

APPENDIX 4

MUNICIPAL BOUNDARY EXPANSION FROM A COUNTY PERSPECTIVE

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INTRODUCTION

Mississippi is divided into eighty-two (82) counties whose boundaries are fixed by statute.⁶⁹⁸ A new county may be created only in accordance with certain provisions of *Mississippi Constitution of 1890*.⁶⁹⁹ Most of the lands of the state lie outside the boundaries of a municipality.

Municipalities originally provided a more intense level of service to a more densely populated area than did counties. Over the years, however, the level of service demanded of counties has increased significantly. Counties now provide many services which were once within the exclusive domain of municipalities (e.g., door-to-door garbage collection, wastewater collection and treatment, solid waste disposal, etc.).

Many municipalities have engaged in aggressive annexation policies which have resulted in the addition within their corporate limits of property which is, at least initially, rural in nature. Inevitable conflicts between municipalities and counties have arisen related to municipal annexation and incorporation. Whenever there is a change in municipal boundaries, whether it involves the creation of a new municipality, annexation of territory by an existing municipality, or a de-annexation effort, the county will be impacted.

COUNTY STANDING TO OPPOSE ANNEXATION

The right of counties to oppose municipal annexation first reached the Mississippi Supreme Court in the case of *Harrison County v. City of Gulfport* 557 So.2d 780, (Miss. 1990).⁷⁰⁰ Prior to the decision of the Supreme Court in that case, there was considerable legal controversy over whether a county had the right to oppose an annexation. There were pending annexations in both Gulfport and Biloxi which Harrison County had filed objections. The cases were being heard by separate Chancellors. In both cases the chancellors ruled that Harrison County was not a proper party to oppose an annexation. The Mississippi Supreme Court granted an interlocutory appeal.

On appeal, the Mississippi Supreme Court examined the right of a county to oppose an annexation in view of two distinct legal requirements – standing and underlying authority. The Court found that counties possess both requisites.

Standing. In order to participate in any litigation potential parties must show that they have a justiciable interest in the litigation. In determining whether counties have standing intervene in

⁶⁹⁸*Code*, §§ 3-3-3 and 19-1-1 through 19-1-163.

⁶⁹⁹*Const.*, § 260.

⁷⁰⁰This case contains a useful discussion of instances where the issue had been previously addressed in passing in other cases. Because of the landmark nature of the decision lengthy excerpts follow.

an annexation, the Supreme Court first examined the general principles of standing applying to all litigation. The Court said:

We begin with our general rules on standing to sue. Parties may sue or intervene where they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, see *Dye v. State ex rel. Hale*, 507 So.2d 332, 338 (Miss.1987); *Frazier v. State of Mississippi*, 504 So.2d 675, 691-92 (Miss.1987); *Belhaven Improvement Association, Inc. v. City of Jackson*, 507 So.2d 41, 45-47 (Miss.1987), or as otherwise authorized by law, see, e.g., *Canton Farm Equipment Co. v. Richardson*, 501 So.2d 1098, 1105-09 (Miss.1987); *City of Pascagoula v. Scheffler*, 487 So.2d 196, 198 (Miss.1986). This view has been statutorily incorporated into our annexation confirmation procedure. *Miss. Code Ann. Sec. 21-1-31* (1972) authorizes intervention by any party “interested in, affected by or aggrieved by” a proposed annexation.⁷⁰¹

The Court then moved to the more specific question of whether the concerns of a County were sufficient to meet this test in an annexation proceeding. The Court found:

Standing is like any other charge of a party’s pleading. Harrison County’s well pleaded allegations, where considered on their face, must be taken as true. *Common Cause of Mississippi v. Smith*, 548 So.2d 412, 415 (Miss.1989); *McFadden v. State of Mississippi*, 542 So.2d 871, 874 (Miss.1989); *Wilkinson v. Mercantile National Bank*, 529 So.2d 616, 618 (Miss.1988). The factual components of a claim of standing, however, may be challenged via Rule 56, Miss.R.Civ.P. For example, if a county geographically remote from Biloxi or Gulfport were to assert a right to intervene and object to these annexations, the cities may well be able to show beyond peradventure the absence of a colorable basis in fact for the intervening county’s claim of interest or effect and, if so, the court would have power to dismiss that county as a party for lack of standing under Section 21-1-31. On appeal, we would apply the same standards as the court below, viz., if there is no genuine issue of material fact on the questions of interest or effect such that we may say with confidence the objecting county lacks a colorable claim, the court should order dismissal of the objector. *Huff v. Hobgood*, 549 So.2d 951, 953 (Miss.1989); *Short v. Columbus Rubber and Gasket Co.*, 535 So.2d 61, 63 (Miss.1988). On the other hand, to resist dismissal for lack of standing the objector is hardly required to prove it may prevail on the merits. The motion should be denied unless on the materials eligible for consideration under Rule 56, see *Magee, Adm’x., etc. v. Transcontinental Gas Pipe Line Corp.*, 551 So.2d 182, 186 (Miss.1989), it may be said the objector has no colorable basis for a claim of interest or effect from the annexation.

The Board of Supervisors of Harrison County, Mississippi, on January 25, 1988, adopted a resolution finding the proposed annexations by the Cities of Gulfport and Biloxi “inimical to the best interests and general welfare of the people of Harrison County”; that said annexations would adversely affect the areas proposed to be annexed, and that such would seriously affect the operation of the Harrison County School System in these areas; that Harrison County’s tax base and its school system would suffer irreparable damage due to loss of taxpayers and students, etc. These findings suggest standing. Moreover, the interest of the county is derived from the interest of the citizens of the county living in or owning property in the areas tabbed for annexation. The board of supervisors is the governmental authority closest to those people and is surely charged to protect

⁷⁰¹*Harrison County v. City of Gulfport*, 557 So.2d 780, 782 (Miss. 1990).

their welfare. From these thoughts it is a short step to *Miss. Code Ann. Sec. 21-1-31* (1972), which describes those who may appear and object to an annexation as “all parties interested in, affected by or being aggrieved by said proposed enlargement.”

Rules regarding standing, statutory or otherwise, import objective standards. Still, common sense suggests the party asserting standing would be more sensitive to whether its interests will be affected by an annexation – than would the annexing municipality or even the trial court. Cf. *Hentz v. State*, 489 So.2d 1386, 1388 (Miss.1986). A party’s assertion of an interest or effect goes a long way toward establishing that it has an interest in or will likely be affected by an annexation.

The cities would have us try the merits of the County’s “findings” just to decide the standing question. In this context, *In the Matter of Enlargement of Corporate Boundaries of the City of Pascagoula*, 346 So.2d 904 (Miss.1977) is instructive when it reminds us

[w]hat proof the objectors may or may not have been prepared to offer at the hearing bearing upon the question of the reasonableness of the proposed expansion is of course, impossible for us to know or foresee with any degree of accuracy.

Id. at 905. The Pascagoula Court goes on to point out the different parties affected by the city annexation:

Under the circumstances of the proposed expansion, affecting, as it must, the interest of a great many persons and corporations as well as functions and activities of Jackson County and other governmental entities within the area proposed to be annexed, it is impossible to predict at this stage of the proceedings what facts or circumstances may be developed in evidence having a bearing upon the reasonableness or unreasonableness of the proposed expansion. Obviously, the nature of the question is such that many factors may bear upon it and disadvantages as well as advantages will be relevant and properly considered as the expansion hardly could be considered reasonable if it should develop that the former outweigh the latter.

Id. (Interlocutory appeal from chancellor’s order overruling city’s motion to strike written objections to city’s petition for annexation). Rule 56’s modification of these views hardly detracts from their force today.

Without belaboring the point, the record is such that we may not say with confidence that Harrison County has no interest in, nor that it would not be affected by, these annexations, should either be confirmed. Within the meaning and contemplation of § 21-1-31 Harrison County has standing to object to each of those annexations.⁷⁰²

⁷⁰²*Supra*, 783.

Legal Authority. Having found that the County had standing to oppose the annexations, the Court then turned to the more basic question “Does state law permit counties to oppose an annexation.” After an examination of applicable law, the Court found that counties do have the authority to oppose annexations. The Court said:

Both Gulfport and Biloxi and, as well, the courts below read the rule too strictly. To begin with, the general principle necessarily has common sense limits, for a board of supervisors could hardly function if we held its every act had to be previously authorized specifically and in detail. For one thing, authority not expressly provided may be exercised if “vested by necessary implication.” *Capital Electric Power Association v. Mississippi Power & Light Co.*, 218 So.2d 707, 715 (Miss.1968); *Jefferson County v. Grafton* 74 Miss. 435, 442, 21 So. 247, 248 (1897). In *State for Use of Lawrence County v. Fortinberry*, 54 Miss. 316 (1877), the board of supervisors brought an action against one indebted to the county, and incidental thereto attached the debtor’s properties lying within the county. The debtor appeared and challenged the authority of the board of supervisors to execute and file an attachment bond. Concededly, no statute authorized the board to make and file the bond. The Court noted the statute authorizing the board to sue “in all matters in which the county may be interested” and held the authority to give the attachment bond, though not expressed, was necessarily implied. *Fortinberry*, 54 Miss. at 319. In *Board of Supervisors of Carroll County v. Georgia Pacific Ry. Co.*, 11 So. 471 (Miss.1892), the board brought an action against the railroad charging its conversion of the county’s negotiable bonds. The railroad demurred, challenging the board’s authority to maintain the action. The Court found no statute expressly empowering the board to bring the action but nevertheless held the demurrer should be overruled. The Court held the Board could sue under Miss. Code Sec. 897 (1880) which entitled the county “to the benefit of all actions to which individuals are entitled in a given state of the case.” In this vein *Leflore Bank & Trust Co. v. Leflore County*, 202 Miss. 552, 557, 32 So.2d 744, 746 (1947) teaches that “what others in business may do, the county in its authorized business affairs is free also to do unless otherwise commanded by law.” Moreover, the Howe rule has been moderately but significantly relaxed by statute. *Miss. Code Ann. Sec. 19-3-40* (Supp.1989).

Harrison County is a political subdivision of the State of Mississippi. *State v. Board of Supervisors of Grenada County*, 141 Miss. 701, 105 So. 541 (1925); *Pidgeon Thomas Iron Co. v. Leflore County*, 135 Miss. 155, 99 So. 677 (1924). Consistent with the general principle, a county has no right to sue incident to its being, but only as authorized by law. *Leflore County v. Big Sand Drainage District*, 383 So.2d 501, 502 (Miss.1980); *Brabham v. Board of Supervisors of Hinds County*, 54 Miss. 363, 364 (1877). But when we turn to our statute books, we find three code sections which, read together, seem wholly adequate unto the day. In *Miss. Code Ann. Sec. 11-45-17* (1972), the legislature has enacted that

Any county may sue and be sued by its name, and suits against the county shall be instituted in any court having jurisdiction of the amount sitting at the county site; but suit shall not be brought by the county without the authority of the board of supervisors, except as otherwise provided by law

We long ago held this statute by necessary implication authorized a county to employ counsel and bring an action, denying that the authority should be limited

to suits where the county had a pecuniary interest, for “it is to the interest of the county to maintain the peace and harmony of its inhabitants.” *Coahoma County v. Knox*, 173 Miss. 789, 795, 163 So. 451, 452 (1935). This is hardly surprising, for the supervisors of each county in this state are charged generally to promote the peace, happiness, and economic and social welfare of the people they serve. See, e.g., *Miss. Code Ann. Sec. 19-7-3* (Supp.1989), cited in *Leigh v. Board of Supervisors of Neshoba County*, 525 So.2d 1326, 1330 (Miss.1988).

What is implicit in Section 11-45-17 has been expressed in *Miss. Code Ann. Sec. 19-3-47(1)(b)* (Supp.1989), which provides that

The board of supervisors shall have the power, in its discretion to employ counsel in all civil cases in which the county is interested. . . .

Miss. Code Ann. Sec. 11-45-19 (1972) further elaborates a county’s authority to sue.

Suit may be brought, in the name of the county, where only a part of the county or of its inhabitants are concerned, and where there is a public right of such part to be vindicated.

No reason is offered why we should afford these several statutes a reading other than as their words and phrasing ordinarily import, and upon reflection we see none. When we give these statutes a common sense reading, we see Harrison County acting by and through its board of supervisors legally empowered to proceed in court regarding matters affecting the county’s interest. Section 19-3-47(1)(b) authorizes the county to employ counsel to act for it in all civil actions in which the county is interested. Section 11-45-17 says the county may sue and be sued in its own name, requiring prior authority from the board of supervisors. It is the board of supervisors which decides whether the county is interested in a matter, this Court’s authority to intervene being limited to cases where the assertion is seen a sham. That only those Harrison County residents outside the present corporate limits of Gulfport and Biloxi may have rights at stake is no obstacle, as Section 11-45-19 makes clear.

The undercurrent dominating Gulfport and Biloxi’s response is that the county shouldn’t be allowed to oppose an annexation. We should protect the taxpayers of Harrison County from having public funds expended in this manner, or so the argument goes. The problem is that this day and this forum are inappropriate to that end. The statutes cited above empower the county to pursue litigation regarding matters in which it is interested. No rule of statutory construction would authorize our reading into these statutes “except in annexation cases.” As no language in these general authorization statutes precludes Harrison County’s opposition to Gulfport and Biloxi’s annexation, we regard the supervisors’ decision a political one, not subject to judicial review, and for which the supervisors are answerable only at the polls.

All seem to agree that a county should be permitted to oppose invasion from a municipality principally situated in an adjoining county. For example, all assume there was no problem with Madison County’s appearance and opposition to Jackson’s recent annexation. See *City of Jackson v. City of Ridgeland*, 551 So.2d 861 (Miss.1989). Other states have allowed such opposition. See *City and*

County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169, 173-74 (1963) (Arapahoe County is a “person aggrieved” by City of Denver’s efforts to annex territory within Arapahoe County); *Elkins v. City and County of Denver*, 157 Colo. 252, 257, 402 P.2d 617, 620 (1965) (same); *DeKalb County v. City of Atlanta*, 132 Ga. 727, 65 S.E. 72, 78 (1909) (DeKalb County has authority to object to Atlanta’s efforts to expand from Fulton County and into DeKalb County). And so we are told Hancock County or Stone County would be legally empowered to object were Gulfport seeking to expand into one or both. But if this be so, Harrison County equally has authority to intervene and object today.

The question before us is whether the legislature has enacted that a county may appear and object at all. If an invaded county whose lands are being annexed has authority to object, so may a home county so long as our law is posited in its present form. It may well be that an adjacent invaded county’s “interest” or “effect” may differ from that of a home county. This hardly proves a home county has no legally cognizable “interest” or “effect” from annexations such as these, and no inconsiderable difficulty attends the effort to articulate a legally cognizable distinction between the effects of Gulfport’s annexation of 53.65 miles of incorporated Harrison County lands and the effect of a like annexation of Hancock or Stone County lands. If the authority exists it surely exists without regard to the particular county interest(s) at stake and without regard to the ground(s) on which the county may oppose the annexation. Put otherwise, if Harrison County has no standing to object to these annexations, this may only be because the law does not permit counties to contest annexations, period. As indicated above, we find that the authority to appear and object does exist and that the matter of whether and when that authority may be exercised is committed wholly to the discrete judgment of the board of supervisors.

We are told litigation between municipalities and counties is unseemly and that we should move to prevent it. The argument belies our history. See, e.g., *City of Indianola v. Sunflower Co.*, 209 Miss. 116, 46 So.2d 81 (Miss.1950) (county brought suit against city to confirm title to property); *Town of Crenshaw v. Panola County*, 115 Miss. 891, 76 So. 741 (1917) (suit between political subdivisions, town sought to recover tax money from county); *City of Bay St. Louis v. Board of Sup’rs of Hancock County*, 80 Miss. 364, 32 So. 54 (1902) (county sued city for room in courthouse used as city hall). If such suits be seen an evil, the legislature may certainly administer a cure.

A further objection is that residents of Gulfport and Biloxi pay taxes to Harrison County and have a right that their tax dollars not be used to thwart their interests in the two annexations. The source of the right is never identified, nor is it apparent on reflection. The point requires a presumption that all taxpayers of Gulfport and Biloxi approve their city’s annexation plans. The short answer is found in Section 11-45-19. The county may sue where only a part of its inhabitants have interests at stake. Citizens of Gulfport and Biloxi, unhappy with the actions of any of the governmental bodies litigating today, may find a remedy in the political and not the legal process.⁷⁰³

With the right of counties to be involved in annexations clearly established by our law, the question then becomes “Should a County oppose an annexation?” This decision is often made

⁷⁰³Supra, 784-787.

with little consideration as to the real impact of annexation on a county. A board of supervisors considering whether to oppose an annexation can rest assured that the municipality will seek and will get an answer to the question “Why does the County oppose this annexation?” Generally there will be a number of reasons put forth, some are legitimate, others less so.

Politics. Whether true or not, you may be assured that the municipality will claim that the proposed annexation is based on nothing more than politics. Very often supervisors will be faced with a vocal constituency living in an annexation area. Those being annexed very often will seek to have the board of supervisors oppose the annexation as a way of avoiding the cost of the litigation themselves. Though the board of supervisors may decide to oppose an annexation on the grounds of politics alone, heed should be paid to the words of Justice Hawkins dissent in *Harrison County*:⁷⁰⁴

It should be perfectly plain that the employment by the board of supervisors of Harrison County of lawyers to protect their own political and economic power under the argument that they are “protecting the county taxpayer” is no more valid than laying out and building roads and bridges on private property.

No doubt laying out subdivisions, building driveways, field roads and bridges with public, taxpayers’ money helped create in hundreds of instances political bosses. A supervisor rendering such services to taxpayers in his district enormously enhanced his political power. Those days are over. But the Mississippi Supreme Court has told the boards of supervisors you can salvage or re-establish some of your economic and political power by paying disgruntled property owners’ legal fees out of the public treasury to fight any municipal expansion.

If this is not illegal, void and against public policy, then what is?

The majority has given a lengthy exposition of authority by political subdivisions generally to go to court, but ignored and missed the point of this case entirely: that the public treasury is funding legal fees to help individual supervisors and private property owners. This should never be classified as an “object authorized by law.”

No law book is needed to detect the violation of public policy in this action by the Harrison County board of supervisors. *You do not even need to be a lawyer. An unimpaired olfactory sense will suffice.* [Emphasis Added]

Municipal officials have become much more vocal in opposition to members of boards of supervisors who oppose annexations. The political reality often is that there are may more voters adversely affected by supervisors opposition to annexation than are aided. Municipal residents pay county taxes. Many resent county government using their tax money against municipalities. The Supreme Court recognized that citizens of the municipality unhappy with the actions of any of the governmental bodies litigating annexations, may find a remedy in the political and not the legal process.” In fact opposition to annexations was a factor in the defeat of a number of incumbents during the most recent elections.

⁷⁰⁴Supra, 791.

School Issues. As the Supreme Court noted one of the reasons that Harrison County asserted for opposing the Gulfport and Biloxi annexations was the potential impact on county schools. This is no longer a real issue in annexation.

Prior to 1986 state law provided that with regard to cities with a municipal school district, the boundaries of a school district automatically changed when the city annexed.⁷⁰⁵ In 1986 the legislature repeal this legislation. Under the new legislative scheme, annexations no longer impact school district lines. Because, however, the change had voting implications, the preclearance was required under the *Voting Rights Act of 1965*.

Initially the Justice Department rejected the change. Years of litigation ensued with the federal courts ultimately holding the repeal of the automatic expansion of municipal school lines upon annexation was unenforceable. Following the litigation, however, the repeal was ultimately precleared. The relationship between annexation and school district lines is now a thing of the past.⁷⁰⁶

⁷⁰⁵Code, 37-7-611.

⁷⁰⁶While it appears that school issues are no longer a legal concern, the Mississippi Supreme Court recently emphasized the importance the issue can play. In noting that the impact on schools was unclear in the particular case, the Court said:

This Court should certainly not be unmindful of a very common occurrence in Mississippi, that being the unifying effect which a public school has on a community, whether incorporated or unincorporated. It is obvious even from the scant record before this Court regarding the Oak Grove Schools, [FN22] as well as the reported decisions in footnote 20 of this opinion, that the Oak Grove residents have for years had a strong sense of community pride and have been very supportive of their public school in Oak Grove. [FN23] Among the witnesses testifying before the chancellor in the case sub judice concerning the Oak Grove community and the Oak Grove Schools were Lamar County Supervisor Mike Backstrom, Melva Maples, Anthony Mozingo, and Thomas Price, who testified that the Oak Grove School was "a central unifier in the Oak Grove area." While the Oak Grove Concerned Citizens were a party in the 1991 *Hattiesburg* decision of this Court, scant if any reference is made to the Oak Grove Schools. On the other hand, there was at least some discussion of the Oak Grove Schools in the 1996 *Oak Grove* decision of this Court, wherein this Court affirmed the chancellor's decision to approve Hattiesburg's annexation efforts, with one exception, and to disapprove Oak Grove's incorporation efforts. [FN24] On the school issue, this Court stated:

FN22. The Oak Grove Schools consist of an elementary school, middle school, and high school.

FN23. This Court can take judicial notice of the fact that Oak Grove High School, a Class 5A school as so classified by the Mississippi High School Activities Association, which classification is based on high school student population, played Wayne County at Oak Grove on Friday, November 29, 2002, for the South-half 5A football championship. While football is but one aspect of a public school system, there is no doubt that Oak Grove football is yet another positive factor for the Oak Grove community, drawing the citizens together for a common cause, which, in the end, brings about better working/social relationships among the Oak Grove citizens.

Jurisdiction Over Roads and Streets. The question frequently arises as to who has jurisdiction over public roads and streets in areas annexed by a city. On annexation jurisdiction over public roads and the obligation of maintenance becomes a municipal responsibility.⁷⁰⁷

County Parks. County owned and maintained parks are often in an area annexed by a municipality. The question is frequently raised as to whether the annexation will result in the park becoming a municipal park. The attorney general has addressed this issue as follows:

“Pursuant to Section 21-1-27, *Mississippi Code of 1972*, I respectfully request your written opinion as to whether an annexation by a municipality of adjacent unincorporated territory would have any effect on the existing jurisdiction of the county park commission over parks in the unincorporated territory. The type of park commission to which I refer is created under Section 55-9-81, *Mississippi Code of 1972*.

In re Extension of Boundaries of City of Hattiesburg 840 So.2d 69, 94 (Miss.,2003) [Court’s footnotes retained].

⁷⁰⁷The Attorney General has opined as follows:

The general rules with respect to jurisdiction over streets and highways are stated as follows:

The legislature, as representative of the state, has control and authority over the highways and streets within the borders of the state, and may delegate such power to local governmental authorities. 39 *Am.Jur.2d* § 199, p. 578

County authorities have no power to control municipal streets except where a statute so provides. In most states there are statutes vesting such control in the corporate authorities of cities and incorporated towns, and the usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways and streets located therein. Where such control is vested in the municipal authorities, the power of the municipality over its streets is exclusive, and the general power of the county within which the municipality lies, to control the highways within its territory, is thereby divested insofar as such streets are concerned. . . . Upon the annexation of territory to a municipality, highways therein become streets and subject to the control of the municipal authorities. 39 *Am.Jur.2d* § 203, p. 584

Granting municipalities jurisdiction over streets, sidewalks, sewers and parks is § 21-37-3, which provides: The governing authorities of municipalities shall have the power to exercise full jurisdiction in the matter of streets, sidewalks, sewers and parks; to open and lay out and construct the same; and to repair, maintain, pave, sprinkle, adorn, and light the same.

The Mississippi Supreme Court has construed this statute as giving the municipality not only the authority to maintain streets within its corporate limits, but the affirmative duty to do so. 1988 WL 250158.

There are certain park facilities located in Orange Beach that are under the jurisdiction of the Harrison County Parks and Recreation Commission. The City of Gulfport is attempting to annex Orange Beach. The Harrison County Park and Recreation Commission is concerned that its jurisdiction over these park facilities will be affected by the annexation. My reading of Sections 55-9-81 et seq., Mississippi Code of 1972, leads me to believe that the jurisdiction of the county park commission would in no way be affected by such annexation. Your confirmation of this reading of those sections or explanation of a different conclusion that you may reach would be appreciated.

The statutes referred to above are attached for your review. Your prompt attention to this request will be greatly appreciated, due to the imminent annexation.”

In response to your inquiry, we concur with your conclusion that the jurisdiction of a county park commission created pursuant to *Mississippi Code Annotated* §§ 55-9-81 et seq. (Revised 1989) would not be affected by a municipality’s annexation of territory wherein one or more county parks have been established by said commission.

Financial Impact on the County. Municipal annexations do have some financial impact on counties. Generally, the impact is offset by the fact that service requirements are reduced. In certain localized areas this may not be the case. The following are examples of specific financial impacts of annexation on counties: road taxes,⁷⁰⁸ garbage and trash collection,⁷⁰⁹ fire protection rebate funds, TVA lieu funds, gaming fees,⁷¹⁰ and funds impacted by local and private legislation or legislation which is local in nature.

THE EXPANSION PROCESS

In compliance with the mandates of § 88 of the *Mississippi Constitution of 1890*, the legislature adopted statutes related to the classification, creation, abolition and expansion of municipalities. Though the original statutes have been amended on numerous occasions since adoption,⁷¹¹ Title 21 Chapter 1 of the *Mississippi Code* contains those statutes today.

⁷⁰⁸Code § 65-15-21 Provides in part as follows:

One-half (½) of all ad valorem taxes collected by or for a county or a separate or special road district on property within a municipality (the streets of which are worked at the expense of the municipal treasury, or worked by municipal authority) for road purposes of such county or district, not including taxes for the purposes of paying bonds issued for road purposes or the interest thereon or for creating a bond and interest fund for retiring the same, shall be paid over to the treasurer of such municipality for said municipality.

⁷⁰⁹Annexations generally are of more developed areas. Annexation of heavily developed areas may result in increases in collection costs for the remaining more sparsely populated areas.

⁷¹⁰Code § 75-76-197.

⁷¹¹The legislature first adopted general annexation legislation in 1892 pursuant to the requirements of § 88 of the then new *Constitution*.

CLASSIFICATION

All municipalities in the state are divided into three (3) classes. Municipalities with a population of two thousand (2,000) or more are classified as cities. Those with a population of more than less than two thousand (2,000) but more than three hundred (300) are classed as towns. A village has three hundred (300) or fewer inhabitants.⁷¹² If a new federal census changes the population so that a municipality is in a different class, the governing authorities are required to enter an order on the minutes changing the municipality to the proper class. This order is to be filed with the secretary of state. The census is conclusive as to the class of a municipality.⁷¹³ Municipalities are to operate under the corporate name of “The City of _____,” “The Town of _____,” or the “Village of _____” according to the proper classification.

CREATION

General Requirements. A new municipality may be created in Mississippi provided the area has the following characteristics:⁷¹⁴ one square mile of territory, population of at least 300, at least one (1) mile of hard surface streets (either existing or under construction), at least six (6) streets making up the one (1) mile of hard surfaced streets, and a public utilities system (water and/or sewer) existing or under construction.

The Petition. If an area possesses these characteristics, it may incorporate as a town or city on the petition of at least two thirds (**b**) of the qualified electors residing in the area. The petition must meet the following requirements: (a) describe that area proposed to be incorporated; (b) contain a map or plat of the area to be incorporated; (c) set forth the corporate name of the new municipality;

(d) set forth the number of inhabitants in the new municipality; (e) set forth the assessed valuation of the real property in the area according to the latest available assessment; (f) state the aims of the petitioners in seeking to incorporate; (g) set forth the municipal and public services the municipality proposes to provide; (h) set forth the reasons that the public convenience and necessity requires a new municipality and contain a statement of the names of the persons the petitioners desire to be appointed as officers of the new municipality; and (i) be sworn to by at least one (1) of the petitioners. Once the necessary signatures are obtained the petition must be filed in Chancery Court.⁷¹⁵

Notice. After the petition is filed in the Chancery Court, a date is set for the hearing by the Chancellor. Notice of the time of the hearing must be given by publication in a newspaper, to all persons interested in, affected, or having objections to the proposed annexation.⁷¹⁶ If there is an

⁷¹²Code, § 21-1-1.

⁷¹³Code, §21-1-3.

⁷¹⁴Code, § 21-1-1.

⁷¹⁵Code, § 21-1-13.

⁷¹⁶Code, § 21-1-13. This notice must meet the following requirements: be in a newspaper published in or having a general circulation in the area to be incorporated; be published once each week for three consecutive weeks; the first publication must be at least 30 days prior to the date of the hearing; and the publication must contain a full legal description of the territory to be incorporated.

existing municipality within three (3) miles of the area to be incorporated, process must be served on it at least 30 days prior to the hearing.⁷¹⁷

Hearing. At the time set forth in the notice,⁷¹⁸ a hearing is to be held in chancery court. At the hearing, any evidence related to the issues of “public convenience and necessity” or reasonableness may be presented. If the proposed incorporation is found to be reasonable and required by the public convenience and necessity, the chancellor is to grant the incorporation as requested. If not, the incorporation is to be denied. Additionally, the chancellor may allow only a part of the area to be incorporated.⁷¹⁹

If the chancellor grants the incorporation, in whole or part, a decree is to be entered which shall contain the following: (a) a declaration that the municipal corporation is created; (b) an accurate description of the boundaries of the new municipality; (c) classification of the new municipality as a town or city; and (d) the names of the officers of the municipality.⁷²⁰ A map of the new municipality must be filed with the chancery clerk.⁷²¹

Public Convenience and Necessity. Factors that the court should look to determine whether the incorporation is required by the public convenience and necessity were summarized by the Mississippi Supreme Court in *City of Pascagoula v. Scheffler*, 487 So. 2d 196 (Miss. 1986). The Court said:

The power vested in the chancery court is the judicial function of deciding that a petition is sufficient and that the statutory jurisdictional conditions have been met. To determine public convenience and necessity, this Court sets forth the following factors as some to be considered: the governmental services presently provided; the quality and adequacy of all services provided, *Lowe v. City of Jackson*, 336 So. 2d 490 (Miss. 1976); the services expected from other sources, e.g. neighboring municipalities, water districts, county services, etc.; the impairment of an immediate right vested in an adjoining city, See *Schatzman v. Town of Greenfield*, 273 Wis. 277, 77 N.W. 2d 511(1956) (city proper party to object only where showing of impairment of immediate right); the substantial or obvious need justifying incorporation, *Hamilton v. Incorporation of Petal*, 291 So. 2d 190 (Miss. 1974).⁷²²

Reasonableness. The following factors have been identified as indicating reasonableness in an incorporation case:

The following factors, although by no means exhaustive, are examples of those to be considered by the chancery court when making a determination of reasonableness. These factors may overlap with those determinative of public

⁷¹⁷Code, § 21-1-13.

⁷¹⁸As a practical matter, if the case is contested, there will usually be a continuance.

⁷¹⁹See Code, 21-1-17. The Chancellor cannot enlarge the area.

⁷²⁰Code, § 21-1-17.

⁷²¹Code, § 21-1-17.

⁷²²487 So 2d 200-201.

convenience and necessity. No one factor per se determines reasonableness, but a consideration of all pertinent factors gives guidance to reach an ultimate conclusion. Factors are: whether a proposed area has definite characteristics of a village, *In Re Incorporation of Village of Twin Lakes*, 226 Wis. 505, 277 N.W. 373 (1938); whether the residents of the proposed area for incorporation have taken initial steps toward incorporation and whether a nearby city has initiated preliminary proceedings toward annexation, *Fields v. City of Jackson*, 280 So. 2d 837 (Miss. 1973); *Application of Fernan Lake Village*, 80 Idaho 412, 331 P. 2d 278 (1958); *In Re Town of Waconia*, 248 Iowa 863, 82 N.W. 2d 762 (1957); *Couch v. City of Forth Worth*, 287 S.W. 2d 255 (Texas 1956); whether there has been any financial commitments toward incorporation or annexation proceedings; whether a neighboring city has the prerogative to – contest incorporation, although consent of nearby city not required under *Miss. Code Ann. 21-1-17* (1972); *Contra: Tenn. Code Ann. 6-1-205* (1985); *Corporation of Collierville v. Fayette County Election Comm 'n.*, 539 S.W. 2d 334 (Tenn. 1976); *Town of Godfrey v. City of Alton*, 33 Ill. App. 3d 978, 338 N.E. 2d 890 (1975); whether incorporation effects an existing city within three miles, *City of Jackson & Pearl v. City of Richland Incorporated*, 318 So. 2d 843 (Miss. 1975); *City of Meridian v. Marion*, 255 So. 2d 906 (Miss. 1971); whether population of area shows an increase and continuity of settlement, *Hamilton v. Incorporation of Petal*, 291 So. 2d 190 (Miss.1974); *Bd. of Supervisors of Norfolk County v. Duke*, 113 Va. 94, 73 S.E. 456 (1912); whether a community has a separate identity, *Hamilton, supra*; whether natural geographical boundaries separate an area from other municipalities; whether transportation is affected; whether incorporation will affect the interest of landowners in the affected area, *Western Line Consol. v. City of Greenville*, 465 So. 2d 1057 (Miss. 1985); whether cost of operating the municipality is prohibitive, *In Re City of Pearl*, 279 So. 2d 590 (Miss. 1973); whether an estimated tax base of proposed area will support incorporation; whether the overall welfare of residents of affected area is improved by incorporation, *City of Meridian v. Town of Marion*, 255 So. 2d 906 (Miss. 1971).⁷²³

Effective Date. The decree creating a new municipality becomes effective ten (10) days after it is entered.⁷²⁴ However, if there is an appeal within that ten (10) day period, the effective date is stayed until the Supreme Court rules.⁷²⁵

⁷²³*Pascagoula v. Scheffler*, 87 So. 2d 196, 201-202 (Miss. 1986).

⁷²⁴*Code*, § 21-1-17.

⁷²⁵See *Code*, § 21-1-21. In both incorporations and annexations there is a potential inconsistency in the appeal procedures. Section 21-1-21 sets out the manner and time (10 days) in which the appeal is to be taken. However, the Mississippi Supreme Court adopted Rule 4 of the Rules of Appellate Procedures which states in pertinent part:

RULE 4. APPEAL AS OF RIGHT – WHEN TAKEN

(a) Appeal and Cross-Appeals in Civil and Criminal Cases. In a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the

ANNEXATION

Annexation may be accomplished in one of two ways with the most common method being initiation by the municipality.⁷²⁶ However, the citizens of the area sought to be annexed may directly petition the chancery court for inclusion into the municipality.⁷²⁷

Annexation Ordinance. In annexations initiated by the municipality, the first step in the process is the passage of the ordinance. The territory to be annexed must be contiguous to the municipality.⁷²⁸ Obviously, it must not be a part of another city. The ordinance must set out the following: (a) a legal description of the territory sought to be annexed; (b) a legal description of the city as it will exist if the annexation is granted; (c) a description, in general terms, of the proposed improvements to be made in the annexed territory; (d) the manner and extent of the proposed improvements; (e) the approximate time in which the improvements are to be made; and (f) a statement of the public services the municipality proposes to render in the annexation area.

The Petition. After the ordinance is adopted, the municipality must file a petition in the chancery court of the county in which the property sought to be annexed is located. The petition must contain the following: a statement of the fact that the ordinance has been adopted, a request for the enlargement of the municipality, a certified copy of the ordinance of annexation, and a map or plat of the municipality as it will exist if the annexation is approved.⁷²⁹

Notice. After the petition is filed, notice must be provided in the same time and manner as is required for an incorporation.⁷³⁰

Supreme Court, the clerk of the Supreme Court shall note on it the date on which it was received and transmit it to the clerk of the trial court and it shall be deemed filed in the trial court on the date so noted.

At this point there is no reported decision with respect to the inconsistency.

⁷²⁶Though the basic concepts related to annexation are relatively simple, the implementation of a successful annexation planning effort requires considerable planning. Attached as Addendum B is a checklist of factors which should be considered prior to undertaking a major annexation.

⁷²⁷*Code*, § 21-1-27 *et seq.*; *Code*, § 21-1-45.

⁷²⁸There is one exception to this rule related to airports.

⁷²⁹*Code*, § 21-1-31.

⁷³⁰*Code*, § 21-1-33. See also *Code*, § 21-1-15 [Publication in the newspaper, posting in the annexation area and service of process on municipalities within three (3) miles of the territory to be annexed].

Hearing. At the hearing all persons having an objection may appear and present evidence.⁷³¹ The chancellor is to hear the case based on the issue of reasonableness.⁷³² If the chancellor finds the annexation reasonable, a decree is to be entered granting the annexation. As in incorporation cases, if the burden of proof is not met, the annexation should be denied. The chancellor has the option of granting the annexation in part. No territory not described in the ordinance may be added by the chancellor. The decree of the chancellor is effective ten (10) days after entry if no appeal is taken.⁷³³

Reasonableness. In a series of cases arising since the adoption of the current annexation statutes in 1950 the Mississippi Supreme Court has dealt with the issue of what is a reasonable annexation. The Court recently summarized the factors to be considered as follows:

This Court has stated:

In a series of cases beginning with *Dodd v. City of Jackson*, 238 Miss. 372, 396-97, 118 So. 2d 319, 330 (1960) down through most recently *McElhanev v. City of Horn Lake*, 501 So. 2d 401, 403-04, (Miss. 1987) and *City of Greenville v. Farmers, Inc.*, 513 So. 2d 932, 941 (Miss. 1987), we have recognized at least eight indicia of reasonableness. These include (1) the municipality's need for expansion, (2) whether the area sought to be annexed is reasonably within a path of growth of the city, (3) the potential health hazards from sewage and waste disposal in the annexed areas, (4) the municipality's financial ability to make the improvements and furnish municipal services promised, (5) the need for zoning and overall planning in the area, (6) the need for municipal services in the area sought to be annexed, (7) whether there are natural barriers between the city and the proposed annexation area, and (8) the past performance and time element involved in the city's provision of services to its present residents.

⁷³¹Unlike other litigated matter, it is not necessary that written pleadings be filed to allow a party to object. The Mississippi Supreme Court deliberately choose to preserve this right when they adopted the Mississippi Rules of Civil Procedure. That rule states in part:

RULE 81. APPLICABILITY OF RULES

(a) Applicability in General. These rules apply to all civil proceedings but are subject to limited applicability in the following actions which are generally governed by statutory procedures.

(11) creation of and change in boundaries of municipalities;

⁷³²Section 21-1-33 of the *Code* provides that the chancellor is also to determine the issue of "public convenience and necessity." The Mississippi Supreme Court struck this requirement down in annexation case in 1953 in the case of *Ritchie v. Brookhaven*, 217 Miss. 860, 65 So. 2d 436, sugg. of error overruled 217 Miss. 876, 65 So. 2d 832 (1953). The Court held that the issue of "public convenience and necessity" was legislative in nature and not subject to judicial review. It is important to contrast the Court's holding in annexations with incorporations. In the case of annexations, the issue of public convenience and necessity is considered by the municipality's legislative body and a determination is made. In incorporation cases the same is not true. Thus, it would appear that "public convenience and necessity must still be proven in incorporation cases.

⁷³³*Code*, § 21-1-33.

Other judicially recognized indicia of reasonableness include (9) the impact (economic or otherwise) of the annexation upon those who live in or own property in the area proposed for annexation; *Western Line Consol. v. City of Greenville*, 465 So. 2d 1057, 1059 (1985); (10) the impact of the annexation upon the voting strength of protected minority groups, *Enlargement of Boundaries of Yazoo City v. Yazoo City*, 452 So. 2d 837 at 842-43 (1984)]; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and for the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy the (economic and social) benefits of proximity to the municipality without paying their fair share of the taxes, *Texas Gas Transmission Corp. v. City of Greenville*, 242 So. 2d 686, 689 (Miss. 1971); *Forbes v. Mayor & Board of Alderman of City of Meridian*, 86 Miss. 243, 38 So. 676 (1905); and (12) any other factors that may suggest reasonableness vel non. *Bassett v. Town of Taylorsville*, 542 So. 2d 918, 921 (Miss. 1989).⁷³⁴

Appeal. The same rules apply to annexation appeals as to appeals in incorporation cases.⁷³⁵

Post Annexation. If the annexation is successful, a certified copy of the decree must be sent to the secretary of state.⁷³⁶ A map or plat of the approved boundaries is to be submitted to the chancery clerk for recordation in the official plat book.⁷³⁷

Citizen Initiated Annexation. Citizens in unincorporated areas⁷³⁸ may initiate an annexation under the provisions of § 21-1-47 of the *Mississippi Code*. The following requirements must be met:

(a) the territory sought to be included must be contiguous to the municipality and (b) a petition must be filed and signed by two thirds (b) of the qualified electors of the area sought to be included.⁷³⁹

A petition cannot be filed within two (2) years of the date of an adverse determination of any proceedings for the inclusion of the same territory.⁷⁴⁰

⁷³⁴*Extension of Boundaries of the City of Ridgeland v. City of Ridgeland*, 651 So. 2d 48, 551, (Miss. 1995).

⁷³⁵*Code*, § 21-1-17 and *Code*, § 21-1-21.

⁷³⁶*Code*, § 21-1-39.

⁷³⁷*Code*, § 21-1-41.

⁷³⁸Section 21-1-45 of the *Code* mistakenly utilizes the word “incorporate.” The Mississippi Supreme Court resolved the issue in *In Re Ridgeland*, 494 So. 2d 348 (Miss. 1986).

⁷³⁹The petition must: accurately describe the territory to be included; set forth the reasons the territory should be included; be sworn to by at least one (1) of the petitioners; and have attached a plat of the municipality as it will exist if the territory is added.

⁷⁴⁰*Code*, § 21-1-45.

DEANNEXATION

The same statute which grants citizens of an adjoining territory the right to initiate an annexation gives citizens of existing cities the right to seek deannexation.⁷⁴¹ The procedures are the same as for citizen-initiated annexations and are covered by the same statutes. This has been a little used remedy in the state. The Mississippi Supreme Court recently rendered a decision in one of the few deannexation cases to arise since the adoption of the 1950 statutes.⁷⁴² The Court held that the test of reasonableness is the same for annexations and deannexations – reasonableness.

COMBINATION

Two (2) or more cities may combine by following the procedures set out in § 21-1-43 of the *Code*. The following requirements must be met: (a) the municipalities must be adjacent; (b) the governing authorities of each city must adopt an ordinance;⁷⁴³ (c) a petition must be filed in the chancery court;⁷⁴⁴ (d) the ordinance must state the name of the new city; and (e) the chancellor

⁷⁴¹*Code*, § 2 1-1-45 provides:

The qualified electors of any territory contiguous to and adjoining any existing municipality and the qualified electors of any territory which is a part of an existing municipality, may be included in or excluded from such municipality, as the case may be, in the manner hereinafter provided. Whenever the inhabitants of any incorporated territory adjacent to any municipality shall desire to be included therein, and whenever the inhabitants of any territory which is a part of an existing municipality shall desire to be excluded therefrom, they shall prepare a petition and file same in the chancery court of the county in which such municipality is located, which said petition shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be included in or excluded from such municipality. Said petition shall describe accurately the metes and bounds of the territory proposed to be included in or excluded from such municipality, shall set forth the reasons why the public convenience and necessity would be served by such territory being included in or excluded from such municipality, as the case may be, and shall be sworn to by one or more of the petitioners. In all cases, there shall be attached to such petition a plat of the municipal boundaries as same will exist in the event the territory in question is included in or excluded from such municipality. No territory may be so excluded from a municipality within two years from the time that such territory was incorporated into such municipality, and no territory may be so excluded if it would wholly separate any territory not so excluded from the remainder of the municipality. No petition for the inclusion or exclusion of any territory under this section shall be filed within two years from the date of any adverse determination of any proceedings originated hereinafter under this chapter for the inclusion or exclusion of the same territory.

⁷⁴²See *Samuel Cole v. City of Jackson*, 93-CA-1288, June 5, 1997.

⁷⁴³The ordinance must meet the same requirements as an ordinance for annexation.

⁷⁴⁴The petition must meet the same requirements as a petition for annexation.

must find the combination reasonable. The decree of the chancellor shall properly classify the new municipality as a town or city.⁷⁴⁵

Post Combination Operation. After the combination, the governing authorities of both cities continue to serve until the next regular election. The mayor of the larger city becomes the mayor of the new city. Tax assessments and levies continue until the next time they would be set by law. The ordinances of the larger city become effective for the new city.⁷⁴⁶

ABOLITION

Though a new municipality must have at least 300 persons, existing villages may continue to operated.⁷⁴⁷ However, if a municipality drops below fifty (50) inhabitants according to the latest U.S. Census, it will be automatically abolished.⁷⁴⁸ Additionally, a municipality is automatically abolished if it fails to hold official meetings for a period of twelve (12) consecutive months or if it fails to hold municipal elections for two (2) consecutive elections.⁷⁴⁹

Municipalities of fewer than 1,000 inhabitants may voluntarily abolish the town or village by taking the following steps: (a) an ordinance must be adopted setting forth the reasons for dissolution; (b) a petition must be filed in the chancery court seeking to abolish the municipality; (c) a hearing must be set; (d) notice of the hearing must be properly given;⁷⁵⁰ (e) a hearing must be held with those opposed being given the right to appear; and (f) a chancellor must determine that the abolition is reasonable.

CONCLUSION

It is highly likely that most board members will be called on to review the county's position in an municipal boundary case within the upcoming term of office. Clearly, the county has the legal authority to object. Before doing so, the reasons for getting involved should be honestly evaluated. A meaningful objection to an annexation will result in substantial expenditures of public funds. Not only will the county make large expenditures, the citizens of the municipality will be forced to expend substantially more to counter the county's opposition. Expenditures that could go to provide needed services and improvements are often made with little to show for it in the end.

⁷⁴⁵A new village cannot be created in this manner because two villages may not combine unless the combined population is at least 500. *Code*, § 21-1-43.

⁷⁴⁶*Code*, § 2 1-1-43.

⁷⁴⁷*Code*, § 2 1-1-1.

⁷⁴⁸*Code*, § 2 1-1-49.

⁷⁴⁹*Code*, § 2 1-1-51.

⁷⁵⁰Notice is given in the same manner as for annexations or incorporations.