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Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule

Annexation, the process by which a municipality extends its boundaries to include outlying areas,¹ is usually an attractive prospect to both the annexing municipality and the territory being annexed. The main benefit to citizens in the annexed area is that after annexation they receive city services and access to city facilities.² Through annexation, the city forces persons in fringe areas who often use municipal services to share the tax burden of those services.³ Furthermore, annexation ensures that the development of fringe areas is not inconsistent with city planning objectives.⁴

Annexation has been a major factor in the growth of North Carolina cities.⁵ From 1917 to 1947, there were 225 special legislative acts extending municipal corporate boundaries in North Carolina.⁶ In the seven year period from 1970 to 1977, annexations by cities with populations over 2500 accounted for 1480 corporate boundary extensions.⁷ Annually, about one-half of North Carolina's cit-

1. Note, *Annexation—North Carolina's Referendum Procedure*—Texfi Industries, Inc. v. City of Fayetteville, 17 WAKE FOREST L. REV. 765, 767-68 (1981).

2. NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS & NORTH CAROLINA LEAGUE OF MUNICIPALITIES, REPORT OF THE JOINT ANNEXATION STUDY COMMISSION OF THE NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS AND THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES 21 (1980) [hereinafter cited as NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS]; NORTH CAROLINA BAR ASSOCIATION, LOCAL GOVERNMENT LAW VI-11 to -12 (1959) (quoting MUNICIPAL GOVERNMENT STUDY COMMISSION, SUPPLEMENTARY REPORT OF MUNICIPAL GOVERNMENT STUDY COMMISSION 5 (1959)).

3. DEPARTMENT OF URBAN STUDIES NATIONAL LEAGUE OF CITIES, ADJUSTING MUNICIPAL BOUNDARIES 1-2 (1966), reprinted in SELECTED MATERIALS ON MUNICIPAL ANNEXATION 78-79 (W. Wicker ed. 1980). N.C. GEN. STAT. § 160A-58.10 (1982) provides that an annexed area is subject to immediate taxation by the annexing authority.

4. According to a 1958 study, problems may arise in uncontrolled fringe areas:

We have viewed with alarm the experience in other states where failure of cities to expand their boundaries periodically has resulted in what is called the "metropolitan problem." We have analyzed what can happen if a city is surrounded by heavily populated fringe areas that cannot for a variety of reasons be annexed by the city. We have noted fringe areas that are, in every sense of the word, slums. We have noted fringe areas whose problems of sanitation and traffic and law enforcement are so great that cities are discouraged from attempting annexation. We have noted fringe areas so poorly developed that the city finds it impossible to extend water and sewer facilities through these areas to serve presently undeveloped land that could accommodate sound development.

MUNICIPAL GOVERNMENT STUDY COMMISSION, REPORT OF MUNICIPAL GOVERNMENT STUDY COMMISSION 19 (1958), reprinted in SELECTED MATERIALS ON MUNICIPAL ANNEXATION 41 (W. Wicker ed. 1980). See also A. COATES, INTRODUCTION TO GOVERNMENT IN NORTH CAROLINA, 21-22 (tracing the history of municipal growth in North Carolina and observing that when fringe areas came to be "sufficiently near to affect the health of the inhabitants of the town," the town's limits were inevitably extended); ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS 63 (1962), reprinted in SELECTED MATERIALS ON MUNICIPAL ANNEXATION 72 (W. Wicker ed. 1980) ("[i]f uncontrolled, [fringe] areas can be a source of trouble and cost for the entire area—the residents of the fringe area as well as the annexing city").

5. NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS, *supra* note 2, at 11.

6. *Id.* at 12. Until 1947 the only way to annex territory to a municipality was by special act of the general assembly. *Abbott v. Town of Highlands*, 52 N.C. App. 69, 73, 277 S.E.2d 820, 823, cert. denied, 303 N.C. 710, 283 S.E.2d 136 (1981).

7. NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS, *supra* note 2, at 17.

ies make three annexations each.⁸ In this flurry of annexation activity the boundaries of North Carolina's cities move closer to one another, increasing the likelihood that two or more municipalities will want to annex the same fringe area. Under North Carolina statutes more than one municipality may have authority to annex the same territory;⁹ thus, a conflict might ensue if two or more municipalities take action at once.

The North Carolina Supreme Court has resolved two such conflicts. In *Town of Hudson v. City of Lenoir*¹⁰ and in *City of Burlington v. Town of Elon College*,¹¹ the court had to determine which of two competing annexation attempts would prevail. The *Hudson* court considered the nature of the competing proceedings and chose a "voluntary" proceeding over an "involuntary" one.¹² In 1984 the court in *Burlington* explicitly overruled the *Hudson* decision, holding that the "winner" of the race for annexation is the first municipality officially to begin its proceedings, regardless of the type of proceedings involved.¹³ The *Burlington* court thus adopted the prior jurisdiction rule, which had been long recognized elsewhere as dispositive of disputes between municipalities over annexation of the same territory.¹⁴

In the *Hudson* case the town of Hudson sought to extend its boundaries under statutes permitting unilateral, involuntary annexation,¹⁵ a type of annexation that does not require the consent of residents in the area to be annexed. The city of Lenoir, responding to a petition from residents of the area to be annexed, sought to annex the same territory pursuant to the voluntary procedure prescribed by section 160A-31 of the North Carolina General Statutes.¹⁶ The court temporarily restrained both municipalities from pursuing their proceedings. After the restraining order was lifted, both municipalities simultaneously began

8. *Id.* at 16.

9. For a discussion of statutory annexation methods in North Carolina and jurisdictional requisites for annexation, which may be satisfied by more than one municipality, see *infra* notes 25-42 and accompanying text.

10. 279 N.C. 156, 181 S.E.2d 443 (1971).

11. 310 N.C. 723, 314 S.E.2d 534 (1984).

12. "Voluntary" proceedings are those initiated by the residents of an area proposed for annexation. "Involuntary" annexations proceed regardless of the desire or consent of those residents. See *infra* notes 28-42 and accompanying text.

13. *Burlington*, 310 N.C. at 730, 314 S.E.2d at 538.

14. See, e.g., *Borghi v. Board of Supervisors*, 133 Cal. App. 2d 463, 284 P.2d 537 (1955); *City of Daytona Beach v. City of Port Orange*, 165 So. 2d 768 (Fla. Dist. Ct. App. 1964); *City of Muscatine v. Waters*, 251 N.W.2d 544 (Iowa 1977); *Pfeiffer v. City of Louisville*, 240 S.W.2d 560 (Ky. 1951); *State ex rel. Orono v. Village of Long Lake*, 274 Minn. 264, 77 N.W.2d 46 (1956); *Sugar Creek v. City of Independence*, 466 S.W.2d 100 (Mo. Ct. App. 1971); *City of West Fargo v. City of Fargo*, 251 N.W.2d 918 (N.D. 1977); *State ex rel. Winn v. City of San Antonio*, 259 S.W.2d 248 (Tex. Civ. App. 1953); *Town of Greenfield v. City of Milwaukee*, 259 Wis. 77, 47 N.W.2d 292 (1951). But see VA. CODE ANN. § 15.1-1037(a) (1981) (Virginia statutes do not follow the prior jurisdiction rule and instead provide that if there is an annexation dispute, "the court in which the original proceedings are pending . . . shall consolidate the cases and hear them together, and shall make such decision as is just taking into consideration the interest of all parties to each case.").

15. N.C. GEN. STAT. §§ 160A-33 to -56 (1982 & Supp. 1983) provide for involuntary annexation; §§ 160A-33 to -44 govern involuntary annexations by cities of fewer than 5000 persons; and §§ 160A-45 to -56 govern involuntary annexations by cities of 5000 or more. Because it was populated by fewer than 5000 persons, the Town of Hudson used §§ 160A-33 to -44 in its attempted involuntary annexation.

16. *Id.* § 160A-31 (1982).

new annexations; thus, neither proceeding was commenced before the other. Searching for a basis on which to declare that one of the proceedings would prevail, the court examined the nature of the two proceedings and noted that statutes for voluntary annexation allow for quicker completion of proceedings than do statutes for involuntary annexation.¹⁷ The court concluded that the general assembly preferred an annexation that had the blessing of the landowners and ruled that the voluntary annexation prevailed over the simultaneously begun involuntary one.¹⁸ Because the two annexation attempts had been initiated simultaneously, the *Hudson* court could not give priority based on a first-to-start rule. The court, however, did not limit its holding to simultaneously begun annexations; instead, the court suggested that voluntary proceedings would always be given priority.¹⁹

In *Burlington*²⁰ the North Carolina Supreme Court faced another contest between an involuntary and a voluntary proceeding. Unlike *Hudson*, in which neither of two competing proceedings clearly had been begun first, the town of Burlington had initiated its involuntary proceedings for annexing a territory before the town of Elon College ever received a petition from the territory's residents to begin voluntary proceedings. Nonetheless, Elon College completed its proceedings first. Burlington brought suit alleging that it had prior jurisdiction over the territory and, therefore, that Elon College's activities were null and void. The North Carolina Supreme Court accepted Burlington's reasoning, rejected the *Hudson* court's holding that voluntary annexation proceedings are "more equal" than involuntary ones, and adopted instead the rule of prior jurisdiction.²¹

Under the prior jurisdiction rule, when "separate equivalent proceedings relat[e] to the same subject matter, that one which is prior in time is prior in jurisdiction to the exclusion of those subsequently instituted."²² A proceeding is "prior in time" if it is initiated before another; the proceeding is initiated when

17. *Hudson*, 279 N.C. at 161, 181 S.E.2d at 447.

18. *See id.* at 161-62, 181 S.E.2d at 447.

19. *See id.* The *Hudson* court cited no cases for support and one case to the contrary. The contrary case, which the court cited with the signal "*but see*," was *Town of Clive v. Colby*, 255 Iowa 483, 123 N.W.2d 331 (1963) (supplemental opinion).

20. *City of Burlington v. Town of Elon College*, 310 N.C. 723, 314 S.E.2d 534 (1984).

21. *Id.* at 728-30, 314 S.E.2d at 537-39. Had the *Hudson* court restricted its holding to cases in which an involuntary and voluntary proceeding began simultaneously, the *Burlington* court could have limited *Hudson* to the facts of the case. Because the *Hudson* holding went beyond the facts of the case, however, the *Burlington* court had to overrule *Hudson* to adopt the prior jurisdiction doctrine. To the extent that *Hudson* is still good law, it applies only when multiple annexation attempts are simultaneously begun.

22. 2 E. McQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 7.22(a), at 377 (3d rev. ed. 1979). The prior jurisdiction rule

applies, generally speaking, to and among proceedings for the municipal incorporation, annexation, or consolidation of a particular territory, i.e., in proceedings of this character, while the [proceeding] first commenced is pending, jurisdiction to consider and determine others concerning the same territory is excluded. Thus, where two or more bodies or tribunals have concurrent jurisdiction over a subject matter, the one first acquiring jurisdiction may proceed, and subsequent purported assumptions of jurisdiction in the premises are a nullity.

Id. at 377-78.

the "first mandatory public procedural step" is taken.²³ Applying the prior jurisdiction rule to the *Burlington* facts, the supreme court found that Burlington took the first mandatory public procedural step by following the first directive of the statute pursuant to which it annexed—adopting a resolution of intent to annex.²⁴ Because adoption of this resolution occurred before Elon College made any annexation efforts, Elon College had no jurisdiction to annex, even though it completed its proceedings first.

Before examining potential implications of the prior jurisdiction rule, it is useful to consider the various methods by which annexation may be accomplished in North Carolina.²⁵ Although the general assembly has the authority to extend municipal boundaries by special act,²⁶ it has also enacted statutes allowing municipalities to extend their boundaries independent of the general assembly. In recent years these more local forms of annexation have become increasingly common.²⁷

One method by which municipalities may annex without reference to the general assembly or to the desires of citizens living in an area to be annexed is the involuntary method prescribed by sections 160A-33 to -56 of the North Carolina General Statutes.²⁸ If the annexing body has at least 5000 citizens, it proceeds under sections 160A-33 to -44,²⁹ the statutes under which Burlington proceeded, and if it has fewer than 5000, it proceeds under sections 160A-45 to -

23. See *infra* notes 53-61 and accompanying text.

24. See N.C. GEN. STAT. § 160A-49(a) (1982) (current version at *Id.* § 160A-49(a) (Supp. 1983)). For a discussion of how the amended version of § 160A-49 might change the *Burlington* court's determination that the resolution of intent is the first step, see *infra* text accompanying note 59.

25. N.C. CONST. art. VII, § 1 gives the general assembly the power to create and control the boundaries of cities and towns. The general assembly has delegated much of this power to the municipalities, providing statutory means by which municipalities may effect annexation without legislative action. When the general assembly has so delegated its authority, annexation is invalid unless the municipalities comply with the statutory directives. *E.g., In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 16-17, 249 S.E.2d 698, 707 (1978) (quoting *Huntley v. Potter*, 255 N.C. 619, 627, 122 S.E.2d 681, 686 (1961)). "Substantial compliance" with the statutes, however, is probably sufficient. For a discussion of substantial compliance, see *infra* notes 67-83 and accompanying text.

Despite the delegation of its annexation powers, the general assembly has retained the right to annex by special legislative act, N.C. GEN. STAT. § 160A-21 (1982), formerly the only means by which annexation could be accomplished, *Abbott v. Town of Highlands*, 52 N.C. App. 69, 73, 277 S.E.2d 820, 823, *disc. rev. denied*, 303 N.C. 710, 283 S.E.2d 136 (1981). Consideration of this method of annexation is beyond the scope of this Note.

26. N.C. GEN. STAT. § 160A-21 (1982).

27. See *supra* notes 6-8 and accompanying text.

28. N.C. GEN. STAT. §§ 160A-33 to -56 (1982 & Supp. 1983). The U.S. Advisory Commission on Intergovernmental Relations has cited these statutes as model statutes. See NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS, *supra* note 2, at 2.

29. N.C. GEN. STAT. § 160A-34 (1982) specifically limits the application of §§ 160A-33 to -44 to annexing cities of fewer than 5000 persons. N.C. GEN. STAT. § 160A-33(4) (1982) notes that because

urban development in and around municipalities having a population of less than 5000 persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities . . . the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities and still attain the objectives set forth in this section.

56, the statutes under which Hudson proceeded.³⁰ To undertake this involuntary annexation, a municipality must be contiguous to at least one-eighth of the proposed annexed area's boundaries,³¹ the area proposed for annexation must not already be part of another municipality,³² and the annexed area must be developed for urban purposes.³³ Furthermore, a municipal governing board must pass a resolution identifying an area under consideration for annexation³⁴

30. N.C. GEN. STAT. § 160A-46 (1982) specifically limits the application of §§ 160A-45 to -56 to annexing cities of 5000 or more persons. Section 160A-45(4) notes that

new urban development in and around municipalities having a population of 5000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained.

31. *Id.* §§ 160A-36(b)(2), -48(b)(2). The definition of "contiguous" for involuntary annexation, set forth in §§ 160A-41(1) and 160A-53(1) is, with a few semantic changes, the same as the definition of "contiguous" for voluntary annexation under § 160A-31(f), *infra* note 39.

32. *Id.* §§ 160A-36(b)(3), -48(b)(3).

33. Section 160A-36(c) sets forth the "urban purposes" requirement for annexation by cities of fewer than 5000 persons:

An area developed for urban purposes is defined as any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional, or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts five acres or less in size.

Id. § 160A-36(c). Section 160A-48(c) defines an area developed for "urban purposes" when annexation is sought by a city of 5000 or more persons. *Id.* § 160A-48(c) (Supp. 1983). Such an area:

(1) Has a total resident population equal to at least two persons for each acre of land included in its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts five acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional, or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five acres or less in size.

Id. Cities of 5000 or more persons may also annex an area that does not meet the requirements of § 160A-48(c) but:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or

(2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

Id. § 160A-48(d) (1982).

Huntley v. Potter, 255 N.C. 619, 629, 122 S.E.2d 681, 688 (1961) remanded for specification an ordinance which stated in conclusory terms that the area being annexed was developed for urban purposes.

34. N.C. GEN. STAT. §§ 160A-37(i)-(j), -49(i)-(j) (Supp. 1983). The requirement for adoption of an identifying resolution appears in an amended version of the statute not in effect when Burlington annexed under the involuntary procedures. For a discussion of the effect the amendment might have on the operation of the prior jurisdiction doctrine, see *infra* text accompanying note 59.

and a resolution of intent to annex.³⁵ The local board must prepare a report setting forth proposed boundary changes and proposed plans for extending municipal services to the area to be annexed.³⁶ Finally, a notice of public hearing and a public hearing are required before the local board may enact an annexation ordinance.³⁷

"Voluntary" proceedings are another means by which North Carolina municipalities may annex without legislative action.³⁸ Unlike involuntary proceedings, residents of the area to be annexed must initiate and consent to voluntary proceedings. Voluntary proceedings may accomplish the annexation of both contiguous³⁹ and satellite⁴⁰ areas. If the area to be annexed meets either the definition of "contiguous" or the definition of "satellite," annexation may be initiated by a petition signed by all residents of the proposed annexation area.⁴¹ The voluntary procedures further require public notice and a hearing prior to enactment of an annexation ordinance by the local board.⁴²

Because two or more North Carolina municipalities could satisfy the statutory prerequisites for annexation and could attempt annexation at the same time, a rule to govern which proceeding would prevail in those circumstances is necessary. Such a rule should ensure that annexation proceedings are predictable and orderly and that the better conceived plan, which furthers the interests of the greatest number of persons in an urban area, prevails. The recently adopted prior jurisdiction rule seems suited to address most of these concerns because it embodies certain of the policy objectives of annexation. Alternatives to the prior jurisdiction rule, however, also could address these concerns.

Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings. A rule declaring as the winner the first municipality to *complete* its proceedings would only encourage North Carolina municipalities to rush annexation proceedings in order to thwart the success of other proceedings begun earlier. In North Carolina each annexation method takes a different amount of time to complete, and thus it is possible, as in *Burlington*, that the second annexation to begin will be the first completed. Because the prior jurisdiction rule looks to the time of com-

35. N.C. GEN. STAT. §§ 160A-37(a), -49(a) (Supp. 1983).

36. *Id.* §§ 160A-35, -47 (1982 & Supp. 1983).

37. *Id.* §§ 160A-37(b) to (e), -49(b) to (e).

38. *Id.* § 160A-31 (1982).

39. Section 160A-31 defines an area as "contiguous" if

such area either abuts directly on the municipal boundary or is separated from the municipality by a street or a street right-of-way, a creek or a 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.

Id. § 160A-31(f).

40. *Id.* § 160A-58 to -58.6. This statute defines "satellite corporate limits" as "the corporate limits of a noncontiguous area annexed pursuant to this Part or a local act authorizing or effecting noncontiguous annexations." *Id.* § 160A-58(3). For further discussion of limitations on annexation of a satellite, see *infra* note 81.

41. N.C. GEN. STAT. §§ 160A-31(a), -58.1(a) (1982).

42. *Id.* §§ 160A-31(c)-(d), -58.2.

mencement rather than to the time of completion of proceedings,⁴³ it guarantees that the first annexation proceedings begun will not be undermined by subsequently initiated plans. Thus, the rule ensures predictability and eliminates the incentive for a rush to the finish line.

Because both the *Hudson* rule and the first-completed rule favor voluntary procedures,⁴⁴ which are undertaken with the blessing of residents in an area to be annexed, either rule arguably is preferable to the prior jurisdiction rule, which is blind to the nature of the competing proceedings and thus ignores the desires of residents. Furthermore, the voluntary procedures may have been preferred by the general assembly, for, as noted by the *Hudson* court,⁴⁵ they are quicker than the involuntary procedures. Considerable commentary, however, suggests that individual desires should not be paramount in annexation. Elaborating on the necessity of subordinating individual desires to effectuate sound urban development, a government study commission in 1958 declared:

[W]e believe in the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby *acquires* the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of a city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. Therefore, sooner or later his property must become subject to the regulations and services that have been found necessary and indispensable to the health, welfare, safety, convenience, and general prosperity of the entire urban area.⁴⁶

Although this policy appears to deprive property owners of their liberty, it is consistent with the maxim that an individual's property rights are only those that the law chooses to acknowledge. The policy also recognizes that an organized society is more far-sighted than are self-interested individuals. Individuals are more likely to resist annexation because of personal grievances or fears about a neighboring municipality and to seek annexation by one municipality solely to prevent annexation by another, precisely the scenario that led to the *Hudson* and *Burlington* cases.⁴⁷ In doing so individuals probably will not consider either the likely impact of annexation on an entire urban area or whether one municipality

43. 2 E. McQUILLAN, *supra* note 22, § 7.22(a), at 378.

44. A rule that would declare as the winner the first to the finish line almost always would favor the voluntarily annexing municipality because the voluntary procedures require less time to complete than do the involuntary procedures. The disparity in the time required to complete the various proceedings was noted in *Hudson*, 279 N.C. at 161, 181 S.E.2d at 447. The voluntary proceeding would win consistently if the *Hudson* rule governed annexation disputes because that rule favors voluntary proceedings.

45. *Id.*

46. MUNICIPAL GOVERNMENT STUDY COMMISSION, *supra* note 4, at 19-21 (quoted in *Burlington*, 310 N.C. at 729-30, 314 S.E.2d at 538).

47. See *Burlington*, 310 N.C. at 724-25, 314 S.E.2d at 535; *Hudson*, 279 N.C. at 157-58, 181 S.E.2d at 444.

is better equipped than another to extend municipal service to an annexed area. Moreover, residents of a territory under consideration for annexation might seek incorporation as a means of thwarting a neighboring municipality's annexation efforts. Such rushed incorporation might lead to unnecessary fragmentation of municipal services and leave North Carolina a conglomerate of tiny municipal corporations, none of which would be large enough to provide its inhabitants the diversity and quality of services more easily afforded by a larger entity.⁴⁸ That courts have so readily adopted the prior jurisdiction rule rather than one favoring the preferences of local residents demonstrates that the policy underlying annexation subordinates individual desires to the orderly growth of cities and the convenience, health, and safety of entire urban areas.⁴⁹

Certainly not all initial, involuntary annexation attempts are entirely noble⁵⁰ for municipalities might be as greedy and short-sighted as individuals. The first municipality to begin proceedings may well seek to annex merely as a political expediency.⁵¹ The first municipality to initiate proceedings might also see "an area, which will certainly be vital to [its] development in the foreseeable future, threatened by the possibility of a rival annexation or incorporation, [and] force . . . a premature annexation of the territory in order to protect its interests."⁵² Thus, a subsequently begun annexation attempt, whether voluntary or involuntary, does not always present the worse alternative; the second municipality is not necessarily less deserving of or less able to serve a new area than is the first municipality to begin its proceedings.

Although none of the alternatives—the first-completed rule, the *Hudson* rule, or the prior jurisdiction rule—is without drawbacks, the policy statements and the universal acceptance of the prior jurisdiction rule suggest widespread agreement that proceedings first begun are more likely to be well conceived than those subsequently begun. Both *Hudson* and *Burlington* support this conclusion; in each the subsequently begun proceeding was voluntary and little more than a response to an earlier-begun proceeding. Moreover, although none of the rules can guarantee that the best annexation plan will win, the prior jurisdiction rule does ensure greater predictability than the alternatives. Measuring priority from the date of commencement determines the outcome from the beginning,

48. The 1958 Study Commission observed

urban areas where the fringe is not unincorporated but a tangled thicket of small, financially weak and competing towns and special districts. In these areas it is impossible to find any one governmental unit which has the jurisdiction or financial ability to provide those services and facilities which are essential to the development of the entire urban area.

MUNICIPAL GOVERNMENT STUDY COMMISSION, *supra* note 4, at 19-21.

49. See N.C. GEN. STAT. §§ 160A-33(1), -45(1) (1982 & Supp. 1983) (setting forth as the policy behind involuntary annexation "[t]hat sound urban development is essential to the continued economic development of North Carolina").

50. "Some annexations have been attempted for less noble reasons. So-called land grabs for additional tax revenues, for increasing the area or population of the city as an end in itself, and competitive annexation to thwart anticipated annexation by another jurisdiction, have usually proved to be unwise actions." DEPARTMENT OF URBAN STUDIES NATIONAL LEAGUE OF CITIES, *supra* note 3, at 2.

51. Yeager, *City and Town Boundaries—Incorporation, Consolidation, Annexation, and Severance Under the Iowa Statutes*, 19 DRAKE L. REV. 1, 29 (1969).

52. *Id.* at 29-30.

whereas a rule looking to the date of completion would lead to uncertainty throughout the annexation process. A rule favoring voluntary proceedings would make an involuntary proceeding even more uncertain since the involuntary proceeding could be thwarted at any time by a voluntary one. Therefore, given the alternatives, the prior jurisdiction rule seems a practical choice.

North Carolina, having only recently adopted the prior jurisdiction rule, has yet to refine the doctrine to specify the limits of its application. One necessary refinement is the determination of what marks commencement of proceedings for purposes of acquiring prior jurisdiction. Another is a determination of how defective a proceeding must be before it will lose the benefits of prior jurisdiction. North Carolina courts also have yet to determine how quickly an annexing municipality must complete proceedings in order to retain prior jurisdiction.

Typically, proceedings are commenced for prior jurisdiction purposes when the "first mandatory public procedural step" in the statutory process is taken.⁵³ In North Carolina there is more than one statutory means of annexation,⁵⁴ so the first step will not be the same for all proceedings. The city of Burlington pursued annexation under the involuntary procedures permitting a city of 5000 or more persons to annex unilaterally;⁵⁵ the involuntary procedures for smaller cities are functionally identical.⁵⁶ Under these statutes at the time Burlington annexed, the first directive was that an annexing municipality adopt a resolution of intent,⁵⁷ and it was the adoption of such a resolution that marked the "first mandatory public procedural step" in that case.⁵⁸

A 1983 amendment to section 160A-49 of the North Carolina General Statutes, however, might have created a new first step in this particular statutory process.⁵⁹ The amendment, effective for resolutions of intent adopted on or after July 1, 1984, requires that at least one year prior to adopting the resolution of intent, a municipal governing board adopt a resolution identifying an area under consideration for annexation. A municipality may annex without the identifying

53. 2 E. McQUILLAN, *supra* note 22, § 7.22(a), at 378.

54. The statutory methods of annexation discussed in this Note are those that the municipalities may pursue without a specific act of the general assembly because these are the methods in which municipalities will more likely conflict with one another. Another means of annexation, annexation by special act of the general assembly, N.C. GEN. STAT. § 160A-21 (1982), will not be discussed in this Note in view of the intricacies of relations between the State and local bodies.

55. *Id.* §§ 160A-45 to -56 (1982 & Supp. 1983).

56. *Id.* §§ 160A-33 to -44. Given the statutory similarity, the "first mandatory public procedural step" in the involuntary process should be the same for both small and large municipalities.

57. *Id.* § 160A-49(a). An amendment to this statute, effective in 1984, prescribes another step before the adoption of the resolution of intent, namely adoption of a resolution identifying an area under consideration for annexation. *Id.* § 160A-49(i)-(j) (Supp. 1983). The statutes governing involuntary annexation by a smaller municipality were similarly amended. *Id.* § 160A-37(i)-(j). For a discussion of this amendment, see *infra* text accompanying note 59.

58. *Burlington*, 310 N.C. at 728, 314 S.E.2d at 537. A North Carolina decision prior to *Burlington* had determined that adoption of the resolution of intent "mark[s] the formal beginning of the municipality's actions." *Kritzer v. Town of Southern Pines*, 33 N.C. App. 152, 155, 234 S.E.2d 648, 651 (1977). Interestingly, in *City of Muscatine v. Waters*, 251 N.E.2d 544 (Iowa 1977), similar annexation proceedings were not officially begun for prior jurisdiction purposes until there was publication of notice of a public hearing on the proposed annexation.

59. N.C. GEN. STAT. § 160A-48(i)-(j) (Supp. 1983).

resolution, but in that event the ordinance annexing the particular area will not be effective until one year after the date of its adoption. Because there is an alternative to adoption of the identifying resolution, that resolution might not be deemed the "first mandatory public procedural step" for prior jurisdiction purposes. Since the identifying resolution is directed by the statute, however, it should be considered official and public enough to be the "first mandatory public procedural step." In fact, if the identifying resolution is not deemed to mark the first step, no municipality concerned about protection from competing annexation will adopt it; there will be a one-year wait whether a municipality adopts an identifying resolution or a resolution of intent, and it would be safer for a municipality to adopt a resolution of intent so that it could be assured the protection of the prior jurisdiction rule. If the new amendment is to have vitality, courts need to interpret it as giving jurisdictional priority to municipalities that choose the identifying resolution alternative.

The voluntary procedures for annexation of both a contiguous area⁶⁰ under section 160A-31 and a satellite area⁶¹ under section 160A-58 require a petition signed by all owners of real property in the area to be annexed.⁶² The receipt of this petition probably marks the "first mandatory public procedural step" of these processes. The *Hudson* case, which involved an involuntary and a voluntary proceeding, is unclear on whether the receipt of the petition by the local governing board or the investigation and certification of the petition's accuracy marks the beginning of voluntary proceedings. In reciting the facts, the court indicated that the voluntary procedure was initiated when investigation and certification of the petition were complete.⁶³ In the text of the opinion, however, the court detailed the steps taken to commence the proceedings and included the presentation of the petition to the governing board.⁶⁴ Under the precedent of other jurisdictions, presentation and receipt of the petition is sufficiently "public" to mark the beginning of proceedings.⁶⁵

Other jurisdictions have determined that the advantages of prior jurisdiction do not accrue to a municipality not complying with applicable statutes, even though that municipality commenced its proceedings first.⁶⁶ North Carolina has yet to decide how rigidly a municipality must comply with the letter of the statutes in order to obtain and retain prior jurisdiction. Because "substantial

60. For a definition of contiguous, see *supra* note 39.

61. For a general definition of satellite, see *supra* note 40.

62. N.C. GEN. STAT. §§ 160A-31(a), -58.1(a) (1982).

63. *Hudson*, 279 N.C. at 158, 181 S.E.2d at 445.

64. *Id.* at 162, 181 S.E.2d at 447.

65. See Comment, *Municipal Corporations: Prior Jurisdiction Rule*, 7 WAKE FOREST L. REV. 77-83 (1970-71). In jurisdictions in which the statutory procedure for annexation requires publication of notice prior to circulation of a petition, courts have held that the first public step for purposes of prior jurisdiction is the posting of this notice. *Village of Brown Deer v. City of Milwaukee*, 274 Wis. 50, 58, 79 N.W.2d 340, 345 (1956); *Town of Greenfield v. City of Milwaukee*, 259 Wis. 77, 83, 47 N.W.2d 292, 296 (1951). In other jurisdictions which, like North Carolina, require a petition but no posting of notice that a petition will be circulated, however, the first public step is the filing of the petition with the local governing board. *Greenfield*, 259 Wis. at 83, 47 N.W.2d at 296.

66. 2 E. McQUILLAN, *supra* note 22, § 7.22(a), at 378. See also *Town of Clive v. Colby*, 455 Iowa 483, 496-97, 123 N.W.2d 331, 333 (1963) (supplemental opinion); *State ex rel. Village of Orono v. Village of Long Lake*, 274 Minn. 264, 273-74, 77 N.W.2d 46, 52 (1956).

compliance with the statutes,"⁶⁷ as opposed to absolute compliance, has been sufficient when a single North Carolina municipality has attempted to annex,⁶⁸ less than meticulous compliance with the details of the statutes probably should not cause one municipality competing with another to lose its jurisdictional priority. Even when there have been "procedural irregularities [in an annexation proceeding which were] found to have materially prejudiced the substantive rights of . . . petitioners"⁶⁹ and the annexation ordinance has been remanded to the local governing board for amendment as directed by the statute, the amendments have not always been serious enough to require a second public hearing.⁷⁰ The cases in which deficiencies requiring remand have not been serious enough to require a second public hearing might be good precedent for what deficiencies will allow a municipality to retain prior jurisdiction. On the other hand, when there is a capable, competing municipality waiting in the wings, a judge may not be predisposed to wink at statutory deficiencies. A stricter application of the statutes for purposes of prior jurisdiction could well ensure greater obedience to the statutes by municipalities concerned about a potential competing annexation. In turn, the quality of annexation proceedings generally would improve.

Although complete, literal compliance with every requirement of the involuntary annexation statute should not be necessary for a municipality to claim exclusive jurisdiction over an area, the physical conditions required—that at least one-eighth of the proposed annexed area's boundaries coincide with the annexing municipality's primary limits,⁷¹ that the proposed annexation area not be a part of another municipality,⁷² and that the proposed annexation area be developed for urban purposes⁷³—should be followed strictly.⁷⁴ These conditions are jurisdictional requirements, and "if they do not exist, any attempts to

67. *E.g.*, *Scovill Mfg. Co. v. Town of Wake Forest*, 58 N.C. App. 15, 23, 293 S.E.2d 240, 246 (1982).

68. *E.g.*, *City of Conover v. City of Newton*, 297 N.C. 506, 521-22, 256 S.E.2d 216, 226 (1979) (failure of a resolution of intent to detail correctly the metes and bounds description of an area to be annexed was not fatal to validity of involuntary proceeding because maps available for public inspection correctly depicted the area); *Dunn v. City of Charlotte*, 284 N.C. 542, 201 S.E.2d 873 (1974) (failure to include in annexation report a proposed timetable for extension of municipal services to annexed area, though required by statute, did not preclude substantial compliance and did not affect the complainant's substantive rights); *In re Annexation Ordinance Adopted by New Bern*, 278 N.C. 641, 180 S.E.2d 851 (1971) (failure to have city official explain at public hearing plans for extension of city services to an area proposed for annexation, though required by statute, did not materially affect the substantial rights of complaining parties because the report itself was clear and understandable); *Adams-Millis Corp. v. Town of Kernersville*, 6 N.C. App. 78, 169 S.E.2d 496 (1969) (failure to extend the period for public inspection of annexation plans after amending the plans did not harm petitioner).

69. N.C. GEN. STAT. §§ 160A-38(g), -50(g) (1982).

70. *See Gregory v. Town of Plymouth*, 60 N.C. App. 431, 299 S.E.2d 232 (1983) (no required rehearing regarding amended report for extension of municipal services when report merely clarified the specifics of what services would be extended and how those services would be financed).

71. N.C. GEN. STAT. §§ 160A-36(b)(2), -48(b)(2) (1982); *Hawks v. Town of Valdese*, 299 N.C. 1, 261 S.E.2d 90 (1980) (requirement of contiguousness not satisfied when boundaries of the annexed area coincide with an annexing city's satellite limits but not with its "primary" limits).

72. N.C. GEN. STAT. §§ 160A-36(b)(3), -48(b)(3) (1982).

73. *Id.* §§ 160A-48(c)-(d), -36(c) (1982 & Supp. 1983). For discussion of the meaning of "urban purposes," see *supra* note 33.

74. *See Town of Clive v. Colby*, 255 Iowa 483, 123 N.W.2d 331 (1963) (supplemental opinion); *State ex rel. Village of Orono*, 247 Minn. 264, 77 N.W.2d 46 (1956).

annex are of no legal consequence.”⁷⁵ Moreover, the annexing city must conform to the requirement that it have the ability to extend municipal services to the area it seeks to annex.⁷⁶ Because these requirements directly affect the need for a particular “urban” area to be annexed and the ability of an annexing city to accommodate additional territory, the policy behind annexation dictates that they be followed strictly. Otherwise, the purpose behind allowing involuntary annexation—that sound urban development be effected by extension of municipal services into areas where population, industry, and other activity are concentrated⁷⁷—is not operative.

Having satisfied the prerequisites for involuntary annexation, an annexing municipality probably will have to take the major procedural steps to be able to take advantage of the prior jurisdiction rule. In addition to adopting resolutions of identification and intent,⁷⁸ these steps include issuing a report setting forth proposed boundary changes and plans for extending municipal services to the area to be annexed,⁷⁹ publishing notice of a public hearing and conducting a public hearing prior to officially enacting an annexation ordinance.⁸⁰ Citizens are given early notice that annexation is being considered through the public adoption of resolutions, are informed of the nature and potential effects of this boundary extension by the report, and are given a voice in the proposed change by the notice and public hearing. Because these steps inform citizens about the annexation and give them a chance to express their opinions, they should not be omitted. If these general steps are taken, however, specific irregularities within the hearing or the report should not be deemed to preclude “substantial compliance” so long as the citizens’ rights to be informed and heard are not undermined.

The same conclusions that apply to involuntary proceedings should apply to voluntary ones. First, the annexing municipality must make sure that all physical conditions for jurisdiction to annex are strictly met.⁸¹ Second, a peti-

75. Yeager, *supra* note 51, at 17. As a practical matter, these jurisdictional prerequisites will be met completely or not at all because they are primarily all-or-nothing type requirements; thus, there will not be “substantial compliance” with them.

76. N.C. GEN. STAT. §§ 160A-35, -47 (1982 & Supp. 1983). See *Town of Clive v. Colby*, 255 Iowa 483, 123 N.W.2d 331 (1963) (supplemental opinion) (no jurisdiction to annex because of failure to show capability to extend municipal services to proposed annexation area); *In re Annexation Ordinance Adopted by Jacksonville*, 255 N.C. 633, 646-47, 122 S.E.2d 690, 700 (1961) (plans for extension of services condition precedent to annexation); *Gregory v. Town of Plymouth*, 60 N.C. App. 431, 433, 299 S.E.2d 232, 234 (original ordinance remanded to local board to add details of extension of municipal services to annexed area), *cert. denied*, 308 N.C. 544, 304 S.E.2d 237 (1983).

77. N.C. GEN. STAT. §§ 160A-33, -45 (1982).

78. For discussion of the resolutions of identification and of intent, see *supra* notes 57-59 and accompanying text.

79. N.C. GEN. STAT. §§ 160A-35, -47 (1982 & Supp. 1983).

80. *Id.* §§ 160A-37, -49.

81. Section 160A-31 requires that a contiguous area, to be annexed as such, meet the statutory definition of “contiguous.” *Id.* § 160A-31 (1982). For that statutory definition, see *supra* note 39.

Conditions for annexation of satellites are more rigorous. See N.C. GEN. STAT. § 160A-58.1(b)(1982). A city may not annex a satellite area that is not within three miles of the annexing city’s primary limits, *id.* § 160A-58.1(b)(1), or that is closer to the primary limits of another city than to the annexing city. *Id.* § 160A-58.1(b)(2). Any subdivision in the satellite area must be wholly included in the annexation. *Id.* § 160A-58.1(b)(4). The annexing city also must be capable of

tion requesting annexation signed by all residents of the area to be annexed must be received and certified by the local governing board.⁸² Last, there must be notice and a public hearing about the proposed annexation.⁸³ As with the involuntary proceedings, something short of strict compliance with the details of these steps should suffice to maintain prior jurisdiction, but the steps themselves should be substantially taken.

Finally, North Carolina must determine how long an acquired jurisdictional priority lasts. The general law is that "the right of priority in order of time may be lost if proceedings, once instituted, are not completed within a reasonable time."⁸⁴ As with all invocations of the word "reasonable," what is a reasonable amount of time depends on the circumstances of each case.⁸⁵ Key factors will be whether annexation is pursued actively and whether there is a projected date for completion of the proceedings.⁸⁶ Beyond these general considerations, North Carolina courts will have to define more specifically what amount of time is reasonable.

That the only two North Carolina cases involving competition for annexation are *Hudson* and *Burlington* suggests that adoption of a rule to govern such competition is a relatively insignificant event. The increasing population of North Carolina's cities, however, and their need to expand and accommodate that population probably mean that disputes of the *Burlington* variety will multiply in the future.⁸⁷ The mere existence of the prior jurisdiction rule might have the beneficial effect of discouraging residents of an area targeted for involuntary annexation by a neighboring municipality from seeking voluntary annexation by a different municipality. Because the prior jurisdiction rule does not countenance such efforts, annexation will be well considered rather than purely reactive. Even though the rule will prevent some annexation conflicts from arising, other fights over priority to annex are inevitable. These fights will result from the increased need for annexation and from the variety of annexation procedures available in North Carolina, procedures that do not require that annexation of a particular area be by a particular municipality. The rule of prior jurisdiction

providing municipal services to the satellite area equivalent to the services already provided citizens of the annexing city. *Id.* § 160A-58.1(b)(3). Finally, the annexation of the new satellite area, when added to all other satellites of the annexing city, must not result in the city having more than 10% of its area within satellite boundaries. *Id.* § 160A-58.1(b)(5).

82. *Id.* §§ 160A-31(a), -58.1(a). The court in *City of Conover v. City of Newton*, 297 N.C. 506, 256 S.E.2d 216 (1979), stated that withdrawal of six required signatures from the petition prior to completion of proceedings invalidates a voluntary annexation attempt.

83. N.C. GEN. STAT. §§ 160A-31(c) to -31(d), -58.2 (1982).

84. 2 E. McQUILLIN, *supra* note 22, § 7.22(a), at 378-79. See also *Town of Clive v. Colby*, 255 Iowa 483, 492, 121 N.W.2d 115, 120 (1963) ("proceedings should be conducted with reasonable dispatch and completed within a reasonable time"); Yeager, *supra* note 51, at 16-17 (reciting the facts of *Clive*); Comment, *supra* note 65, at 84 (annexation and incorporation proceedings must be completed within a reasonable time or else exclusive jurisdiction is lost).

85. See *City of Muscatine v. Waters*, 251 N.W.2d 544 (Iowa 1977) (more than one year to complete annexation is not unreasonable given the circumstances); *In re Incorporation of Brown Deer*, 267 Wis. 481, 484-85, 66 N.W.2d 333, 335-36 (1954) (although annexing city acted in good faith, it lost its prior jurisdiction because annexation efforts were moving slowly and completion of proceedings was not expected for two years); Yeager, *supra* note 51, at 16-17.

86. Comment, *supra* note 65, at 84.

87. See *id.* at 79-80.

should provide a fair and practical method for settling these disputes and should be even more useful when the problems discussed by this Note—when the prior jurisdiction rule is invoked, when annexation is too defective to merit the rewards of the prior jurisdiction rule, and when an annexation proceeding must be completed in order to retain the benefits of the rule—are resolved.

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