



Jefferson County West Virginia

Public Information

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9-11-2005

~~§ 8-6-1 MUNICIPAL CORPORATIONS~~

~~of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars. (1997, c. 224.)~~

ARTICLE 6.

ANNEXATION.

Part I. General.

Sec.
8-6-1. Annexation of unincorporated territory.

Part II. Annexation by Election.

8-6-2. Petition for annexation.
8-6-3. Governing body of municipality to certify annexation; order.

Part III. Annexation Without Election.

8-6-4. Annexation without an election.

Part IV. Annexation by Minor Boundary Adjustment.

Sec.
8-6-5. Annexation by minor boundary adjustment.

Part V. Duties as to Ad Valorem Taxes for Municipal Purposes on Properties in Newly Annexed Areas.

8-6-6. Duties as to ad valorem taxes for municipal purposes on properties in newly annexed areas.

Revision of chapter. — See note under the same catchline at the beginning of this chapter.
Michie's Jurisprudence. — Annexation, 13B M.J., Municipal Corporations, § 17.
W. Va. Law Review. — For note, "Some Municipal Annexation Problems in West Virginia," see 68 W. Va. L. Rev. 394 (1966).

Authority of commission. — The powers exercised by a county commission with regard to municipal annexation are wholly statutory and it can exercise no other powers except those implicit in the specific grant. In re City of Morgantown, 159 W. Va. 788, 226 S.E.2d 900 (1976).

PART I. GENERAL.

§ 8-6-1. Annexation of unincorporated territory.

(a) Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.

(b) Any farmlands or operations as described in article nineteen [§§ 19-19-1 et seq.], chapter nineteen of this code which may be annexed into a municipality shall be protected in the continuation of agricultural use after being annexed.

(c) Any new imposition of a tax or any increase in the rate of tax upon any business, occupation or privilege following annexation shall be applied in accordance with the provisions of section five [§ 8-13-5], article thirteen, chapter eight of this code. (1937, c. 56; 1969, c. 86; 1989, c. 132; 2001, c. 210.)

ALR references. — Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 ALR5th 195.

PART II. ANNEKATION BY ELECTION.**§ 8-6-2. Petition for annexation.**

- (a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.
- (b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.
- (c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be taken upon the proposed annexation on a date and at a time and place to be named in the order.
- (d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of the additional territory whether they reside or have a place of business therein or not, to be taken upon the question on the same day at some convenient place in or near the additional territory.
- (e) The governing body shall cause the order for the election to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code. The publication area is the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order for the election shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, a summary of the municipality's plan for providing services to the additional territory and, if practicable, shall also contain a popular description of the additional territory.
- (f) The election shall be held, superintended and conducted and the results thereof ascertained, certified, returned and canvassed in the same manner by the same individuals as elections for municipal officers. The election is reviewable by the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen (§ 8-5-16), article five of this chapter.
- (g) The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

For Annexation Against Annexation

(h) Any freeholder which is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by the firm or corporation.

(i) An individual who is a qualified voter and freeholder of the municipality or the additional territory shall be entitled to vote only once.

(j) For purposes of this section, the term "qualified voter of the additional territory" includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may vote by its manager, president, or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to vote in the annexation election.

(k) When an election is held in any municipality in accordance with the provisions of this section, another election relating to the same proposed change or any part thereof shall not be held for a period of one year.

(l) If a majority of all of the legal votes cast in the municipality and a majority of all the legal votes cast in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article. (1937, c. 56; 1951, c. 131; 1961, c. 97; 1963, c. 120; 1965, c. 105; 1967, cc. 105, 120; 1969, c. 86; 1989, c. 132; 2001, c. 210; 2003, c. 100.)

Effect of amendment of 2003. — Acts 2003, c. 100, effective June 5, 2003, deleted "not less than twenty nor more than thirty days from the date thereof" from the end of (c); inserted "a majority of all legal votes cast" in (j); and made minor stylistic changes.

ALR references. — Capacity to attack the fixing or extension of municipal limits or boundary, 13 ALR2d 1279; 17 ALR5th 196.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 ALR2d 1266.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision, 17 ALR5th 196.

Applicability. — Municipalities operating under a charter granted under the provisions of this chapter are specifically required to use the provisions of this section with regard to annexation of any territory except minor boundary adjustments. *State ex rel. Alexander v. County Court*, 147 W. Va. 693, 130 S.E.2d 200 (1963).

Contiguous territory. — After municipality has annexed contiguous territory, voter registration is required in the annexed territory. 50 Op. Atty Gen. 258 (1963).

Farms land. — The courts cannot interfere to prevent change of corporate limits because the territory included may be farming lands, which

will be subjected to municipal taxes, although receiving no peculiar benefits therefrom. *West v. West Virginia Fair Ass'n*, 97 W. Va. 10, 126 S.E. 333 (1924).

Mandatory function. — The duty of a town council under this section, to submit the question of a change of boundary to a vote, is mandatory, not ministerial or discretionary, if such petition as this section prescribes is presented. *Shank v. Town of Ravenswood*, 43 W. Va. 242, 27 S.E. 223 (1897).

Ministerial function. — A county commission is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of this section or § 8-6-4, but the powers delegated to a county commission under § 8-6-5 are broader in scope and encompass more than the performance of a ministerial duty. In re *City of Morgantown*, 159 W. Va. 788, 226 S.E.2d 900 (1976).

Railroad bridge. — A town may extend its corporate limits so as to include a railroad bridge over the Ohio river and impose municipal taxes on such bridge. Such taxation is not ultra vires. *Point Pleasant Bridge Co. v. Town of Point Pleasant*, 32 W. Va. 228, 9 S.E. 231 (1889).

Quoted in *Peyton v. City Council*, 182 W. Va. 297, 387 S.E.2d 532 (1969).

§ 8-6-3. Governing body of municipality to certify annexation; order.

The governing body of such municipality shall enter the results of such election in its minutes, and, when the annexation proposed is adopted, as provided in the immediately preceding section [§ 8-6-2] of this article, shall forward a certificate to such effect to the county court [county commission] of the county wherein the municipality or the major portion of the territory thereof, including the annexed territory, is located; and such court shall thereupon enter an order in substance as follows:

"A certificate of the governing body of the municipality of was this day filed showing that an annexation has been made, in the manner required by law, to the corporate limits thereof, and that by such annexation the said corporate limits are as follows:

"Beginning at (here recite the boundaries as changed). It is, therefore, ordered that such annexation to said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said governing body a certified copy of this order as soon as practicable after the rising of this court."

After the date of such order, the corporate limits of the municipality shall be as set forth therein. (1937, c. 56; 1951, c. 131; 1969, c. 86.)

Editor's notes. — For construction of the county court as county commission, see W.Va. Const. art. IX, § 9.

PART III. ANNEXATION WITHOUT ELECTION.

§ 8-6-4. Annexation without an election.

(a) The governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if:

(1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.

(b) For purposes of this section, the term "qualified voter of the additional territory" includes firms and corporations in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may sign a petition by its manager, president or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to sign a petition relating to the proposed annexation.

(c) The determination that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including

§ 8-6-5

MUNICIPAL CORPORATIONS

the area proposed to be annexed is located, upon certiorari to the governing body in accordance with the provisions of article three [§§ 53-3-1 et seq.], chapter fifty-three of this code.

(d) A qualified voter of the additional territory who is also a freeholder of the additional territory may join only one petition of the additional territory.

(e) It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory. In determining the total number of eligible petitioners, in each category, a freeholder or any other entity that is a freeholder shall be limited to one signature on a petition as provided in this section. There shall be allowed only one signature on a petition per parcel of property and any freehold interest that is held by more than one individual or entity shall be allowed to sign a petition only upon the approval by the majority of the individuals or entities that have an interest in the parcel of property.

(f) If all of the eligible petitioners are qualified voters, only a voters' petition is required.

(g) If satisfied that the petition is sufficient in every respect, the governing body shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the additional territory, is located. The county commission shall thereupon enter an order as described in the immediately preceding section [§ 8-6-3] of this article. After the date of the order, the corporate limits of the municipality shall be as set forth therein. (1951, c. 131; 1961, c. 97; 1963, c. 120; 1965, c. 105; 1967, c. 120; 1969, c. 86; 1989, c. 132; 2001, c. 210.)

Legislative intent. — The language in this section clearly expresses the legislative intent which contemplated two separate petitions. Op. Atty Gen., Dec. 15, 1977.

The legislature contemplated the filing of two separate and distinct petitions classified as the qualified voter's petition and the freeholder's petition. Op. Atty Gen., Dec. 15, 1977.

Mandatory requirements. — The one-hundred-inhabitant restriction in § 8-2-1 is a mandatory requirement for annexation of territory of less than one square mile. Peyton v. City Council, 182 W. Va. 297, 387 S.E.2d 532 (1989).

Ministerial function. — A county commis-

sion is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of this section or § 8-6-2, but the powers delegated to a county commission under § 8-6-5 are broader in scope and encompass more than the performance of a ministerial duty. In re City of Morgantown, 159 W. Va. 786, 226 S.E.2d 900 (1976).

Signature. — One who is both a qualified voter and freeholder is eligible to sign only the qualified voter's petition. Op. Atty Gen., Dec. 15, 1977.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§ 8-6-5. Annexation by minor boundary adjustment.

(a) In the event a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed,

is located for permission to effect annexation by minor boundary adjustment. The municipality shall pay the costs of all proceedings before the commission.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in section thirty-five [§ 17C-1-35], article one, chapter seventeen-c of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in section thirty-five, article one, chapter seventeen-c of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An accurate map showing the metes and bounds of the additional territory;

(3) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

(4) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(5) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(6) A statement of how the proposed annexation will affect the municipality's finances and services; and

(7) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under section two [§ 8-6-2] or four [§ 8-6-4] of this article.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in section two [§ 8-6-2] of this article. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.