

Boundaries & annexation

Introduction

The first and only principle of law governing boundaries of municipalities is that no one – no governmental authority, or individual, person or entity – has any legally protected right to the placement of a municipal boundary in a particular location. Municipal boundaries are drawn by politicians in the legislature. They can be redrawn at any time by those same politicians or by a vote of the people.

Political boundaries are created by incorporation. They are changed by disincorporation, consolidation, annexation or detachment.

Incorporation

Villages and cities have separate statutes addressing incorporation. Both statutes have one thing in common. The process begins by securing a petition for incorporation from the State Boundary Commission (SBC). The SBC has an informational guideline on how to fill out a petition to incorporate.

In general, the petition must be signed by a sufficient number of qualified electors. It must legally describe the area to be incorporated and have a survey attached showing the boundaries in juxtaposition with its surrounding communities. Before submitting the petition, it is recommended that the municipality meet with the staff of the SBC. They will review the petition and tell you to correct any deficiencies. This is important because a petition, once submitted, cannot be amended. It will be rejected if there is any doubt whether it meets all of the statutory requirements.

The SBC determines the legal sufficiency of the petition; holds a public hearing to determine the reasonableness of the incorporation; and, if so found, approves the petition. A period of 45 days is then triggered allowing five percent of the population to petition for a referendum. If no peti-

tion is filed, or if a referendum is held and the incorporation passes, the SBC then orders an election to be held to elect a charter commission. Upon election, the charter commission drafts a charter and sends it to the governor's office for approval. If so approved, an election is then held (1) to approve the charter, and (2) to elect the first slate of municipal officials. If the charter does not secure approval of the electorate, the charter commission has two years within which to submit a new proposed charter to the governor's office.

(See Chapter 3, Charter revision & amendment for more on charter commissions)

Disincorporation

Disincorporation in a home rule city begins with the filing of a petition of at least 25 percent of the city electors. A city sends the petition to the county commission, which is required to review it. If the county approves the petition, it will pass a resolution calling for an election. A 2/3 vote of the city electorate is required to win.

Home rule villages have no statutory mechanism to disincorporate. They would have to insert a provision in their charter permitting them to do so before they could disincorporate.

Consolidation

Consolidation begins with the filing of a petition with the SBC signed by five percent of the total population of the two or more cities or villages. If the petition is approved, the SBC orders an election on the question to be held along with the election of nine charter commissioners. If the question passes the election, the charter commission drafts the proposed charter. If the governor's office approves the charter, the election is held on the charter and candidates for office to the newly consolidated entity.

Annexation

There are three rules to consider. First, in order to be annexed, the territory has to be contiguous to the municipal border. Second, the amount of land touching along the boundary line must be somewhat proportional to the size of the territory to be annexed. And, third, no islands of township property can be created between the municipality's old boundary and the newly drawn boundary line.

Home rule villages secure permission from the county commission to hold an election to annex property. If the county approves the petition, it passes a resolution ordering an election.

Home rule cities annex property in several ways. If the property is owned by the city and vacant, the city council adopts a simple resolution stating their intent to annex the property. If the township agrees, annexation takes place by the adoption of a joint resolution of the legislative bodies of the city and the township. If the property is in a charter township, the county is petitioned to hold an election in the city and in the area to be annexed.

Most other annexations are through petition to the SBC. Petitions can be filed by the city, by 75 percent of the land owners, by 25 percent of the registered voters in the area to be annexed or by one percent of the entire population of the city and township.

The petition process consists of:

1. a pre-application review of the petition provided by the SBC containing: legal description of the territory, a survey, a map of the general area in juxtaposition with the rest of the city.
2. a determination of the legal sufficiency of the petition by the SBC.
3. a public hearing by the SBC.
4. an adjudicative hearing at which time the SBC reviews their staff reports and responses to questionnaires sent out to the city and township, and
5. approval by the SBC.

If the SBC approves the petition and the head of the Consumers and Industry Services Department signs off, a 45-day refer-

endum period is required before the annexation becomes final. If five percent of the registered voters in the area to be affected, file a petition to hold an election on the question of annexation, the election is held. If both the majority of the electors in the annexed area and the majority of the city or township electors voting separately approve the annexation, the decision of the SBC stands. If either group fails to register a majority vote, the SBC decision is overturned.

Exemption and exclusions from annexation

Two Year Rule

No petition will be accepted by the SBC if filed within two years of a previous determination by the SBC on any portion of the territory included in a current petition.

Charter Township

If a charter township substantially meets all of the following requirements, property can only be annexed under the provisions set forth in Section 34 of the Charter Township Act. The township has:

- a state equalization value greater than \$25 million;
- a minimum density of 150 persons per square mile;
- fire protection services provided directly or by contract;
- a zoning ordinance or master plan;
- solid waste disposal services;
- water or sewer services;
- police protection by contract or otherwise.

All of these services must be provided to the entire township (*Shelby Twp v SBC*; 129 Mich App 50 (1986)).

Annexation of territory from a charter township is still permitted but it is only allowed by:

- election called for by petition of registered voters within the territory to be annexed and the city;
- joint resolution of the city and the township, and

- petition to the SBC to straighten the boundary between the two municipalities or to remove enclaves.

The Charter Township Act does not provide a means for a property owner to petition for annexation with the SBC.

425 agreements

Property within the jurisdiction of an agreement entered into pursuant to 1984 PA 425 cannot be annexed during the term of the agreement. The 425 Agreement must have been entered into for an actual economic development project as defined by the act. It cannot be entered into merely to exchange utility services between the townships. There also has to be an actual conditional transfer of property. To effectively block annexation, the 425 agreement cannot have been entered into as a sham or “shark-repellant” to block annexation. *Twps of Casco, Columbus and Lenox v SBC*.

Boundary changes by agreement

Two statutes, the “Urban Cooperation Act” and “Act 425”, are often used to approve a boundary change between a city and township.

Urban Cooperation Act

The Urban Cooperation Act (1967 PA 7) and the Intergovernmental Transfers of Functions and Responsibilities Act (1967 PA 8) are preferred by cities. The acts permit two or more local governments to enter into an interlocal agreement to do anything either one of them could do on its own. If the agreement is to provide water and sewer to an area of the township, the consideration would be the sharing of the millage on the property with the township. Each municipality would hold a public hearing on the agreement. Final agreement would not occur until after the expiration of a 45 day referendum periods.

To effect a boundary change under an Act 7 or 108 agreement, each municipality would have to adopt mutual resolutions under Section 9 of the home rule cities act

agreeing to annexation of property into the city.

Conditional transfer of property for economic development

1984 PA 425, as amended, permits units of government to conditionally transfer municipal jurisdiction over property from one municipality to another for the purposes of economic development. For example, if a developer of an economic development project in the township requires water and sewer, the property is conditionally transferred into the city in order to secure those services. The city shares the taxes it receives from the transferred property with the township for the length of the agreement, at the end of which the property either returns to the township or stays with the city. Each municipality has to hold a public hearing. Finalization of a 425 agreement does not occur until the expiration of a 30-day referendum period, when it is filed with the county clerk and the secretary of state.

Detachment

Villages

Detachment of property from a home rule village is initiated by the filing of a petition with the county clerk of one percent of the population of the qualified electors in the village and township. If the petition is legally sufficient, the county approves the petition and orders the election. The votes of the village and township electors are counted collectively. A majority wins. Assets owned by the home rule village in the detached area are sold pursuant to the statute and the proceeds divided proportionately with the township. Debts are likewise divided and shared proportionately with the township.

Home rule cities

The detachment process is started by the circulation and filing of a petition signed by one percent of the registered electors of the city or township with the county clerk. If legally sufficient, the county board approves and orders an election to be held on the question of detachment, with the combined

total of all the votes cast in both the city and township being counted together. A simple majority determines the outcome. Any assets that the city may own in the detached territory are then sold under special formula in the home rule city act and divided proportionately between the city and the township. Debts and obligations are also divided proportionately with the township

About the author . . .

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Mr. Beach received his law degree in 1971 from Wayne State University Law School and his B.A. degree in 1966 from Bowdoin College.