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NOTE

ANNEXATION IN MINNESOTA TODAY — A STUDY OF PROBLEMS AND PROCEDURES

I. INTRODUCTION

In the last fifty years the United States has witnessed amazing population gains by many of its cities. This increase was especially noticeable in the 1940's, as four-fifths of the entire increase in population in the United States during that period occurred in the one hundred and sixty-eight largest metropolitan areas.¹ Within these metropolitan areas another important trend was present—the faster growth of suburbs than that of the central cities. From 1940 to 1950 the central cities grew from forty-three million to forty-nine million while the outlying parts or suburbs grew from twenty-six million to thirty-five million.² Thus the rate of growth of suburbs was two and one-half times that of the central cities. This outward movement has resulted in the central cities being drained of both population and industry.³

1. See Woodbury, *The Future of Cities and Urban Redevelopment* 491-492 (1953). A metropolitan area is one containing a population of 50,000 or over. It may contain more than one city.

2. *The Municipal Year Book* 27 (1951).

3. See Reed, *Progress in Metropolitan Integration*, 9 *Pub. Admin. Rev.* 1 (1949).

Not one of these one hundred and sixty-eight urbanized communities is politically organized as a unified entity. Instead, each of these areas contains many local government units—municipalities, townships, counties and special districts. A major problem then is to what extent the central city should extend its boundaries by annexation or other methods. A companion problem is how this annexation should be accomplished. The latter subject will be covered in this Note. Included will be a discussion of some of the difficulties faced by a city or village seeking to expand its borders as well as treatment of the requirements of Minnesota law in this area.

There are two basic methods provided by Minnesota law to permit the expansion of a city's or village's boundaries—annexation and consolidation. Since the only provision in the Minnesota Statutes for consolidation is one allowing any two villages having a common boundary line to consolidate,⁴ discussion will here be limited to a consideration of annexation, the more general method provided for the growth of municipalities.

II. MINNESOTA ANNEXATION STATUTES

The power to determine boundaries of cities and villages belongs to the state legislature,⁵ subject only to constitutional limitations.⁶ In Minnesota the legislature has provided rather complicated procedures for annexation which vary according to the classification of the municipality. A municipality may be incorporated in Minnesota into a village⁷ or a city. If it is a city it is divided into one of four classes according to population. A first class city is one having more than 50,000 inhabitants; a second class city is one having between 20,000 and 50,000 inhabitants; a third class city is one with 10,000 to 20,000 inhabitants; and a fourth class city is one having not more than 10,000 inhabitants.⁸

4. Minn. Stat. § 412.071 (1953). Until this section was rewritten in 1949 consolidation was available only if the two villages had a common boundary which was at least one and one-half miles long. M. S. A. § 413.09(1) (1947). At that time the statute was estimated to cover only thirteen pairs of villages. See Peterson, *Comments on the Scope and Application of Chapters on Cities and Villages*, 24 M. S. A. 53, 56 (1947).

5. State *ex rel.* Erickson v. Gram, 169 Minn. 69, 210 N. W. 616 (1926); see 2 McQuillin, *Municipal Corporations* 277, 278 (3d ed. 1949).

6. See State *ex rel.* Erickson v. Gram, 169 Minn. 69, 71, 210 N. W. 616 (1926).

7. For a complete study of village incorporation in Minnesota see Note, 38 Minn. L. Rev. 646 (1954).

8. Minn. Stat. § 410.01 (1953).

A. Villages

Before a village may annex any land the territory must meet the dual requirement that it abut on the village and that it be so conditioned as to be properly the subject of village government.⁹ Land to be abutting must be in direct contact with the village limits. It is not enough, for example, if a territory merely corners upon a municipality but does not abut on it.¹⁰ The additional requisite that the land be "properly conditioned"¹¹ was discussed in a recent Minnesota case, *State ex rel. Danielson v. Village of Mound*.¹² In that case a petition for incorporation as a village was filed by persons living in an unincorporated area, Spring Park. An election was ordered pursuant to the statute. However, before the election was held, the petition was dismissed as legally defective, whereupon four corporations, which owned 37 acres in Spring Park, petitioned the village of Mound to annex this 37 acres. The only portion of this tract of land which abutted on Mound was a 100 ft. wide railroad right of way which extended five-eighths of a mile from the rest of the territory in question. After the Mound Village Council by ordinance had declared the territory to be annexed, the original Spring Park petitioners submitted another incorporation petition but no action was taken on it because of the conflicting annexation action of Mound. The Spring Park petitioners then contested the Mound annexation by getting the supreme court to issue a writ of quo warranto. In holding that the territory was not properly conditioned for village government the court gave its interpretation of the test:

"In the light of § 412.041, Subd. 1, and our controlling decisions, a territory to be added to an existing village by annexation is conditioned as properly to be subjected to village government only if it lies in such close proximity to the village as to both abut thereon and as to be suburban in its character, and to be so limited in area and to have such a natural connection, as well as a unity or community of interests, with the village that the entire area, taken as a whole, will naturally and reasonably be adaptable to the maintenance of village government whereby, in addition to other municipal functions, there may be a common feasible provision for, and enjoyment of, the benefits of the usual

9. *Id.* § 412.041(1). In addition the territory must not be included in any other village or city.

10. See Burry, *Village Handbook for Officials of Minnesota Villages* 55 (1949).

11. This test must also be met in original incorporation proceedings. For a discussion of the important factors in applying the test there see Note, 38 *Minn. L. Rev.* 646 (1954).

12. 234 *Minn.* 531, 48 *N. W.* 2d 855 (1951).

municipal conveniences such as water, sanitation, gas, electricity, police and fire protection, and similar services."¹³

Despite this properly conditioned requirement, an annexation proceeding need not include all the territory which is so conditioned as to be a proper subject of village government.¹⁴

Under Minnesota law on annexation by villages, the conditions to be met and procedure to be followed vary depending upon such things as the nature, size and ownership of the land to be annexed. If a village owns land which abuts on the village and is outside the village limits it may annex such land by merely having its council pass an ordinance to that effect.¹⁵ The annexation is complete upon a filing of a certified copy of the ordinance with the county auditor in the county in which the land is located and another copy with the Secretary of State.¹⁶ If unincorporated territory is entirely within the limits of a particular village the village may annex it. To do so the council must adopt a resolution stating its intention to annex the property and setting a time and place for a hearing. At least ten days before the date set for the hearing a copy of this resolution must be served on all owners of land to be annexed. Then following the hearing the village council must adopt an ordinance by a majority vote stating first that the annexation is for the best interests of the village and of the land to be annexed, and second that the land is annexed.¹⁷ To complete the annexation a copy of the ordinance is filed with the county auditor and another with the Secretary of State.¹⁸

If land is platted, or if unplatted does not exceed 200 acres in area, a majority of the owners may petition the village council to annex. If the council determines it to be to the best interest of the land and the village it may pass an ordinance annexing the territory. However, if the petition is not signed by all the land owners a hearing following thirty days' notice must be held before the council may act.¹⁹ Again a copy of the ordinance must be filed with the county auditor and Secretary of State.²⁰

The broadest provision for annexation to villages is the section of general application which allows annexation of land of more than

13. State *ex rel.* Danielson v. Village of Mound, 234 Minn. 531, 545, 48 N. W. 2d 855, 864 (1951).

14. State *ex rel.* Smith v. Village of Gilbert, 127 Minn. 452, 149 N. W. 951 (1914).

15. Minn. Stat. § 412.041(2) (1953).

16. *Id.* § 412.041(6).

17. *Id.* § 412.041(3).

18. *Id.* § 412.041(6).

19. *Id.* § 412.041(4).

20. *Id.* § 412.041(6).

200 acres.²¹ Several requirements must be met here at the outset: the territory must have at least 75 residents; no part of the land may be more than one and one-half miles from the village limits; and no election for annexation of the same area may have been held within the previous two years. If the other prerequisites are met five or more voters of the area may take a census to establish that there is a minimum of 75 residents and then within four weeks of the census present a petition to the village council requesting an election on the proposed annexation. If the council finds that the annexation would be to the best interests of the village and the territory affected, it then orders an election to be held in the affected territory within 30 days of the filing of the petition. Ten days posted notice of the election must be given. All persons who are legal voters of the territory to be annexed may vote.²² If the proposition for annexation secures a majority vote, the village clerk to complete the annexation files with the county auditor and with the Secretary of State a judge's certificate of the election results, a copy of the petition, a copy of the council's resolution ordering the election and the originals of the proofs of posting of the election notices.²³ It should be noted that annexation under this provision may be defeated by an adverse vote of either the village council or the people of the territory to be added.

B. Cities

The procedures and prerequisites for annexation to cities are also set out in detail in the Minnesota Statutes. There is a general annexation provision applying to all cities which is identical to the procedure to be followed by villages as set out in the previous paragraph.²⁴ Until 1949 villages were included under this same section of the statutes along with cities,²⁵ and nearly all of the cases construing the section involved annexation made by villages.²⁶ The question may arise in the future as to whether these opinions should apply only to one section or the other or both. Because the substantive provisions of the statute were not changed when it was broken into the two separate but identical sections the sounder conclusion would seem to be that the cases should be considered as applying to both sections.

21. *Id.* § 412.041(5).

22. Rep. Att'y Gen. Minn., Op. 51 (1946).

23. Minn. Stat. § 412.041(5), (6) (1953).

24. *Id.* § 413.12.

25. See M. S. A. § 413.12 (1947).

26. *E.g.*, State *ex rel.* Hilton v. Village of Buhl, 150 Minn. 203, 184 N. W. 850 (1921) (property must be so conditioned as to be properly subjected to village government).

1. Fourth Class Cities

In addition to the foregoing general annexation provision for cities, there are several more specific sections pertaining to annexation by cities according to class. There is a proviso applying to boroughs and fourth class cities whereby they may annex property they own which is outside but contiguous to the city.²⁷ This section is identical to that for villages except here the ordinance must be filed and recorded in the office of the register of deeds of the county in which the city is located instead of in the auditor's office. If the majority of the owners of any property which has been platted into blocks or the owner of any piece of land abutting upon a fourth class city petition the city council to annex such property, the council may do so by ordinance. A copy of the ordinance is filed with the register of deeds in the county where the city is located.²⁸ Where there is more than one person owning *unplatted* property included in a petition under this section, all owners must sign.²⁹ A fourth class city may annex land which is contiguous to and surrounded on all sides by the corporate limits of the city whether the land is platted or unplatted if the land is not used for agricultural purposes and not within the corporate limits of any city or village and "... not (sic) so conditioned as properly to be subjected to city government."³⁰ If the city wishes to annex such land it must set a hearing by resolution and give ten days' notice to the land owners. If, after the hearing, the council determines that the annexation will be to its interests and will cause no manifest injury to the tract owners it may by ordinance annex such territory.³¹ Again a copy of the ordinance must be filed with the register of deeds of the county where the city is located.³² Fourth class cities may also annex land in an adjoining county if the land is contiguous to the corporate limits of such city and is not within ten miles of any other city or village within the state.³³

27. Minn. Stat. § 413.13 (1953).

28. *Id.* § 413.14.

29. Rep. Att'y Gen. Minn. 59 A-1 (Op. July 24, 1951).

30. Minn. Stat. § 413.143 (1953). The "not," preceding the "so conditioned as properly to be subjected to city government," was apparently added inadvertently by the 1951 amendment which intended to add only the words "or village." See Minn. Laws 1951, c. 376, § 2. The 1951 bill, S. F. No. 911, assumed the word "not" was already in the statute while in fact it was not. See Minn. Stat. § 413.143 (1949). A bill correcting this error has been passed by the 1955 Minnesota Legislature. See Minn. Laws 1955, c. 292, § 1.

31. Minn. Stat. § 413.143(2) (1953).

32. *Id.* § 413.143(3).

33. *Id.* § 413.15.

2. *Third Class Cities*

A third class city may annex any adjacent territory so conditioned as properly to be subjected to city government which has been wholly or partially platted provided that the territory has a resident population of not less than 500 persons to the square mile and provided further that the territory is in the same county and not within the limits of any other city or village. The petition in such a case is to the county board and may be made by ten per cent or more of the voters residing in the city and territory proposed to be annexed. If the city council votes in favor of such annexation the question is submitted to the voters of the city and of the territory and if a majority of the total voting favor annexation then it is completed when the county auditor files with the register of deeds and Secretary of State a copy of the election results along with a copy of the petition and the city council resolution.³⁴ If the majority of the owners of platted property or the owner of any tract of land abutting upon a third class city petitions the city council to have such property annexed, the council may do so by ordinance. The council must file a copy of the ordinance with the register of deeds of the county and another with the county auditor.³⁵ There is also available a statutory procedure whereby adjoining villages³⁶ and fourth class cities³⁷ may be annexed to third class cities. In the case of a village ten per cent and in the case of a fourth class city thirty-five per cent of the voters may petition their governing body to call an election for the determination of a proposed annexation to a third class city. At any time within 20 days after the filing of a certification to the effect that a majority of the annexees have voted favorably, the council of the third class city may by resolution declare the village or fourth class city to be annexed. The annexation is completed when a copy of this resolution is filed with the Secretary of State and another is filed with the register of deeds of each county in which the affected cities or villages are located.

3. *Second Class Cities*

If the majority of owners of platted property or the owner of a tract abutting upon a second class city petitions the city council

34. *Id.* § 413.18.

35. *Id.* § 413.19.

36. *Id.* § 413.20. As of 1947, the only adjoining third class cities and villages which could have merged under this section were Virginia—Franklin, South St. Paul—Inver Grove and Brainerd—Baxter. See *Comments, supra* note 4, at 56.

37. Minn. Stat. § 413.17 (1953). As of 1947, this section applied only to Mankato—North Mankato and South St. Paul—West St. Paul. See *Comments, supra* note 4, at 56.

to have such property annexed, the council may by ordinance or resolution declare the property to be annexed. The annexation is completed upon the filing of a copy of the ordinance or resolution with the county register of deeds and another with the county auditor.³⁸

4. *First Class Cities*

Lands not exceeding 50 acres in area, adjoining and contiguous to any first class city may be annexed upon petition of 500 legal voters of the city and approval by its mayor and by the board of supervisors in the town in which the lands are located. The mayor issues a proclamation of annexation and this is recorded in the office of the Secretary of State and in the register of deeds' office of the county in which the territory is located.³⁹ A first class city having over 350,000 inhabitants may annex land adjoining and contiguous to it if the land is in the same county, has been platted and is outside any incorporated municipality and if the owner or owners so petition.⁴⁰ All or any portion of any village or fourth class city may be annexed to a first class city after a petition of 100 or more village or fourth class city freeholders, a five-eighths majority approval of the electors at a special election in the community to be annexed and a resolution of annexation by the council of the first class city.⁴¹

III. SOME ANNEXATION PROBLEMS

With the foregoing description of Minnesota's very complex and detailed treatment of annexation as a background, consideration will now be made of some of the problems and difficulties that are encountered in putting annexation procedures into practice.

Where two or more inconsistent proceedings involving the same territory are pending at the same time complications may develop. This situation may occur where there are two annexation petitions involving the same land or where there are in process both an annexation proceeding and an original incorporation at one time. The general rule in such case is that no action in the second proceeding can be taken until disposition is made of the first.⁴² In a

38. Minn. Stat. § 413.22 (1953).

39. *Id.* § 413.23.

40. *Id.* § 413.24. This section at present applies only to St. Paul since Minneapolis, the only other city meeting the population requirement, is completely surrounded by incorporated suburbs. See Woodbury, *op. cit. supra* note 1, at 555.

41. Minn. Stat. § 413.25 (1953).

42. *E.g.*, *People ex rel. Hathorne v. Morrow*, 181 Ill. 315, 54 N. E. 838 (1899); *Taylor v. City of Fort Wayne*, 47 Ind. 274 (1874); *Beyer v. Templeton*, 147 Tex. 94, 212 S. W. 2d 134 (1948); *Application for Incorporation of Village of St. Francis*, 208 Wis. 431, 243 N. W. 315 (1932). *But cf.* *Mt. Lebanon Township Appeal*, 168 Pa. Super. 582, 80 A. 2d 89 (1951).

leading case on the question, *People ex rel. Hathorne v. Morrow*,⁴³ the court likened the situation to that of a controversy between two courts saying:

“As between courts of co-ordinate jurisdiction, the tribunal first acquiring jurisdiction retains it, and is not to be interfered with by another co-ordinate court. The reason of the rule is, that otherwise confusion and conflict would arise. Here, power is given over the same territory to two parties authorized to act—one a city council or board of trustees, who may attach it to a municipality to which it is adjacent; the other, a majority of the legal voters within its boundary, who may organize it into a village.”⁴⁴

A recent Pennsylvania case,⁴⁵ though distinguishable on its facts from the *Morrow* case, reached what appears to be a conflicting result. In the Pennsylvania case, City *B* sought to annex part of City *A*. Pending at the time was another annexation proceeding wherein City *A* sought to annex part of City *B*. If this annexation by *A* were successful it would have destroyed all contiguity between City *B* and the area *B* sought to annex in the second proceeding. Since annexation could not be made unless contiguity existed, City *A* requested the court to suspend action on *B*'s petition until the first proceeding had been disposed of. However, the court refused to do this and on appeal it was held that the lower court did not err in refusing to suspend the action. The court, in affirming, used language which is broad enough to cover dual attempts at annexation of the *same* territory when it said, “The status of a boundary line in an annexation proceeding remains unchanged and is unaffected by the mere pendency of another proceeding and remains unchanged until a final order of court.”⁴⁶ The court pointed out, however, that there was no connection between the two proceedings and that the property involved in the two annexations was wholly different and unrelated. Thus it is questionable whether the decision would be considered binding in a controversy where two separate proceedings involved the same territory despite the broad language used.

Minnesota has never passed on the question of whether the pendency of one proceeding precludes a later action regarding the same territory. Because of differing statutory provisions as to waiting periods before elections, there exists a possibility of an interesting controversy between proceedings for annexation and

43. 181 Ill. 315, 54 N. E. 839 (1899).

44. *Id.* at 319, 54 N. E. at 839.

45. Mt. Lebanon Township Appeal, 168 Pa. Super. 582, 80 A. 2d 89 (1951).

46. *Id.* at 585, 80 A. 2d at 90.

incorporation. Minn. Stat. § 412.011(3) (1953) provides a 20-day waiting period between the date of filing of a petition for incorporation as a village and the date of the election. Minn. Stat. § 412.041(5) and § 413.12(3) (1953) however require only a minimum of 10 days between the date of filing of a petition for annexation of a territory to a village or city and the date of the election in the territory covered by the petition. Thus it is possible for an annexation proceeding which was started after the filing of a village incorporation petition to come before the voters even before the incorporation question. Since annexation is complete upon the filing with the county auditor and the Secretary of State of the document showing the petition and successful election,⁴⁷ it is conceivable that the annexed territory may be a part of the annexing city or village even before the election on the original incorporation petition is held. This would be true even though the annexation proceeding was not yet in process at the time the village incorporation petition was filed.

To prevent this rather anomalous result it would seem that Minnesota should follow the majority rule and hold that the filing of the incorporation petition precludes any later proceeding affecting any part of the same territory during the pendency of the incorporation proceeding. Of course it could be argued that since the legislature favored annexation proceedings by providing a shorter waiting period it intended that annexation should be allowed to stand whenever it was completed before incorporation. However, this approach is unrealistic since the legislature in setting the waiting periods was undoubtedly concerned with the question of proper notice to the persons in the territory rather than with any problem of preference between the two types of proceedings. Both of the foregoing treatments have a shortcoming in that the sole criterion is which act occurred first—under the former rule it is the filing of the petition which is important while under the latter it is the completion of the proceeding.⁴⁸ Informed students of municipal government would probably agree that neither approach is sound since both totally disregard the question of which solution would be to the greatest advantage of the people in the territory and the two contesting communities. A better result might be achieved if the contro-

47. See notes 23 and 24 *supra* and text thereto.

48. If a vote on incorporation is adverse no subsequent incorporation petition involving the same territory may be brought within one year. Minn. Stat. § 412.011(4) (1953). Similarly, there is a two year period before an annexation petition may be entertained following an adverse vote on annexing the same territory. Minn. Stat. § 412.041(5) (1953). The two sections apparently are non-reciprocal and an adverse vote on one will not bar the other.

versy were to be decided by an informed but unbiased third party since then the result could be based upon the attainment of the greatest public convenience.⁴⁹

A problem closely related to that just covered is the question of annexing territory which is already incorporated within another municipality. It is well settled that a legislature may by express statutory provision confer upon a municipality the power to annex all or part of another municipality adjacent to it.⁵⁰ In *State ex rel. Richards v. Cincinnati*,⁵¹ where a city was allowed to annex an adjacent community pursuant to statute, it was held that it was no objection to such annexation to claim that a municipality might be so annexed without its consent or that the annexed city might become subject to taxation for the payment of debts previously incurred by the annexing city. Likewise in *Kansas City v. Steg-miller*,⁵² a city with a population over 100,000 was allowed to extend its boundaries so as to include another municipality under a constitutional provision so permitting. However, in situations where there is no statutory authorization for the annexation of adjacent municipalities it is generally held that a city may not annex organized areas.⁵³ Both North Dakota⁵⁴ and Wisconsin⁵⁵ when faced with this question refused to allow a city to extend its boundaries by annexing territory which was already within the limits of an incorporated municipality. In 1952 the Minnesota Supreme Court in *State ex rel. Village of Fridley v. City of Columbia Heights*,⁵⁶ followed the example of North Dakota and Wisconsin. In that case Columbia Heights sought to annex an irregularly shaped piece of land lying entirely within the Village of Fridley. The attempted annexation had been under Minn. Stat. § 413.14 which grants to fourth class cities, *inter alia*, the power to annex abutting property which has been platted into lots and blocks or outlots when a majority of the owners so petition. In holding that the power to annex a portion of an incorporated village cannot be implied from such language the court stated:

49. See the suggested establishment of an administrative commission in the conclusion *infra*.

50. See, e.g., *State ex rel. Village of Fridley v. City of Columbia Heights*, 237 Minn. 124, 130, 53 N. W. 2d 831, 835 (1952); see 2 McQuillin, *Municipal Corporations* 318-319 (3d ed. 1949).

51. 52 Ohio St. 419, 40 N. E. 508 (1905).

52. 151 Mo. 189, 52 S. W. 723 (1899).

53. E.g., *McKeon v. City of Portland*, 61 Ore. 385, 122 Pac. 291 (1912).

54. *Village of North Fargo v. City of Fargo*, 49 N. D. 597, 192 N. W. 977 (1923).

55. *City of Wauwatosa v. City of Milwaukee*, 180 Wis. 310, 192 N. W. 982 (1923).

56. 237 Minn. 124, 53 N. W. 2d 831 (1952).

"The construction sought by respondent (Columbia Heights) appears unreasonable and would lead to unjust results. If adopted, an organized village might be cut down from time to time until it became but a small part of its original area, without the consent of the inhabitants remaining therein and without apportionment of the public debt, even though incurred directly for benefits accruing to the detached territory. It could result, as in the instant case, in a division of such a village into 'islands' separated from each other by portions of other municipalities and disconnected from the public institutions of the village. No municipality would be safe in planning its affairs. We are satisfied that if the legislature had intended to grant power or authority to bring about such results it would have expressed it in clear and concise language and would have made ample provision for apportionment of debts and like matters."⁵⁷

Thus it appears that the only way for a land-locked Minnesota city like Minneapolis to grow is to convince five-eighths of the voters of an adjoining village or city that they ought to vote in favor of being annexed by the large city,⁵⁸ a dim possibility at best.⁵⁹

The determination of a municipality's boundaries is a legislative function⁶⁰ and in the absence of constitutional restrictions a legislature has unlimited power to detach or disconnect territory from or attach or annex territory to a town, village, or city.⁶¹ This is true even though the change in boundaries is made without the consent of the inhabitants affected by it⁶² or without the consent and even against the protest of the local authorities.⁶³ It is well settled that the legislature may delegate the function of annexation to municipalities.⁶⁴ Of course the city or village must exercise the function within the scope of its delegated power.⁶⁵ Delegation to an administrative board of the power to change boundaries has also been upheld.⁶⁶ However, there is a pronounced split on the question of delegation to the courts of the power to authorize annexation. In *Galesburg v. Hawkinson*,⁶⁷ the Illinois court, in holding that the legislature could

57. *Id.* at 135, 53 N. W. 2d at 838.

58. See note 41 *supra* and text thereto.

59. See Wright, *Are Suburbs Necessary?*, 35 Minn. L. Rev. 341, 349 (1951).

60. See *Brenke v. Borough of Belle Plaine*, 105 Minn. 84, 87, 117 N. W. 157, 158 (1908).

61. See *State ex rel. Erickson v. Gram*, 169 Minn. 69, 71, 210 N. W. 616 (1926); see 2 McQuillin, *Municipal Corporations* § 7.10 (3d ed. 1949).

62. *In re Detachment of Unplatted Lands from Owatonna*, 183 Minn. 164, 236 N. W. 195 (1931).

63. See 2 McQuillin, *Municipal Corporations* 299 (3d ed. 1949).

64. See *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 545, 148 N. W. 2d 855, 864-865 (1951).

65. See 2 McQuillin, *Municipal Corporations* § 7.13 (3d ed. 1949).

66. See, *e.g.*, *Elston v. Crawfordsville*, 20 Ind. 272 (1863); *Oakman v. Board of Supervisors of Wayne County*, 185 Mich. 359, 152 N. W. 89 (1915).

67. 75 Ill. 152 (1874).

not delegate to the courts power to extend municipal borders, said :

“The same power cannot be either legislative or judicial as the legislatures may incline to retain it, or surrender it to the judiciary. If the boundaries of municipal corporations can be altered and changed by the legislature, in its discretion, and the authorities are all that way, then it is impossible that the courts can be invested with such power. Courts may determine whether what is claimed by the municipal authority to be the corporate limit is so or not, and they may inquire whether the legislative authority has exceeded the powers with which it is invested; but all this implies an existing law applicable to the particular subject, and the inquiry is, What is the law, and has it been violated or complied with? Here, however, the inquiry is, What shall the law be, as respects the boundaries of this city . . . ?”⁶⁸

In 1953 Iowa followed the *Galesburg* decision and held unconstitutional a delegation of legislative power which authorized judicial review of the “desirability” of an annexation.⁶⁹ Some states, contrary to the foregoing, have found that the granting of discretionary power to courts for the determination of municipal boundaries is not an unconstitutional delegation of legislative power.⁷⁰ It has been suggested that there actually is no delegation of legislative power at all in many of these cases because the original legislative impetus is in the legislature and then in the local council.⁷¹ In an early case, *State ex rel. Luley v. Simons*,⁷² Minnesota aligned itself with Illinois and held unconstitutional a delegation of power to a court. The powers held to have been improperly delegated were the powers to determine whether the lands sought to be incorporated ought justly to be included; whether the interests of the inhabitants would be promoted thereby; and whether the proposed area should be enlarged or diminished “as justice may require.” Although it is arguable⁷³ that Minnesota might constitutionally delegate to courts the power to grant or refuse annexation if definite fact standards were provided to guide the court,⁷⁴ it would seem that in view of

68. *Id.* at 158.

69. *State ex rel. Klise v. Town of Riverdale*, 244 Iowa 423, 57 N. W. 2d 63 (1953), 38 Minn. L. Rev. 170 (1954).

70. *E.g.*, *Tribbett v. Marcellus*, 294 Mich. 607, 293 N. W. 872 (1940); *Henrico County v. Richmond*, 106 Va. 282, 55 S. E. 683 (1906).

71. See 38 Minn. L. Rev. 170, 171 (1954).

72. 32 Minn. 540, 21 N. W. 750 (1884).

73. See *Wright, Are Suburbs Necessary?*, 35 Minn. L. Rev. 341, 354 (1951).

74. *Cf. Hunter v. City of Tracy*, 104 Minn. 378, 116 N. W. 922 (1908) (statute which on its face gave court discretion to grant or deny decree detaching land from a city was upheld on the ground that the statute was actually mandatory and not discretionary since the court *had* to grant the decree if all the prerequisites were met).

the *Simons* decision and the extreme difficulty of drafting sufficiently definitive legislation such a suggestion is not practicable. Furthermore, if a statute were sufficiently exhaustive to meet the constitutional objections much needed flexibility would be lost.

IV. CONCLUSION

There has been no attempt in this Note to explore the question of what circumstances will make expansion of communities through annexation desirable. Assuming that annexation is often the best means of promoting the general welfare in this area, what can we conclude about the present statutory system in Minnesota? As the statutes exist today they are extremely complex and varied, often-times appearing to be a conglomeration of unrelated requirements and procedures. Simpler and more universal annexation laws would seem to be a step in the right direction. Implementation of such laws would require a departure from our present system of leaving the annexation procedure entirely up to the annexing municipality and the residents of the area to be annexed. Most writers⁷⁶ of recent times who have considered the problem have advocated a plan patterned after that of Virginia, where the courts make the final determination on a proposed annexation.⁷⁶ However, because of constitutional difficulties in Minnesota⁷⁷ and the added consideration that courts may be inferior to administrative bodies in this field,⁷⁸ it would appear to be more advantageous to establish an administrative commission to decree or deny annexation. Two distinct possibilities are available here: there could be a statewide commission, as was proposed in a recent Minnesota Law Review Note in regard to original incorporation of villages,⁷⁹ or there could be established boards on the county level, as provided in a Proposed Bill to Provide Method of Changing Boundaries of Proposed Village which was recently prepared for the Legislative Research Committee by the League of Minnesota Municipalities. Whichever the approach, it seems clear that some attempt should be made to integrate and simplify the present helter-skelter mass of annexation laws into a more workable instrument.

75. See, e.g., Wright, *Are Suburbs Necessary?*, 25 Minn. L. Rev. 341, 354 (1951); Note, 32 Neb. L. Rev. 43, 66 (1952); Note, 11 U. of Pitt. L. Rev. 446, 460-461 (1950).

76. See Note, 36 Va. L. Rev. 971 (1950).

77. See note 72 *supra* and text thereto.

78. See Woodbury, *op. cit. supra* note 1, at 568-572.

79. Note, 38 Minn. L. Rev. 646, 660 (1954).