

ANNEXATION

Annexation: Land Use Planning

Higdon v. City of Senoia,
538 S.E.2d 39 (Ga. 2000)

Does a statute unconstitutionally interfere with a city's zoning power by requiring the resolution of all bona-fide land-use objections before any annexation may become effective? If it does not, may a city complete annexation despite failing to resolve all bona-fide land-use objections that the county raises about the area to be annexed?

The Georgia Supreme Court held that such a statute is constitutional because it does not affect any substantive zoning matters. The General Assembly has the power of annexation, and it may delegate this power to municipal governments along with any constitutionally-valid limitations and conditions.

FACTS AND PROCEDURAL HISTORY

Georgia law provides that the annexation of property is not effective until all of the county's bona-fide land-use classification objections concerning the property are resolved. To comply with the Official Code of Georgia Section 36-70-24(4)(C), Coweta County and all municipalities within the County, including the City of Senoia, adopted a process to resolve all land-use-classification disputes concerning property subject to annexation.

A disagreement arose between the City and the County concerning the use of fifty-five acres of County land proposed for annexation. The landowners applied to the City for annexation and sought residential zoning, which would allow for one-acre lots. At the time of the dispute, the land was located in the County's rural zoning district, which required a minimum lot size of five acres. The County was concerned primarily about the intensification of land use. The smaller lots and subsequent urbanization would substantially affect the fifty-five acres, and surrounding property, being annexed.

As required by the resolution process, the County objected to the City's proposed annexation. Although they were successful in

settling the question of land use, the parties were unable to agree on who would monitor the restrictions. The Board of Annexation approved the annexation and ordered the County to monitor its restrictions. However, the City rejected the Board's recommendation, and the parties commenced the next stage of the resolution process by attempting mediation. When it became clear that the parties could not agree on a mediator, Senoia brought a declaratory action challenging the constitutionality of the annexation statutes in question. The City argued that the statutes requiring the resolution of all land-use objections before annexation violated the delegation of zoning power granted to it under the Georgia Constitution. The trial court declared the statutes unconstitutional. This decision would have allowed for the completion of the proposed annexation. However, on appeal by the County, the Georgia Supreme Court reversed the trial court's decision and declared the statutes constitutional. Therefore, before the City could annex the property, it had to resolve the County's land-use objections in accordance with the dispute-resolution process.

ANALYSIS

To minimize the inefficiency that results from competing governments, the Georgia Assembly enacted Section 36-70-24(4)(C), which "provides for a dispute resolution process when a bona fide land use dispute arises between the city and county over the use of land which is the subject of annexation." *Higdon*, 538 S.E.2d at 40. Further, Section 36-36-11 "provides that an annexation is not effective until any bona fide land use classification objections raised by the county . . . are resolved . . ." *Id.* To determine the constitutionality of these statutes, the court must consider whether they unlawfully interfere with a municipality's zoning power or merely set forth a procedure for municipalities to follow during the annexation process.

The General Assembly has the power of annexation and it may delegate this power to the municipalities. Its determination as to how much legislative power to give a municipality is limited only by the federal and state constitutions. The statutes in this case set forth certain conditions that must be satisfied before municipalities can annex any property. In reviewing the constitutionality of the statutes, the court examined the Legislature's intent and purpose in enacting them to determine whether that purpose conflicted with the constitutional delegation of zoning authority. Here, the Legislature's intent was clear: it was to provide

alternative forms of dispute resolution concerning matters of annexation. This process would ensure that the benefits and burdens of annexation are carefully evaluated each time, including the financial and environmental impact on the City and County. The court concluded that the statutes did not involve any substantive zoning matters, but instead concerned only those annexation procedures coming under the control of the General Assembly.

In general, a municipality may exercise the powers of annexation delegated to it by the General Assembly, but it must do so in accordance with any constitutionally valid limitations. Therefore, before the City could annex the property in question, it had to follow the resolution process prescribed by the General Assembly and resolve its land use dispute with the County.

COMMENTARY

This case would turn out quite differently in Florida because Florida has no statutes equivalent to the Georgia statutes at issue in this case. Therefore, a Florida city would be able to continue with the annexation despite an objection by the county regarding the proposed land use.

Like Georgia, Florida provides for alternative forms of dispute resolution between competing governmental entities. Chapter 164 of the Florida Statutes controls the conflict-resolution process and requires that the alternative procedures be exhausted before any litigation is commenced. Certain actions between competing governments in Florida are not covered by the act; however, Florida Statutes Section 164.1051 specifically provides that municipal annexation is subject to the alternative-dispute-resolution process. The states differ in that Florida does not require that the resolution process be undertaken and completed before annexation can become effective.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 2, §§ 7.12–7.13 (Dennis Jensen & Gail A. O'Gradney eds., 3d ed., Clark Boardman Callaghan 1996).
- 12 Fla. Jur. 2d *Counties and Municipal Corporations* §§ 48–71 (1998).

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