



# A SELECTED READING

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## Annexation and De-annexation of Municipal Property

Rapidly growing cities and towns frequently need to extend their municipal boundaries. The extension of municipal boundaries in Alabama and in other states is accomplished through a process known as “annexation.” The four methods of annexation available to Alabama municipalities are examined in this article. On certain rare occasions, a municipality may need to remove property from its corporate limits. This process, which is known as “de-annexation”, is also discussed in this article.

### Annexation by Local Legislative Act

One of the most widely used methods of annexation in Alabama is the adoption of special acts by the Legislature. Annexation by local act is prohibited in all but a dozen or so states. The authority for annexation by local act in Alabama is found in Section 104(18) of the Alabama Constitution of 2022. Only the Legislature can annex property without the consent of the property owners or the municipal governing body. AGO 1989-0315.

The Legislature of Alabama is not restricted to a positive annexation of territory to the municipalities in the adoption of a local act. Examples reveal legislation which states the annexation shall be complete only after a favorable referendum in the territory to be annexed, that agricultural property shall be exempt from ad valorem taxation by the municipality, that the annexation shall be effective only after a favorable referendum and the adoption of a resolution by the municipality, and that territory annexed shall be exempt from ad valorem taxation for a specified period of time. See, Opinion of the Justices, 249 Ala. 312, 31 So.2d 309 (Ala. 1947).

Generally, the Legislature’s power to annex by local act is not subject to attack on the grounds that property owners in the annexed territory are being deprived of their property without due process of law in violation of the 14th Amendment to the U. S. Constitution. *Cedar Rapids v. Cox*, 108 N.W.2d 253 (Iowa 1961); *Hunter v. Pittsburg*, 207 U.S. 161 (1907).

For the valid adoption of a local act to annex territory into a municipality, Section 106 of the Alabama Constitution of 2022, requires that notice of the intention to apply for the passage of such an act shall have been published, without cost to the state, in the county or counties where the matter or thing to be affected is situated. The notice must state the substance of the proposed law and state that a map showing the territory proposed to be annexed is on file in the office of the probate judge. Section 11-42-6, Code of Alabama 1975.

The notice must be published at least once a week for four consecutive weeks in a newspaper published in such county or counties prior to the introduction of the bill. Proof by affidavit that such notice has been given must be exhibited to each house of the Legislature and spread upon the journal. It has been ruled that a local bill can be introduced immediately after it appears in a required publication for the fourth week. This means that a bill can be introduced 23 days after its first date of publication. Posting is allowed if no newspaper is published in the county affected.

In addition, Section 11-42-6, Code of Alabama 1975, requires all annexation bills to contain an accurate description of the territory proposed to be annexed and a map or plat showing the relationship of the territory to the existing municipal limits. The map is to be attached to the bill and must be filed in the office of the probate judge of the county or counties in which the territory is located. The Alabama Supreme Court has held that the Legislature may annex noncontiguous property to a municipality. *Birmingham v. Vestavia Hills*, 654 So.2d 532 (Ala. 1995).

The League recommends that a municipal governing body discuss the proposed annexation with its state legislators before taking any steps to procure the passage of a local act. Since the measure must be passed by both houses of the Legislature, the assistance and approval of the senator(s) representing the municipality, as well as the representative(s), are necessary. If both the senator(s) and representative(s) approve of the bill, it will most likely be passed under the local courtesy rule without opposition. It is recommended that once a municipality has discussed the proposed annexation with its legislative delegation that it seeks approval from its delegation to work with the Legal Division of the Legislative Services Agency

(LSA) to prepare the annexation bill. Having LSA prepare your local annexation bill for advertisement to begin with can help prevent duplicate advertising in the event LSA makes changes to any bill a municipality has already advertised prior to working with LSA. All bill drafting should begin with LSA.

Often, prior to introduction of a bill, representatives and senators will want a resolution passed by the municipality seeking annexation. The municipal governing body should adopt a resolution providing for the following:

- The public health and good require the annexation of the described territory,
- It is wise, expedient and economical for the annexation to be accomplished by the passage of a local law,
- The mayor is directed to cause notice of the application for passage of such local law to be published for four consecutive weeks in the newspaper published in the county after the bill is prepared by the Alabama Legislative Reference Service,
- The clerk should prepare necessary copies of the local bill for delivery to the local representative with a certificate from the publisher showing the dates of publication, and
- The costs of publishing the bill will be paid by the municipality.

If no newspaper is published within the county, the notice may be posted for two consecutive weeks at five different places in the county prior to introduction of the bill.

Municipal officials should anticipate legislative sessions and cause annexation bills to be prepared by LRS and advertised well in advance of the opening date of the session. Legislation becomes jammed toward the end of the session and if the bill is introduced late it might not receive the required attention. A minimum of five legislative days is required for a bill to pass through both houses, but a municipality should not count on such rapid passage.

As a final word of caution, care should be taken in the preparation of the bill and the published notice to ensure that the territory is properly described. While courts have recognized that slight changes may be made in local bills after their advertisement, it is difficult to predict what a court will consider a material or substantial change. See, *Mobile v. Aborady*, 600 So.2d 1009 (Ala. 1992) and *Tuscaloosa v. Kamp*, 670 So.2d 31 (Ala. 1995). In Kamp, the Alabama Supreme Court held that Section 106, Alabama Constitution, 1901, was not violated when the Legislature amended a local annexation bill, after notice was published, by reducing the amount of property being annexed.

## **Statutory Methods of Annexation**

Alabama municipalities have three distinct statutory procedures for annexation. The first procedure is available to all municipalities regardless of size. Sections 11-42-1 through 11-42-6, Code of Alabama 1975. The second method, found at Sections 11-42-20 through 11-42-24, Code of Alabama 1975, was adopted by the state Legislature in 1971 and since 1982, has applied to all cities and towns. A third statutory method may be used by all cities of 25,000 or more in population and is found at Sections 11-42-40 through 11-42-88 of the Code.

When the annexing municipality is divided into council districts, the League encourages that municipality should designate the council district in which the annexed land is located.

### **1. The General Statute**

The provisions set out in Sections 11-42-1 through 11-42-6, Code of Alabama 1975, state that any city or town, by adopting a resolution which is filed in the probate court along with a detailed map, may initiate annexation procedures. Consent of persons owning at least 60 percent of the acreage of the platted or unplatted land must be obtained. At least two qualified electors residing on each quarter of each quarter section must also consent. The probate judge next orders an election and if a majority of the qualified electors residing in the territory proposed to be annexed vote in favor, the territory is annexed. The Alabama Supreme Court in *Givorns v. Valley*, 598 So.2d 1338 (1992), held that such an annexation election is legal even though individuals who owned property within the annexed area, but resided elsewhere, were not allowed to vote in the election.

The difficulty with the present provisions is obvious: "No platted or unplatted territory shall be included within such boundary unless there are at least two qualified electors residing on each quarter of each quarter section, according to government survey or part thereof, of such platted or unplatted land, who assent thereto in writing by signing said petition, together with the consent of persons, firms or corporations owning at least sixty percent (60%) of the acreage of such platted or unplatted land, such consent to be signified by their signing said petition." There may be a quarter of a quarter section

upon which no one resides and, therefore, the securing of two qualified electors is impossible. Further, a single landowner owning 60 percent of the acreage has a veto power.

In 1965, this law was amended by the Legislature at the request of the League to eliminate the necessity of the election if all of the persons affected by the annexation consent to it.

It is not necessary that the petitions allege that the signers have the required qualifications, but such facts must be proved to the probate court. *Oxford v. State*, 257 Ala. 349, 58 So.2d 604 (Ala. 1952). It is also not required that the consenting qualified electors be property owners. The Attorney General has ruled that “owners of 60 percent of the acreage” means a beneficial owner. AGO to Hon. J. C. Grady, June 17, 1958.

The territory to be annexed must be contiguous to the municipality and must not be in the corporate limits of an existing municipality. A substantial common boundary between the annexing municipality and the annexed territory is not necessary. *Fultondale v. Birmingham*, 507 So.2d 489 (Ala. 1987). The resolution adopted by the municipality does not have to be published as an ordinance or resolution of general or permanent nature. *Talladega v. Jackson-Tinney Lumber Company*, 209 Ala. 106, 95 So. 455 (Ala. 1923).

Notwithstanding any other provision of law, any Class 6 municipality may annex land or territory pursuant to the provisions of Chapter 42, Title 11, Code of Alabama 1975, provided the land or territory is contiguous to land or territory owned by a public university when the land or territory owned by the university is contiguous to the municipality, notwithstanding that the land or territory to be annexed is not contiguous to the municipality. Nothing in this section shall affect the status of property owned by the university. Section 11-42-30, Code of Alabama 1975.

Annexation petitions filed pursuant to Section 11-42-2 of the Code are not required to be filed with the probate judge, although the probate judge may request proof of residency and qualification as an elector. AGO 1999-0246.

## **2. Annexation by Unanimous Consent**

Article 2 of Section 42 of Title 11 (Sections 11-42-20 through 11-42-24) of the Code of Alabama 1975, provide an additional method of annexation which can be used by all Alabama municipalities. It should be noted that hardbound volumes of the Code of Alabama 1975 still have this article titled as only applying to municipalities of 2000 or more population. This section of the Code was amended in 1982 to remove this population restriction but the Alabama Code Commissioners have not updated this change in the title of Article 2. This method of annexation is available to all municipalities regardless of population.

These sections require unanimous consent of all of the property owners in the area proposed to be annexed. It also requires that all such persons sign the petition. An owner of property in the area is “the person in whose name the property is assessed for ad valorem tax purposes in the absence of proof to the contrary.” This provision was included to prevent disputes and uncertainty of ownership.

A municipality should require proof of authority if a name appears on the petition and the records show that such person does not assess the property for which he or she signed. Both husband and wife should sign (much property is now held under survivorship deeds); property owned by corporations should be signed for by a qualified officer of the corporation and the signature attested; property owners who are not married should indicate their marital status. An expression to the effect that “John Doe who resides in the area does not object” is not a sufficient manifestation of his position to meet the legal requirements. The Attorney General has ruled that annexation petitions should be signed by both a life tenant and the holder of the remainder interest. AGO 1993-0227.

The state of Alabama is an owner of property within the meaning of the annexation statutes and may consent to the annexation of property it owns, even though the state is exempt from property taxes. The petition for annexation should be signed by the Governor. AGO 1998-0009.

The owner of a mineral estate, whose property is assessed for ad valorem taxation, is an owner who must consent to an annexation under the unanimous consent method in Section 11-42-21, Code of Alabama 1975. AGO 1999-0048.

The area to be annexed may not be within the corporate limits of another municipality. The statute, however, provides that in the event the territory to be annexed lies in the police jurisdiction of the annexing municipality and in the police jurisdiction of another municipality, the governing body of the annexing municipality may, by a series of ordinances, annex land to a boundary that is equidistant from its existing corporate limits and the existing corporate limits of another municipality. *Prichard v. Saraland*, 536 So.2d 1387 (Ala. 1988); *Prattville v. Millbrook*, 621 So.2d 267 (Ala. 1993)..

In 2021, Section 11-43-21 was amended to allow for a unanimous consent procedure to avoid the equidistant rule for property lying within overlapping police jurisdictions. If a municipality is annexing property within an overlapping police jurisdiction and doing so would require more than one annexation pursuant to the equidistant rule, the municipality may request that all of the municipalities whose police jurisdictions overlap assent to the annexation by adoption of a resolution of

the governing body of each of the municipalities, and if the governing body of the annexing municipality adopts an ordinance assenting to the annexation of the property into the municipality, then the corporate limits of the municipality shall be extended and rearranged so as to embrace and include the property effective on the date of the publication of the ordinance.

Before 2021, the police jurisdiction of a municipality could expand as the municipality expanded its corporate limits, which could lead to such issues caused by overlapping police jurisdictions. See Act 2015-361. However, shortly after Section 11-42-21 was amended, Section 11-40-10 of the Code was amended to permanently freeze the police jurisdictions of municipalities as they existed on January 1, 2021. Act 2021-297. This does not prevent a municipality from annexing territory beyond its existing police jurisdiction, but doing so will consume its police jurisdiction into the new corporate limits. For further discussion on this topic, please see the article entitled “The Municipal Police Jurisdiction” found on the League legal team’s Selected Readings page, here: <https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx>

A municipality may not use long-lasso annexation to create contiguity with a parcel of property. A property owner must consent to the annexation of a corridor to reach the property. Where annexation of a public right of way is involved, more than just the roadway must be included in the corridor. AGO 1998-170. There is no requirement that a corridor annexation must include private, as opposed to public, property to avoid being categorized as a prohibited long-lasso annexation. A city’s corridor annexation, which involved property that was 19.3 miles long and 330 feet wide, did not consist solely of the public right-of-way and thus did not constitute a prohibited long-lasso annexation where less than 25% of the width of the annexed property was public right-of-way. *Fort Morgan Civic Ass’n, Inc. v. City of Gulf Shores*, 100 So.3d 1042 (Ala.2012). The petition, after it is fully signed by all persons owning property in the area, is presented to the city clerk. The petition must contain an accurate description of the property to be annexed. “Accurate description” as used in the act means a legal description – a description that would enable anyone to locate exactly the area encompassed. In addition to the description, the petitioners must attach a map “showing its relationship to the corporate limits of the municipality ...” The Alabama Supreme Court has held that there is no requirement that cities and towns be regular in shape, but the law clearly necessitates that the area to be annexed must be contiguous and homogeneous. *Prattville v. Millbrook*, 621 So.2d 267 (Ala. 1993).

After the petition in proper form is presented to the city clerk, the governing body in a legal meeting may, in its discretion, adopt an ordinance assenting to the annexation. Upon adoption and publication of the ordinance, the area becomes a part of the corporate limits of the municipality on the date of publication of the ordinance. The governing body must file a description of the property annexed in the office of the probate judge of the county.

The expense of preparing the petition should normally be borne by the property owners. The city clerk should verify the facts and the governing body should find that the persons signing the petition constitute all the owners of the property and that it is contiguous to the corporate limits.

A municipality may annex contiguous territory even if the property is only accessible by a road that runs through another municipality. The police jurisdiction of one municipality may not extend into the corporate limits of another municipality. A United States highway is not an interstate as that term is used in Section 32-5A-171, Code of Alabama 1975. AGO 1999-0148.

A property owner seeking to annex into a municipality under Sections 11-42-20 through 11-43-22, Code of Alabama 1975 (the unanimous consent method), may submit successive petitions to the council if the first petition was rejected. A council must follow its rules of procedure regarding reconsideration of the matter. AGO 1999-0069; See *Spanish Fort v. City of Daphne*, 774 So.2d 567 (Ala. 2000).

### 3. The Special Statute

The fourth method of annexation is available to cities with populations of 25,000 or more. Under this procedure, found in Article 3 of Section 42 of Title 11 (Sections 11-42-40 through 11-42-88) of the Code of Alabama 1975, a municipality initiates the proceedings with a resolution. No petition containing written consent of a specified percentage of property owners, or number of electors, is required. The statute, however, has some serious drawbacks.

Electors residing in the territory must vote in favor of the election as under the general procedure. If the territory is voted into the municipality, it is exempt from city taxation for a minimum of 10 years. An exception to this stipulation is that after five years the annexed territory, if it has a population of 20 or more persons per contiguous 10 acres, becomes subject to city taxation. This exception does not apply to individual property which is exempt for a minimum of 10 years.

Ala. Code Section 11-42-73 states persons residing in the annexed territory are not eligible to vote in municipal elections or hold municipal office as long as the territory is tax exempt. However, the Alabama Supreme Court has determined these restrictions to be unconstitutional and severed from the remainder of the statutory scheme. *City of Birmingham v. Smith*, 507 So. 2d 1312 (Ala. 1987). Simply, these restrictions can longer be applied by the municipality but the remaining provisions of Article 3 of Section 42 of Title 11 remain effective.

No person, firm or corporation in tax-exempt territory shall be liable for a privilege license to the municipality except as

provided in the statute. This feature probably costs the municipality revenue because prior to annexation the municipality had the authority to license all businesses in its police jurisdiction in an amount not exceeding one-half of the amount charged similar businesses operating in the corporate limits.

In addition to these three statutory methods of annexation, there is authority for any Class 4 municipality organized in accordance with Section 11-44B-1, et seq., Code of Alabama 1975, (only applicable to the City of Tuscaloosa) to annex certain unincorporated territory which is enclosed within the corporate limits of the municipality. Such territory is commonly referred to as an “island.” The League for many years has attempted to have state-wide legislation passed which would allow all municipalities, regardless of Class size to take in property that is completely enclosed within the corporate limits of the municipality. A method for “Island Annexation” continues to be a legislative priority for the League.

### **De-annexation through Legislative Act**

The corporate limits of a municipality may be reduced in one of two ways, (1) through a local legislative act of the state Legislature or (2) pursuant to the procedures set out in Article 7 of Section 42 of Title 11 (Sections 11-42-200 through 11-42-213) of the Code of Alabama 1975.

The procedures described above for annexation through local legislative act would also apply to de-annexation by local legislative act.

### **Statutory Procedures for De-annexation of Property**

If a municipal council wishes to reduce the corporate limits of the municipality, the council must pass a resolution defining the proposed corporate limits. Section 11-42-200, Code of Alabama 1975. Once the resolution is adopted, the mayor or council president must file the following with the probate judge of the respective county: (1) a certified copy of the resolution that defines the proposed corporate limits; (2) a plat or map correctly defining the corporate limits proposed to be established; and (3) the names of all qualified electors residing in the territory proposed to be excluded from the area of such corporation. Section 11-42-201, Code of Alabama 1975.

After the above has been filed, the probate judge shall call a hearing at which those individuals residing in the area to be excluded may appear before the judge of probate and show cause as to why the proposed reduction of corporate limits should not take place. Section 11-42-202, Code of Alabama 1975. All persons residing in the affected area should be notified by the probate judge. The date of the hearing must be no less than 10 days from the filing of the resolution and not more than 30 days from the filing. If no one appears at the hearing to object to the reduction, the judge of probate shall order the corporate limits reduced as outlined in the council resolution and map or plat. Section 11-42-203, Code of Alabama 1975. The order shall be recorded in the minutes and the map or plat shall be recorded in the probate office. Residents who appear at the hearing and protest the reduction must show reasonable cause as to why the reduction should not take place. Section 11-42-204, Code of Alabama 1975.

If the judge of probate determines that reasonable cause is shown, he or she shall order that an election be held by the qualified electors of the municipality. The election shall take place not less than 10 days and not more than 30 days from the order for election. The election will be directed by the probate judge.

The judge shall give notice of election as provided in Section 11-42-205, Code of Alabama 1975. Section 11-42-205 requires one publication of the notice for at least seven days in a newspaper published in the city or town. If there is no newspaper published in the city or town, the probate judge shall post a notice of election at three public places. The notice shall state the date of the election, describe the proposed limits as stated in the resolution and state that a map of territory to be de-annexed is provided for public inspection in the probate judge office of the respective county. The election shall be held at the regular voting places in the city or town and all qualified electors residing in the city or town shall have a right to vote on the reduction of corporate limits. Section 11-42-206, Code of Alabama 1975. The statute is ambiguous as to polling places, but the League’s interpretation is that polling places shall be those designated for the municipal elections.

The probate judge shall conduct the election in accordance with the general election laws and any additional provisions found in Section 11-42-200, et. seq., Code of Alabama 1975. Section 11-42-207, Code of Alabama 1975. The probate judge is not required to provide an official ballot; however, the probate judge is responsible for the appointment of clerks, inspectors and a returning officer. Section 11-42-207, Code of Alabama 1975. Each voter may furnish his or her own ballot with one of the following phrases written or printed:

- “For adoption of the proposed corporate limits.”

Or

- “Against the adoption of proposed corporate limits.”

Section 11-42-208, Code of Alabama 1975.

Once the polls are closed, the election inspectors are responsible for determining the result of the election at their respective polling locations and deliver the results to the returning officer, who shall immediately return the results to the probate judge. The judge of probate is responsible for canvassing the results of the election. If a majority vote favors a reduction of the corporate limits, the judge must order on the record adjudging and decreeing that the corporate limits reflect the corporate limits as described in the council resolution. The probate judge shall also designate that the resolution and map or plat have been duly adopted and recorded of the records in the probate office. If a majority vote does not favor a reduction in the corporate limits, the probate judge shall enter an order dismissing the proposal. Section 11-42-208, Code of Alabama 1975.

The results of the election may be contested by any qualified elector who voted in the election in the manner provided for in Section 17-15-1, et. seq., Code of Alabama 1975. Section 11-42-209, Code of Alabama 1975. The losing party in the contest shall be responsible for the costs associated with the contest. Section 11-42-213, Code of Alabama 1975. The city or town shall be the contestee. Section 11-42-209, Code of Alabama 1975.

The city or town proposing the reduction in the corporate limits shall be responsible for the costs and expenses incident thereto. Section 11-42-210, Code of Alabama 1975.

The municipal governing body shall exercise the same jurisdiction over the new corporate limits as it exercised over the original corporate limits, including enforcement of laws and ordinances. Section 11-42-212, Code of Alabama 1975.

The municipality seeking to reduce its corporate limits is responsible for paying the probate judge \$10.00 for services surrounding the election. Section 11-42-213, Code of Alabama 1975. All other election officials are entitled to compensation as provided in the general election laws as found in Section 17-6-3, Code of Alabama 1975.

### **Notice of Annexations or De-annexations**

Once an area becomes a part of the municipality through annexation or is taken out of a municipality through de-annexation, the municipality should notify the following federal and state agencies of their new boundaries:

- **Administrator, ABC Board:** 2715 Gunter Park Drive, West, Montgomery, Alabama 36109. A change in boundaries could increase revenue received from state ABC Board profits. Boundary change information will also aid the ABC Board in determining whether county or municipal approval is necessary in the granting of licenses. **Telephone:** (334) 271-3840; **Website:** <https://alabcboard.gov/>
- **State Treasurer:** State Capitol, 600 Dexter Avenue, Room S-106, Montgomery, Alabama 36104. A boundary change could affect the municipal share of the tag tax distributed by the state treasurer. **Telephone:** (334) 242-7500 or (334) 242-7501; **FAX:** (334) 242-7592; **Website:** <https://treasury.alabama.gov/>
- **State Comptroller:** RSA Union, 100 North Union, Suite 220, Montgomery, Alabama 36130. A boundary change could affect the proceeds from the State Oil and Gas Severance Tax distributed by the comptroller. **Telephone:** (334) 242-7063; **Website:** [www.comptroller.alabama.gov](http://www.comptroller.alabama.gov) • State Revenue Department – Individual and Corporate Tax Division: Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36130. A boundary change could affect the municipal share of the State Financial Institution Excise Tax. **Telephone:** (334) 242-1170; **Website:** [www.revenue.alabama.gov](http://www.revenue.alabama.gov)
- **State Department of Revenue** – Property Tax Division: Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36132. A change in boundaries could affect utility ad valorem taxes which are assessed by this office. **Telephone:** (334) 242-1170; **Website:** [www.revenue.alabama.gov](http://www.revenue.alabama.gov)
- **State Department of Revenue** — Sales, Use and Business Tax Division: Gordon Persons Building, 50 North Ripley Street, Montgomery, Alabama 36130. A change in municipal boundaries could affect the amount of sales and use tax revenue collected by the state revenue department for the municipality. **Telephone:** (334) 242-1525; **Website:** [www.revenue.alabama.gov](http://www.revenue.alabama.gov)
- **Probate Judge:** A boundary change may affect the revenue distributed to the municipality by the probate judge based on the automobile tag tax.
- **County Tax Assessor and County Tax Collector:** Boundary changes will affect ad valorem tax revenues.
- **County Commission:** Boundary changes may affect proceeds from the TVA money received from the state to be shared with counties and municipalities.
- **County Board of Registrars:** Boundary changes will affect the municipal voting list prepared from county voting lists compiled by this office.
- **State Legislative Reapportionment Office:** Any municipality which annexes property into the municipality or de-

annexes property from the municipality shall notify the Legislative Reapportionment Office of such action within seven days of the final action. The municipality shall provide all census blocks involved in the annexation or de-annexation so that the office may maintain accurate information concerning the corporate limits of each municipality located within the state. A municipality's failure to notify the Legislative Reapportionment Office as provided by law shall not be grounds to challenge or invalidate the annexation or de-annexation. Section 11-42-7, Code of Alabama 1975.

### **Maintenance of Streets and Roads in Newly-Annexed Territory**

Notwithstanding the adoption of a resolution as required in Section 11-49-80 and 11-49-81, Code of Alabama 1975, the annexation of unincorporated territory into a municipality, after July 7, 1995, shall result in the municipality assuming responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, provided such public streets or parts thereof were controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation.

The municipality must also assume the responsibility to control, manage, supervise, regulate, repair, maintain and improve all public streets or parts thereof lying within the territory annexed, provided such public streets or parts thereof were dedicated to, accepted by, and were controlled, managed, supervised, regulated, repaired, maintained, and improved by the county for a period of less than one year prior to the effective date of the annexation when such public streets or parts thereof were also approved upon construction by the municipal planning commission of the annexing municipality.

Except as herein provided, this section does not require a municipality to assume responsibility to control, manage, supervise, regulate, repair, maintain or improve any street or part thereof located within the territory annexed which was not being controlled, managed, supervised, regulated, repaired, maintained and improved by the county prior to the effective date of the annexation, nor does this section require a county to assume responsibility to control, manage, supervise, regulate, repair, maintain or improve any street or part thereof located within the territory annexed which was not being controlled, managed, supervised, regulated, repaired, maintained and improved by the county prior to the effective date of the annexation.

After July 7, 1995, when the annexation of unincorporated territory by a municipality results in a public street or part thereof which was dedicated to, accepted by, and was controlled, managed, supervised, regulated, repaired, maintained and improved by the county for a period of one year prior to the effective date of the annexation, or for a period of less than one year prior to the effective date of the annexation when such public street or part thereof was approved upon construction by the municipal planning commission, being located outside the corporate limits of the annexing municipality while at the same time bounded on both sides by the corporate limits of the annexing municipality, the county governing body shall consent to the annexation of such public street or part thereof by the municipality. Once consent is given by the owners of such public street or part thereof to annexation by the municipality, the municipality shall annex that portion of the public street or part thereof which is bounded on both sides by the municipal corporate limits. Once the annexation becomes effective, the municipality shall assume responsibility for the public street or part thereof as provided above.

Nothing contained in Section 11-49-80 and 11-49-81 shall prohibit a county and a municipality from entering into a mutual agreement providing for an alternative arrangement for the control, management, supervision, regulation, repair, maintenance or improvement of public streets or parts thereof lying within the corporate limits of an incorporated municipality.

A municipality may adopt a resolution pursuant to Section 11-49-80 and 11-49-81 of the Code of Alabama to accept responsibility for county roads within the corporate limits. If the municipality does not adopt this resolution, the county remains responsible for the road, unless it was annexed into the municipality after July 7, 1995, or unless other factors are present. AGO 2001-0254, AGO 2002-0277, and AGO 2003-0034.

### **Extension of Planning Jurisdiction**

As a result of Act 2015-361, a municipality may only extend its planning jurisdictions as a result of an annexation once a year, on January 1, and only for those annexations finalized on or before October 1 of the previous year. The planning jurisdiction includes all land within a mile and a half outside the municipal corporate limits. Section 11-52-30, Code of Alabama 1975. It is important to note, however, that the limitation on the extension of the planning jurisdictions in no way limits the effective date of the underlying annexation. The annexation is effective as provided by law. Section 11-40-10, Code of Alabama 1975; Section 11-52-30, Code of Alabama 1975.

### **Community Development Districts**

Section 35-8B-1 of the Alabama Code provides several definitions for "community development districts" permitting the sale of alcoholic beverage. Generally, community development districts are private residential developments used for residential, social, commercial or charitable purposes.

Notwithstanding any other provision of law relating to annexations, the real property within a community development district may be annexed by a wet municipality in the same county upon petition by the district's board and approval by the municipality's governing body. At least 30 days prior to the approval of the annexation by the municipality's governing body, a plat or map of the territory being annexed must be furnished to the judge of probate of the county where the proposed annexation is located. Any annexation of real property within a community development district by a wet municipality may be made subject to such conditions as may be determined and agreed upon by the district's board and the annexing municipality's governing body. Section 35-8B-1(s)(3)(a), Code of Alabama 1975.

An annexation conducted pursuant to this subdivision does not require contiguity between the real property within the community development district and the annexing municipality. Notwithstanding any annexation, a county shall retain the right to provide all environmental services in a community development district, including, but not limited to, garbage services. Section 35-8B-1(s)(3)(b-c), Code of Alabama 1975.

An annexation implemented pursuant to this subdivision must commence by June 1, 2026. The property cannot be used as a site for a casino, nor may any other commercial or charitable gambling activities be conducted on the property. Section 35-8B-1(s)(3)(d-e), Code of Alabama 1975.

### **Court Cases and Attorney General's Opinions on Annexation**

- There is no requirement that names on an annexation petition be dated. *Lett v. State*, 526 So.2d 6 (Ala. 1988).
- A municipality may annex property separated from it by a public waterway. *Johnson v. Rice*, 551 So.2d 940 (Ala. 1989). Provided, however, that in order to do so, there must be a public road by which the properties can be reached by automobile from the original municipal boundaries without traveling through another municipality to get to the proposed annexed territory. See *City of Irondale v. City of Leeds*, 2013 WL 563410 (Ala. Feb. 15, 2013); *City of Spanish Fort v. City of Daphne*, 774 So.2d 567 (Ala. 2000); *City of Madison v. City of Huntsville*, 555 So.2d 755 (Ala. 1989).
- Long-lasso annexation – annexation of the public right of way along a road to bring in non-contiguous property – is invalid. *Fultondale v. Birmingham*, 507 So.2d 489 (Ala. 1987). Long-lasso annexations are retroactively repealed. *Birmingham v. Blount County*, 533 So.2d 534 (Ala. 1987). However, the legislature has the right to annex property through the long-lasso method. *Vance v. Tuscaloosa*, 661 So.2d 739 (Ala. 1995).
- A city may annex the waters of Mobile Bay either by local act or by approval of all property owners. AGO 1995-0293.
- A municipality may not amend an ordinance of annexation which has been adopted and published pursuant to law to exclude property owners who no longer wish to belong to the municipal limits. This property should be de-annexed. AGO 1996-0155.
- Voting by absentee ballots must be allowed in annexation elections. AGO 1999-0027.
- The procedure for the annexation of fire districts is the same as the procedure for the annexation of unincorporated parcels of land. Like noncontiguous parcels of land, noncontiguous parcels of a fire district may only be annexed by local act. AGO 2001-0277.
- If a city located in a wet county expands into a dry county, the newly annexed property within the dry county will remain dry. The sale and distribution of alcoholic beverages on that land is governed by the county's wet-dry election. AGO 2002-0197. Section 28-2A-20, Code of Alabama 1975, provides a procedure which can be used by the governing body of any Class 1, 2, or 3 municipality or any municipality of 18,500 people or more which is wet and that has annexed territory located in a dry county to determine the wet-dry status of the annexed territory located in a dry county. [Note: If a municipality votes separately from the county to go wet in a municipal wet-dry election, rather than simply that the city is wet because it is located in a wet county, newly annexed territory beyond the county lines would be wet as well.]
- A city can require private and commercial entities to become a part of the municipality in order to continue to receive water and sewer services from the city. AGO 2005-0038.
- Requiring annexation of property as a condition to providing water services is a reasonable condition precedent to the obligation of a utility to serve an applicant. *Brown v. Huntsville*, 891 So.2d 295 (Ala. 2004).
- The territory in an industrial park established pursuant to section 11-23-1, et seq., of the Code of Alabama cannot be annexed. The property on the opposite side of the industrial park is not, and does not become, contiguous to the boundaries of the city unless it is actually touching at some point. AGO 2007-0005.
- A city's annexation of property where a gas station was located was valid, where the map was located in a file on the

chief probate clerk's desk and at least one person was furnished the map by the office staff after asking to see it. The annexation map was open to inspection during the public notice period of the annexation statute as was required for annexation. *Russell Petroleum, Inc. v. City of Wetumpka*, 976 So.2d 428 (Ala.2007)

- A town annexed public roads from the county. The public's use of a roadway for over 20 years provided the county with only a prescriptive easement in the roads, not ownership, and, thus, the county was not an owner with the ability to consent to town's annexation of portions of the roads. A neighboring town had standing to bring a counterclaim, even though it was not incorporated at time of the challenged annexation and the personal representative of the property owner's estate had the power to consent to neighboring town's annexation of the estate property. *Town of Elmore v. Town of Coosada*, 957 So.2d 1096 (Ala.2006)
- A willingness ordinance regarding annexation may be rescinded before the special election on the question of annexation to the extent that such rescission does not disturb any vested rights. *Bradley v. Town of Argo*, 2 So.3d 819 (Ala.2008).
- The town should assume responsibility for the public streets in the areas annexed during the 24 months following incorporation at the same time it begins to assume responsibility for the streets in the newly incorporated town. AGO 2019-0049.
- The City of Childersburg may not annex any portion of property that lies within the boundaries of Bon Air using section 11-42-21 of the Code of Alabama. The town of Bon Air may be dissolved, the charter may be forfeited, or the town may consolidate with the City of Childersburg. After the town has been dissolved or the charter forfeited, the Legislature may, by a local act, annex any portion of that territory into the City of Childersburg. AGO 2024-0019.
- Annexation by one municipality may reduce the police jurisdiction of that municipality and the police jurisdiction of a municipality with an overlapping police jurisdiction. The equidistant line would also be recalculated to be the line halfway between the corporate limits of each municipality with overlapping police jurisdictions. AGO 2025-0005.

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