Annexation

The Past, the Present, the Future

Panel Discussion Lead By:
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I. Methods:
   a.  25% petition/referendum method S. C. Code § 5-3-300
   b.  75% petition method S. C. Code § 5-3-150 (1)
   c.  100% petition method S. C. Code § 5-3-150 (3)
   d.  Special Situations, see IV below S. C. Code § 5-3-100 through 140

    Cunningham v. City of Greensboro, 711 S.E.2d 477 (N.C.App.2011)

III. Who signs petitions?
    a. Freeholders 75% petition method; S. C. Code §5-3-240 (18 yrs, legal title, present
       possessory interest, at least one tenth undivided interest and whose name
       appears on tax records)

    b. Owners of real estate 100% petition method; Ex parte
       Wilson v. Yemassee, 391 S.C. 565, 707 S.E.2d 402 (2011); persons
       owning property under 5-3-150(3) (100% petition) is broader than
       freeholder under 5-3-150 (1) (75% petition); State, as presumptive
       owner of marsh, was a necessary signatory
c. Electors  
Petition/ referendum method; must be “resident elector”. Must you look behind voter registration books to determine that the elector still resides in the area to be annexed?

d. Special situations, governmental agencies  
See IV below

IV. What can be annexed?

a. Contiguity  
S.C. Code § 5-3-305, property must be adjacent and share a continuous border;  
_Cabiness v. Town of James Island_ 393 S.C. 176, 712 S.E.2d 416 (2011): a “point” is a continuous border; discussion of property “intervening between”.

b. Municipal or county property  
S.C. Code § 5-3-100; annexed by resolution of municipality if municipal owned and adjacent; resolutions of governing body of municipality and county if county owned and adjacent. Ordinance also required.

c. Roads and highways  
S.C. Code § 5-3-110; width of abutting ROW upon consent of county or DOT maintaining ROW

d. Multi-county park  
S. C. Code §5-3-115; if title is in State’s name, Budget and Control Board must approve.

e. Owned by a corporation  
S. C. Code §5-3-120; petition by Stockholders

f. School district Property  
S.C. Code § 5-3-130; Board of Trustees
g. State-owned property  
S.C. Code § 5-3-140; Budget and Control Board; Ex parte Wilson v. Yamassee, supra.

h. Federal property  
S.C. Code § 5-3-140; petition by “federal government”

V. Who gets notice
a. Pre-annexation
75% method: public hearing;  
100% method: no one  
25% petition/referendum: published notice of referenda dates; any freeholder owning property having 25% or more of assessed value of area to be annexed; any freeholder owning timberland or agriculturally assessed property

b. Post-annexation
S.C. Code § 5-3-90: Secretary of State; SCDOT; Justice Department

VI. Litigation
a. Who has standing
State always has standing (when acting in public interest) Ex parte Condon v. Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000);  
75% method: anyone residing in the annexing municipality or in the area to be annexed;  
100% method: any owner of property in the area to be annexed  
25% petition/referendum: governed by municipal election protests (?)

b. Prerequisite to suit
S.C. Code § 5-3-270: Notice of Intent to Contest, within 60 days of annexation; Jurisdictional: Moon v. Greer, 384 S.C. 184, 558 S.E.2d 527 (2002)
c. Statute of limitations  
S.C. Code § 5-3-270: Lawsuit within 90 days of annexation

VII. Special Service and Taxing Districts  
a. Plan for transfer of service  
S.C. Code § 5-3-300 et seq: 
Municipality decides who serves; 
Agreement must be in place before 
tax revenues are transferred to 
municipality

VIII. Pending legislation  
a. MASC  
b. General Assembly  
c. North Carolina  

   a. allowed if contiguous and 60% of the lots are urban manner or subdivided  
b. 2011 and 2012 annexation laws stopped involuntary annexations  
   i. Requires a referendum with a majority of votes cast in favor of the 
      annexation  
   ii. Must provide water and sewer to involuntary annexed areas if a 
       majority of persons want service