
Coates' Canons Blog: Annexing Streets – Interpreting S.L. 2011-57, and Dealing With Half a Street

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Article: <https://canons.sog.unc.edu/annexing-streets-%e2%80%93-interpreting-s-l-2011-57-and-dealing-with-half-a-street/>

This entry was posted on September 21, 2011 and is filed under Annexation, General Local Government (Miscellaneous)

The recent annexation reform legislation summarized in this **blog post**, changed the involuntary annexation laws, but left the basic structure for voluntary annexation in place. The legislature, did, however, modify the petition signature requirements by enacting **S.L. 2011-57 (HB 171)**, apparently to address a concern about cities annexing streets they don't own. The act itself is fairly simple. It essentially prohibits a city from petitioning itself to annex property it doesn't own (a city would not have been permitted to do this under the existing law), and clarifies the status of petitions for satellite annexation that include property that is exempt from the signature requirements. The law raises a possible conflict with existing law, however, when applied to contiguous annexations in which streets are used to create contiguity, as permitted in **G.S. 160A-31(f)**. This post summarizes the basic petition requirements for voluntary and involuntary annexations, explores the meaning of the new law, and also discusses the related issue of annexation areas that include only half of a street.

Voluntary Annexation Authority

Cities have authority to annex property by petition ("voluntary annexations") when the owner or owners of the property request it. There are two statutory procedures for voluntary annexations; one for property that is contiguous to the current municipal boundary (**Chapter 160A, Article 4A, Part 1**), and one for non-contiguous ("satellite") annexations (**Chapter 160A, Article 4A, Part 4**). Cities also have specific authority to annex, by resolution, property owned by the city itself. **G.S. 160A-31(g)** (contiguous); **G.S. 160A-58.7** (non-contiguous).

Petition Requirements

The petition requirements for each type of voluntary annexation are set out in the statutes. The common requirement is that the petition must be signed by the owners of the real property described in the petition. When a city annexes its own property, no petition is required, but the city's adoption of the resolution is the evidence of the owner's assent.

The satellite annexation statute contains an exception to the signature requirement. It says that "the petition need not be signed by the owners of real property that is wholly exempt from property taxation..., nor by railroad companies, public utilities...or electric or telephone membership corporations." **G.S. 160A-58.1(a)**.

The new law amends the satellite annexation statute to specify that a petition is void if: (1) it is not signed; (2) the city signs the petition but doesn't own or have a legal interest in the property; or (3) the property is a type which does not require a signature, but the property owner objects to the annexation. The act also amends both the self-annexation and contiguous annexation statutes to specifically prohibit the city, by petition city or resolution of the city, from annexing property it does not own, or in which it has no legal interest.

Each of the three amendments includes a statement that a city is not considered to own or have a legal interest in a State-maintained road unless it owns the underlying fee, not just an easement. The term "right of way" is often used to describe a street generically, but it is also sometimes used to describe the interest owned, without distinguishing whether the interest is an easement or fee. In many cases, it is the easement holder, rather than the owner of the fee, that controls the use of the right of way, but technically the statute requires a petition from the actual owner.

Effect of the New Law

As applied to satellite annexations, these provisions make sense and are consistent with existing case law. As summarized in David Lawrence's *Annexation Law in North Carolina* (Vol. 2, p. 4-8), the case of *County of Brunswick v. Town of Bolivia*, 56 N.C. App. 732, (1982) upheld Brunswick County's challenge to a petition for annexation of county property signed by nearby owners and town residents, but not by the county. And, under current law, a property owner always has authority to withdraw the property from a petition at any time prior to the annexation. See, *Cunningham v. City of Greensboro*, summarized [here](#). As a practical matter, this change means that the exemption from the signature requirement for satellite annexations only applies when the exempted property is included in a petition signed by the owners of other property that would also be annexed. An unsigned petition proposing to annex only exempted property would not be valid. And even when included in a petition by other property owners, exempted property may not be annexed if the owners of the exempted property object.

It's a bit more complicated, however, to apply the new language to the contiguous annexation statute. Under subsection (f) of that statute, property is deemed contiguous if it is separated from the municipal boundary by, among other listed features, a "street or street right-of-way," or "lands owned by the State of North Carolina." This provision specifically authorizes the city to include this category of property in the area described in the petition. The North Carolina Court of Appeals has held that this type of intervening property automatically becomes a part of the city when it is included in the petition to create contiguity. *Town of Valdese v. Burke, Inc.*, 125 N.C. App. 688 (1997). How should the new language be reconciled with this combination of statutory and case law?

There is no indication that the legislature intended to remove or limit the authority to include streets and street rights of way to create contiguity. Indeed, the legislation appears to be aimed at self-annexation under subsection (g), and not the annexation of intervening property (as interpreted by case law) under subsection (f). The new provision prohibits annexation by petition or resolution of the city, so perhaps the city's inclusion of intervening areas in the ordinance pursuant to subsection (g) is not prohibited. Nonetheless, the new language may create some uncertainty about whether the automatic annexation of intervening property not owned by the city still occurs.

One strategy might be to obtain the signature of all of the actual owners, to avoid any ambiguity and avoid the creation street donut-holes (donut strips?) within the city limits. This may be a challenge for privately owned streets, but at least for property adjacent to the city boundary, property descriptions may include the underlying fee to the center line of the street. If the street is a State-maintained right of way, however, the city will be out of luck. A **2005 Attorney's General's letter opinion** advises the State Department of Transportation that it has no authority to petition for municipal annexation. The only other options would be to involuntarily annex the street by itself under G.S. 160A-58.54(a)(4)(a.)(5), or to request a legislative annexation by local act.

Half a Street

Finally, it's important to note that this whole discussion relates to streets that may be used to create contiguity. A separate problem occurs when a petition for annexation does not include some or all of a road on the outer edge of the annexed property. Where the description of the annexed property extends to the center line, the owners of the property across the street sometimes are not willing to sign a petition for the remaining half of the street, which potentially subjects a small part of their property to city jurisdiction. Neither the city nor the petitioning property owners have authority to include this property in the petition without the owner's signature. In this situation, it may be that involuntary or legislative annexations are the only options.

Links

- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H171v4.pdf
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-31
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-58.1
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-58.7
- www.sog.unc.edu/publications/books/annexation-law-north-carolina-volume-2-voluntary-annexation
- appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01ODQtMS5wZGY=