


STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATIONMICHAEL F. EASLEY
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FEB 17 2005
DIVISION 13
DIVISION OFFICE

February 11, 2005

MEMORANDUM TO: Division Engineers

FROM: W. S. Varnedoe, PE
Chief Engineer - Operations 

SUBJECT: Requests by Municipalities for the Department of
Transportation to Request Voluntary Annexation

As you know, we are receiving more and more requests from municipalities for the Department to petition for annexation. I have discussed this issue with Beth McKay, Special Deputy Attorney General, and she has provided the attached guidance. In an effort to address this issue consistently statewide, please use this guidance as you respond to any request.

Please note in the next to last paragraph of Ms. McKay's memorandum, NCDOT has not been given authority by the legislature to petition a municipality for annexation. Therefore, it should be our practice to relay this information to any local government that asks for NCDOT to make such a request.

I hope that this clarifies the Department's stand on this issue. Thank you for your cooperation in providing a consistent message throughout the state on this matter. If you have questions related to annexation, please contact Daniel Keel in the Chief Engineer's Office at 919-733-7621.

WSV:wdk

Attachment

cc: Bill Rosser, P.E., Attachment
Daniel Keel, P.E., Attachment

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
CHIEF ENGINEER'S OFFICE
1537 MAIL SERVICE CENTER
RALEIGH NC 27699-1537

TELEPHONE: 919-733-7621
FAX: 919-733-4141
WEBSITE: WWW.DOH.DOT.STATE.NC.US

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
Elizabeth L. McKay
Transportation Section

February 7, 2005

TO: W.S. Varnedoe
Chief Engineer – Operations

FROM: Elizabeth Leonard McKay *elm*
Special Deputy Attorney General

RE: Requests by Municipalities for Department of Transportation to Request Voluntary Annexation

You have asked that I summarize our discussions as to the authority of the North Carolina Department of Transportation (NCDOT) to petition a municipality for annexation of right of way. Your request is the result of several municipalities making such requests and the perhaps inconsistent practices among the divisions regarding such requests. Our discussions have addressed only instances in which municipalities request NCDOT to petition for annexation; a municipality's decision to annex by other means has not been part of our discussions.

Annexation by Petition

One method for a municipality to extend its borders is for property owners to request by petition to be a part of the municipality. (Again, there are other methods not relevant to this discussion.) N.C. Gen. Stat. § 160A-31 outlines the procedure by which a landowner may petition to the governing board of a municipality that his property be annexed into the municipality by ordinance. One of the conditions of this petitioning procedure is that the area to be annexed be "contiguous" to the boundary of the municipality. "Contiguous" is defined as an area that "either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina." N.C. Gen. Stat. § 160A-31(f). It appears, therefore, that the legislature did not intend for rights of way or state owned properties to interfere with the ability of a municipality to annex by petition properties separated from the municipal boundary by that right of way or a state owned property. In other words, it should not be an obstacle for a property owner to be annexed by petition to the municipality if the only thing between the property and the municipality is a highway right of way.

MAILING ADDRESS:
DEPARTMENT OF TRANSPORTATION
ATTORNEY GENERAL'S OFFICE
1505 MAIL SERVICE CENTER
RALEIGH, NC 27699-1505

TELEPHONE: 919-733-3316
FACSIMILE: 919-733-9329

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH, NC 27601

Authority to Petition for Annexation given to DOA

We discussed that there is statutory authority under N.C. Gen. Stat. § 143-341(4)(n) for the Department of Administration (DOA) "to petition for the annexation of state-owned lands into any municipality," under the powers and duties of DOA. Although this statutory authority falls under Article 36, "Department of Administration," of Chapter 143, NCDOT right of way is not expressly exempted or excluded from such powers. (The legislature, however, expressly exempts NCDOT from other provision of Chapter 143, e.g., procedures for letting public contracts, etc.). It is reasonable to conclude that the General Assembly did not intend for NCDOT right of way to be included in the property for which DOA may petition for annexation, particularly since the General Assembly particularly excluded highway right of way and other interests in land owned by NCDOT from general provisions related to state lands. See N.C. Gen. Stat. § 146-65.

Authority of NCDOT to Petition for Annexation

I have been unable to find a General Statute that expressly authorizes NCDOT to petition a municipality to annex NCDOT right of way. Such authority would come from the legislature in the form of a General Statute that would confer such authority. Although NCDOT is given ample legal authority governing the relationship and coordination of transportation systems within and around municipalities (See Article 3A of Chapter 136, "Roads and Highways," N.C. Gen. Stat. §§ 136-66.1 through 136-66.7), there is no express authority of NCDOT to petition a municipality for annexation.

Clearly, there are circumstances where annexation of NCDOT right of way into a municipality may enhance the existing transportation system by, for example, allowing the municipality to more effectively control development and growth along the right of way which may affect the efficiency of the transportation system. Nonetheless, the fact that express authority is given to DOA but no separate authority is given to NCDOT suggests that by either intent or oversight the legislature did not give NCDOT the authority to petition a municipality for annexation of right of way.

I hope this memorandum is helpful to you. Please note that the opinions stated herein are mine alone and have not been reviewed and approved in accordance with the procedures for an official opinion of the Department of Justice. Please let us know what further action you may want us to take or if you would like to discuss these matters in greater detail.

/ELM
(Varnedoe.Annexation.119425)