



Municipal Annexation, Incorporation and Other Boundary Changes

Revised June 2011

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I. State Statutes and Court Decisions

A. Incorporation

ACA 14-38-101—108 and 14-38-114—115 provide the procedures for the incorporation of municipalities in Arkansas.

B. Annexation Election Method

ACA 14-40-301. Construction.

The provisions of this subchapter shall not be construed to give any municipality the authority to annex any portion of another city or incorporated town.

COURT DECISIONS

Cited: *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740, 774 S.W.2d 828 (1989); *Utley v. City of Dover*, 352 Ark. 212 (2003).

ACA 14-40-302. Authority — Exceptions.

(a) By vote of two-thirds (2/3) of the total number of members making up its governing body, any municipality may adopt an ordinance to annex lands contiguous to the municipality if the lands are any of the following:

(1) Platted and held for sale or use as municipal lots;

(2) Whether platted or not, if the lands are held to be sold as suburban property;

(3) When the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary;

(4) When the lands are needed for any proper municipal purposes such as for the extension of needed police regulation; or

(5) When they are valuable by reason of their adaptability for prospective municipal uses.

(b) (1) Contiguous lands shall not be annexed when they either:

(A) Have a fair market value at the time of the adoption of the ordinance of lands used only for agricultural or horticultural purposes and the highest and best use of the lands is for agricultural or horticultural purposes; or

(B) Are lands upon which a new community is to be constructed with funds guaranteed in whole or in part by the federal government under Title IV of the Housing and Urban Development Act of 1968 or under Title VII

of the Housing and Urban Development Act of 1970.

(2) Any person, firm, corporation, partnership or joint venturer desiring to come within this exclusion must have received from the Department of Housing and Urban Development a letter of preliminary commitment to fund the new community under one (1) of the federal acts.

(3) If any lands are annexed which are being used exclusively for agricultural purposes, the lands may continue to be used for such purposes so long as the owner desires, and the lands shall be assessed as agricultural lands.

(c) However, a municipality having a population of less than one thousand (1,000) persons shall not annex in any one (1) calendar year contiguous lands in excess of ten percent (10%) of the current land area of the municipality.

COURT DECISIONS

(a) Agricultural or Horticultural Purposes.

This section, as amended by Acts 1975, No. 309, providing that contiguous lands shall not be annexed when they have a fair market value of land used for agricultural purposes and the best use of the land is for agricultural purposes, deals with a substantive matter and should not be given a retroactive effect. *Herrod v. City of North Little Rock*, 260 Ark. 890, 545 S.W.2d 620 (1977).

The prohibition against annexing lands being used for agricultural or horticultural purposes is not absolute; such lands may be annexed to a municipality if the highest and best use of those lands is for something other than agriculture or horticulture and one of the five criteria of subsection (a) is met. *Gay v. City of Springdale*, 287 Ark. 55, 696 S.W.2d 723 (1985).

The prohibition against annexing agricultural lands is no longer absolute; the lands may be annexed if their highest and best use is for a purpose other than agriculture. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

The fact that the land is agricultural and the owner does not want it developed does not determine its fate as to annexation; the owner will

not have to abandon its use, and its assessment for taxation shall be as agricultural land. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

(b) **Criteria Generally.** This section, is disjunctive, and annexation of land is proper when the proof sufficiently complies with any one of its conditions. *Holmes v. City of Little Rock*, 285 Ark. 296, 686 S.W.2d 425 (1985); *Gay v. City of Springdale*, 298 Ark. 554, 769 S.W.2d 740, 774 S.W.2d 828 (1989).

It was permissible to annex a tract of land where that tract was more valuable for city purposes than for agriculture, even if one part of the tract was more valuable for farming purposes than for city purposes where: (1) there was a variety of land uses in the tract; (2) access to the tract existed by city streets; (3) city utilities were available; (4) a municipal airport commission would purchase part of the tract; (5) the tract was surrounded on three sides by present city boundaries and on the fourth side by the Arkansas River; (6) the tract was substantially urbanized; and (7) the biggest part of the tract consisted of platted residential development. *Holmes v. City of Little Rock*, 285 Ark. 296, 686 S.W.2d 425 (1985).

The five criteria listed in subsection (a) are disjunctive, and annexation may be proper when any one of the five conditions is met. *Gay v. City of Springdale*, 287 Ark. 55, 696 S.W.2d 723 (1985).

The lands sought to be annexed must meet one of the five criteria in this section; if a part of the proposed area does not meet one of the requirements, then the annexation of the entire area is voided in toto. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

Annexation is not prohibited simply because a tract is rather rugged or heavily wooded with sparse population; the value of the land is derived from its actual and prospective use for city purposes. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

(c) **Evidence.** A majority of electors voting in favor of annexation makes a prima facie case for annexation, and the burden rests on those objecting to produce sufficient evidence to defeat the prima facie case. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

(d) **Proper Municipal Purposes.** Where the trial court found that much of the lands represented the actual growth of the city beyond its legal boundary, that the lands were needed for extension of police and fire protection, that the

lands were valuable by reason of their adaptability for prospective municipal purposes, and that, although some acreage was presently used for agricultural purposes, the highest and best use of these lands was for purposes other than their present use, the findings were not clearly wrong and annexation was proper. *Chappell v. City of Russellville*, 288 Ark. 261, 704 S.W.2d 166 (1986).

A city's proposed annexation was an honest effort to extend its boundaries to encompass the actual growth of the city and land needed for municipal purposes as defined by law; however, the Supreme Court will not recognize annexation proposals that are essentially land grabs beyond the actual growth of the city with no serious goal of responsible land use planning. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Land in a flood plain is not excluded from consideration for annexation. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Trial court properly found that farm property located within the city limits in the floodway was needed for a proper municipal purpose under subsection (a) of this section such as for the extension of needed police and fire regulation; in addition, the city's proposed use of property as open space or to expand city's existing park plan was a higher use that also mitigated toward's annexation. *Chandler v. Little Rock*, 351 Ark. 172, 89 S. W. 3d 913 (2003).

Trial court found that subdivision (a)(4) of this section was met because the lands in question were needed for the purpose of municipal growth and expansion, and the lands were valuable under subdivision (a)(5) of this section by reason of the lands' adaptability for the prospective municipal uses; the trial court properly found that the city was very limited in any area for expansion within its present boundaries, and the court affirmed the annexation by the city of the lands. *Utley v. City of Dover*, 352 Ark. 212, 101 S.W.3d 191

Cited: *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992); *White v. Lorings*, 274 Ark. 272, 623 S.W.2d 837 (1981); *Magruder v. Arkansas Game and Fish Commission*, 287 Ark. 343, 698 S.W.2d 299 (1985).

ACA 14-40-303. Annexation Ordinance— Election Procedures.

(a) The annexation ordinance shall:

- (1) Contain an accurate description of the lands desired to be annexed;
- (2) Include a schedule of the services of the annexing

municipality that will be extended to the area within three (3) years after the date the annexation becomes final; and

(3) Fix the date for the election provided in this section.

(b)(1) The annexation ordinance shall not become effective until the question of annexation is submitted to the qualified electors of the annexing municipality and of the area to be annexed at the next general election or at a special election. The special election shall be called by ordinance or proclamation of the mayor of the annexing municipality in accordance with § 7-11-201 et seq.

(2)(A) If a majority of the qualified electors voting in the election vote for the annexation, no later than fifteen (15) days following the election, the county clerk shall certify the election results and record the same, along with the description and a map of the annexed area, in the county records, and file a certified copy thereof with the Secretary of State.

(B) The annexation shall be effective, and the lands annexed shall be included within the corporate limits of the annexing municipality thirty (30) days following the date of recording and filing of the description and map, as provided in this section, or in the event an action is filed with the circuit court as provided in § 14-40-304, on the date the judgment of the court becomes final.

(3) If a majority of the qualified electors voting on the issue at the election vote against the annexation, the annexation ordinance shall be null and void.

(c)(1)(A) The city clerk shall certify two (2) copies of the annexation ordinance and a plat or map of the area to be annexed and convey one (1) copy to the county clerk and one (1) copy to the county election commission at least sixty (60) days before the election.

(B)(i) No later than forty-five (45) days prior to the election, the city shall identify all persons who reside within the area proposed to be annexed, and the county clerk shall assist the city in determining the names and addresses of all qualified electors residing within that area.

(ii) The failure to identify all persons residing within the area proposed to be annexed or the failure to determine the names and addresses of all qualified electors residing within that area shall not invalidate or otherwise affect the results of the election.

(C) All of the qualified electors residing within the territory to be annexed shall be entitled to vote in the election.

(D) The city clerk shall give notice of the election by publication by at least one (1) insertion in some newspaper having a general circulation in the city.

(2)(A) The county clerk shall give notice of the voter registration deadlines at least forty (40) days before the election by ordinary mail to those persons whose names and addresses are on the list provided by the city clerk.

(B) The county clerk shall prepare a list by precinct of all those qualified electors residing within the area to be annexed who are qualified to vote in that precinct and furnish that list to the election officials at the time the ballot boxes are delivered.

(3) If the county clerk or the county election commission shall fail to perform any duties required of it, then any interested party may apply for a writ of mandamus to require the performance of the duties. The failure of the county clerk or the county election commission to perform the duties shall not void the annexation election unless a court finds that the failure to perform the duties substantially prejudiced an interested party.

(d) If the annexation is approved and becomes final, the governing body of the city shall, by ordinance, as soon as practical after the annexation, attach and incorporate such annexed territory to and in one (1) or more wards of the city lying adjacent thereto, and the territory so assigned and attached to a ward shall thereafter be considered and become a part thereof as fully as any other part of the city.

(e) From the map or plat provided by city ordinance of the wards assigned, the county clerk shall proceed to ascertain and determine the voters' proper precinct and shall enter the same upon the voter registration records of those inhabitants of the territory so annexed and give notice of that change within thirty (30) days after the adoption of the city ordinance assigning the territory to wards.

(f)(1) In the event that within thirty (30) days of the date that one (1) city calls for an annexation election, another city calls for an annexation election on all or part of the same land proposed to be annexed by the first city, then both annexation elections shall be held, provided that the second city must call for its annexation election to be held on the next available date in accordance with § 7-11-201 et seq. before or after the holding of the first city's election.

(2)(A) If the annexation election held first is approved by the voters, the results of it shall be stayed until the second annexation election is held.

(B)(i) If only one (1) of the annexation elections is approved by the voters, then the city that called that election shall proceed with the annexation of the land.

(ii)(a) Except as provided in subdivisions (f)(2)(B)(ii)(b) and (c) of this section, if both annexation elections are approved by the voters, then a third election shall be held three (3) weeks after the second annexation election. The provisions of § 7-11-201 et seq., governing the procedures and dates on which special elections may be held shall not apply to the third annexation election provided in this subsection.

(b) If the date of the third election falls upon a legal holiday, the election shall be held four (4) weeks after the

second annexation election.

(c) If the date of the election under subdivision (f) (2)(B)(ii)(b) of this section is a legal holiday, the election shall be held five (5) weeks after the second annexation election.

(iii) Notice of the third election shall be published in a newspaper circulated in the area to be annexed during the period following the second election.

(iv) Only the residents of the area proposed to be annexed by both cities shall vote in the third election.

(v) The issue on the ballot in the third election shall be into which of the two (2) cities the residents of the area want to be annexed.

(vi) The area shall be annexed into the city receiving the most votes in the third election.

(vii) In the event of a tie vote in the third election, the area shall be annexed to the city that had the highest percentage vote in favor of the annexation in the first or second election.

(3) If the city that does not get to annex the area voted on by both cities included land in its annexation election other than the land voted on by both cities, then that land shall be annexed into such city if it is still contiguous to such city after the other land is annexed to the other city, but such land shall remain part of the county if it is not so contiguous.

COURT DECISIONS

(a) **Description of Lands.** Annexation proceedings based on a description of land that describes only a line and does not encircle any geographical area are invalid. *City of North Little Rock v. Garner*, 256 Ark. 1025, 511 S.W.2d 656 (1974).

Where the city described all the land sought to be annexed by metes and bounds as “the area included in the following description not currently in the City” and a map was referred to in the ordinance and was duly filed with the circuit clerk after the election, the description of the property to be annexed was proper and sufficient. *Lee v. City of Pine Bluff*, 289 Ark. 204, 710 S.W.2d 205 (1986).

Although subdivision (b) (1) (B) (i) required city to file a description and map of annexed area and correct election results with the county clerk and Secretary of State, city’s failure to file such matters with the Secretary of State did not toll the 30-day requirement to bring suit under § 14-40-304; subdivision (b) (1) (B) (ii) provides that a municipality’s annexation shall be effective 30 days following its filing the description and map of the annexed property with only the county clerk. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

(b) **Filing Election Returns.** Nothing in this section requires the filing of correct election returns with the Secretary of State. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

(c) **Effective Date of Annexation.** Residents of an area in the process of being annexed to a city do not have the right to vote in a municipal bond election until after the annexation becomes effective and, accordingly, where a circuit court order upholding a contested annexation was not signed until after nine days after the bond election, such election was valid despite the fact that residents of the annexed area did not vote therein. *Tanner v. City of Little Rock*, 261 Ark. 573, 550 S.W.2d 177 (1977).

Where a city collected franchise taxes from residents of an annexed area during pendency of appeals from circuit court’s final order holding annexation valid, the franchise taxes were not illegal exactions that had to be refunded since, pursuant to this section, the annexation was effective on the date of final judgement; moreover, because no supersedeas or stay was issued under ARAP Rule 8 and ARCP Rule 62, the city had the authority and responsibility to furnish services to the annexed area and collect franchise taxes during pendency of the appeal. *Jackson v. Little Rock*, 274 Ark. 51, 621 S.W.2d 852 (1981).

(d) **Filing Election Returns.** Nothing in this section requires the filing of correct election returns with the Secretary of State. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

(e) **Schedule of Services.** The requirements of a schedule of services is intended to assist voters by furnishing them with detailed information about the annexation proposal. *Carter v. City of Sherwood*, 263 Ark. 616, 566 S.W.2d 746 (1978).

Where a city ordinance calling an annexation election merely stated that the city committed itself to the extension into the annexed area “of public services now available to the residents of [the city] ... and such services shall include all city services,” the ordinance was inadequate under this section. *Cater v. Sherwood*, 263 Ark. 616, 566 S.W.2d 746 (1978).

Cited: *Pennington v. City of Sherwood*, 304 Ark. 362, 802 S.W.2d 456 (1991). *Utley v. City of Dover*, 352 Ark. 212, 101 S.W.3d 191 (2003).

ACA 14-40-304. Judicial Review.

(a) If it is alleged that the area proposed to be annexed does not conform to the requirements and stan-

dards prescribed in ACA 14-40-302, a legal action may be filed in the circuit court of the county where the lands lie, within thirty (30) days after the election, to nullify the election and to prohibit further proceedings pursuant to the election.

(b) In any such action filed in the circuit court of the county where the lands lie, the court shall have jurisdiction and the authority to determine whether the procedures outlined in this subchapter have been complied with and whether the municipality has used the proper standards outlined in ACA 14-40-302 in determining the lands to be annexed.

COURT DECISION

(a) **In General.** Election contests have no common law existence; they are solely the creatures of constitution or statute. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

(b) **Enabling Ordinance.** Nothing in this section or in this chapter requires that the enabling ordinance be identified or specifically challenged. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

Where original complaint, which was timely, was not deficient in stating a cause of action, later amendment, which merely corrected an obvious error in the designation of the particular ordinance, was not essential to that cause of action. *Duennenberg v. City of Barling*, 309 Ark. 541, 832 S.W.2d 237 (1992).

(c) **Time Limitation.** Where neither appellants nor others filed suit within 30 days of the annexation election, appellants' attempt to raise such an issue in a later collateral proceeding failed. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

Although § 14-40-303 (b) (1) (B) (i) required city to file a description and map of annexed area and correct election results with the county clerk and Secretary of State, city's failure to file such matters with the Secretary of State did not toll the 30-day requirement to bring suit under this section; § 14-40-308 (b) (1) (B) (ii) provides that a municipality's annexation shall be effective 30 days following its filing the description and map of the annexed property with only the county clerk. *City of Springdale v. Town of Bethel Heights*, 311 Ark. 497, 845 S.W.2d 1 (1993).

Challenges to procedures outlined in this subchapter must be made within 30 days of the annexation elections, whether or not such challenges arise from requirements prescribed by the section. *Williams v. Harmon*, 67 Ark. App. 281,

999 S.W.2d 206 (1999).

Cited: *Utley v. City of Dover*, 352 Ark. 212, 101 S.W.3d 191 (2003).

• **Annexation of Lands in Adjoining County** **ACA 14-40-401. Authority.**

(a) The General Assembly finds that there are areas within adjoining counties that are so necessary to the satisfactory conducting of a city's business that there is a need to annex land lying in the adjoining county into the city. This law will aid the residents to receive needed services to improve the quality of life in the unincorporated area.

(b) Any lands contiguous to a municipality having a population of seventy-five thousand (75,000) or less, although located in an adjoining county, may become annexed to the municipality in the manner provided in this chapter.

• **Ordinance Method** **ACA 14-40-501. Authority—Exceptions.**

(a)(1)(A)(i) Whenever the incorporated limits of a municipality have completely surrounded an unincorporated area, the governing body of the municipality may propose an ordinance calling for the annexation of the land surrounded by the municipality.

(ii) Subdivision (a)(1)(A)(i) of this section shall include situations in which the incorporated limits of a municipality completely have surrounded an unincorporated area on only three (3) sides because the fourth side is a boundary line with another state.

(B) If the incorporated limits of two (2) or more municipalities have completely surrounded an unincorporated area, the governing body of the municipality with the greater distance of city limits adjoining the unincorporated area's perimeter may propose an ordinance calling for the annexation of the land surrounded by the municipalities, unless it is agreed by the adjoining municipalities that another of the adjoining municipalities should propose an ordinance calling for the annexation.

(2) The ordinance will provide a legal description of the land to be annexed and describe generally the services to be extended to the area to be annexed.

(b)(1) The unincorporated area to be annexed shall comply with the standards for lands qualifying for annexation which are set forth in § 14-40-302.

(2) Privately owned lakes exceeding six (6) acres of water surface which are used exclusively for recreational purposes and lands adjacent to them not exceeding twenty (20) acres in size which are used exclusively for recreational purposes in relation to the lake shall not qualify for annexation under the provisions of this subchapter.

Note: Underlined text indicates additional language enacted by Act 150 of 2007.

ACA 14-40-502. Hearing—Notice.

(a) A public hearing shall be conducted within sixty (60) days of the proposal of the ordinance calling for annexation.

(b) At least fifteen (15) days prior to the date of the public hearing, the governing body of the municipality shall publish a legal notice setting out the legal description of the territory proposed to be annexed and notify by certified mail all the property owners within the area proposed to be annexed of their right to appear at the public hearing to present their views on the proposed annexation.

ACA 14-40-503. Procedure for Annexation.

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, at the next regularly scheduled meeting following the public hearing, the governing body of the municipality proposing annexation may bring the proposed ordinance up for a vote.

(B) An ordinance shall not be enacted within fifty-one (51) days of a scheduled election to consider annexing all or part of the area in question.

(2) If a majority of the total number of members of the governing body vote for the proposed annexation ordinance, then a prima facie case for annexation shall be established, and the city shall proceed to render services to the annexed area.

(b) The decision of the municipal council shall be final unless suit is brought in circuit court of the appropriate county within thirty (30) days after passage to review the actions of the governing body.

• Petition Method

ACA 14-40-601. Application By Petition.

(a) Whenever a majority of the real estate owners of any part of a county contiguous to and adjoining any city or incorporated town shall desire to be annexed to the city or town, they may apply, by petition in writing, to the county court of the county in which the city or town is situated and shall name the persons authorized to act on behalf of the petitioners.

(b) The “majority of real estate owners” referred to in this section shall mean a majority of the total number of real estate owners in the area affected, if the majority of the total number of owners shall own more than one-half (1/2) of the acreage affected.

COURT DECISIONS

(a) **In General.** Where annexation of territory contiguous to a municipality is desired, a petition signed by a majority of real estate owners in the territory sought to be and annexed by a majority of the real estate owners of the affected who are residents of the county in which the municipality

and area affected must be filed. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

(b) **Amendments.** Although this section does not specifically provide for amendments to a petition for annexation, there is nothing wrong with court looking to petition and amended petition to ascertain whether or not a majority of the owners of record who own the majority of land have in fact petitioned to be annexed and that the area has been sufficiently identified. *Chastain v. Davis*, 294 Ark. 234, 741 S.W.2d 632 (1987).

(c) **Contiguous Land.** Land held not contiguous to municipality. *Clark v. Holt*, 218 Ark. 504, 237 S.W.2d 483 (1951).

Land held contiguous to municipality. *Louallen v. Miller*, 229 Ark. 679, 317 S.W.2d 710 (1958).

There is no requirement that land be completely contiguous. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

City challenging annexation did not show that the property owners’ request to be annexed into a particular city was invalid under this subchapter as the property owners’ petition showed that a majority of the property owners of land contiguous to and adjoining the particular city to which the property owners wanted to annex their property approved of the annexation request. *City of Dover v. City of Russellville*, 346 Ark. 279, 57 S.W.3d 171 (2001).

(d) **Majority of Real Estate Owners.** When annexation is desired, petition filed with county court must be signed by majority of real estate owners of the area sought to be annexed and also a majority of such owners who are residents of the county in which the municipality and area are located. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Petition of majority of real estate owners does not mean resident landowners, but a majority of the total number of real estate owners in area affected. *Smalley v. City of Fort Smith*, 239 Ark. 39, 386 S.W.2d 944 (1965).

Evidence showed majority of landowners had signed the petition for annexation. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d (1987).

Although subsection (b) does not specifically provide for amendment in a petition for annexation, nothing prevents a court’s looking to a petition and an amended petition to ascertain whether or not a majority of the owners of record who own a majority of the land to be annexed have, in fact, petitioned to be annexed. *City of Marion v. Guaranty Loan and Real Estate Co.*,

Ark. App. 427, 58 S.W.3d 410 (2001).

(e) **Property Description.** Although original petition contained an incorrect property description, map attached thereto, which was also one of exhibits at trial, property and sufficiently described property sought to be annexed. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Cited: *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

ACA 14-40-602. Hearing on Petition.

(a) (1) When the petition shall be presented to the county court, the clerk shall file it, and the court shall set a date for a hearing on the petition.

(2) The date for the hearing shall not be less than thirty (30) days after the filing of the petition.

(b) (1) (A) Between the time of the filing of the petition and the date of the hearing, the petitioners shall cause a notice to be published in some newspaper of general circulation in the county.

(B) The notice shall be published one (1) time a week for three (3) consecutive weeks.

(2) If there is no newspaper of general circulation in the county, notice shall be posted at some public place within the limits of the incorporated town or city for at least three (3) weeks before the date of the hearing.

(3) The notice referred to in this subsection shall contain the substance of the petition and state the time and place appointed for the hearing thereof.

(c) The hearing procedure set forth in ACA 14-38-103 shall be followed in the proceedings concerned in this section insofar as such procedure is not in conflict with any provision expressly set out in this subchapter.

COURT DECISIONS

(a) **Evidence.** The substantial evidence rule applies in annexation proceedings initiated by petition, and the courts are authorized to exercise the same discretion as to the rightness and propriety thereof that they exercise in the case of annexation proceedings by municipality. *Cantrell v. Vaughn*, 228 Ark. 202, 306 S.W.2d 863 (1957).

(b) **Notice.** Notice of proposed annexation held sufficient. *Chastain v. Davis*, 294 Ark. 134, 741 S.W.2d 632 (1987).

Cited: *Louallen v. Miller*, 229 Ark. 679, 317 S.W.2d 710 (1958); *Proposed Annexation v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

ACA 14-40-603. Order for Annexation.

(a) After the hearing, if the county court shall be satisfied that the allegations of the petition were sustained by the proof, if the court shall be satisfied that the require-

ments for signatures under ACA 14-40-601 have been complied with and if the court shall be satisfied that the limits of the territory to be annexed have been accurately described and an accurate map thereof made and filed, and that the prayer of the petitioner is right and proper, then the court shall enter its order granting the petition and annexing the territory.

(b) The order shall be recorded by the clerk of the county.

COURT DECISIONS

(a) **In General.** Judgment or order entered in proceedings for annexation of territory must necessarily show on its face the fulfillment of statutory requirements to give court jurisdiction. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

(b) **Determination.** When county court to which petition is presented is satisfied that qualified voters own property in the territory sought to be annexed and reside therein and also finds that a majority of them have signed the petition and that other conditions have been complied with, it has duty to grant petition. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

Where evidence was conclusive that 90 percent of territory sought to be annexed to a municipality was used for agricultural purposes and was not needed for prospective municipal purposes, county court was justified in denying landowner's petition for annexation. *Cantrell v. Vaughn*, 288 Ark. 202, 306 S.W.2d 863 (1957).

(c) **Signatures.** Order annexing territory to municipality which failed to show that notice of the proceeding was given based on a petition which failed to show that those who signed it were the property owners in the territory to be annexed was void ab initio and no rights accrued under it. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Where annexation petition was signed by a majority of the resident landowners in the territory sought to be annexed, but not a majority of the landowners living in the county, judgment denying annexation on remonstrator's petition was held correct. *Call v. Wharton*, 204 Ark. 544, 162 S.W.2d 916 (1942).

(d) **Void Orders.** In collateral attack upon order entered in proceeding for annexation of territory, the court must decide whether notice was given or waived by an inspection of the record only, and order showing that the petition was approved the same day as filed and not showing that all parties interested in the annexa-

tion of the proposed territory were present when the order was made is void ab initio. *Posey v. Paxton*, 201 Ark. 825, 147 S.W.2d 39 (1941).

Cited: *Proposed Annexation v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

ACA 14-40-604. Proceedings to Prevent Annexation.

(a) (1) No further action shall be taken for a period of thirty (30) days after the order for annexation has been entered. Within that time any person interested may institute a proceeding in the circuit court to have the annexation prevented.

(2) (A) If the court or judge hearing the proceeding shall be satisfied that the requirements for annexation as set out in this subchapter have not been complied with, that the territory proposed to be annexed is unreasonably large, or that the territory is not properly described, the court or judge shall make an order restraining any further action under the order of the county court and annulling it. However, such proceeding shall not bar any subsequent petition.

(B) If the court or judge shall determine that the order of the county court was proper, then the order of the county court shall be affirmed, and the proceedings to prevent the annexation shall be dismissed.

(b) When any complaint shall be made in accordance with this section to prevent an annexation of territory, notice thereof shall be given to the city or incorporated town authorities and the agent of the petitioners.

COURT DECISIONS

(a) **Construction.** Subdivision (a)(2)(A) of this section does not improperly shift the burden of proof in an action which challenges the annexation of property by a town and, instead, merely mandates the court to restrain and annul an annexation order if the requirements for annexation have not been met. *Town of Houston v. Carden*, 332 Ark. 340, 96 S.W.2d 131 (1998).

(b) **Purpose.** The sole purpose of this section is to give to remonstrants an opportunity to appeal a county court order to the circuit court. *Palmer v. City of Conway*, 271 Ark. 127, 607 S.W.2d 87 (Ct. App. 1980).

(c) **Annexation Proceeding Not Shown.** Mere filing of plat by owner of land adjoining city boundary showing the lands to be divided in lots, blocks, and streets and designated as an “addition” to the city was in no way a compliance with statutory provisions regarding annexation and in no way amounted to annexation. *Van Marion v. Hawkins*, 224 Ark. 199, 272 S.W.2d 317 (1954).

(d) **Annulment.** The court properly annulled

the annexation of land by a town where there was little, if any, credible evidence that the town itself would be benefited by the annexation and since the town could not annex land simply to prevent the establishment of a hog farm on part of the land. *Town of Houston v. Carden*, 332 Ark. 340, 965 S.W.2d 131 (1998).

(e) **Any Persons Interested.** Petition of parties to quash order of court annexing territory to a municipality must show that petitioners have an interest as resident or owners of property either in the old municipality or the territory annexed. *Perkins v. Holman*, 43 Ark. 219 (1884).

Writ to quash order of annexation of territory to a municipality that was granted upon petition of owners of the annexed territory will be refused unless the owners or persons named in their petition as authorized to act in their behalf are made parties to the proceedings. *Black v. Brinkley*, 54 Ark. 372, 15 S.W. 1030 (1891).

Parties who filed remonstrance in county court protesting against annexation of territory to a municipal corporation should be treated as parties to such proceedings and be allowed to appeal from an adverse judgment of that court. *Barnwell v. Town of Gravette*, 87 Ark. 430, 112 S.W. 973 (1908).

“Any person interested” means any person who has some interest in the municipality or the area to be annexed. *City of Crossett v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971); *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

In case where city was petitioning for annexation of two separate areas and the persons who opposed all resided or owned property in one area, there was no interested party contesting the annexation of the other area. A motion to dismiss as to the latter area should have been granted. *City of Crossett v. Anthony*, 250 Ark. 660, 466 S.W.2d 481 (1971).

At least some interest must be shown on trial de novo in a circuit court in the face of a motion to dismiss for lack of interest. *Turner v. Wiederkehr Village*, 261 Ark. 72, 546 S.W.2d 717 (1977).

Attorney who owner property near village to be annexed and had contingent fee contract under which he would acquire property in the village if he won his client’s lawsuit did not have standing to challenge the incorporation in the absence of a showing that he was threatened with a direct pecuniary not shared by members of the public in general. *Turner v. Wiederkehr Village*,

261 Ark. 72, 546 S.W.2d 717 (1977).

Where plaintiff testified that he owned land within the city to which the land was to be annexed, filed a pro se petition in county court opposing annexation, was one of the named remonstrants in circuit court, and was opposed to the annexation, the circuit court erred in finding that there was no plaintiff in that court who had standing to contest the annexation. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

(f) **Evidence.** If municipality renders a favorable vote in favor of annexation of territory to it, such vote makes a prima facie case as to the propriety of annexation, and burden of showing sufficient cause against it is placed upon the remonstrants. *Burton v. City of Fort Smith*, 214 Ark. 516, 216 S.W.2d 884 (1949).

(g) **Notice.** Where property owner filed independent action in circuit court to challenge county court order allowing municipality to annex certain property and only purported notice that plaintiff gave to the municipality during the 30-day period following the county court annexation order was the mailing of a copy of the circuit court complaint to the municipal attorney, since the plaintiff was not serving notice of an appeal, but was commencing an independent attack on annexation, the mailing of a copy of the complaint to the municipal attorney did not constitute notice within the meaning of this section and § 14-40-605. *Proposed Annexation to Beaver v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

A complaint filed in circuit court under the provisions of this section is not an appeal but is an independent attack on the annexation, and the notice required means service of process pursuant to Ark. R. Civ. P. 4. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Where petition for annexation filed in county court clearly indicated that a law firm was an agent for the petitioners, § 14-40-601 required that summons be served on them. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

Section 14-40-601 requires service of summons on the agent of the petitioners for annexation, but rather than dismissing the complaint in opposition to the annexation for failure to serve notice, the trial court should have directed that the petitioners be made a party by service of summons on their agent. *Britton v. City of Conway*, 36 Ark. App. 232, 821 S.W.2d 65 (1991).

ACA 14-40-605. Confirmation of Annexation.

(a) If no notice shall be given within thirty (30) days from the making of the order of annexation by the county court, the proceeding before the court shall in all things be confirmed, if the city or incorporated town council shall, by ordinance or resolution, accept the territory.

(b) (1) If the council accepts the territory, the county clerk shall duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court and the resolution or ordinance of the council. The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them. The clerk shall forward one (1) copy of the plat of the annexed territory and one (1) copy of the order of the court to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and preserve them and shall notify all utility companies having property in the municipality of the annexation.

(2) The clerk shall forward a certified copy of the order of the court to the council.

COURT DECISIONS

(a) **Acceptance.** Even though there is no ordinance or resolution of a municipality accepting annexation, other evidence is sufficient to substantiate such acceptance. *Gowers v. Van Buren*, 210 Ark. 776, 197 S.W.2d 74 (1940).

Where there was no showing in record that city made effort to comply with statutory requirements regarding annexation, but merely “accepted” platted area adjoining city boundary by resolution of city council, the city council had no jurisdiction to make the annexation. *Van Marion v. Hawkins*, 224 Ark. 199, 272 S.W.2d 317 (1954).

Where city council passed resolution “accepting” an area adjoining city boundary which had been previously platted to show lands divided into lots, blocks and streets, taxpayers were not estopped to deny validity of the “annexation” on theory that they had for many years paid municipal taxes and accepted municipal benefits. *Van Marion v. Hawkins*, 224 Ark. 199, 272 S.W.2d 317 (1954).

(b) **Notice.** Where property owner filed independent action in circuit court to challenge county court order allowing municipality to annex certain property and only purported notice that plaintiff gave to the municipality during the 30-day period following the county court annexation order was the mailing of a copy of the circuit court complaint to the municipal attorney, since the plaintiff was not serving notice of an appeal, but was commencing an independent

attack on the annexation, the mailing of a copy of the complaint to the municipal attorney did not constitute notice within the meaning of ACA 14-40-604 and this section. *Proposed Annexation v. Ratliff*, 282 Ark. 516, 669 S.W.2d 467 (1984).

ACA 14-40-606. Rights and Privileges of New Inhabitants.

As soon as the resolution or ordinance declaring the annexation has been adopted or passed, the territory shall be deemed and taken to be a part and parcel of the limits of the city or incorporated town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or incorporated town.

C. Consolidation

ACA 14-40-1201. Petition for consolidation

(a)(1)(A) Beginning July 1, 1995, when the inhabitants of any city or incorporated town adjoining or contiguous to another smaller municipal corporation of any class in the same county shall desire that the city or incorporated town annex to it or consolidate with it the smaller municipal corporation, they may apply, by a petition in writing signed by a number of qualified electors from each of the municipal corporations equal to not less than fifteen percent (15%) of the total vote cast for the office of mayor in the respective city or town in the last preceding general election, to the city or town council of the larger municipal corporation.

(B) Municipal corporations separated by a river shall be deemed contiguous.

(2) The petition shall:

(A) Describe the municipal corporations to be consolidated; and

(B) Name the persons authorized to act in behalf of the petitioners presenting the petition as provided in this section.

(3)(A) Beginning July 1, 1995, the petitions shall be filed with the city clerk or town recorder of each municipal corporation, who shall determine the sufficiency of the petitions in each municipality.

(B)(i) If any petition is determined insufficient, he or she shall notify the petitioners in writing without delay, and the petitioners shall be permitted ten (10) days from the notification to solicit additional signatures or to prove any rejected signatures.

(ii) If the city clerk or town recorder of the respective municipalities decides the petitions are sufficient, he or she each shall notify the petitioners in writing and shall present the petitions to the city or town council of the larger municipal corporation.

(b)(1)(A) When the petition is presented to the council, the council shall pass an ordinance in favor of

the annexation and approving and ratifying the petition.

(B) If the council fails to pass the ordinance required under subdivision (b)(1)(A) of this section, then any interested party may apply for a writ of mandamus to require the performance of the requirement.

(2) In that event, it shall be the duty of the persons named in the petition authorized to act in behalf of the petitioners to file the petition, together with a certified copy of the ordinance, in the office of the county clerk of the county in which the municipal corporations are situated.

ACA 14-40-1202. Special election called

(a)(1)(A) Upon presentation of the petition to the county court by the authorized persons, the court shall at once order and call a special election, to be held in accordance with § 7-11-201 et seq., in both of the municipal corporations on the question of the annexation and the name of the proposed consolidated municipality.

(B) The court shall give thirty (30) days' notice of the election by publication one (1) time a week in some newspaper with a bona fide circulation in the territory and by notices posted in conspicuous places in the territory.

(2) The court shall appoint one (1) judge and one (1) clerk in each ward or other division of each municipal corporation, and the mayor and city council of each of the municipal corporations shall select two (2) judges and one (1) clerk for each of the wards or other divisions having the qualifications of electors, to act as judges and clerks of election within the respective wards.

(3) The court shall fix all polling places at which the voting shall take place.

(b)(1) The election shall be held and conducted in each corporation in the manner prescribed by law for holding elections for cities or incorporated towns, so far as they are applicable. Election expenses are to be paid by the larger city or incorporated town.

(2)(A) All elections held under this subchapter are made legal elections.

(B)(i) The elections shall be governed by and subject to all the laws relating to general elections so far as applicable.

(ii) All judges, clerks, and persons voting in the elections shall be subject to the penalties prescribed by the general election laws of the state for any violation of the general election laws to the same extent as though the elections were specifically included in the general election laws of the state.

(3) The returns of the elections shall be made to the court and the result thereof declared by the court.

(c) In order to provide for an orderly transition of affairs if the petition calls for a delay in the implementation of the consolidation, the consolidation shall not take effect until the date specified in the petition, except that the consolidation shall be delayed not longer than eighteen (18) months from the date the election results are declared by the court.

ACA 14-40-1203. Election results.

(a) At any election held under this subchapter, all qualified electors who are residents of either municipality shall be allowed to vote on the adoption or rejection of the proposed annexation or consolidation and the name of the proposed consolidated municipality.

(b)(1)(A)(i) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall be in favor of the consolidation or annexation, then the county court shall declare, by an appropriate order, the annexation or consolidation consummated unless the petition has requested a delayed date for implementation of the consolidation.

(ii) If the petition calls for a delay in the implementation of the consolidation and if a majority of the votes cast in each of the respective municipalities is in favor of the consolidation, then the county court shall order the annexation or consolidation consummated on the date specified in the petition, except that the date shall not be more than eighteen (18) months after the date election results are declared by the court.

(B)(i) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall be in favor of the same name of the municipality, then the county court shall declare, by appropriate order, the name of the consolidated municipality.

(ii) If a majority of the votes cast in each of the respective municipalities, considered as a separate and distinct unit and without reference to the vote cast in the other, shall not be in favor of the same name of the municipality, then the county court shall declare, by appropriate order, the name of the consolidated municipality to be the name of the larger municipality.

(C)(i) Upon the making of the order, the smaller municipal corporation and the territory comprising it shall, in law, be deemed and be taken to be included and shall be a part of the larger municipal corporation.

(ii) The inhabitants thereof shall in all respects be citizens of the larger municipal corporation.

(2) If a majority of the votes of either municipal corporation shall be against annexation, then the city or incorporated town shall not be again permitted to attempt the consolidation for two (2) years.

ACA 14-40-1204. Election; contest actions.

Any elector shall have the right to test the legality and fairness of the election and the declared results in a proceeding before the circuit court without being required to give bond for costs. However, no such contest shall interfere with the consolidation until finally decided.

ACA 14-40-1205. Effect on certain municipalities.

(a) As soon as practicable after the annexation, the council of the larger city or incorporated town shall, by ordinance, form the territory of the smaller municipality into such number of wards as shall seem to be the best interest of the combined city or incorporated town, or shall change the number and boundaries of all the wards of the entire city or incorporated town, or any part of them, as shall seem to be to the best interests of the combined city or incorporated town. In such way, however, the wards shall have as nearly an equal population and assessed valuation of property as practicable and as, in the opinion of the council, would best subserve the true interest of the citizens and taxpayers of the combined city or incorporated town.

(b) The territory and inhabitants of the smaller municipal corporation shall receive that fair and just representation in the city council as the size, population, and assessed valuation of property demands, as compared with the representation accorded to other wards of the city or incorporated town.

(c) If inhabitants of the smaller municipal corporation feel aggrieved at the number of wards, or in any manner dissatisfied with the division of the territory into wards, upon petition of fifty (50) qualified electors, the circuit court is authorized to make changes in the number of wards as the justice of the case requires, in the manner provided in § 14-43-311, so far as applicable.

ACA 14-40-1206. Plot requirement.

(a) The council of the larger city or incorporated town shall cause a plat to be made of the entire city or incorporated town after the annexation thereto and the division into wards of the smaller municipal corporation.

(b) (1) A certified copy of the plat shall be filed and recorded in the office of the circuit court and ex officio recorder of the county and with the Secretary of State.

(2) (A) Thereafter, the plat shall stand, be, and remain the division of the city or incorporated town into wards, and the number and boundaries thereof, until such time as it may be afterwards changed according to law.

(B) However, no change in the boundaries of the wards of the larger city or incorporated town shall determine or affect the time of service of any previously elected alderman of any ward in the larger city or incorporated town.

ACA 14-40-1207. Special election of aldermen or all city officials.

(a)(1)(A) Except as provided under subdivision (a)(1)(B) of this section, the city or town council shall call a special election of aldermen, to be held at such times and places as the council may direct pursuant to a proclamation issued by the mayor in accordance with § 7-11-101 et seq., in the wards of the smaller municipality and for the election of aldermen from any other new wards that may be created by the council out of territory included in the larger city or incorporated town before the annexation, as provided in this subchapter.

(B) If the petition calls for a citywide election for all officials of the new consolidated city or incorporated town, then the city or town council shall call a special election pursuant to a proclamation issued by the mayor in accordance with § 7-11-101 et seq. for all city or town officials to be held at the times and places as it may direct throughout each ward of the consolidated city or incorporated town.

(2) If the implementation of the consolidation of the cities or towns is delayed, the special election for new aldermen or all city officials shall be held at least forty-five (45) days before the effective date of the consolidation.

(b) Each ward of the consolidated city or incorporated town shall have two (2) aldermen, to be elected in the same manner and for the same term as aldermen are elected in cities and incorporated towns.

ACA 14-40-1208. Termination of office.

(a) The term of office of all officers, aldermen, and employees of the smaller municipality and all laws in force therein shall cease upon and after the consolidation.

(b)(1) Any mayor who is forced from office because of a merger of two (2) or more municipalities under this subchapter is presumed to meet the minimum service period under § 24-12-123.

(2) If the mayor who is forced from office has less than ten (10) years of actual service as mayor, then he or she is entitled to a prorated retirement benefit that is equivalent to an amount that is equal to the percentage of the mayor's actual amount of service divided by the minimum ten (10) years of service required under § 24-12-123.

ACA 14-40-1209. Municipal property.

All public property of the smaller municipality shall belong to the consolidation city or incorporated town.

ACA 14-40-1210. Municipal debts.

(a) (1) The debts of each municipality owing prior to or at the time of the consolidation shall be paid by the consolidated municipality by appropriating the revenues derived from year to year from the territory and the inhabitants of what was formerly the larger municipality to the payment of the debts of the larger municipality owing before the consolidation.

(2) In like manner, the debts of the smaller municipality owing prior to and at the time of the consolidation shall be paid by appropriating the revenues derived from what was formerly the smaller municipality in such manner as to do the least injustice to the inhabitants of each former municipality in the way of a decrease in the improving or bettering of the territory as it formerly existed.

(b) In appropriating the revenues of either municipality to pay its own debts existing prior to the consolidation, neither the territory nor inhabitants of what was formerly the larger or smaller municipality shall be discriminated against in the distribution of police protection, board of health service, fire protection, public lighting, or other like public service.

ACA 14-40-1211. Enforcement of debts; preferences.

(a) Creditors of either municipal corporation, on account of obligations made prior to consolidation, shall not be paid sooner or shall not be permitted to enforce the collection of their debts sooner against the consolidated city or incorporated town than the separate municipality prior to consolidation could have paid its own debts or could have been forced to do so.

(b) In any proceeding in court, by mandamus or otherwise, against a consolidated city or incorporated town to enforce the obligations created by either municipal corporation prior to consolidation, no greater part of the revenue of the consolidated city or incorporated town shall be subject to be applied by the court at the instance of the creditor to the payment of the obligations than could have been subjected against the revenues of the particular city or incorporated town creating the obligation prior to consolidation if the particular municipal corporation having so created the obligation had not been annexed.

ACA 14-40-1212. Betterments and improvements.

(a) The wards formed out of the territory comprising the former territory of the smaller municipal corporation annexed under the provisions of this subchapter shall always receive betterments and improvements in an amount equal to the amount of revenue derived by the consolidated municipality from the territory and inhabitants of the smaller municipal corporation, after having deducted the pro rata share of the territory of the running

expenses necessary to be expended in maintaining the government of the entire city or incorporated town and after having taken into consideration the amount of revenues necessarily appropriated to pay the indebtedness due by the smaller municipality before consolidation, until the indebtedness is paid. In addition, those wards shall always receive their fair and equitable proportion of the police, board of health, fire protection, and lighting service of the larger city or incorporated town. They shall in all other ways receive fair and liberal treatment and their fair proportion of the expenditure of moneys by the larger city or incorporated town.

(b) (1) Aldermen representing the wards composing the territory of the smaller municipal corporation before consolidation shall have a right, at all times, to demand of the city council the benefit of the revenue collected from the wards, as provided for in this section.

(2) On the refusal of the council, the aldermen shall have a right to enforce the revenue rights by mandamus or other appropriate proceedings.

(c) In the event the aldermen, or fifty (50) qualified electors of the territory annexed, feel aggrieved in reference to the amount of revenue expended on the territory or as to the other rights guaranteed in this section to the annexed municipality, they may submit the matter to the circuit court, which is authorized by appropriate orders to compel the consolidated city or incorporated town to give the former territory of the smaller municipal corporation the full benefit of its revenue as provided in this section.

ACA 14-40-1213. Contracts.

No franchises, contracts, or other obligations of an extraordinary nature, or other than those necessary for the ordinary and usual running of the affairs of either municipal corporation, which have been granted, made, or created by either municipal corporation after the passage of an ordinance favoring annexation, and prior to the consummation of the annexation, shall be valid and binding against the consolidated municipality, or any part thereof, in the event that a consolidation is effected within sixty (60) days after passage of the ordinance, unless they shall be afterward ratified by the consolidated city or incorporated town.

D. Detachment

For procedures to detach territory from a municipality see ACA 14-40-1801 — 14-40-1803, which provides for submission of the question to a vote of the people and petition to the county court. Also, ACA 14-40-1901 — 14-40-1903 provide that the city council may by resolution provide for the detachment from said city or town of any area which for more than ten (10) years has not been recognized by city officials and is deemed unsuitable

for urban development and petition to the county court for detachment of the designated area. After a hearing upon such petition by the county court, an order may be issued excluding such territory from the corporate limits. Special rules apply to regional airports, as Act 1420 of 1999 exempts them from any rules, regulations, ordinances, or permit requirements of a municipality. Act 1420 of 1999 also provides that the regional airport authority may elect to de-annex from a city or town after a municipality in which the airport property is located is annexed or consolidated with another municipality. In addition, individual landowners can request that their property be detached through the procedure set out in ACA 14-40-608.

ACA 14-40-608. Right to detach certain lands after an annexation proceeding.

(a) Within three (3) years after an annexation proceeding is completed under the provisions of this subchapter and the land remains the boundary of the city or town, the person owning all lands originally annexed into the city or town may be authorized to detach those annexed lands from the city or town under the provisions of this section, so long as the city or town has provided no utility services to those lands.

(b)(1) When a qualifying landowner notifies the municipality that he or she wishes to detach his or her land from the city or town under this section, the governing body of the municipality may pass an ordinance within thirty (30) days to detach the annexed, qualifying land from the municipality.

(2)(A) In order to notify the city or town, the landowner shall file an affidavit with the city clerk or recorder stating that:

(i) His or her land was annexed;

(ii) His or her land is located inside the city or town along the municipal boundary; and

(iii) He or she desires the annexed land to be detached from the municipality.

(B) The affidavit shall be filed along with a certified copy of the plat of the annexed land he or she desires to be detached and a copy of the order of the county court approving the annexation and the resolution or ordinance of the municipal governing body accepting the annexation.

(c) If the municipal governing body approves the ordinance to detach the territory, the clerk or recorder of the municipality shall duly certify and send one (1) copy of the plat of the detached territory, one (1) copy of the ordinance detaching the territory, and one (1) copy of the qualifying affidavit to the county clerk.

(d)(1) The county clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them.

(2) The county clerk shall forward one (1) copy of the plat of the detached territory and one (1) copy of the ordinance detaching the territory to the Director of the Tax Division of the Arkansas Public Service Commission, who shall file and preserve them and shall notify all utility companies having property in the municipality of the detachment proceedings.

SIMULTANEOUS DETACHMENT AND ANNEXATION

ACA 14-40-2101. Simultaneous detachment and annexation by two (2) cities.

(a) When the boundaries of two (2) municipalities are contiguous to and adjoining one another, and one (1) municipality desires to detach and annex territory in another municipality, then the governing body of the municipality desiring to detach and annex territory may propose an ordinance calling for the simultaneous detachment of the lands from the one (1) municipality and the annexation of the lands into its municipal limits. The municipality desiring to annex land in the adjoining city, after the passage of the ordinance calling for detachment and annexation, shall send the ordinance to the governing body of the city or town in which the lands are located.

(b)(1) The ordinance will provide a legal description of the lands proposing to be detached and annexed and describe generally the reasons for proposing the action.

(2) The governing body of the city or town in which the lands are located shall conduct a public hearing within sixty (60) days of the proposal of the ordinance calling for the detachment and annexation.

(3) At least fifteen (15) days prior to the date of the public hearing, the governing body of the proposing municipality shall publish a legal notice setting out the legal description of the territory proposed to be detached and annexed. Municipal officials of the proposing city or town, officials of the city or town in which the lands are located, and property owners within the area proposed to be detached and annexed may appear at the public hearing to present their views on the proposal.

(c)(1) At the next regularly scheduled meeting following the public hearing, the governing body of the municipality in which the lands are located may bring the proposed ordinance up for a vote to concur in the detachment and annexation.

(2) If a majority of the total number of members of the governing body vote for the proposed detachment and annexation ordinance, then a prima facie case for detachment and annexation shall be established, and the proposing municipality shall proceed to render services to the newly annexed area.

(d) The decision of the municipal governing bodies shall be final unless suit is brought in the chancery court

of the appropriate county within thirty (30) days after passage of the ordinance to review the mutual actions of the governing bodies.

(e)(1) As soon as the ordinance proposing the detachment and annexation is final, the territory shall be deemed and taken to be a part and parcel of the limits of the city or town annexing it, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of the city or town.

(2) The governing body of the annexing city or town shall direct the municipal clerk or recorder to duly certify one (1) copy of the plat of the annexed territory and one (1) copy of the proposing ordinance as adopted by both governing bodies to the county clerk.

(3) The clerk shall forward a copy of each document to the Secretary of State, who shall file and preserve them.

ACA 14-40-2002. Annexation into Adjoining Municipality.

(a)(1) A landowner or group of landowners seeking additional municipal services may have their land detached from the municipality in which it is located and annexed into another municipality that borders the land.

(2) However, before annexation is allowed, the municipality in which the land is located shall have an opportunity to provide the services.

(b) The following procedure shall apply:

(1) The landowner or landowners shall file a statement with the municipality in which the land is located listing the municipal service or services being sought and stating that:

(A) The municipality is not providing services necessary to create improvements, provide employment or additional employment, subdivide, or otherwise maximize the use and value of the property;

(B) All the land in the request must compose one (1) area that is contiguous to another municipality;

(C) The services are available in another municipality that borders the land subject to the request; and

(D)(i) The municipality is requested to make a commitment to take substantial steps, within one hundred eighty (180) days after the statement is filed, toward making the services available and within each thirty-day period thereafter to continue taking steps to demonstrate a consistent commitment to provide the service within a reasonable time, as determined by the kind of services requested.

(ii) The commitment must be made in writing to the landowner within thirty (30) calendar days of the filing of the statement, or the landowner may seek to have the land detached from the municipality and annexed into the other municipality.

(iii) The landowner must take appropriate steps to make the land accessible to the service and comply with

reasonable requests of the municipality that are necessary for the service to be provided;

(2) The landowner or landowners may request the annexation of the land into the other municipality and thereby detach the land from the boundaries of the municipality in which the land is currently located, if:

(A) The municipality in which the land is located fails to execute a commitment to services within thirty (30) days after the statement is filed; or

(B) The municipality executes the commitment to services but fails to take the action required under subdivision (b)(1)(D) of this section;

(3)(A) The land shall be annexed into the other municipality if, after a request by the landowner or landowners, the governing body of the municipality into which annexation is sought indicates by ordinance, resolution, or motion its commitment to make the services available and approves the request for annexation.

(B)(i) The annexation shall be void and the land shall be returned to the original municipality if the annexing municipality fails to take substantial steps within one hundred eighty (180) days after the passage of the ordinance, resolution, or motion to make the services available and, within each thirty-day period thereafter, continues taking steps demonstrating a consistent commitment to provide the service within a reasonable time, as determined by the kind of services requested.

(ii) The landowner must have taken appropriate steps to make the land accessible to the service and complied with the reasonable requests of the municipality that are necessary for the service to be provided.

(iii) However, if the requested services are not provided, accepted, and in place within twelve (12) months after the property is accepted by the annexing jurisdiction or substantial steps are not taken to provide, accept, and have the services in place within this time period, then the detachment and annexation shall be void and all property returned to its original jurisdiction; and

(4) The land shall remain in the original municipality until it is annexed into the other municipality.

(c) Land annexed pursuant to this section shall not be eligible for reannexation under this section for a period of two (2) years.

(d) This section shall apply to residential, commercial, industrial, and unimproved land.

(e) For the purposes of this section, "services" means electricity, water, sewer, fire protection, police protection, drainage and storm water management, or any other offering by the municipality that materially affects a landowner's ability to develop, use, or expand the uses of the landowner's property.

ACA 14-40-2003. No Split or Island.

(a) In no event shall the provisions of this subchapter allow a municipality to be split in half or to have any of its land separately encircled, thereby creating an island of that city within the boundaries of another city.

(b) Any detachment and annexation occurring that creates a split or island shall be void and all properties returned to their original municipality.

ACA 14-40-2004. Hearing in Circuit Court; Appeal.

(a)(1) The circuit courts of the state shall have exclusive jurisdiction to hear all matters related to this subchapter.

(2) The circuit court of the county in which the municipalities are located or, in the event that the municipalities are located in different counties or judicial districts, the circuit court of the county or judicial district that has within the county's or judicial district's boundaries the smallest of the two (2) municipalities in population according to the latest federal decennial census, shall have exclusive jurisdiction to hear all matters related to this subchapter.

(b)(1) Upon request of either affected municipality, the landowner or group of landowners, or their representatives, the circuit judge shall hold a hearing or series of hearings related to the provisions of this subchapter.

(2) The circuit judge shall make findings as are necessary to determine whether there has been substantial compliance or noncompliance with the requirements of this subchapter.

(c) At any time, but in no event later than twenty (20) days, after the adoption or rejection of the ordinance bringing the subject property into the annexing jurisdiction, the affected municipalities, landowners, or their representatives may request a hearing before the circuit court on any matter related to this subchapter.

(d) In the event an action is brought in circuit court by any party, the time period for the requested services to be provided, accepted, and in place as provided in § 14-40-2002(b)(3)(B)(iii) shall be tolled until entry of a ruling by the circuit judge and the conclusion of any appeals from that court.

ACA 14-40-2005. Filing.

(a) All documents produced by landowners, municipalities, or others relating to detachment and annexation as enumerated in this subchapter shall be filed with the circuit clerk with copies served upon the municipality and landowners.

(b)(1) The circuit clerk shall establish a system of filing for these matters upon action's having been taken by a landowner or group of landowners pursuant to the provisions of this subchapter.

(2) The circuit clerk's file shall be considered the official record of all matters and proceedings under this subchapter.

Other Effects of Annexation

Annexation procedures are also affected by legislation creating a retail open access system for the electric industry. When territory is annexed by a city or town operating a municipal electric utility that does not offer retail open access, the municipal utility may not provide electric services to that territory until retail open access is available. The city will be permitted, however, to charge franchise fees for electric services provided to the annexed areas. When a city or town operating a municipal electric utility that does offer retail open access annexes territory, the municipal utility may acquire the distribution facilities of the annexed area subject to the valuation regulations set out at ACA 14-207-101 – 14-207-106 normally imposed on a municipality acquiring utilities.

II. Sample Annexation Ordinances, Petitions, Orders, Etc.

ORDINANCE NO. _____
AN ORDINANCE SUBMITTING
TO THE VOTERS OF THE CITY OF
_____, ARKANSAS, AND
OTHER AFFECTED PERSONS, THE
QUESTION OF ANNEXATION
TO SAID CITY OF _____
CERTAIN CONTIGUOUS
TERRITORY; AND DECLARING
AN EMERGENCY

(Use at least one of the following applicable WHEREAS clauses.)

WHEREAS, it appears to the City Council of the City of _____, Arkansas, that the annexation of certain hereinafter described territory, contiguous to the City of _____, is necessary for the orderly growth and development of the City;

WHEREAS, the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary;

WHEREAS, the lands are platted and held for sale or use as municipal lots, or whether platted or not, the lands are held to be sold as suburban property;

WHEREAS, the lands are needed for proper municipal purposes; or

WHEREAS, the lands are valuable by reason of their adaptability for prospective municipal uses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, ARKANSAS:

SECTION 1. That there shall be submitted to the qualified electors of the City of _____ and of the following described area, the question of the annexation of the following described territory to the City of _____:

[insert legal description of area to be annexed]

A map depicting said annexation area is attached hereto as Exhibit A and made a part hereof.

SECTION 2. The question of annexation of the territory described above in Section 1 shall be submitted to the electors qualified to vote on this issue at a special election to be held on Tuesday, (month, day, year). Once this ordinance takes effect, the City Clerk shall immediately notify the County Election Commission and the County Clerk by forwarding to each, a certified copy of this ordinance and the map showing the area to be annexed.

SECTION 3. If at such election a majority of the qualified electors voting in such election shall vote for such annexation, the annexation shall be effective and the territory included within the corporate limits of the City of _____ thirty (30) days following the County Clerk's certification of the election results and recording of the same, along with the description and a map of the annexed area, in the county records, and filing a certified copy thereof with the Secretary of State; or in the event an action is filed with the Circuit Court, on the date the judgment of said Court becomes final. If a majority of the qualified electors voting on the issue at the election vote against the annexation, the annexation ordinance shall be null and void.

SECTION 4. No later than forty-five (45) days prior to the election, the city shall identify all persons who reside within the area proposed to be annexed, and the county clerk shall assist the city in determining the names and addresses of all qualified electors residing within that area.

SECTION 5. The city clerk shall give notice of the election by publication by at least one (1) insertion in some newspaper having a general circulation in the city.

SECTION 6. If the annexation is approved and becomes final, the governing body of the city shall, by ordinance, as soon as practical after the annexation, attach and incorporate such annexed territory to and in one (1) or more wards of the city lying adjacent thereto, and the territory so assigned and attached to a ward shall thereafter be considered and become a part thereof as fully as any other part of the city.

SECTION 7. If the annexation is approved and becomes final, the following services shall be extended to the area within three (3) years:

| SERVICE | DATE |
|--------------------|-------------|
| Police Protection | Immediately |
| Fire Protection | Immediately |
| Code Enforcement | Immediately |
| Animal Control | Immediately |
| Sanitation Service | Immediately |
| Street Maintenance | Immediately |

SECTION 8. The ballots used at said election on the question of annexation shall be marked as follows:

[] FOR annexation of the territory described in Ordinance No. _____.

[] AGAINST annexation of the territory described in Ordinance No. _____.

SECTION 7. Emergency Clause. This ordinance being necessary for the immediate preservation of the public peace, health, safety, and welfare, as well as compliance with special election statutes, an emergency is hereby declared to exist and this ordinance shall be effective and in full force and effect from and after its passage and approval.

PASSED: _____

ATTEST: _____

Clerk or Recorder

APPROVED: _____

Mayor

CERTIFICATE

I, _____, City Clerk of the City of _____, hereby certify that this ordinance was duly passed and approved by a two-thirds vote of the total number of members the City Council of the City of _____, Arkansas, on the ____ day of _____, 2008.

Seal

City Clerk
City of _____

ORDINANCE NO. _____
AN ORDINANCE ANNEXING
CERTAIN LANDS THAT ARE
COMPLETELY SURROUNDED
BY THE INCORPORATED
LIMITS OF THE CITY OF

;
DECLARING AN EMERGENCY;
AND FOR OTHER PURPOSES.

WHEREAS, ACA 14-40-501—14-40-503 provides that unincorporated islands of land that have been completely surrounded by the incorporated limits of a municipality or state boundary may be annexed by that municipality; and

WHEREAS, the City of _____ desires to annex certain lands more completely described below; and

WHEREAS, all necessary urban services, such as fire and police protection, are to be extended to such area within a reasonable period of time; and

WHEREAS, the area to be annexed complies with the standards for lands qualifying for annexation which are set forth in ACA 14-40-302 and ACA 14-40-501; and

WHEREAS, a public hearing was held on (month, day, year), regarding this proposed annexation; and

WHEREAS, on (month, day, year), a legal notice was published setting out the legal description of the territory proposed to be annexed, and all property owners within the area were notified by certified mail of their right to appear at the public hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, ARKANSAS:

SECTION 1. That the following described unincorporated area which is completely surrounded by the city limits of the City of _____ is hereby annexed to the City of _____
(description of the area)

SECTION 2. All necessary urban services, such as police and fire protection, shall be extended to such area within a reasonable time.

SECTION 3. Because these areas are in need of all necessary urban services, such as police and fire protection, and this is necessary for the public peace, health, safety and welfare, an emergency is declared to exist. Therefore, this ordinance shall be in full force and effect from after the date of the passage.

PASSED: _____

ATTEST: _____

Clerk or Recorder

APPROVED: _____

Mayor

IN THE _____
COUNTY COURT IN THE
MATTER OF ANNEXING TO THE
CITY OF _____,
ARKANSAS, CERTAIN TERRITORY
CONTIGUOUS TO THE SAID
CITY OF _____,
ARKANSAS.

PETITION

We, as property owners of the following described area, do hereby petition the County Court of _____, Arkansas, to annex the following lands to the City of _____, Arkansas. We further state that the petition is signed by a majority of the real estate owners owning more than one-half of the acreage in said area, and do further by our petition appoint _____ (person or persons) to act on behalf of the petitioners in presenting this matter to the court.

Description of the area to be annexed to the City of _____, Arkansas:

(description of the area)

NAME _____

ADDRESS _____

IN THE _____ COUNTY
COURT IN THE MATTER OF
ANNEXING TO THE CITY OF
_____, ARKANSAS,
CERTAIN TERRITORY
CONTIGUOUS TO THE CITY OF
_____, ARKANSAS.

ORDER

On this the (month, day, year), is filed the petition of real estate owners desiring the annexation of territory to the City of _____, Arkansas, more particularly described therein, and this Court does hereby fix (month, day, year), as the date for hearing on said petition, and _____, the agent named by said petitioners, shall give notice of such hearing as provided by law, said hearing to be held in the office of the County Judge at _____ a.m.

County Judge

NOTICE

Notice is hereby given that there has been filed in the County Court of _____, Arkansas, the petition of _____ and others, asking for the annexation to the City of _____ of the following described lands situated in _____ County, Arkansas, and contiguous to said city, to-wit:

(description of territory)

A plat of said land proposed for annexation is on file with said petition in the office of the Clerk of said Court, and the undersigned has been named by the petitioners as the person authorized to act for them.

The Court has fixed the _____ day of _____ at _____ o'clock as the date for a hearing on said petition, and all interested persons are now notified to be present at said Court at the time and date so fixed.

Given this (month, day, year).

IN THE _____
COUNTY COURT IN THE MATTER
OF ANNEXING TO THE CITY OF
_____, ARKANSAS,
CERTAIN TERRITORY
CONTIGUOUS TO THE SAID CITY
OF _____, ARKANSAS.

DECREE OF ANNEXATION

On this regular day of a regular term of the County Court of _____ County, Arkansas, there is presented to the Court by _____, agent(s) of the petitioners, a petition for annexation of certain territory, hereinafter more particularly described, to the City of _____, Arkansas, and the Court being fully advised of the facts and the law, doth hereby find, judge and decree as follows:

The Court finds that the petition was filed more than thirty (30) days prior to this date and that in said petition the said _____ was selected by the petitioners to act on their behalf in filing and presenting the petition.

The court further finds that notice of the hearing on this matter was published one (1) time a week for three (3) consecutive weeks as required by Ark. Code Ann. 14-40-602.

The Court doth find that a majority of the total number of real estate owners in the area affected by this petition have signed said petition and that such majority owns more than one-half of the acreage affected.

The Court further finds that the territory sought to be annexed was accurately described in said petition and that said territory is contiguous to the boundaries of the City of _____, Arkansas.

The Court further finds that attached to and made a part of said petition is an accurate map of the territory sought to be annexed to the City of _____.

The Court further finds that the prayer of the petition is right and proper.

Therefore, the Court doth hereby ORDER, JUDGE and DECREE that the following described territory be and the same is hereby annexed to and made a part of the City of _____, Arkansas, to-wit:

(description of territory)

The Court doth further order that the original papers in this cause be delivered to the Clerk of _____ County, Arkansas, same to be properly recorded upon the records of _____ County, Arkansas, and the Clerk, after properly recording and filing the original papers, prepare transcripts of same; that one of the certified transcripts be delivered to the City of _____, Arkansas, one copy to the Secretary of State and one copy to the Director of the Tax Division of the Arkansas Public Service Commission.

County Judge

ORDINANCE NO. _____
AN ORDINANCE ACCEPTING
THE ANNEXATION OF CERTAIN
TERRITORY TO THE CITY OF
_____, ARKANSAS,
AND MAKING SAME A PART OF
THE CITY OF _____,
AND ASSIGNING SAME TO
WARDS.

WHEREAS, petition was filed with the County Clerk of _____ County, Arkansas, by the majority of the real estate owners of the hereinafter described territory praying that said territory be annexed to, and made a part of the City of _____, Arkansas; and,

WHEREAS, on (month, day, year), the County Court of _____, Arkansas, found that the petition was signed by a majority of the real estate owners in said territory; that said territory was contiguous and adjoining the present corporate limits of the City of _____, Arkansas; that an accurate plat or map of said territory had been filed with and made a part of said petition; that proper notice had been given for the time and in the manner prescribed by law, and that all things pertaining thereto had been done in the manner prescribed by law, and that said lands and territory should be annexed to and made a part of the City of _____, Arkansas, subject to the acceptance of same by the City Council of said City at the proper time, as provided by law; and

WHEREAS, the time fixed by law for appealing from said order of annexation made by the County Court has expired and no appeal has been taken from said order.

Now, therefore, be it ordained by the city council of the City of _____, Arkansas:

Section 1. That the following described lands and territory contiguous and adjoining the City of _____, Arkansas, be and the same is hereby accepted as part of and annexed to and made a part of the City of _____.

(description of the area)

SECTION 2. That the above described territory shall be annexed to and made a part of Ward _____ of the City of _____, and the same shall henceforth be a part of said ward as fully as existing parts of said ward.

Passed and approved (month, day, year).

APPROVED: _____

Mayor

ATTEST: _____

Clerk or Recorder



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