Coates' Canons Blog: City Obligations for Providing Services to Annexed Areas

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What services must be provided to annexed areas?

State law allows cities to annex property by petition (voluntary) and city-initiated (involuntary), which now requires approval by a majority of voters in the area to be annexed. Once property is annexed, state law provides that "the territory and its citizens and property shall be subject to all debts, laws, ordinance and regulations in force in [the] municipality and shall be entitled to the same privileges and benefits as other parts of such municipality." G.S. 160A-31(e) (voluntary contiguous), G.S.160A-58.3 (voluntary satellite), G.S. 160A-58.55(j) (city-initiated). While cities in North Carolina have authority to provide many services and functions, the only mandatory function is building code inspection. In two cases, a city that provides water and sewer is required to extend those services to property owners who request it at no cost to the property owners. This is required for city-initiated annexations, and for petitions for annexation for voluntary annexation under the G.S. 160A- 31(b1) (requiring 51% households in a distressed area.) Beyond these limited circumstances, the annexation statutes do not require cities provide any particular mix of services to annexed areas. The obligation is simply to extend services that are already provided in the existing corporate limits.

Is there a standard level of services that a city must meet?

Yes. The standard as interpreted in caselaw is that the "[c]ity is only required to provide annexed territories with substantially the same level of services as enjoyed of the [c]ity." *Matheson v. City of Asheville,* 102 N.C. App. 156, 167 (1991). This applies even if it means that the annexed areas experience a lower level of service than they had before they were annexed.

What if a city annexes property under the involuntary statute, but only provides basic administration services?

That's not good enough. The city must do more for the annexed area. In a North Carolina case, property owners challenged a city-initiated annexation, arguing that they did not receive services in exchange for their taxes. The case held that a city must provide "a meaningful extension of municipal services," something more than part-time "administrative services, such as zoning and tax collection, [that] simply fill needs created by the annexation itself, without conferring significant benefits on the annexed property owners and residents." *Nolan v. Vill. of Marvin*, 360 N.C. 256, 262, (2006). Although the standard the court adopted is not explicit in the statute, the case suggests that there is a threshold that must be met for an involuntary annexation to meet service requirements in exchange for the forced payment of city taxes. Subsequent cases that involved similar challenges, however, have upheld annexations without requiring any particular mix of services, as long as the city provides something more than administrative services. See, e.g. *Nolan v. Town of Weddington*, 182 N.C. App. 486, 492, (2007) ("[T]he Weddington annexation provided police protection [by contract with the sheriff], a service that promotes the health, safety, and welfare of residents within the annexed area…the sheriff tailors the police protection provided by three additional deputies to meet Weddington's expressed needs and preferences. Such protection provides a meaningful benefit to the annexed residents.")

Does the "meaningful services" requirement apply to voluntary annexations?

Probably not. When property owners petition for annexation, they are voluntarily agreeing to pay city taxes. Petitioners are entitled to whatever services that are in place within the city. So even if those services are minimal, the property owners have access to that information and would likely be presumed to accept that when they file their petition.

If a city provides utilities, does the law require a city to extend those utilities to all satellite areas?

Not necessarily. The city must provide services according to policies that are in effect within the city at the time of the

annexation. The satellite annexation statute requires that “[t]he area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.” G.S. 160A-58.1(b)(3). As a general rule, a public utility is obligated to provide services that are within a reasonable distance of existing utility lines, and to provide service to customers on a nondiscriminatory basis. *Dale v. Morganton* 270 N.C. 567, (1967); *Fulghum v. Town of Selma,* 238 N.C. 100 (1953). This standard applies not only to satellite areas, but also within the primary corporate limits. Under this rule, a city lawfully may have a policy that requires property owners to contribute to the cost of extension beyond a certain distance, or that simply denies service altogether based on distance or lack of suitability of the terrain for the extension. If a city has never had a petition for satellite annexation, it is possible that it may not have any policy regarding such extensions. There appears to be no bar to the city adopting a policy prior to voting on a satellite petition. If the policy meets the standards under the public utility case law, the property owner will have to decide whether to go forward with petition under the terms of the policy or withdraw the petition.

Are cities required to accept and maintain private roads in annexed areas?

Not necessarily. As with utilities, it will depend upon the policies in place in the city. The city has the discretion to accept or reject private roads based on the standards the city has in place. The crucial requirement is that the city must act consistent with the standards and city operations that exist within the city.

What about standards for other services, such as police, fire, or solid waste?

Numerous North Carolina cases have addressed complaints by owners of property slated for annexation, who alleged that the level of proposed services was insufficient. Courts have applied a general standard that the levels of service must merely be equal to those of services provided in the existing city limits. See, *Matheson v. City of Asheville*, 102 N.C. App. 156, 167 (1991). Measures of levels of service vary among types of services. Existing resources and policy might result in a range of levels of a particular service, depending upon the locations and conditions of properties. Courts have held that a city must mirror the ranges based on the circumstances, and that an average is not sufficient. See, *In re Durham Annexation Ordinance*, 66 N.C. App, 472, 478-79 (1984).