexation proceeding had to be nullified and voided. Where general terms or expressions in one part of a statute were inconsistent with more specific or particular provisions in another part, the particular provisions had to be given effect as clearer and more definite expressions of the legislative will. The court declined to give an advisory opinion as to what may or may not constitute lands used only for purposes of agriculture.

Newport v. Owens, 213 Ark. 513- Annexation Improper (Agriculture)

This appeal is an effort by the City of Newport to annex certain territory. At the annual municipal election in 1947, the electors of the city voted in favor of annexing approximately 2,000 acres lying to the east and northeast of the city. A petition praying for such annexation was duly filed in the county court. Forty-five property owners residing in the territory proposed to be annexed appeared as remonstrants. The city then amended its petition, and omitted approximately 1,000 acres in the extreme north of the territory originally described; so that the territory finally sought to be annexed amounted to approximately 960 acres. The county court granted the city's amended petition. Thereupon Ed Owens and 14 other property holders, in the remaining territory sought to be annexed, appealed to the circuit court, where the cause was tried de novo, as is the rule in such cases. The circuit court denied the city's petition for annexation of the territory; and this appeal challenges the circuit court judgment.

A considerable portion of the evidence was directed to that portion of the territory referred to as Lakeview Addition; and the evidence preponderates in favor of its annexation. But a tract of approximately ninety acres, lying in the northern part of the territory proposed to be annexed, was shown to be agricultural. One of appellant's witnesses spoke of these lands as "farm lands here in the south part of Section 1." Another witness for appellant said: "That is good agricultural land." Still a third witness said: "That is cultivated land at this time . . . some cotton out there and some soy beans, maybe. Part of it is pretty good land. Down at this end of it is white land, land that doesn't produce a whole lot." There was testimony seeking to bring this agricultural land within the rule announced in *Vogel v. Little Rock*, 55 Ark. 609, 19 S. W. 13; and, if the circuit court had included this land, there would have been substantial evidence to support such holding. There was substantial evidence, however, that this agricultural land, of approximately 90 acres, does not fulfill the test for annexation as stated by Justice Hemingway, to-wit:

"We conclude further that city limits should not be so extended as to take in contiguous lands, (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use, (2) when they are vacant and do not derive special value from their adaptability for city uses."

PROPER:

City of Jacksonville v. City of Sherwood, 375 Ark. 107- Annexation Proper

The landowners petitioned for four tracts of real property totaling approximately 1,951 acres to be annexed into the City of Sherwood. The City of Jacksonville submitted a resolution opposing the annexation. The circuit court upheld the order of a county court approving the annexation. On appeal, the court found that testimony from the trial supported the circuit court's conclusion that the land met two of the Vestal criteria in Ark. Code Ann. § 14-40-302 for annexation. The land was held to be sold as suburban property, and it was valuable by reason of its adaptability for prospective municipal purposes. Because at least one of the Vestal criteria was met, annexation was proper. Looking at the plain language of Ark. Code Ann. § 14-56-413 (1998), as well as case law, the court upheld the circuit court's ruling that the City of Jacksonville's plans for the area were not superior to, and did not defeat, the

landowners' right to petition for annexation to another city. Finally, the express language of Ark. Code Ann. § 14-56-426 did not prohibit annexation of the land.

City of Rockport v. City of Malvern, 356 Ark. 393- Annexation Proper

Landowners requested the city to take substantial steps to make certain services available to them. When such was not done, the landowners requested annexation to the adjoining city. The city alleged that the annexation of the landowners' property was invalid. The trial court found that the city did not comply with Ark. Code Ann. § 14-40-2002 (Supp. 2003). On appeal, the court affirmed. The trial court did not err in finding that the landowners' annexation into the adjoining city complied with Ark. Code Ann. §§ 14-40-2001 to 14-40-2002 (Supp. 2003), and the court rejected the city's argument that the necessary services were already available to the landowners. Sewer service, as defined in § 14-40-2002(e), was not available to the landowners when they requested such services by the city, and sewer service was one necessary to maximize the use of property. Because the city failed to demonstrate a commitment to providing services within a reasonable time, the trial court did not err in finding that the city did not meet its burden of showing compliance with the relevant statutes.

City of Maumelle v. Jeffrey Sand Co., 353 Ark. 686- Annexation Proper

Appellant city sought review of the decision of the Pulaski County Circuit Court (Arkansas), which found in favor of appellees, company and second city, in the company's action to detach its property from the city under Ark. Code Ann. § 14-40-2001 et seq.

The company sought to detach its property from the city and requested that the second city annex the property under the Detachment-Annexation Statutes, codified at Ark. Code Ann. § 14-40-2001 et seq. (Supp. 1999). Even though water and sewer services were available to the property, the company asserted that, because the city did not provide them as municipal services, it failed to meet the requirements of the Detachment-Annexation Statutes. The circuit court agreed, but the Supreme Court disagreed and reversed. The legislature did not intend to eliminate regional organizations or improvement districts as the means by which a municipality could provide services to its citizens. The court concluded, therefore, that the circuit court erred in its interpretation of § 14-40-2001 et seq. when it ruled that the city did not provide water and sewer services to its citizens because the city did not own a water or sewer system. The company's property was served by both sewer and water lines that ran to the property.

Chandler v. City of Little Rock, 351 Ark. 172- Annexation Proper

Appellants, various businesses, challenged appellee city's annexation of unincorporated areas or "islands" surrounded by the city's limits. The Pulaski County Circuit Court (Arkansas) held the city met the statutory requirements for annexation. The businesses appealed, asserting the statutory requirements for annexation were not met, because the disputed area was not needed for, or adaptable for, prospective municipal purposes.

The city passed an ordinance that provided for the annexation of eleven unincorporated areas or "islands" surrounded by the city limits. The property at issue was located within the floodway and had only been used for agricultural purposes. The city argued that, because of the property's location, it made sense economically for the city to have jurisdiction over the property rather than the county. The trial court found, through the testimony of city and county fire and police officials, that the city satisfied the fourth requirement of Ark. Code Ann. § 14-40-302(a), that the lands would be needed for any proper municipal purposes such as for the extension of needed police regulation. Further, small, unincorporated islands within city limits caused great confusion to the public and also great expense to municipalities in having to run vital services around such islands. All parties agreed that the city had plans to use the property for open space or parks. Evidence was presented that many of the city's parks were already located within the floodway. The appellate court held the trial court's finding that the property was needed for a municipal purpose was not clearly erroneous. The judgment of the trial court was affirmed.

Chastain v. Davis, 294 Ark. 134- Annexation Proper

Appellant landowners challenged a judgment from the Pulaski Circuit Court (Arkansas) approving appellee petitioners' petition for the annexation of a certain area to the City of North Little Rock. The landowners argued that the petitioners failed to comply with the statutory requirements pertaining to annexation requests.

The petitioners wanted the area in which they owned property to be annexed. They submitted an annexation petition. The landowners, who also owned land in the area, opposed annexation. The circuit court approved the petition. The landowners appealed. The court ruled that it was not improper for the petitioners to correct an erroneous description of the property to be annexed in an amended petition. They obtained additional signatures for it and it otherwise incorporated all of the elements of the original petition. The map attached to the original petition was correct. The circuit court's order that included the mistake could be corrected without causing prejudice to anyone. The fact that a small number of copies of a newspaper did not include several lines of the notice concerning the proposed annexation did not render the published notice insufficient. The law required published notice within the county of the proposed annexation. The defective newspapers were not for delivery in that county. The petitioner's proof that they owned a majority of the property to be annexed was sufficient. The subject area met the criteria for being "right and proper" for annexation. The court affirmed the order of annexation.

Gay v. City of Springdale, 287 Ark. 55- Annexation Proper

Plaintiff landowners appealed the decision of the Washington County Circuit Court (Arkansas) that sustained defendant city's annexation of four tracts of land that were contiguous to the city pursuant to Ark. Stat. Ann. §§ 19-301 to 19-339 (1980), currently Ark. Code Ann. §§ 14-40-201 to 14-40-607 (1987), based on its finding that the tracts met at least two criteria in Ark. Code Ann. § 14-40-302(a)(2)-(5) (1987) and § 14-40-302(b)(1)(A).

After a prior attempt at annexation failed, the city adopted an ordinance pursuant to Ark. Code Ann. § 14-40-301 (1987) and scheduled a special election to determine whether four tracts in the same general area as the earlier subject property should be annexed. The voters approved the annexation. The trial court found that all four tracts met at least two of the criteria contained in § 14-40-30a(a)(2)-(5) and in § 14-40-302(b)(1)(A)'s requirement that the lands have a highest and best use and fair market value for other than agricultural or horticultural purposes. On appeal, the landowners argued that the trial court erred in failing to deny the annexation petition because a substantial portion of the land failed to meet any of § 14-40-302(a)'s five criteria. In affirming the granting of the annexation petition, the court held that in light of the substantial evidence that the lands were needed for proper municipal purposes, which met one of § 14-40-302(a)'s criterion, the trial court's finding was not clearly erroneous as only one criterion need be met. Further, the city's expert established that the highest and best use standard was met. The court affirmed the judgment of the trial court.

The prohibition against annexing agricultural lands is no longer absolute. The lands may be annexed if their highest and best use is for a purpose other than agriculture.

City of Little Rock v. Findley, 224 Ark. 305- Annexation Proper

This is in regards to a proceeding by the City of Little Rock for the annexation of 4.6 square miles of territory lying south and west of the present city limits. Ark. Stats., 1947, § 19-307. The proposal having been approved by the municipal electorate, the city's petition for annexation was granted by the county court. Upon appeal by the remonstrants, however, the annexation order was set aside after a trial from the beginning in the circuit court.

In court the appellees filed a motion to dismiss the appeal, upon the ground that the city, after the circuit court's denial of annexation, actually annexed part of the territory in question by accepting landowners' petitions for that step. Ark. Stats., §§ 19-301, et seq. The appellees' theory is that the city's voluntary acceptance of part of the proposed addition is inconsistent with its present attempt to annex the whole by force. It was unnecessary to rule upon this motion, for the judgment must in any event be affirmed on its merits.

The Court stated that the governing appellate review in cases of this kind has been settled for many years. It was its duty to affirm the circuit court's judgement if it is supported by substantial evidence. Additionally, a petition like the one in this case is property rejected if only a part of the contemplated addition fails to meet the requirements for inclusion within the municipality; the impropriety does not need to extend to the whole of the territory sought.

Utley v. City of Dover, 352 Ark. 212- Annexation Proper

The property owner challenged a decision of the Pope County Circuit Court (Arkansas), which ruled in favor of appellee city and upheld an annexation. The owner challenged an annexation that was approved by voters. The owner claimed that the annexation violated Ark. Code Ann. §§ 14-40-301 to - 304 (1998 & Supp. 2001). The trial court approved the annexation, and the court agreed. The court noted that Ark. Code Ann. § 14-40-302(a) set forth five acceptable bases upon which an annexation by

election could be based, and a tract needed to meet only one of the criteria. There was evidence to support the trial court's finding that the lands in question were not held to be sold as suburban property under § 14-40-302(a)(2). The phrase concerning the actual growth of the city beyond its legal boundaries under § 14-40-302(a)(3) did not mean that the city must have already grown into the area prior to annexation, and, in any event, there was evidence that the lands being annexed represented the actual growth area of the city. The trial court properly found that annexation was needed for proper municipal purposes and that the land was valuable because of its adaptability for prospective municipal use under § 14-40-302(a)(4), (5). The property owner failed to show any error on the trial court's part.

City of Barling v. Fort Chaffee Redevelopment Authority, 347 Ark. 105- Annexation Proper

Appellee/cross-appellant redevelopment authority sued appellant/cross-appellee city in the Chancery Court of Sebastian County, Arkansas, Greenwood District, for a declaratory judgment that the city's annexation of land and land use ordinances as applied to that land were void. The trial court granted partial summary judgment for both parties, who appealed.

The city annexed parts of a federal reservation on three different occasions. The federal reservation was closed, and the federal government ceded its authority over the reservation to the redevelopment authority, which was created under a trust indenture to which the city was a signatory. The city attempted to assert the power, under its zoning ordinances, to regulate the use of the land it had annexed. The authority asserted this was contrary to the use it had planned for this land. The authority was the entity endowed with the ability to manage, own, and operate the land to its maximum benefit, under the statutes which created it. The authority was allowed to exercise zoning power. The city agreed to cede a portion of the authority granted to it by the state over this land when it signed the indenture creating the trust which created the authority. The city's annexation of land within the federal reservation was authorized as long as it did not conflict with the federal government's purpose in operating the reservation. The authority's challenge to this annexation was long past the applicable limitations period in Ark. Code Ann. § 14-40-304. The trial court's judgments were affirmed.

Chappell v. City of Russellville, 288 Ark. 261 - Annexation Proper

Appellant landowners sought review of the judgment of the Pope Circuit Court (Arkansas) finding that land appellee city desired to annex was suitable for annexation. The landowners contended that the land was not proper for municipal purposes because it consisted of farmland, swampland and open and unimproved land. The city sought to annex 4,150 acres of contiguous lands. The area sought to be annexed encompassed three irregular tracts of land extending the boundaries uniformly to a lake and the Arkansas River. An election was held and the annexation was approved by a vote of 571 to 210. In affirming the judgment of the trial court finding that the lands were suitable for annexation the court held that the trial court was not clearly wrong in finding that much of the lands represented the actual growth of the city beyond its legal boundary; the lands were needed for extension of police and fire protection; the lands were valuable by reason of their adaptability for prospective municipal purposes; and although some acreage was used for agricultural purposes, the highest and best use of these lands was for purposes other than their present use.

Lee v. City of Pine Bluff, 289 Ark. 204- Annexation Proper

Because the city was growing in size and a number of residences had been built beyond the city's limits, the city sought to annex a 9,147 acre area around the city. The proposed annexation was approved by the trial court and by the voters. The property owners, who lived in the annexed area, disputed the property that was included in the annexation. They argued that not all the lands complied with the criteria in Ark. Stat. Ann. § 19-307.1, that the agricultural lands were improperly included in the annexation, and that the legal description of the land was not properly specified. The trial court approved the annexation and the court affirmed the trial court's action. The court held that the strict approach taken by Arkansas courts with regard to the standards for inclusion had been abandoned and the city needed only prove that its actions were not clearly erroneous. Because they were not, as the annexation was an honest effort by the city to extend its boundaries to encompass new growth for necessary municipal purposes, judgment for the city was appropriate. The court also held that the description of the area sufficiently and properly described the area to be annexed.

Holmes v. City of Little Rock, 285 Ark. 296- Annexation Proper

Appellant landowner sought review of the judgment of the Pulaski Circuit Court (Arkansas), which upheld the annexation by appellee city of 15 separate tracts of land. The landowner contended that the annexation was in violation of Ark. Stat. Ann. § 19.307.1 (1980).

The city adopted an ordinance which proposed the annexation of 15 separate tracts of land. An election was held and the vote was in favor of the annexation. All of the challenges to the annexation, excepting the landowner, were dismissed. The trial court upheld the annexation. On appeal, the court affirmed and held that the findings of the trial judge were not clearly erroneous. The facts constituted evidence that the tract could be annexed as lands representing the actual growth of the city beyond its legal boundary. While a pecan orchard existed on a part of the tract, it was permissible to annex a tract of land if that tract was more valuable for city purposes than for agriculture, even if the one tract was more valuable for farming purposes than for city purposes. The court ruled that it was proper for the city to annex property if it was needed for the purpose of making improvements and if value of the land was derived from actual and prospective use for city purposes. Annexation was not prohibited simply because a tract was "rather rugged" and "heavily wooded" with sparse population.

Vogel v. Little Rock, 55 Ark. 609- Important Agriculture Case- Annexation Proper

This case helped distinguish what agricultural value was to be compared to. The value of land is derived from the prospective town use, not from the present county use.

“Nor does it matter that a considerable part of the land is at present used for agriculture; as its value is derived from its prospective town use, and not from its present country use, it might be properly included within the city. This is not the case where the value of the use of lands for agriculture is enhanced by proximity to town; but where the enhancement arises from prospective town uses.”
Vogel v. Little Rock, 55 Ark. 609, 616, 19 S.W. 13, 14 (1892).

Mann v. City of Hot Springs, 234 Ark. 9- Annexation Proper

This appeal challenges a judgment of the Garland Circuit Court which annexed to the City of Hot Springs the adjacent territory here involved. The appellants, Sherman Mann and others are residents of the territory sought to be annexed and have, all the time, most energetically opposed the annexation.

At the General Election in November 1959, there was submitted to the electors of the City of Hot Springs the question of annexing the territory here involved, containing in excess of 700 acres all located south and west of the then existing city limits, and all being in Garland County. The vote was overwhelming in favor of annexation. Thereupon, the City, proceeding under § 19-307 Ark. Stats., presented to the Garland County Court the petition for annexation. The appellants, for themselves and other residents in the territory sought to be annexed, offered testimony in opposition to the annexation, but the County Court duly entered the order for annexation. The case was appealed to the Circuit Court; trial there resulted in a judgment for annexation; and the case is here on appeal.

The record here showed that most of the area sought to be annexed is thickly settled, traversed by streets and highways, and already has stores, banks, schools, filling stations and various other businesses, thereby demonstrating the suburban nature of the territory; and that the City of Hot Springs had shown its ability to provide water, fire, and police protection, and the necessity for such. There is every reason why the territory should be annexed. The judgment of the Circuit Court was affirmed.

Rules:

(a) The vote of the electors of the City of Hot Springs made a prima facie case for annexation, and the burden was on the appellants, as the objectors, to defeat the prima facie case. *Dodson v. Mayor & Town Council*, 33 Ark. 508; *Burton v. Ft. Smith*, 214 Ark. 516, 216 S. W. 2d 884; *Marsh v. El Dorado*, 217 Ark. 838, 233 S. W. 2d 536.

(b) The findings of fact of the Circuit Court in an annexation case like this have the force and effect of a jury verdict, and the appellants, here, have the burden of proving that there was no substantial evidence to sustain the Circuit Court judgment. *Burton v. Ft. Smith*, supra; *Garner v. Benson*, 224 Ark. 215, 272 S. W. 2d 442; *City of Little Rock v. Findley*, 224 Ark. 305, 272 S. W. 2d 823.

(c) "That city limits may reasonably and properly be extended so as to take in contiguous lands, (1) when they are platted and held for sale or use as town lots, (2) whether platted or not, if they are held to be bought on the market and sold as town property when they reach a value corresponding with the views of the owner, (3) when they furnish the abode for a densely-settled community, or represent the actual growth of the town beyond its legal boundary, (4) when they are needed for any proper town purpose, as for the extension of its streets, or sewer, gas or water system, or to supply places for the abode or business of its residents, or for the extension of needed policy regulation, and (5) when they are valuable by reason of their adaptability for prospective town uses; but the mere fact that their value is enhanced by reason of their nearness to the corporation, would not give ground for their annexation, if it did not appear such value was enhanced on account of their adaptability to town use. . . . that city

limits should not be so extended as to take in contiguous lands, (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use, (2) when they are vacant and do not derive special value from their adaptability for city uses." *Vestal v. Little Rock*, 54 Ark. 321, 15 S. W. 891, 16 S. W. 291, 11 L. R. A. 778.

City of Sherwood v. Hardin, 230 Ark. 762-Annexation Proper

The Circuit Court reversed an annexation because it believed that the annexation would not be to the best interests of the residents affected, the area was small, that annexation has not been approved by the planning commission. The Arkansas Supreme Court did not sustain the judgement of the trial court on any of the grounds mentioned above. The record contained no substantial evidence to overcome the prima facie case for annexation or to meet the burden placed on appellees. Hence there was no substantial evidence to sustain the judgment of the trial court and it is therefore reversed, and the order of the County Court (for annexation) was reinstated.

Louallen v. Miller, 229 Ark. 679- Annexation Proper

This appeal deals with the annexation of a small parcel of land to the town of Bryant. The petition for annexation, signed by a majority of the property owners affected, was approved by the circuit court over the objections of appellant and his wife who are affected property owners.

Three assertions were made. The lands sought to be annexed are not contiguous. Two. The lands proposed for annexation are not suitable for that purpose under the rules announced in *Vestal v. Little Rock*, 54 Ark. 321, 15 S. W. 891. Three. There is no substantial evidence to support the judgment of annexation by the circuit court.

The land was held to be contiguous and the Vestal elements are not conjunctive but disjunctive. It is also well established by the decisions of this court that the findings of the trial court in annexation cases must be given the same weight as are given to the verdict of a jury, and that such findings must be sustained if supported by substantial evidence.

Garner v. Benson, 224 Ark. 215- Annexation Proper

The petitioners alleged that unplatted territory that separated the city from the territory it proposed to incorporate had such physical characteristics that it would constitute a barrier that prevented the annexation. The petitioners argued that the annexation would not serve the interests of the inhabitants of the annexed areas. Upon review, the court found that there was ample evidence in the record that supported the annexation of both areas. There was testimony that the unplatted territory was suitable for industrial use. The physical aspect of the unplatted territory would not prevent the city from being unified or prohibit social and economic intercourse between the areas the city sought to annex. The court found that annexation would allow the city to remove hazards in the unplatted territory and reclaim it for urban uses. Further, **the court found that the areas did not have to be contiguous to each other for annexation, merely contiguous with the city.**

Walker v. City of Pine Bluff, 214 Ark. 127- Annexation Proper

The County Court having found in favor of annexation, as did the Circuit Court on appeal, supported by substantial evidence, well within the doctrine announced in *Vestal v. Little Rock*, although there is some contradictory testimony, the testimony was ample to support the judgment, and, accordingly, it was affirmed.

Vestal v. Little Rock, 54 Ark. 321- Annexation Proper

Appellants, an unincorporated town and a landowner, sought review of the order of the Pulaski Circuit Court (Arkansas), which granted the petition of appellee city for the annexation of the town to the city.

The city filed a petition for the annexation of the town into the city's corporate limits. The trial court granted the city's petition, and the town sought review. On appeal, the town contended that the trial court exceeded its authority in ordering that lands be annexed that were not contiguous to the city, and that the trial court ordered that land be annexed which was unreasonable and improper to include within the city. The court held that the presence of a river between the city and the town did not constitute a fact conclusive that the lands were not contiguous within the meaning of Ark. Stat. § 922. The court affirmed the trial court's finding that the annexation ordered was reasonable and proper. The court affirmed the trial court's inclusion of vacant land belonging to an individual. The court held that the trial court erred in the inclusion of the landowner's property because it clearly was not needed for city use. The court held that, pursuant to Ark. Stat. § 786, the city was entitled to amend the petition so as to exclude the land embraced within it.

The court reversed the order of the trial court that allowed for the annexation of the town to the city. The court remanded the matter to the circuit court with directions that the city was to be permitted to make such amendments as it may deem proper in order to exclude from the petition lands that should not be annexed, and the landowner was to be permitted to resist granting the petition as amended.

City limits may reasonably and properly be extended so as to take in contiguous lands,

- (1) when they are platted and held for sale or use as town lots,
- (2) whether platted or not, if they are held to be brought on the market and sold as town property when they reach a value corresponding with the views of the owner,
- (3) when they furnish the abode for a densely-settled community, or represent the actual growth of the town beyond its legal boundary,
- (4) when they are needed for any proper town purpose, as for the extension of its streets, or sewer, gas or water system, or to supply places for the abode or business of its residents, or for the extension of needed police regulation, and
- (5) when they are valuable by reason of their adaptability for prospective town uses; but the mere fact that their value is enhanced by reason of their nearness to the corporation, would not

give ground for their annexation, if it did not appear that such value was enhanced on account of their adaptability to town use.

City limits should not be so extended to take in contiguous lands, (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use, (2) when they are vacant and do not derive special value from their adaptability for city uses.

City of Dover v. City of Russellville, 352 Ark. 279- Annexation Proper

The Pope County Circuit Court, Arkansas, entered judgment granting petitioner property owners' request to be annexed into a particular city. Respondent city challenging the annexation appealed the trial court's judgment.

The property owners, who owned land adjoining the city of Russellville, petitioned the county court pursuant to Ark. Code Ann. § 14-40-601(Repl. 1998), seeking to be annexed into Russellville. The county court entered an order granting it. The city challenging the annexation filed a complaint seeking to prevent the proposed annexation. It alleged insufficient proof existed that all parcels of land were proper for annexation. It also asserted the property owners' proof failed to show the request to annex met the statutory requirements set forth in § 14-40-601. The trial court declined to grant the city challenging the annexation a continuance so it could obtain an expert, declined to recuse itself, and denied a request to depose an agent who had signed the annexation petition for some property owners. After judgment was entered finding the proposed annexation was proper, the state supreme court found the trial court did not err in denying the continuance, in denying recusal, or in denying the request to depose. It further found that the city challenging the annexation did not carry its burden of showing the annexation was improper pursuant to § 14-40-601. The judgment was affirmed.

City of Cave Springs v. City of Rogers, 343 Ark. 652- Annexation Proper

Under the provisions of 1999 Ark. Acts 779 (Act), appellee landowners sought and obtained the deannexation of their property from appellant city and its annexation by appellee city. Appellants filed an action in the Benton County Circuit Court (Arkansas) seeking a declaration that the Act was unconstitutional. Appellants sought review of the dismissal of their action.

Appellee landowners asked appellant city to provide their property with certain municipal services within a specified amount of time, and appellant declined to do so. 1999 Ark. Acts 779 (the Act) authorized these appellees to seek annexation of their land into another city which bordered their property, and they successfully did so. Appellant municipal corporation was not authorized to invoke the protections of U.S. Const. amend. XIV against the state. Municipalities were creatures of statute and, as such, the legislature had wide discretion to enact laws regarding the boundaries of a municipality. The Act contained procedural safeguards to prevent its arbitrary or discriminatory application. There was nothing in the Act to indicate its retroactive application, and one city's annexation of land located within a contiguous city was not a taking without due process. Appellee landowners properly provided notice of the proposed annexation by appellee city to appellant city's mayor.

The trial court was affirmed because the legislation appellants challenged was a proper exercise of the legislature's power to regulate the borders of municipalities. The legislation contained appropriate procedural safeguards, and the process of deannexation and annexation it authorized was not a taking without due process.

Williams v. Harmon, 67 Ark. App. 281- Annexation Proper

Appellants challenged the lower court's order dismissing their claim objecting to respondent's annexation of their property into the city of Sherwood (Arkansas).

Appellants sought review of the lower court's dismissal of their petition to challenge the City of Sherwood's (Arkansas) annexation of their property. The lower court dismissed it because the applicable statute of limitations had run. The court affirmed, holding that appellants' challenge to procedures outlined in Ark. Code Ann. § 14-40-301 et seq. had to have been made within 30 days of the annexation elections under Ark. Code Ann. § 14-40-304 (Repl. 1998). This was so whether or not such challenges arose from requirements prescribed by Ark. Code Ann. § 14-40-302: the section that appellants claimed limited the application of the statute of limitations. Because the court affirmed the lower court's dismissal on the ground that the complaint was not filed within 30 days, a review of whether the complaint was barred by laches or estoppel was unnecessary. The court affirmed the lower court's dismissal of appellants' action because it was barred by the applicable 30-day statute of limitations.

City of Springdale v. Incorporated Town of Bethel Heights, 311 Ark. 497- Annexation Proper

Appellants, a property owner and a city, challenged a judgment of the Benton Circuit Court (Arkansas), which denied the owner's petition pursuant to Ark. Code Ann. § 14-40-401 (1987) to have his property annexed to the city. The circuit court found that appellee town had already annexed the tract of land in which the owner's property was located when the town's voters approved an ordinance annexing seven separate tracts of land.

On appeal, appellants argued that the annexing ordinance was defective because the town council violated certain by-laws and statutory requirements when adopting that ordinance. However, appellants were procedurally barred under Ark. Code Ann. § 14-40-304, which provided that if it was alleged that the area proposed to be annexed did not conform to the requirements of § 14-40-302, a legal action could be filed, within 30 days after the election, to nullify the election. No such suit was filed in this case. Appellants argued that § 14-40-303(b)(B)(i) required the town to file a description and map of the annexed area with the county clerk and Secretary of State and that the town's failure to have filed such matters with the Secretary of State tolled the 30-day requirement to bring suit. However, paragraph (B)(ii) provided that a municipality's annexation should be effective 30 days following its filing the description and map of the annexed property with only the county clerk. There was no authority for the argument that regardless of the validity of the town's prior annexation of tract four, the law did not prohibit the owner from voluntarily annexing the same land into the city. The court affirmed the judgment.

Duennenberg v. City of Barling, 309 Ark. 541- Annexation Proper

Appellants, an individual and the City of Fort Smith, Arkansas, sought review of a judgment from the Sebastian Circuit Court (Arkansas), which granted Appellee City's of Barling, Arkansas, motion to dismiss appellants' amended complaint, in an election contest.

Appellants filed an election contest against the City, alleging that Ordinance No. 202 and the election held pursuant thereto were null and void because the election did not include qualified electors living within the area of annexation, the lands did not meet the criteria in Ark. Code Ann. § 14-40-302(a)(1-5)(1987), and the Ordinance did not contain a proper legal description. The City filed a motion to dismiss the complaint, asserting that Ordinance No. 202 was repealed by Ordinance 203, and hence, the complaint failed to state facts upon which relief could be granted. Thereafter, appellants filed an amended complaint, challenging the validity of the election as provided under Ordinance No. 203. The City filed a motion to dismiss the amended complaint as untimely, under Ark. Code Ann. § 14-40-304 (1987). The circuit court granted the City's motion. On appeal, the court reversed and held that the circuit court erred in dismissing the amended complaint because the original complaint, which was timely, was not deficient in stating a cause of action and the amendment, which corrected an obvious error in the designation of the ordinance, was not essential to that cause of action. The court reversed the circuit court's judgment and remanded for further proceedings.

Britton v. City of Conway, 36 Ark. App. 232- Annexation Proper

Plaintiff city residents appealed from a decision of the Circuit Court of Faulkner County (Arkansas), which dismissed their complaint seeking to prevent the annexation of territory to a city.

Defendants filed a petition in county court seeking the annexation of land to the city. After the county court granted the petition, a complaint was filed in the circuit court to prevent the annexation. The residents were not named in the complaint but rather were referred to generically as "remonstrants." Defendants filed a motion to dismiss the complaint. At a hearing on the motion, one of the residents, who had filed a pro se "petition for denial" in the county court, testified that he was a property owner in the city, that he was one of the remonstrants in the case, and that he was opposed to the annexation. On appeal from the circuit court's dismissal of the complaint, the court held that: (1) the circuit court erred in finding that there was no plaintiff who had standing to contest the annexation because the resident who testified was an "interested person" under Ark. Code Ann. § 14-40-604 and thus was authorized to bring the complaint; and (2) although Ark. Code Ann. § 14-40-601 required service of summons on defendants' agent, the circuit court should have directed that defendants be made a party by service of summons on their agent rather than dismissing the complaint. The court reversed the circuit court's decision and remanded with directions that the circuit court require that defendants be made a party to the case.

Pennington v. City of Sherwood, 304 Ark. 362- Annexation Proper

Appellants sought review of a decision of the Pulaski Circuit Court, Third Division (Arkansas) upholding an annexation of an unincorporated area into appellee city as approved by a majority of the city's voters.

Appellants filed suit challenging the validity of the election, arguing that the legal description of the land in the ordinance calling for the election and the plat attached to the ordinance failed to contain an accurate description of the lands to be annexed as required by Ark. Code Ann. § 14-40-303(a)(1) (1987). The trial court refused to apply a hyper technical concept of "accuracy" and upheld the annexation. On appeal, appellants' argued that the ordinance's legal description of the area to be annexed was inaccurate and that the plat attached to the ordinance reflected boundaries differing from those contained in the ordinance's legal description. The court declined to consider appellants' argument as their abstract did not provide the court with either the legal description contained in the ordinance or a copy of the plat, and the court would not go to the transcript for them. Accordingly, the court was unable to reach the merits of these points on appeal. The court ruled, however, that there was no merit in the contention that the schedule of proposed services for the annexed area was inadequate. Here, there was a schedule or list of the services to be provided. The court affirmed the trial court.

City of Crossett v. Anthony, 250 Ark. 660- Annexation Proper

Appellant city challenged the judgment of the Circuit Court of Ashley County (Arkansas), which found in favor of appellee protestants and denied the city's petition that sought annexation of two different properties.

At a special election the electors of the city voted in favor of annexing two areas to the city. The properties were designated as the north and south properties. The city argued that the protestants lacked standing to challenge the petition for annexation. The court agreed with respect to the north property and reversed that portion of the judgment. The court found that the protestants did not reside or own property within the city limits or the area sought to be annexed. However, the court affirmed the judgment in regard to the south property because there was insufficient evidence that the land was adapted for urban use. Denial of the city's petition for annexation of the north property was reversed and remanded but in regard to the south property it was affirmed.

Planque v. City of Eureka Springs, 243 Ark. 361- Annexation Proper

Following a favorable vote for annexation in a properly called and conducted election, the county court is bound to grant the petition praying for the annexation unless a complaint is filed against it, and the burden rests on those filing such complaint to show why the petition for annexation should not be granted. Eight individuals and three married couples, who owned property within the territory involved, and who are the appellants here, opposed the petition in county court and after hearing thereon, the petition for annexation was granted and an order of annexation was entered by the county judge. The remonstrants appealed to the circuit court where a jury was waived and the case was tried before the circuit judge sitting as a jury. After hearing the evidence offered by the remonstrants, and after finding that a majority of the votes cast at the election was in favor of annexation and that the proposed territory was contiguous to the existing boundary of the City of Eureka Springs, the circuit court found "that the Remonstrants have failed to go forward with the burden of proof to show the invalidity of the order of the Carroll County Court." and the petition of the remonstrants objecting to the

annexation order of the Carroll County Court was dismissed and the annexation was approved by the circuit court.

After appeal, it was clear that the entire evidence offered by the appellants consisted of the testimony of three appellants, and the substance of their testimony was directed primarily to the personal inconveniences, lack of benefits and higher taxes they anticipate from annexation. The court has held that the desires of the residents in the territory to be annexed are not a determinative point. By force of the statute the annexation followed the vote of the City of Eureka Springs. The vote of the City made a prima facie case as to the propriety of the annexation, and the burden of producing sufficient competent evidence to overcome the prima facie case as to the propriety of the annexation was on the appellants, and we conclude that the trial court did not err in holding that appellants failed in their discharge of that burden.

Pike v. City of Stuttgart, 200 Ark. 1010- Annexation Proper

Appellant protesters challenged an order of the Arkansas Circuit Court, Northern District, which dismissed their appeal of a decision of the county court, which dismissed appellee city's annexation proceeding.

Within 30 days of the county court's dismissal of the protesters' challenge to the city annexation proceeding, the protesters filed an affidavit and prayer for appeal. Sometime later they filed a transcript. The circuit court granted the city's motion to dismiss the appeal, and the protesters sought review. The court reversed, finding that (1) the statute relating to annexation afforded a right of action that was independent of an appeal; (2) the transcripts required under Ark. Stat. § 9788 (Pope) had to be delivered and certified, but there was no requirement that they had to be filed within 30 days; and (3) the Act of February 20, 1983 expressly allowed six months for appeals and did not require that a transcript be filed within 30 days. The court reversed the dismissal of the appeal and reinstated the case.

CONTIGUITY

One of the threshold problems that must be resolved by a party interested in the annexation of territory is whether the law of the jurisdiction requires that the territory to be annexed be contiguous or adjacent to the annexing municipality. 81 Am. Jur. Proof of Facts 3d 285 (Originally published in 2005).

The purpose of requiring contiguity, as stated in some annexation statutes and judicial decisions, is to permit the natural and gradual expansion or extension of boundaries. Contiguity assures that the delivery of government services is convenient and prevents the awkward situation where, to acquire such services, individuals would have to pass under or over lands outside of a particular district. As stated by the Illinois Supreme Court in one decision: "The purpose of the contiguity requirement is to permit the natural and gradual extension of municipal boundaries to areas which 'adjoin one another in a reasonably substantial physical sense.' In that way, the delivery of services is more convenient for the city and more efficient for its citizens. Sewer lines, and fire, police and other services, as far as practicable, should not have to pass under or over lands not within municipal boundaries." 81 Am. Jur. Proof of Facts 3d 285 (Originally published in 2005).

In Arkansas, the law about contiguity and lack of contiguity is clear. Arkansas has rejected the use of tiny strips of land to reach the larger area to be annexed. *Chastain v. Davis*, 294 Ark. 134, 142-43, 741 S.W.2d 632, 636 (1987). If the only purpose of inclusion of a strip of land was a connecting link with the lands actually sought to be annexed or use as a subterfuge, contiguity should not be recognized. *Kalb v. W. Helena*, 249 Ark. 1123, 1125, 463 S.W.2d 368, 369 (1971); *Clark v. Holt*, 218 Ark. 504, 505, 237 S.W.2d 483, 483 (1951). Contiguous lands are those not separated from the municipal corporation by outside lands. *Patrick v. McSperritt*, 64 Ark. App. 310, 312, 983 S.W.2d 455, 456 (1998). Additionally, two tracts which corner are contiguous, because they touch. *Clements v. Crawford County Bank*, 64 Ark. 7, 40 S. W. 132, 62 Am. St. Rep. 149. The fact that there would be "islands" of unannexed territory entirely surrounded by the municipal corporation does not destroy the contiguity of the territory annexed. *Kalb v. W. Helena*, 249 Ark. 1123, 1125, 463 S.W.2d 368, 369 (1971).

Contiguous lands may not be annexed if they: (1) At the time of the adoption of the ordinance, have a fair market value of lands used only for agricultural or horticultural purposes and the highest and best use of the lands is for agricultural or horticultural purposes; (2) Are lands upon which a new community is to be constructed with funds guaranteed, in whole or in part, by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII of the Housing and Urban Development Act of 1970; (3) Are lands that do not include residents, except as agreed upon by the mayor and county judge; or (4) Are lands that do not encompass the entire width of public road right-of-way or public road easements within the lands sought to be annexed, except as agreed upon by the mayor and county judge.

If any lands are annexed that are being used exclusively for agricultural purposes, the lands may continue to be used for such purposes so long as the owner desires and the lands shall be assessed as agricultural lands.

IMPROPER:

Clark v. Holt, 218 Ark. 504 Annexation Improper- (Subterfuge)

Appellant town residents challenged the validity of the proceedings of the Boone County Circuit Court (Arkansas) and its judgment holding that the annexation proceeding on a 183-acre tract of land owned by appellee property owners was valid pursuant to Ark. Stat. §§ 19-301 and 19-302.

The federal government was going to flood an area to construct a dam. In compliance with a government requirement, 37 property owners of the town presented a petition to the government favoring relocation adjacent to and northwest of the original town. The government surveyed and platted 95 acres in the area, 50 acres of which were laid out in lots and blocks. The 95-acre tract was annexed to the original town. The government agreed to compensate the original town \$ 13,500 for the construction of streets, alleys, and other facilities in the northwest site. The property owners involved in this dispute acquired a tract of land sometime after annexation of the northwest area. The tract was only connected to the town by a strip of land 50 feet wide and 3060 feet long. The strip was not dedicated for public use. The circuit court upheld the annexation of the 183-acre tract. The court reversed and set aside the order of annexation. The court held that: **(1) the strip of land was used as a subterfuge to annex the property; and (2) under § 19-301, the territory sought to be annexed was not "contiguous and adjoining" to the town, and therefore, the annexation was invalid.** The court reversed the judgment and remanded the case with directions to set aside the order of annexation.

PROPER:

Kalb v. City of West Helena, 249 Ark. 1123- Annexation Proper

Certain property owners who objected to annexation of their property to the City of West Helena have appealed from a judgment of the circuit court annexing the territory. Mildred Scott asserted that the court erred in holding that her land was suitable to, or of such character as to be subject to, annexation. She contended that it was vacant and did not derive special value from its adaptability for city uses. Van Sant Kalb and others asserted that their property was not suitable for city use because it was used for agricultural and horticultural purposes and because it was not contiguous to the city.

There was substantial evidence that significant portions of the land were used for agricultural and horticultural purposes. There is also substantial evidence to show that the tract represents the city's growth beyond the city limits and that the value of the lands is derived from actual and prospective use for city purposes rather than enhanced by proximity to the city. If this evidence is accepted, the tract is a proper subject of annexation. The judgment was affirmed.

Planque v. City of Eureka Springs, 243 Ark. 361- Annexation Proper

Following a favorable vote for annexation in a properly called and conducted election, the county court is bound to grant the petition praying for the annexation unless a complaint is filed against it, and the burden rests on those filing such complaint to show why the petition for annexation should

not be granted. Eight individuals and three married couples, who owned property within the territory involved, and who are the appellants here, opposed the petition in county court and after hearing thereon, the petition for annexation was granted and an order of annexation was entered by the county judge. The remonstrants appealed to the circuit court where a jury was waived and the case was tried before the circuit judge sitting as a jury. After hearing the evidence offered by the remonstrants, and after finding that a majority of the votes cast at the election was in favor of annexation and that the proposed territory was contiguous to the existing boundary of the City of Eureka Springs, the circuit court found "that the Remonstrants have failed to go forward with the burden of proof to show the invalidity of the order of the Carroll County Court." and the petition of the remonstrants objecting to the annexation order of the Carroll County Court was dismissed and the annexation was approved by the circuit court.

After appeal, it was clear that the entire evidence offered by the appellants consisted of the testimony of three appellants, and the substance of their testimony was directed primarily to the personal inconveniences, lack of benefits and higher taxes they anticipate from annexation. The court has held that the desires of the residents in the territory to be annexed are not a determinative point. By force of the statute the annexation followed the vote of the City of Eureka Springs. The vote of the City made a prima facie case as to the propriety of the annexation, and the burden of producing sufficient competent evidence to overcome the prima facie case as to the propriety of the annexation was on the appellants, and we conclude that the trial court did not err in holding that appellants failed in their discharge of that burden.

Smalley v. City of Fort Smith, 239 Ark. 39- Annexation Proper

This appeal stems from an effort to annex 1,594.97 acres of land to the City of Fort Smith. The annexation petition was signed (and filed in the County Court of the Fort Smith District) by residents and landowners of the affected lands. The proceedings were pursuant to Ark. Stat. Ann. § 19-301 et seq. as amended (Repl. 1956 and Supp. 1963).

The County Court granted the annexation. In due time appellants (those opposing annexation) filed a petition in the Sebastian Circuit Court, Fort Smith District, contending the proceeding was contrary to the State Constitution; that the petition was not signed by the required number of property owners; that the land was not suitable for city development; that the "area" was not contiguous to the City of Fort Smith; and, that the County Court erred in refusing to allow certain signers to withdraw their names from the petition. The Circuit Court, after a full hearing, dismissed the petition and affirmed the County Court's order of annexation. On appeal appellants urged for a reversal several separate points.

All arguments were quickly proven ineffective; the question of whether Fort Smith had the constitutional right and power to annex property which lies wholly within the greenwood District of Sebastian County raised some concern. It is noted the constitution does not compel Sebastian County to have two districts, nor does it specify the division line in case two districts were created. It is noted also that the preceding section of the constitution (§ 4) clearly indicates the legislature has the right to form

new counties -- i.e. to form new county lines. If it can change county lines it could undoubtedly change district lines -- as by annexation. The judgement of the trial court was affirmed.

Rooker v. City of Little Rock, 234 Ark. 372- Annexation Proper

Appellant landowners challenged a judgment from the Pulaski Circuit Court, Second Division (Arkansas), which annexed land to appellee city in an annexation proceeding instituted pursuant to Ark. Stats. § 19-101. The city filed a petition to annex land to the city, and the landowners objected. The trial court entered a judgment of annexation, and on appeal, the court affirmed. The landowners could not assert the invalidity of the city's annexation ordinance because they stipulated to its validity at the trial lever. The ordinance did not implicate Ark. Const. amend. 14, which applied to the General Assembly and not to municipalities. Although the city's first amended petition was void because it added territory to that described in the original petition, the trial court did not consider the void amended petition, and the petition considered by the trial court did not add territory. Evidence supported the trial court's findings that the petition's map and property description were sufficiently accurate and that the city was financially able to furnish services to the annexed territory. **The exclusion of areas of unincorporated land lying completely within the incorporated territory did not destroy the contiguity of the territory.** The court affirmed the trial court's judgment of annexation.

Louallen v. Miller, 229 Ark. 679- Annexation Proper

This appeal deals with the annexation of a small parcel of land to the town of Bryant. The petition for annexation, signed by a majority of the property owners affected, was approved by the circuit court over the objections of appellant and his wife who are affected property owners.

Three assertions were made. The lands sought to be annexed are not contiguous. Two. The lands proposed for annexation are not suitable for that purpose under the rules announced in *Vestal v. Little Rock*, 54 Ark. 321, 15 S. W. 891. Three. There is no substantial evidence to support the judgment of annexation by the circuit court.

The land was held to be contiguous and the Vestal elements are not conjunctive but disjunctive. It is also well established by the decisions of this court that the findings of the trial court in annexation cases must be given the same weight as are given to the verdict of a jury, and that such findings must be sustained if supported by substantial evidence.

Garner v. Benson, 224 Ark. 215- Annexation Proper

The petitioners alleged that unplatted territory that separated the city from the territory it proposed to incorporate had such physical characteristics that it would constitute a barrier that prevented the annexation. The petitioners argued that the annexation would not serve the interests of the inhabitants of the annexed areas. Upon review, the court found that there was ample evidence in the record that supported the annexation of both areas. There was testimony that the unplatted territory was suitable for industrial use. The physical aspect of the unplatted territory would not prevent the city from being unified or prohibit social and economic intercourse between the areas the city

sought to annex. The court found that annexation would allow the city to remove hazards in the unplatted territory and reclaim it for urban uses. Further, **the court found that the areas did not have to be contiguous to each other for annexation, merely contiguous with the city.**

Incorporation

Steps and Details for Incorporation

14-38-101. Petition for incorporation

When the inhabitants of a part of any county not embraced within the limits of any city or incorporated town shall desire to be organized into a city or incorporated town, they may apply, by a petition in writing, signed by the greater of either two hundred (200) or a majority of the qualified voters residing within the described territory, to the county court of the proper county. The petition shall: describe the territory proposed to be embraced in the incorporated town and have annexed to it an accurate map or plat of the territory; state the name proposed for the incorporated town; and name the persons authorized to act in behalf of the petitioners in prosecuting the petition.

The court shall not approve the incorporation of any municipality if any portion of the territory proposed to be embraced in the incorporated town shall lie within five (5) miles of an existing municipal corporation and within the area in which that existing municipal corporation is exercising its planning territorial jurisdiction, unless the governing body of the municipal corporation has affirmatively consented to the incorporation by written resolution.

The planning territorial jurisdiction limitation shall not apply if the area proposed to be incorporated is land upon which a real estate development by a single developer, containing not less than four thousand (4,000) acres, has been or is being developed under a comprehensive plan for a community containing streets and other public services, parks, and other recreational facilities for common use by the residents of the community, churches, schools, and commercial and residential facilities, and which has been subdivided into sufficient lots for residential use to accommodate a projected population of not fewer than one thousand (1,000) persons, and for which a statement of record has been filed with the Secretary of the United States Department of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act.

When any petition shall be presented to the court, it shall be filed in the office of the county clerk, to be kept there, subject to the inspection of any persons interested, until the time appointed for the hearing of it.

At or before the time of the filing, the court shall fix and communicate to the petitioners, or their agent, a time and place for the hearing of the petition, which time shall not be less than thirty (30) days after the filing of the petition. Thereupon, the petitioners or their agent shall cause a notice to be published in some newspaper of general circulation in the county for not less than three (3) consecutive weeks. If there is no newspaper of general circulation in the county, a notice shall be posted at some public place within the limits of the proposed incorporated town for at least three (3) weeks before the time of the hearing. The notice shall contain the substance of the petition and state the time and place appointed for the hearing.

14-38-103. Hearing on petition

Every incorporation hearing under this chapter shall be public and may be adjourned from time to time. Any person interested may appear and contest the granting of the prayer of the petition, and affidavits in support of or against the petition, which may be prepared and submitted, shall be examined by the county court. In its discretion, the court may permit the agent named in the original petition to amend or change it. However, no amendment shall be permitted whereby territory not before embraced shall be added or the character of the proposed city or incorporated town changed from special to general, or from general to special, without appointing another time for a hearing and requiring new notice to be given as provided in § 14-38-101.

14-38-104. Order of incorporation – Transcript

The county court shall make out and endorse on the petition an order to the effect that the city or incorporated town as named and described in the petition may be organized if the court shall be satisfied after hearing the petition that: the greater of either two hundred (200) or a majority of the qualified voters residing within the described territory have signed the petition; the limits have been accurately described and an accurate map or plat of the limits made and filed; the name proposed for the city or incorporated town is proper and sufficient to distinguish it from others of like kind in the state; and moreover, that it shall be deemed right and proper in the judgment and discretion of the court that the petition shall be granted.

The order shall be signed and delivered by the court, together with the petition and the map or plat, to the recorder of the county, whose duty it shall be to record it as soon as possible in the proper book or records and to file and preserve in his or her office the original papers, having certified thereon that it has been properly recorded. It shall also be the duty of the recorder to make out and certify, under his or her official seal, two (2) transcripts of the record. The recorder shall forward one (1) copy to the Secretary of State and deliver one (1) copy to the agent of the petitioners, with a certificate thereon that a similar transcript has been forwarded to the Secretary of State as provided by this section.

14-38-105. Completion of incorporation

As soon as the record shall be made and the transcript certified, forwarded, and delivered, the inhabitants within the limits described in the petition shall be deemed a city or incorporated town, to be organized and governed under the provisions of this subtitle in like manner as if specially named therein.

As soon as the city or incorporated town shall be actually organized, by election of its officers as provided in § 14-38-108, notice of its existence as such shall be taken in all judicial proceedings in the state.

14-38-106. Complaint to prevent organization

One (1) month shall elapse from the time the transcripts are forwarded and delivered before notice shall be given of an election of officers in the city or incorporated town. At any time within the one (1) month, any person interested may make complaint in writing, in the nature of an application for an injunction to the circuit court, or the judge in vacation, having given at least five (5) days' notice

thereof. He or she shall furnish a copy of the complaint to the agent of the petitioners for the purpose of having the organization of the proposed city or incorporated town prevented.

14-38-107. Hearing on complaint – Annulment

It shall be the duty of the court or judge to hear the complaint in a summary manner, receiving answers, affidavits, and proofs, as may be deemed pertinent.

If it shall appear to the satisfaction of the court or judge that the proposed city or incorporated town does not contain the requisite number of inhabitants, that a majority of them have not signed the original petition, or that the limits of the proposed city or incorporated town are unreasonably large or small or are not properly and sufficiently described, then the court or judge shall order the record of the incorporated town to be annulled.

It shall be the duty of the county recorder to endorse on the record the order so made and to certify and transmit to the Secretary of State a copy of the order. Thereupon, the record shall be of no effect, but the proceeding shall in no manner bar a subsequent petition to the county court, on the same subject, by complying with the provisions of this chapter.

14-38-108. First election of officers

Unless the agent of the petitioners, within thirty (30) days after a transcript shall be delivered as provided in § 14-38-104, shall be notified of a complaint having been made to the circuit court of the county, or a judge thereof, then, at the end of the thirty (30) days after the dismissal of the complaint, the agent shall give public notice, by posting a notice at three (3) or more public places within the limits of the city or incorporated town, of the time and place of holding the first election for officers of the city or incorporated town. The election shall be conducted and the officers elected and qualified in the manner prescribed by law in like cases. If the election shall be held at any other time than that prescribed by law for the regular election of the officers, the officers elected shall continue in office so long and in like manner as if they had been elected at the preceding period of the regular election.

14-38-109. City or town lying in more than one county

Every city and incorporated town presently lying in more than one (1) county and presently exercising the rights, privileges, and powers of a municipal corporation, de facto or de jure, and heretofore incorporated or attempted to have been incorporated under any special act of the General Assembly of the State of Arkansas, or in any other manner incorporated under color of law, is declared to be a duly incorporated city or incorporated town of that classification which the city or town may presently enjoy as certified by the Secretary of State, as fully to all intents and purposes as though the city or town had been duly incorporated under the general laws of the State of Arkansas.

Each act and deed heretofore done by any officers of the city or incorporated town in their official capacity under color of office for or in behalf of the city or incorporated town is cured, validated, and declared confirmed and shall have the same force and effect as though the city or incorporated town had been lawfully incorporated under the general statutes of the State of Arkansas.

14-38-114. Preservation of papers

The Secretary of State shall receive and preserve in his or her office all papers transmitted to him or her in relation to the organization, incorporation, or annexation of territory to cities and towns.

14-38-115. Alternative method of incorporation -- Petition and election

(a) (1) In addition to the procedures for incorporating a city or town under §§ 14-38-101 -- 14-38-108, the inhabitants of a part of any county not embraced within the limits of any city or incorporated town may apply to the county judge of the proper county to call for an election on the issue of incorporating a city or town and for electing municipal officials if the following conditions are met:

(A) The territory proposed to be incorporated has at least four thousand (4,000) inhabitants according to the most recent federal decennial census; and

(B) The county judge is presented a written petition that:

(i) Meets the requirements of subdivision (a)(2) of this section; and

(ii) Is signed by at least twenty-five percent (25%) of the qualified voters who reside in the territory proposed to be incorporated.

(2) The petition shall:

(A) Describe the territory proposed to be embraced in the incorporated city or town and have attached to it an accurate map or plat of the territory;

(B) State the name proposed for the incorporated city or town; and

(C) Name the persons authorized to act in behalf of the petitioners in prosecuting the petition.

(b) The county judge shall not approve a petition for incorporation of any city or town if any portion of the territory proposed to be incorporated is ineligible under the criteria in § 14-38-101(b).

(c) If a petition for incorporation is presented to the county judge, it shall be filed in the office of the county clerk to be kept there, subject to the inspection of any persons interested, until the time appointed for a public hearing on the petition.

(d)

(1) Upon the filing of a petition for incorporation, the county judge shall set the time for a public hearing on the petition and shall communicate to the petitioners or their agent a time and place for the hearing that shall be not less than thirty (30) days after the filing of the petition.

(2)

(A) The petitioners or their agent shall publish a notice in some newspaper of general circulation in the county for not less than three (3) consecutive weeks.

(B) The notice shall contain the substance of the petition and state the time and place set for the public hearing.

(e) The county judge shall hold the public hearing at the time and place determined, and the procedure for a hearing set forth in § 14-38-103 shall be followed in the proceedings concerned in this section to the extent applicable.

(f) (1) After the hearing, if the county judge is satisfied that the procedures for filing the petition for incorporation were followed, that the requirements for signatures under subsection (a) of this section have been met, that the limits of the territory to be incorporated have been accurately described and an accurate map was made and filed, and if the prayer of the petitioner is right and proper, then the county judge shall enter an order that:

(A) Grants the petition to hold an election on the date of the next general election; and

(B) Sets the date of the next general election as the date of the election on the issue of incorporating the city or town and electing officers.

(2) The order shall be recorded by the clerk of the county.

(g) (1) (A) If the county judge orders an election on the issue of incorporation, the county clerk shall notify the county election commission at least sixty (60) days before the election that the issue of incorporation shall also appear on the election ballot for a proposed city or incorporated town.

(B)

(i) No later than forty-five (45) days prior to the election, the county clerk shall identify all persons who reside within the territory proposed to be incorporated, and the county clerk shall determine the names and addresses of all qualified electors residing within that territory.

(ii) The failure to identify all persons residing within the territory proposed to be incorporated or the failure to determine the names and addresses of all qualified electors residing within that territory shall not invalidate or otherwise affect the results of the election.

(C) All qualified electors residing within the territory to be incorporated shall be entitled to vote on the issue of incorporation.

(D) The county clerk shall give notice of the election by publication by at least one (1) insertion in some newspaper having a general circulation in the county.

(2)

(A) The county clerk shall prepare a list by precinct of all those qualified electors residing within the territory to be incorporated who are qualified to vote in that precinct and furnish that list to the election officials.

(B) The county clerk shall give notice of the voter registration deadlines at last forty (40) days before the election by ordinary mail to those persons whose names and addresses are on the list.

(3) The election on the issue of incorporation shall be held in accordance with the procedures established for other municipal elections, and the ballot for the election shall be printed substantially as follows:

" FOR THE INCORPORATION OF THE CITY (OR TOWN) OF (NAME OF PROPOSED CITY OR INCORPORATED TOWN), ARKANSAS.

AGAINST THE INCORPORATION OF THE CITY (OR TOWN) OF (NAME OF PROPOSED CITY OR INCORPORATED TOWN), ARKANSAS."

(4) No later than seven (7) days following the election, the county clerk shall:

(A) Certify the election results;

(B) Record the election results in the county records; and

(C) File a certified copy with the county judge.

(h) (1) (A) If a majority of the qualified electors voting on the issue of incorporation in the election vote for the issue, then the county clerk shall no later than seven (7) days following the election:

(i) Certify the election results;

(ii) Record the election results in the county records; and

(iii) File a certified copy with the Secretary of State.

(B) Upon the county clerk's filing of the election results, the county judge shall:

(i) Approve the petition of incorporation as ratified by the voters; and

(ii) Endorse on the petition an order that the city or incorporated town as named and described in the petition is organized and that the petition shall be granted.

(C)

(i) The order, petition, and map or plat shall be signed and delivered to the county recorder to record them in the proper records and to file and preserve in his or her office the original papers, having certified on the papers that they have been properly recorded.

(ii)

(a) It shall also be the duty of the recorder to make out and certify, under his or her official seal, two (2) transcripts of the record.

(b) The recorder shall forward one (1) copy to the Secretary of State and deliver one (1) copy to the agent of the petitioners, with a certificate on the transcript that a similar transcript has been forwarded to the Secretary of State.

(D)

(i) The incorporation shall be effective on the date the order of the county judge is filed and recorded.

(ii) The election of municipal officers shall be effective upon that date.

(2) If a majority of the qualified electors voting on the issue at the election vote against the issue of incorporation, the incorporation petition is null and void.

(i)

(1) If an order of the county judge provides for an election on the issue of incorporation, then the election of officers for the proposed city or town is to take place at the same time as the election on the issue of incorporation at the next general election.

(2) The county clerk shall notify the county election commission at least sixty (60) days before the election that the election of city or town officers shall also appear on the election ballot along with the issue of incorporation of the proposed city or incorporated town.

(3)

(A) The county election commission is responsible for holding the first election of officers for the proposed city or town.

(B) The type of officers to be elected and qualified and the election itself shall be conducted in the manner prescribed by law in like cases for a city or town of like size or class.

(4) If the election is held at any other time than that prescribed by law for the regular election of the officers of the city or town of like size or class, the officers elected shall continue in office as long as and in the same manner as if they had been elected at the preceding period of the regular election of officers of the city or town of same size or class.

Incorporation Cases

IMPROPER:

Town of Ouita v. Heidgen 247 Ark. 943- Incorporation Improper (Taking)

This appeal is from a judgment of the Pope County Circuit Court which held void an order of the county court incorporating approximately 925 acres of land, near Russellville in Pope County, into the town of Ouita. The circuit court enjoined the incorporators from proceeding further with organization of the town under the county court order, and the incorporators prosecute this appeal under the name "Town of Ouita."

Approximately 80 resident landowners in the area involved filed their petition and plat in the office of the Pope County Clerk; the petition named Alfred B. Hettel, Jim Parrish and four other individuals to act in behalf of the petitioners, and the other preliminary statutory procedure for incorporation was carried out. No one appeared in opposition to the petition at a hearing held by the county court, so the petition was granted and an order of incorporation was entered by the county court under authority of Ark. Stat. Ann. § 19-103 (Repl. 1968).

John Heidgen and J. Madison White filed this action to have the order of incorporation declared invalid. They alleged that the petition and notice in the incorporation proceeding did not accurately describe the area or territory proposed to be included within the corporate limits, which is a ground for injunctive relief under the provisions of Ark. Stat. Ann. §§ 19-105 and 19-106 (Repl. 1968). They also alleged that the petition for incorporation was not filed with a good-faith intention of establishing a town or city, but only for the purpose of preventing the territory from being annexed to the city of Russellville, which had already commenced annexation proceedings. Additional allegations were: the nature of the land and terrain was not of such character as to form an incorporated town, so that taxation levied for municipal purposes would constitute the taking of private property without making just compensation to the owners; the proposed incorporated town would be incapable of affording them with municipal services, thus depriving them of protection of life, liberty and property. This was treated as the taking of private property for public use in the form of taxation without giving any compensation, by way of protection to life, liberty, property, or otherwise. The judgement denying the incorporation was affirmed.

Waldrop v. Kansas C. S. R. Co., 131 Ark. 453- Incorporation Improper (Taking)

The Waldrop case was a suit for injunction against the collection of taxes from a railroad in the purported town of Ogden, alleged by the taxpayer to be nonexistent. The trial court found the order of incorporation to be void. One of the bases for this finding was that the land was not of such character as could form an incorporated town. Since it was manifest that the owners of the lands involved could not derive any benefit from being placed within the limits of the town, and that the town was only incorporated for the purpose of organizing a school district, the court said that the attempted organization was void as an arbitrary and unreasonable exercise of power. This, constituted, insofar as a property owner and taxpayer was concerned, the taking of private property for public use in the form of taxation without giving any compensation, by way of protection to life, liberty, property, or otherwise.

Arnold v. McCarroll 200 Ark. 1094- Incorporation Improper (Not Legitimate Reason)

Incorporation of Omaha was held void. The incorporation of the town of Omaha was void for the reason that most of the lands included within the corporate limits were agricultural and timbered lands and not needed for the legitimate expansion of the village or town of Omaha. Even if it be conceded that the lands might be laid off in blocks, lots, streets and alleys no such use of them was intended then or in the future. The agricultural and timbered lands embraced within the corporate limits were uninhabited except for a few isolated farm houses and the purpose of embracing them within the corporate limits was to avoid the payment of the 6 1/2c state tax on gasoline to be sold therein. No other reasonable conclusion can be drawn from reading the testimony. We think the trial court upon the remand of this cause correctly declared that the agricultural and timbered lands included in the corporate limits were not needed for urban purposes nor intended to be used for urban purposes and for that reason the incorporation of Omaha was void.

Campbell v. City of Cherokee Village West, 333 Ark. 310-Remanded for Further Proceedings

Appellant resident challenged the decision of the Fulton County Circuit Court (Arkansas), which dismissed with prejudice his complaint for an injunction against the incorporation of appellee city.

The trial court ruled that because the resident had failed to contest the petition for incorporation in the county court he was not an interested person under the applicable statute and, therefore, lacked standing. On review, the court reversed and remanded. The court found that Ark. Code Ann. § 14-38-103(a)(2), regarding contesting an incorporation, was permissive or discretionary, rather than mandatory. The court determined the right of action provided in Ark. Code Ann. § 14-38-106 was a separate and independent action taken by filing a complaint in circuit court after incorporation had been approved by the county court, but before notice had been given of an election of officers for the incorporated town. The court concluded that a citizen was not required to first appear in county court and contest a petition for incorporation in order to have standing to file a complaint against such incorporation in circuit court, and the resident was a "person interested" because he lived in the area to be incorporated. The dismissal of the resident's complaint for an injunction against the incorporation of the city was reversed and the cause was remanded.

PROPER:

Chastain v. City of Little Rock 208 Ark. 142- Incorporation Proper

Petitioner individuals challenged the decision of the Pulaski Circuit Court, Second Division (Arkansas), which denied the individuals' petition, filed pursuant to Pope's Dig. Ark. Stat. §§ 9786-9788, to incorporate certain territory adjoining the city (territory) into a town called West Little Rock. Moreover, the individuals sought review of the trial court's decision that granted respondent city's petition to annex the territory.

The city adopted an ordinance whereby it was ordered that the question of annexation be submitted to the voters. Thereafter, the city held an election to determine whether the voters were in favor or

against annexation of the territory. The voters were in favor of annexation. A hearing was held to decide on the city's petition for annexation and the individuals' petition for incorporation. At the conclusion of the hearing, the county court denied both petitions. All parties appealed to the trial court. The individuals challenged trial court's decision denying their petition. On appeal, the court held that the city had a right to file the petition for annexation. Moreover, the court held that the city had the right to have its petition heard by the county court, even though the individuals' petition for incorporation was pending. The court affirmed the trial court's decision.

City of Little Rock v. Town of North Little Rock 72 Ark. 195- Incorporation Proper

This is an action brought by the city of Little Rock and other parties to enjoin the town of North Little Rock and its mayor and the members of its common council from proceeding further under the act of March 16, 1903, in their attempt to annex the territory embraced in the Eighth Ward of the city of Little Rock to the incorporated town of North Little Rock. The city contends that an act for annexation authorizes the town of North Little Rock to take private property without due process of law and without compensation. The court stated that there is nothing in the act that justifies such a conclusion. The act does not purport to deal with property of any kind, but only with the territory of towns and cities, which, under certain circumstances, it provides may be annexed to other corporations of that kind. Little Rock v. N. Little Rock, 72 Ark. 195, 202, 79 S.W. 785, 787 (1904).

The court, feeling some doubt of the expediency of cutting off a large portion of the city of Little Rock and annexing it to the town of North Little Rock, has have given careful attention to the whole argument, and after full consideration thereof felt compelled to hold that the statute in question is a valid law, and that the courts have no power to forbid its enforcement. The incorporation is proper.

White v. Lorings 274 Ark. 272- Incorporation Proper

A petition to incorporate the town of Wrightsville, Arkansas, pursuant to the provisions of Ark. Stat. Ann. § 19-101, et seq. (Repl. 1980) was rejected by the county court (Arkansas). The appeal to the Pulaski Circuit Court resulted in a trial de novo in which the petition was again rejected. Appellant voters challenged that decision.

The trial court's judgment recited that: the trial court was not persuaded that the petition for incorporation, as amended, satisfied the requirements of Ark. Stat. Ann. §§ 19-101 and 19-106; much of the area, as amended to be incorporated, was agricultural or open and vacant and would not derive any benefit from incorporation, but would be subject to taxation; and, the area to be incorporated was unreasonably large. On appeal, the court noted that the trial court gave no other reason for its first finding. The court stated that in its second finding the trial court was taking into consideration the statutes which provided for annexation of territory to an already existing town, but there had never such provisions as to the original incorporation of towns and cities. The court stated that in considering an approximately two square mile area containing more than 900 people with its own post office, school, and over 400 other buildings, it was of the opinion that the area did not fall within the definition of "unreasonably large." Therefore, the trial court should have allowed the incorporation. The case was reversed and remanded to the trial court with directions to permit the incorporation of the town.

Detachment

Steps and Details for Detachment Proceedings

14-40-608. Right to detach certain lands after annexation proceeding.

Within eight years after an annexation by landowner petition has been granted, and the land remains within the annexing municipality, “the person owning all lands originally annexed into the city or town may be authorized to detach those annexed lands from the city or town under the provisions of this section, so long as the city or town has not provided utility services to those lands.” Ark. Code Ann. § 14-40-608. The landowner should notify the municipality that they wish to detach from the city, and the city may then pass an ordinance or resolution detaching the requested property from the city within thirty days. Proper notification by a landowner to the annexing city shall be an affidavit filed with the city clerk that stating that: “(i) His or her land was annexed; (ii) His or her land is located inside the city or town along the municipal boundary; and (iii) He or she desires the annexed land to be detached from the municipality.” Id. The affidavit should also include a plat of the land sought to be detached, a copy of the order of the county court granting the city annexation, and a copy of the ordinance or resolution accepting the land annexation.

If the governing body of the city approves the ordinance or resolution to detach the property, then the city clerk must certify and send one copy of the plat of the detached territory, one copy of the ordinance detaching the territory, and one copy of the qualifying affidavit to the county clerk. Then the county clerk must forward a copy of each document to the Secretary of State, which will file and keep them. Additionally, the county clerk must forward one copy of the plat of the detached territory and one copy of the ordinance detaching the territory to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and keep them and notify all utility companies having property in the municipality of the detachment proceedings.

14-40-2002. Annexation into adjoining municipality.

A landowner or group of landowners seeking additional municipal services may have its land detached from the municipality in which it is located and annexed into another municipality that borders the land. However, before annexation is allowed, the municipality in which the land is located shall have an opportunity to provide the additional services.

The landowner or landowners shall file a statement with the municipality in which the land is located listing the additional municipal service or services being sought and stating that: The municipality is not providing services necessary to create improvements, provide employment or additional employment, subdivide, or otherwise maximize the use and value of the property; All the land in the request must compose one (1) area that is contiguous to another municipality; The additional services are available in another municipality that borders the land subject to the request; and (i) The municipality is requested to make a commitment to take substantial steps, within one hundred eighty (180) days after the statement is filed, toward providing the additional services and, within each thirty-

day period thereafter, to continue taking steps to demonstrate a consistent commitment to provide the service within a reasonable time, as determined by the kind of services requested. (ii) The commitment must be made in writing to the landowner within thirty (30) calendar days of the filing of the statement, or the landowner may seek to have the land detached from the municipality and annexed into the other municipality. (iii) The landowner must take appropriate steps to make the land accessible to the service and comply with reasonable requests of the municipality that are necessary for the service to be provided.

The landowner or landowners may request the annexation of the land into the other municipality and thereby detach the land from the boundaries of the municipality in which the land is currently located if: (A) The municipality in which the land is located fails to execute a commitment to services within thirty (30) days after the statement is filed; or (B) The municipality executes the commitment to services but fails to take the action required under subdivision (b)(1)(D) of this section.

The land shall be annexed into the other municipality if, after a request by the landowner or landowners, the governing body of the municipality into which annexation is sought indicates by ordinance, resolution, or motion its commitment to make the services available and its approval of the request for annexation. (i) The annexation shall be void and the land shall be returned to the original municipality if the annexing municipality fails to take substantial steps within one hundred eighty (180) days after the passage of the ordinance, resolution, or motion to make the services available and, within each thirty-day period thereafter, continues taking steps demonstrating a consistent commitment to make the additional service available within a reasonable time, as determined by the kind of services requested. (ii) The landowner must have taken appropriate steps to make the land accessible to the service and complied with the reasonable requests of the municipality that are necessary for the service to be provided. (iii) However, if the requested services are not available within twelve (12) months after the property is accepted by the annexing jurisdiction or substantial steps are not taken to make the services available within this time period, then the detachment and annexation shall be void and all property returned to its original jurisdiction; and the land shall remain in the original municipality until it is annexed into the other municipality.

Land annexed pursuant to this section shall not be eligible for reannexation under this section for a period of two (2) years. This section shall apply to residential, commercial, industrial, and unimproved land. For the purposes of this section, "services" means electricity, water, sewer, fire protection, police protection, drainage and storm water management, or any other offering by the municipality that materially affects a landowner's ability to develop, use, or expand the uses of the landowner's property.

14-40-2003. No split or island.

In no event shall the provisions of this subchapter allow a municipality to be split in half or to have any of its land separately encircled, thereby creating an island of that city within the boundaries of another city. Any detachment and annexation occurring that creates a split or island shall be void and all properties returned to their original municipality.

14-40-2005.Filing.

All documents produced by landowners, municipalities, or others relating to detachment and annexation as enumerated in this subchapter shall be filed with the circuit clerk with copies served upon the municipality and landowners. The circuit clerk shall establish a system of filing for these matters upon action's having been taken by a landowner or group of landowners pursuant to the provisions of this subchapter. The circuit clerk's file shall be considered the official record of all matters and proceedings under this subchapter.

14-40-2101. Simultaneous detachment and annexation by two cities.

When the boundaries of two (2) municipalities are contiguous to and adjoining one another, and one (1) municipality desires to detach and annex territory in another municipality, then the governing body of the municipality desiring to detach and annex territory may propose an ordinance calling for the simultaneous detachment of the lands from the one (1) municipality and the annexation of the lands into its municipal limits. The municipality desiring to annex land in the adjoining city, after the passage of the ordinance calling for detachment and annexation, shall send the ordinance to the governing body of the city or town in which the lands are located.

The ordinance will provide a legal description of the lands proposing to be detached and annexed and describe generally the reasons for proposing the action. The governing body of the city or town in which the lands are located shall conduct a public hearing within sixty (60) days of the proposal of the ordinance calling for the detachment and annexation. At least fifteen (15) days prior to the date of the public hearing, the governing body of the proposing municipality shall publish a legal notice setting out the legal description of the territory proposed to be detached and annexed. Municipal officials of the proposing city or town, officials of the city or town in which the lands are located, and property owners within the area proposed to be detached and annexed may appear at the public hearing to present their views on the proposal.

At the next regularly scheduled meeting following the public hearing, the governing body of the municipality in which the lands are located may bring the proposed ordinance up for a vote to concur in the detachment and annexation. If a majority of the total number of members of the governing body vote for the proposed detachment and annexation ordinance, then a prima facie case for detachment and annexation shall be established, and the proposing municipality shall proceed to render services to the newly annexed area.

The decision of the municipal governing bodies shall be final unless suit is brought in the circuit court of the appropriate county within thirty (30) days after passage of the ordinance to review the mutual actions of the governing bodies. As soon as the ordinance proposing the detachment and annexation is final, the territory shall be deemed and taken to be a part and parcel of the limits of the city or town annexing it, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or town. The governing body of the annexing city or town shall direct the municipal clerk or recorder to duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the proposing ordinance as adopted by both governing

bodies to the county clerk. The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them.

14-40-2201. Annexation and provision of scheduled services.

Beginning March 1, 2014, and each successive year thereafter, the mayor or city manager of a city or incorporated town shall file annually with the city clerk or recorder, town recorder, and county clerk a written notice describing any annexation elections that have become final in the previous eight (8) years.

The written notice shall include: The schedule of services to be provided to the inhabitants of the annexed portion of the city; and a statement as to whether the scheduled services have been provided to the inhabitants of the annexed portions of the city. If the scheduled services have not been provided to the new inhabitants within three (3) years after the date the annexation becomes final, the written notice reporting the status of the extension of scheduled services shall include a statement of the rights of inhabitants to seek detachment. A city or incorporated town shall not proceed with annexation elections if there are pending scheduled services that have not been provided in three (3) years as prescribed by law.

14-40-2202. Inhabitants of annexed area.

In all annexations under § 14-40-303 and in accordance with § 14-40-606, after the territory declared annexed is considered part of a city or incorporated town, the inhabitants residing in the annexed portion shall: (1) Have all the rights and privileges of the inhabitants of the annexing city or incorporated town; and (2) (A) Be extended the scheduled services within three (3) years after the date the annexation becomes final. (B) The mayor of the municipality shall file a report with the city clerk or recorder, town recorder, and county clerk of the extension of scheduled services.

If the scheduled services have not been extended to the area and property boundaries of the new inhabitants within three (3) years after the date annexation becomes final, the written notice reporting the status of the extension of scheduled services shall: (1) Include a written plan for completing the extension of services and estimated date of completion; and (2) Include a statement of the rights of inhabitants to seek detachment.

A city or incorporated town shall not proceed with any additional annexation elections if there are pending scheduled services that have not been extended as required under this subchapter.

14-40-2005. Filing.

- (a) All documents produced by landowners, municipalities, or others relating to detachment and annexation as enumerated in this subchapter shall be filed with the circuit clerk with copies served upon the municipality and landowners.
- (b)

- **(1)** The circuit clerk shall establish a system of filing for these matters upon action's having been taken by a landowner or group of landowners pursuant to the provisions of this subchapter.
- **(2)** The circuit clerk's file shall be considered the official record of all matters and proceedings under this subchapter.

14-40-2004. Hearing in circuit court -- Appeal.

- **(a)**
 - **(1)** The circuit courts of the state shall have exclusive jurisdiction to hear all matters related to this subchapter.
 - **(2)** The circuit court of the county in which the municipalities are located or, in the event that the municipalities are located in different counties or judicial districts, the circuit court of the county or judicial district that has within the county's or judicial district's boundaries the smallest of the two (2) municipalities in population according to the latest federal decennial census, shall have exclusive jurisdiction to hear all matters related to this subchapter.
- **(b) (1) (A)** Upon petition of either affected municipality, the landowner or group of landowners, or its representatives, the circuit judge shall hold a hearing or series of hearings related to the provisions of this subchapter.
 - **(B)** The municipalities, the landowner who requested annexation, and a landowner who began owning land after the annexation request are parties to the hearings.
 - **(2)** The circuit judge shall make findings as are necessary to determine whether there has been substantial compliance or noncompliance with the requirements of this subchapter.
- **(c)** The petition under subdivision (b)(1) of this section shall be filed no later than twenty (20) days after the adoption or rejection of the ordinance, resolution, or motion bringing the subject property into the annexing jurisdiction.
- **(d)** In the event an action is brought in circuit court by any party, the time period for the requested services to be available as provided in § 14-40-2002(b)(3)(B)(iii) shall be tolled until entry of a ruling by the circuit judge and the conclusion of any appeals from that court.

Detachment Cases

IMPROPER:

Shofner v. County Board of Education 296 S.W. 31- Detachment Improper (Partial Detachment)

On the 11th day of September, 1925, the county board of education, through its executive secretary, O. W. Bass, issued the following order, addressed to the county treasurer and county clerk of Washington county: "You are hereby ordered not to cash any warrant out of school funds of school district No. 53, Washington county, Ark., or to pay out any of the funds credited to said district, unless authorized to do so by the county board of education."

Thereafter, on October 2, 1925, the county board of education made the following order of detachment from common school district No. 53, and annexing the territory detached to rural special school district No. 10: "It is therefore ordered and adjudged by the county board of education that the following territory in Washington county, Ark., be and the same is detached and annexed to district No. 10: [Describing lands totaling a large acreage.] "It is further ordered that all money belonging to the above-described territory shall be transferred and placed to the credit of school district No. 10 by the county treasurer, and that all the school children now residing on the above-described territory shall have all the privileges of the children in district No. 10, and it is further ordered by the county board of education that the county superintendent notify the directors of district No. 53 of the action of the county board of education in this matter."

The appellant proposes that the partial detachment of territory less than the whole from a common school district and instructions to the treasurer and the clerk are void. The county board of education has no jurisdiction to order the county treasurer to refuse to pay warrants, properly drawn, on the funds of a school district by the board of directors, and their action on September 11, 1925, as above set out, was therefore illegal and void. Additionally, the legislature intended in Act 15 of the Acts of 1919 (Acts 1919, p. 6) to prevent a common school district from being dismembered by taking away portions thereof, and leaving the common school district without a sufficient territory to properly support a school in the district.

City of Maumelle v. Jeffrey Sand Company 353 Ark. 686- Detachment Improper (Municipal Services)

Appellant city sought review of the decision of the Pulaski County Circuit Court (Arkansas), which found in favor of appellees, company and second city, in the company's action to detach its property from the city under Ark. Code Ann. § 14-40-2001 et seq. (Supp. 1999).

The company sought to detach its property from the city and requested that the second city annex the property under the Detachment-Annexation Statutes, codified at Ark. Code Ann. § 14-40-2001 et seq. (Supp. 1999). Even though water and sewer services were available to the property, the company asserted that, because the city did not provide them as municipal services, it failed to meet the requirements of the Detachment-Annexation Statutes. The circuit court agreed, but the Supreme Court disagreed and reversed. The legislature did not intend to eliminate regional organizations or

improvement districts as the means by which a municipality could provide services to its citizens. The court concluded, therefore, that the circuit court erred in its interpretation of § 14-40-2001 et seq. when it ruled that the city did not provide water and sewer services to its citizens because the city did not own a water or sewer system. The company's property was served by both sewer and water lines that ran to the property by means of an improvement district and by Central Arkansas Water. The judgment was reversed, and the cause was remanded for further action.

School Dist. v. County Board of Education, 185 Ark. 328- Detachment Improper (No Notice)

Appellant school district sought review of an order of the Circuit Court for Columbia County (Arkansas), which denied the school district's petition for certiorari to bring up and quash an order from the County Board of Education that changed the boundary lines between the school district and another school district under the authority of Act 169, 1931 Ark. Gen. Assembly §§ 44, 52.

A petition was filed for the change of the boundaries between the school district and the other district. The Board called a joint meeting of themselves with the directors of the two districts for the purpose of making the change of the boundary lines, and the directors were unable to agree to the proposed change. The Board changed and adjusted the lines as prayed for in the petition. The school district was present with its entire board of directors, and its attorney had notice of the action, but took no appeal from the order. The school district then filed a petition for a writ of certiorari. On review the court found the change amounted to an annexation of substantial property and no notice was given in accordance with Act 169, 1931 Ark. Gen. Assembly § 44 and the Board was without jurisdiction or authority to make the order. Having no such jurisdiction, the Board's order was void and could be quashed on certiorari and the circuit court erred in not granting the desired relief.

The court reversed the circuit court's judgment and remanded with directions to grant the petition for certiorari and quash the order of the Board that changed the boundary line of the school districts.

PROPER:

City of Rockport v. City of Malvern, 356 Ark. 393- Detachment Proper

Landowners requested the city to take substantial steps to make certain services available to them. When such was not done, the landowners requested annexation to the adjoining city. The city alleged that the annexation of the landowners' property was invalid. The trial court found that the city did not comply with Ark. Code Ann. § 14-40-2002 (Supp. 2003). On appeal, the court affirmed. The trial court did not err in finding that the landowners' annexation into the adjoining city complied with Ark. Code Ann. §§ 14-40-2001 to 14-40-2002 (Supp. 2003), and the court rejected the city's argument that the necessary services were already available to the landowners. Sewer service, as defined in § 14-40-2002(e), was not available to the landowners when they requested such services by the city, and sewer service was one necessary to maximize the use of property. Because the city failed to demonstrate a commitment to providing services within a reasonable time, the trial court did not err in finding that the city did not meet its burden of showing compliance with the relevant statutes.

FAQs

Can land be “technically contiguous” to fulfill the annexation requirements? What if there is a shoestring (1 foot tract) piece of land connecting both areas?

For an annexation, land must be actually contiguous and not just technically contiguous. The use of a tiny strip of land or fabrication of a connection is not enough to initiate annexation proceedings.

Does Vestal apply to annexation by petition?

Yes, the Vestal criteria have been used in annexation by petition cases. An example of a case that uses the Vestal criteria is *City of Jacksonville v. City of Sherwood*, 375 Ark. 107.

Appellant, the City of Jacksonville, Arkansas, sought review of an order from the Pulaski County Circuit Court (Arkansas), which upheld the annexation of appellee landowners' property into appellee, the City of Sherwood, Arkansas.

The landowners petitioned for four tracts of real property totaling approximately 1,951 acres to be annexed into the City of Sherwood. The City of Jacksonville submitted a resolution opposing the annexation. The circuit court upheld the order of a county court approving the annexation. On appeal, the court found that testimony from the trial supported the circuit court's conclusion that the land met two of the Vestal criteria in Ark. Code Ann. § 14-40-302 for annexation. The land was held to be sold as suburban property, and it was valuable by reason of its adaptability for prospective municipal purposes. Because at least one of the Vestal criteria was met, annexation was proper. Looking at the plain language of Ark. Code Ann. § 14-56-413 (1998), as well as case law, the court upheld the circuit court's ruling that the City of Jacksonville's plans for the area were not superior to, and did not defeat, the landowners' right to petition for annexation to another city. Finally, the express language of Ark. Code Ann. § 14-56-426 did not prohibit annexation of the land. The court affirmed the judgment of the circuit court.

What makes an annexation right and proper? Does this criteria apply if the annexation proceeding was initiated by city or by adjoining landowners?

City of Centerton v. City of Bentonville cites the 2008 case of *City of Jacksonville v. City of Sherwood* (375 Ark. 107, 111), and makes clear that an annexation is only “right and proper” if it meets at least one of the criteria set out in 14-40-302(a). The Arkansas Supreme Court has found that “the criteria applies regardless of whether the annexation proceeding was initiated by city or by adjoining landowners,” and that “[w]here at least one of the criteria of section 14-40-302(a) is met, the petition of adjoining landowners is ‘right and proper’ under section 14-40-603(a).

Vestal is a landmark case that has been cited many times. Where can I find the cases that have cited Vestal to obtain a better understanding of what factors to annexation are?

Here is a list of applicable cases that have cited the Vestal criteria:

Town of Houston v. Carden, 332 Ark. 340, 965 S.W.2d 131
Chastain v. Davis, 294 Ark. 134, 741 S.W.2d 632
Saunders v. Little Rock, 262 Ark. 256, 556 S.W.2d 874
Herrod v. North Little Rock, 260 Ark. 890, 545 S.W.2d 620
Parrish v. Russellville, 253 Ark. 1000, 490 S.W.2d 126
Crossett v. Anthony, 250 Ark. 660, 466 S.W.2d 481
Kalb v. West Helena, 249 Ark. 1123, 463 S.W.2d 368
Planque v. Eureka Springs, 243 Ark. 361, 419 S.W.2d 788
Little Rock v. Findley, 224 Ark. 305, 272 S.W.2d 823
Garner v. Benson, 224 Ark. 215, 272 S.W.2d 442
Clark v. Holt, 218 Ark. 504, 237 S.W.2d 483
Burton v. Ft. Smith, 214 Ark. 516, 216 S.W.2d 884
Walker v. Pine Bluff, 214 Ark. 127, 214 S.W.2d 510
Newport v. Owens, 213 Ark. 513, 211 S.W.2d 438
Posey v. Paxton, 201 Ark. 825, 147 S.W.2d 39
Fowler v. Ratterree, 110 Ark. 8, 160 S.W. 893
Woodruff v. Eureka Springs, 55 Ark. 618, 19 S.W. 15
City of Marion v. Guar. Loan & Real Estate Co., 75 Ark. App. 427, 58 S.W.3d 410

*For more information regarding the cases listed or access to complete opinions please contact AAC Law Clerk Kevin Liang.

Notes

Notes

This guide is not intended to replace actual legal counsel or advice. Please contact the Association of Arkansas Counties or your county attorney for specific questions regarding annexation and the current law.

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