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Mr. Michael McCreery
United Counties Council of Illinois
217 East Monroe Street, Suite 101
Springfield, IL 62701

Re: Municipal Annexation of Territory to a Village or City within the County

Dear Mike:

Issue

May a county contest a municipal annexation of territory to a village or city within the county?

Analysis

The Illinois Municipal Code authorizes municipalities to annex any territory not within the corporate limits of any other municipality as long as the territory is contiguous to the annexing municipality.¹ Generally, an annexation may be initiated by the municipality or upon petition of the owners and electors of the territory proposed to be annexed.

Depending on the method of annexation, the process may be court controlled or non-court controlled. In a court controlled annexation, the court will review the validity of a petition for annexation prior to an election on the issue. Objections to the petition may be made by “interested parties” as long as they are filed five days prior to the hearing on the petition.² Objections typically allege that the property described in the petition is not contiguous to the municipality; the requisite number of electors or owners has not signed the petition; or the description of the territory is inadequate. In a non-court controlled annexation, the court will only review the annexation proceedings if a *quo warranto* lawsuit challenges the validity of the annexation after it has been done.

¹ 65 ILCS 5/7-1-1.

² 65 ILCS 5/7-1-3.

Objections to court controlled annexations or *quo warranto* suits can only challenge that the procedural requirements of the annexation were not met. A court may not review and rule on the "wisdom" of an annexation.³ If all procedure steps to the annexation are met then it will be valid regardless of objection.

Procedurally, notice of annexation must be provided to fire protection districts and library districts which exercise jurisdiction over any of the territory proposed to be annexed.⁴ An annexation will not be effective unless notice is given to the trustees of the fire protection and library district and an affidavit is filed reflecting the same. Notice must also be provided to the township commissioner of highways and the board of town trustees if the proposed territory to be annexed includes highways under township jurisdiction; however, failure to give such notice will not affect the validity of the annexation.⁵ After the annexation is final, notice must also be sent to the election authorities having jurisdiction in the annexed territory and to the post office branches serving the territory.⁶ Again, failure to give such notice will not invalidate the annexation. Notice to other parties may be required in certain special circumstances highlighted in the Illinois Municipal Code.

Conclusion

A county has limited authority to object to a municipal annexation in the county. The right to annex territory is a right bestowed upon the municipality by statute; therefore, objections are proper only in the limited circumstances where the procedural requirements for annexation have not been met. A county may not otherwise object to a municipal annexation.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Steven A. Milburn

HGB:SAM/tem

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

³ *In re Petition to Annex Certain Territory to Village of North Barrington*, 144 Ill.2d 353, 579 N.E.2d 880, 162 Ill.Dec. 66 (1991); *Spaulding School District No. 58 v. City of Waukegan*, 18 Ill.2d 526, 165 N.E.2d 283 (1960). See also 56 AM.JUR.2d *Municipal Corporations, Counties, and Other Political Subdivisions* §41 (2000).

⁴ 65 ILCS 5/7-1-1.

⁵ Id.

⁶ 65 ILCS 5/7-1-1.