

Chapter XXVIII Annexation

1. Article VIII, section 2(c), Florida Constitution, provides,

Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extraterritorial powers by municipalities shall be as provided by general or special law.

2. Chapter 171, Florida Statutes (2003).

- a. Purpose.

The purposes of Chapter 171 are to set forth procedures for adjusting the boundaries of municipalities through annexation and to delineate criteria for determining when annexations may take place. Fla. Stat. §§ 171.021 and 171.022, (2003). In *SCA Services of Florida, Inc. v. City of Tallahassee*, 418 So. 2d 1148 (Fla. 1st Dist. App. 1982), the court noted, "The section setting forth procedures for adjusting the boundaries of municipalities and for determining when annexations may take place, when read in pari materia with § 171.022, preempting all other means by which a municipality may accomplish an annexation on its own, must be interpreted as providing a clearly defined and exclusive method by which an annexation can be accomplished." In *City of Ormond Beach v. City of Daytona Beach*, 794 So.2d 660 (Fla. 5th Dist. App. 2001) the court noted that after the Municipal Annexation or Contraction Act was adopted, procedures under the Act became the exclusive method to be used for municipal annexation.

- b. Legislative act.

In *City of Ormond Beach v. City of Daytona Beach*, *supra*, the court held that absent illegality or fraud, a court has no authority to enjoin a legislative act such as the power to annex. In *1000 Friends of Florida, Inc. v. Florida Dept. of Community Affairs*, 824 So. 2d 989 (Fla. 4th Dist. App. 2002) the court held the city did not have to modify its comprehensive plan on areas it planned to annex prior to annexation.

3. Referendum annexation.

- a. Prerequisite to referendum annexation.

Prior to commencing referendum annexation procedures, the governing body of the municipality must prepare and file with the board of county commissioners of the county in which the municipality is located, a report setting forth the plans to provide urban services to the area to be annexed. The report must include (1) a map of the municipality and adjacent territory, showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, and the general land use pattern in the area to be annexed; (2) a statement certifying that the area to be annexed meets the criteria set forth in Fla. Stat. § 171.043 (2003) as to the

character of the area to be annexed (explained further below); and (3) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Fla. Stat. § 171.042, (2003).

b. Character of area to be annexed.

Pursuant to Fla. Stat. § 171.043 (2003), the municipality may propose to annex an area only if the total area to be annexed is contiguous to the municipality's boundaries at the time the annexation proceeding is begun, the area is reasonably compact, and no part of the area is included within the boundary of another incorporated municipality. A further requirement is that part or all of the area to be annexed must be developed for urban purposes as that term is defined in Fla. Stat. §171.043(2)(a)-(c), (2003). In addition to the area developed for urban purposes, a municipal governing body may include in the area to be annexed any area which is not developed for urban purposes if such area either lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through the sparsely developed area; or is adjacent, on at least sixty percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes. Fla. Stat. § 171.043, (2003).

- (1) In *Johnson v. Town of Suwannee River*, 336 So. 2d 122, *cert. den.*, 345 So. 2d 428 (Fla. 1st Dist. App. 1976), the court stated,

The elements essential to constitute a municipal corporation comprehend a contiguous territory sufficiently populated and industrialized to make it necessary that additional and better governmental services such as police protection, sanitary improvements, lights, water, electricity, sewage disposal, paved streets, and other municipal conveniences be provided. The area incorporated must be suited for municipal purposes and must bear a just proportion to the population included.

- (2) For further discussion on the characteristics of annexable property, see *State ex rel. Bower v. City of Tampa*, 316 So. 2d 570 (Fla. 2d Dist. App. 1975) (tidal lands); *State ex rel. Ervin v. City of Oakland Park*, 42 So. 2d 270 (Fla. 1949) (wild lands); *Gillette v. City of Tampa*, 57 So. 2d 27 (Fla. 1952) (wild lands); *State ex rel. Landis v. Town of Boca Raton*, 129 Fla. 673, 177 So. 293 (Fla. 1937)(wild lands); *Smith v. Town of Monteverde*, 38 So. 2d 135 (Fla. 1948)(rural adjacent areas); *Town of Mangonia Park v. Homan*, 118 So. 2d 585 (Fla. 1960)(swamp).

c. Procedures for referendum annexation.

- (1) Fla. Stat. § 171.0413 (2003) identifies the specific procedures which must be followed in connection with a referendum annexation by a municipality of contiguous, compact, and unincorporated territory. Fla. Stat. § 171.0413(1) (2003) requires the municipality to adopt a nonemergency ordinance proposing to annex property, provided that such ordinance proposes only one reasonably compact area to be annexed. Further, prior to

the annexation ordinance becoming effective, a referendum on the annexation ordinance must be held pursuant to the requirements of Fla. Stat. § 171.0413 (2003). If approved by referendum, the annexation ordinance becomes effective 10 days after the referendum or as otherwise provided in the ordinance, but no more than one year following the date of the referendum. The governing body of the annexing municipality may also choose to submit the ordinance of annexation to a separate vote of the registered electors of the annexing municipality.

- (2) If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of more than 50 percent of the land in such area consent to the proposed annexation prior to the referendum to be held on the annexation. Fla. Stat. § 171.0413(5) (2003).
- (3) If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, then no vote of electors of the area proposed to be annexed shall be required. In addition to the requirements of Fla. Stat. § 171.0413(5) (2003), the area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality pursuant to Fla. Stat. § 171.0413(2) (2003), then the property owner consents required pursuant to Fla. Stat. § 171.0413(5) (2003) shall be obtained prior to the final adoption of the ordinance, and the annexation ordinance shall be effective upon becoming a law or as otherwise provided in the ordinance. Fla. Stat. § 171.0413(6) (2003).
- (4) Pursuant to Fla. Stat. § 171.0423(2)(e) (2003), if there is any majority vote against annexation, the ordinance may not be effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by the annexing municipality for a period of two years from the date of the referendum on annexation. Fla. Stat. § 171.0413(e) (2003).

d. Notice of referendum.

With respect to a referendum on the question of annexation, Fla. Stat. §171.0413(b) (2003) requires the municipality to publish notice of the referendum at least once each week for two consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held. The notice shall include the ordinance number, the time and places for the referendum, and a brief, general description of the area proposed to be annexed, including a map clearly showing the area and a statement that the complete legal description by metes and bounds and the ordinance can be obtained from the office of the city clerk. On the day of the referendum, a copy of the ordinance of annexation and a description of the property proposed to be annexed shall be prominently displayed at each polling place. Fla. Stat. § 171.0413(b) and (c), (2003).

e. Severing of parcels.

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed may not be severed, separated, divided or partitioned by the provisions of the annexation ordinance, but shall, if intended to be annexed, be annexed in its entirety and as a whole. However, the owner of such property may waive said requirement if the owner does not desire all of his property to be included in the annexation. Fla. Stat. § 171.0413(3) (2003).

4. Voluntary annexation.

Voluntary annexation occurs when the owners of real property in an unincorporated area of the county which is contiguous to the municipality and reasonably compact petition the governing body of the municipality to annex their property into the municipality. Fla. Stat. § 171.044(1) (2003). Where the property owner voluntarily petitions a municipality for annexation, a referendum is not required in order to complete the annexation. *North Ridge Gen. Hosp. v. City of Oakland Park*, 374 So. 2d 461 (Fla. 1979).

The standards or characteristics set forth in Fla. Stat. § 171.043 are not required to be met in voluntary annexations. Op. Att'y Gen. Fla. 078-121 (1978). The property's state of development is not necessarily relevant where the property owners voluntarily seek annexation. *May v. Lee County*, 438 So. 2d 481 (Fla. 2d Dist. App. 1986). A municipality is also not required to comply with the prerequisites to annexation prescribed by Fla. Stat. § 171.042 (2003) prior to voluntarily annexing property. Op. Att'y Gen. Fla. 075-234 (1975).

a. Procedures for voluntary annexation.

Fla. Stat. §171.044 provides for voluntary annexation of property. An owner of property located in an unincorporated area of a county which is contiguous to the municipality and reasonably compact may petition the governing body of the municipality for annexation to the municipality. Upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property. The ordinance shall include a map which clearly shows the annexed area and a complete legal description of that area by metes and bounds. The ordinance may be passed after notice of the annexation has been provided as required by section 171.044(2). An ordinance adopted through voluntary annexation shall be filed with the clerk of the circuit court, the chief administrative officer of the county in which the municipality is located, and the Department of State within seven days after adoption. Fla. Stat. § 171.044(1), (2) and (3) (2003).

(1) Signature of owners.

- (a) A municipality may not voluntarily annex a land area occupied by a single condominium without a determination that the annexation petition bears the signature of all owners of units in the condominium Op. Att'y Gen. Fla. 87-54 (1987).

- (b) Annexation ordinances may be validly enacted even though the original petitioners for annexation have transferred the land to persons who have not petitioned for annexation. *Mackinley v. City of Stuart*, 321 So. 2d 620 (Fla. 4th Dist. App. 1975).

- b. Character of land to be voluntarily annexed.

In voluntary annexation, the only limitations prescribed by Fla. Stat. §171.044 (2003) are that the property sought to be annexed be contiguous, reasonably compact, and that the annexation not result in the creation of enclaves. See Fla. Stat. § 171.044(1) and (5); *May v. Lee County*, 483 So. 3d 481 (Fla. 2d Dist. App. 1986); *Tampa v. Hillsborough County*, 504 So. 2d 10 (Fla. 2d Dist. App. 1986); and *City of Sunrise v. Broward County*, 473 So. 2d 1387 (Fla. 4th Dist. App. 1985).

- 5. Minimum Requirements for Referendum and Voluntary annexation.

Areas to be annexed in both referendum and voluntary annexation must be contiguous to the annexing municipalities, must be reasonably compact, and must be located in the unincorporated area of the county. Fla. Stat. §§ 171.042(1) and 171.044(1) (2003).

- a. Contiguity.

Fla. Stat. §§ 171.044(1) and 171.042(1) require that the area proposed for annexation be contiguous to the annexing municipality. "Contiguous" is defined in Fla. Stat. § 171.031(11). Although the contiguity requirement is found in Fla. Stat. § 171.044(1), it has been held to exist even in the absence of a statutory requirement. *Mackinley v. City of Stuart*, 321 So. 2d 620 (Fla. 4th Dist. App. 1975).

- (1) In *May v. Lee County*, 483 So. 2d 481, 482 - 483 (Fla. 2d Dist. App. 1986), the court stated,

When used in the context of municipal annexation, the term "contiguous" has been defined as "touching or adjoining in a reasonably substantial sense". *Wescom, Inc. v. Woodridge Park Dist.*, 49 Ill App.3d 903, 7 Ill. Dec. 560, 563, 364 N.E.2d 721, 724 (1977). But for the presence of Interstate 75, May's property would border upon the existing city limits of Fort Myers. Ordinarily, the presence of a road running parallel to a city's boundary should not prevent the assimilation of adjoining territory. ...That the road involved in the present case is a limited access highway does not interfere with our finding that May's property is contiguous to the city boundary. Such a determination depends upon the character of the areas immediately adjacent to the Interstate highway.

In footnote 1 of *May v. Lee County*, the court noted a dispute in the case law as to whether parcels which only "corner" upon one another may be considered "contiguous". See also Op. Att'y Gen. Fla. 072-282 (1972)

- (2) In *City of Sanford v. Seminole County*, 538 So. 2d 113 (Fla. 5th Dist. App. 1989), the court held that parcels of land which bordered city limits met requirements for annexation that parcels be contiguous to municipal property, and thus, circuit court's finding of lack of contiguity was improper. The county argued that because only a small percentage of the entire circumference of the annexed properties touched municipal property, the annexed properties were not contiguous. The court rejected the county's argument holding that Fla. Stat. § 171.031(11) (2003) only requires a substantial part of one of the boundaries of the annexed parcel to touch municipal property.
- (3) When more than one tract of land is annexed, the contiguity requirement is satisfied where all of the tracts of land to be annexed are contiguous to each other and one of them is contiguous to the annexing municipality. *Mackinley v. City of Stuart*, 321 So. 2d 620 (Fla. 4th Dist. App. 1975).
- (4) The question of what territory is "contiguous" so as to be subject to annexation by a municipality is further discussed in *Municipal Corporations-Annexation*, 49 F.L.R. 3d 589; *Contiguity of Land Annexed by Municipality*, 11 P.O.F. 2d 461; 2 McQuillin, *The Law of Municipal Corporations* § 7.20 (3d ed. 1979).

b. Reasonably compact.

Fla. Stat. § § 171.044(1) and 171.042(1) (2003) require that the area proposed for annexation be "reasonably compact" to the annexing municipality. "Compactness" is defined in Fla. Stat. § 171.031(12) (2003) as a "concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to insure that the area shall be reasonably compact."

- (1) In *City of Sunrise v. Broward County*, 473 So. 2d 1387 (Fla. 4th Dist. App. 1985), the court stated that in order to understand the concepts of compactness and the prohibition against the creation of enclaves, it is helpful to consider the general purpose and goals of a municipal corporation as described by the Attorney General in his opinion at 077-18 (1977), quoting from 56 Am. Jur. 2d *Municipal Corporations*, § 69:

The legal as well as the popular idea of a municipal corporation in this country, both by name and use, is that of oneness, community, locality, vicinity; a collective body, not several bodies, a collective body of inhabitants – that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality, of compactness or contiguity, not separation or segregation. 1977 Op. Atty. Gen. Fla. 077-18 (February 18, 1977) at p. 38.

- (2) In *City of Sanford v. Seminole County*, 538 So. 2d 113 (Fla. 5th Dist. App. 1989), the court held that parcels of land which bordered city limits met requirement for annexation that parcels be reasonably compact, and circuit court's finding otherwise was erroneous;

annexations did not create small isolated areas and although annexations might be viewed to some extent as being a finger pattern, they were not winding or turning.

(3) Enclaves.

Fla. Stat. §§ 171.044(5) and 171.042(1) (2003) prohibit the annexation of land when such annexation results in the creation of enclaves. The term "enclave" is defined in Fla. Stat. § 171.031(13). The court in *City of Sunrise v. Broward County*, 473 So. 2d 1387 (Fla. 4th Dist. App. 1985), held that the area sought to be annexed was not reasonably compact where it created not only enclaves, but also annexed finger areas in a serpentine pattern.

c. Unincorporated areas.

- (1) In *Town of Baldwin v. Consolidated City of Jacksonville*, 610 So. 2d 95 (Fla. 1st Dist. App. 1995), the court held that the city could not annex land because there was no unincorporated area in Duval County and the Town of Baldwin could not annex land already located in the City of Jacksonville.

6. Annexation of enclaves ten acres or less.

- a. The Legislature recognizes that enclaves can create significant problems in planning, growth management, and service delivery and declares it is the policy of the state to eliminate enclaves. Fla. Stat. § 171.046(1) (2003).
- b. Fla. Stat. § 171.046(2) (2003), allows enclaves of 10 acres or less to annex into the most appropriate municipality, based upon existing or proposed service provision arrangements by (1) interlocal agreement with the county, or (2) municipal ordinance when fewer than 25 registered voters reside in the enclave and at least 60 percent of those registered voters approve of the annexation in a referendum. Fla. Stat. § 171.046(2) does not apply to undeveloped or unimproved real property. Fla. Stat. § 171.046(3) (2003).

7. Challenges to annexations.

- a. In *SCA Servs. of Florida, Inc. v. City of Tallahassee*, 418 So. 2d 1148 (Fla. 1st Dist. App. 1982), the court held that section 171.081 requires the complainant to:
- (1) Be a party affected;
 - (2) Allege that he will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in Chapter 171 or to meet the requirements established for annexation as they apply to his or her property;
 - (3) File the complaint seeking judicial review within 30 days following passage of the annexation ordinance, and
 - (4) Seek review by certiorari in circuit court.

- b. "Parties affected" is defined in Fla. Stat. § 171.031(5) (2003) to mean any persons or firms owning property in, or residing in, either a municipality proposing annexation or owning property that is proposed for annexation into a municipality or a governmental unit with jurisdiction over such area.
- (1) In *SCA Servs., supra*, the court held that SCA Services was a "party affected" since it had a property right in the unincorporated area, an exclusive franchise for hauling garbage. See also *City of Tampa v. Hillsborough County*, 504 So. 2d 10 (Fla. 2d Dist. App. 1986) (Hillsborough County was a "party affected" under section 171.081 since it owned 106.7 acres of land included in the annexation area and was a governmental unit with jurisdiction over the area to be annexed); *City of Sunrise v. Broward County*, 473 So. 2d 1387 (Fla. 4th Dist. App. 1985) (Broward County was a "party affected" because of the wording of section 171.031(5), which defines parties affected as any person or firm owning property in the annexed area or "any governmental unit with jurisdiction over such area"); *City of Panama City v. City of Springfield and City of Lynn Haven*, 700 So. 2d 101 (Fla. 1st Dist. App. 1997) (Determining without discussion that respondents did not have standing pursuant to section 171.031(5) to challenge the annexation ordinance.) See also *City of Panama City v. Muroe*, 700 So. 2d 128 (Fla. 1st Dist. App. 1997).
 - (2) *City of Tallahassee v. Kovach*, 733 So. 2d 576 (Fla. 4th Dist. App. 1999). Owner of property surrounded on three sides by lands annexed by the city was not an affected party as defined in Fla. Stat. § 171.031(5) (1995).
- c. Material injury.
- (1) In *SCA Servs., supra*, the court found that SCA Services satisfied the material injury requirement by alleging the failure of the city to plan for garbage services in the area to be annexed and that consequently its exclusive franchise rights for hauling garbage may be harmed by the annexation. See also *City of Sunrise v. Broward County*, 504 So. 2d 1387 (Fla. 4th Dist. App. 1985) (County's allegations that it would suffer material injury through loss of tax revenue satisfied the material injury criteria of section 171.081); *Tampa v. Hillsborough County*, 504 So. 2d 10 (Fla. 2d Dist. App. 1986) (Accepting the trial judge's determination that the county demonstrated a belief that it would suffer a material injury).
- d. Seek judicial review within 30 days.
- (1) In *SCA Servs. supra*, the court affirmed the dismissal of the action because SCA Services filed the action more than 30 days after passage of the annexation ordinances.
 - (2) Where city proceeding to voluntarily annex land failed to give legally sufficient notice of intent to annex as required by statute, the right to object to the annexation by petitioning the court was not lost by failure to file the petition within 30 days after approval of annexation ordinance. *Town of Magnolia Park v. Homan*, 118 So. 2d 585 (Fla. 2nd Dist. App. 1960).
- e. Seek review by certiorari in circuit court.

- (1) Where the court has acquired jurisdiction of the subject matter and parties, and the relief sought is within the jurisdiction of the court, any objection to the vehicle used to grant the relief, whether statutory certiorari or writ of quo warranto, is subject to waiver if not timely raised. *City of Lake Mary v. County of Seminole*, 419 So. 2d 737 (Fla. 5th Dist. App. 1982).
- (2) The court may elect to treat an appeal as a petition for writ of certiorari pursuant to Florida Rule of Appellate Procedure 9.040(c).
- (3) *Martin County v. City of Stuart*, 736 So. 2d 1264 (Fla. 4th Dist. App. 1999). Appellate court's review of circuit court's decision in its appellate capacity is limited. District court review is limited to whether there was a lack of procedural due process or departure from essential requirements of law. Although annexation decisions are legislative, district court is limited to narrow certiorari review as set forth in *Haines City v. Heggs*, 658 So. 2d 523 (Fla. 1995).

8. Effects of annexation.

- a. Pursuant to section 171.062, an area annexed shall be subject to all laws, ordinances, and regulations enforced in the municipality and shall be entitled to the same privileges and benefits as other parts of the municipality upon the effective date of the annexation. If the area annexed is subject to the county's land use plan and zoning or subdivision regulations, said regulations shall remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area. Fla. Stat. §171.062(2),(2003). Solid waste collection service contracts maybe governed by Fla. Stat. § 171.062(4) or (5), (2003).
- b. In *Alachua County v. Florida Rock Industries, Inc.*, 834 So. 2d 370 (Fla. 1st Dist. App. 2003), the court held that the county could not enforce a developer's agreement with a concrete manufacturer, after the City of Newberry annexed the concrete manufacturer's land into the city and adopted a comprehensive plan that included the property. As a result of the annexation and comprehensive plan amendment, Alachua County's control over the development of Florida Rock passed to the City of Newberry, the county's "successor in interest."
- c. Fla. Stat. § 171.093 (2003) provides for the orderly transition of special district service responsibilities in an annexed area from an independent special district, if the municipality elects to assume such responsibilities. This section does not apply to districts created pursuant to Chapter 190 or Chapter 373.

9. Annexation as prerequisite to provision of utilities.

- a. In *Allen's Creek Properties, Inc. v. City of Clearwater*, 679 So. 2d 1172 (Fla. 1996), the court held that a municipality could refuse to provide sewer services, or could require annexation as a condition to the provision of sewer services where property was located within the municipality's exclusive sewer service territory established pursuant to interlocal agreement with neighboring municipal sewer service provider. Because the agreement in this case did not create an affirmative duty on the part of the city to provide services to the unincorporated land within its service area, the court concluded that the city may require annexation as a condition to the landowner's receipt of sewer services.

- b. In *City of Clearwater v. Metco Development Corp.*, 519 So. 2d 23 (Fla. 2d Dist. App. 1987), rev. den., 525 So. 2d 876 (Fla. 1988), the court held that the city couldn't condition the provision of water service on annexation where the city had obligated itself under an agreement with the county to provide water service to the unincorporated area.