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TEXAS ANNEXATION BATTLES

A Few Practical Lessons Learned the Hard Way

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(A Few Practical Lessons Learned the Hard Way)

Texas annexation law is complex. Very complex. It is also confusing. Very confusing. Much has been written about annexations, both procedural and substantive. Little has been written about annexation litigation. This paper deals with the suing and defending of governmental entities – not the vagaries and complexities of annexation procedures. This paper thus will deal straightforwardly with annexation litigation strategy – with a few Texas slogans thrown in for good measure to illustrate the practical principles.

1. ***"He's So Dumb, He Doesn't Know Whether It's Raining Or Someone's Pissin' On His Boots" — President Lyndon Baines Johnson***. The first and foremost lesson in annexation battles involves analyzing the claimed annexation error. Two completely different outcomes will usually result, depending on classification of the alleged error. Thus, the classification of the type of error is critical in annexation litigation. There are two types of annexation errors — procedural and substantive. Procedural errors are voidable; substantive errors are void. Classifying the annexation error as either procedural or substantive sounds straightforward, but many times it is not nearly that clear.

   Some errors are clearly procedural, *e.g.*, *City of Rockwall v. Hughes*, 246 S.W.3d 621, 627 (Tex. 2008)(failing to comply with procedures in the Texas Annexation Act "such as providing proper notice for hearings, conducting the required hearings, and providing an annexation plan" are procedural)*; Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 438 (Tex. 1992)(mere irregular exercise of valid authority must be brought by the state in *quo warranto* proceedings); *State v. City of Waxahachie*, 17 S.W. 348, 349-350 (Tex. 1891)(holding that lack of notice to some voters in the area does not render annexation void); *Round Rock Life Connection Church, Inc. v. City of Round Rock*, 2011 WL 589832, *4 (Tex. App.—Austin 2011, pet. denied)(alleged circumvention of municipal annexation plan requirement by separately annexing two or more § 43.052(h)(1) properties when no reason exists under generally accepted municipal planning principles and practices is a procedural requirement); *City of Seguin v. Worth*, 2008 WL 2835295, *2 (Tex. App.—San Antonio 2008, no pet.)(landowner seeking arbitration under § 43.052(i) in a voidable annexation was procedural); *Werthmann v. City of Fort Worth*, 121 S.W.3d 803, 806 (Tex. App.—Fort Worth, 2003, no pet.)(holding that the annexation plan requirement of § 43.052 was procedural); *May v. City of McKinney,* 479 S.W.2d 114, 120 (Tex. App.—Dallas 1972, writ ref'd n.r.e.) (holding that insufficiency of notice prior to enactment of annexation ordinance was procedural).

Some annexation errors are clearly substantive, *e.g.*, annexing territory that exceeds the statutory size limits, Tex. Loc. Gov't. Code § 43.055, *Alexander Oil*, 825 S.W.2d at 438 (it is well-established that a municipality may only annex up to 10% of its incorporated area in any one calendar year); annexations beyond the 10% rule are made without statutory power and "utterly void," *Deacon v. City of Euless*, 405 S.W.2d 59, 64 (Tex. 1966); *cf. Munday ISD v. Knox City ISD*, 254 S.W.2d 381, 382 (Tex. 1953)(school district that annexed 24% of its area, exceeding the 10% rule applicable to school districts, was declared void); annexing non-contiguous and non-adjacent land, *City of West Lake Hills v. State ex rel. City of Austin,* 466 S.W.2d 722, 729-30 (Tex. 1971)(holding that ordinances attempting to annex noncontiguous and nonadjacent land in violation of statute were invalid); *City of Willow Park v. Bryant*, 763 S.W.2d 506, 510-11 (Tex. App.—Fort Worth 1988, no writ)(annexations of lands not adjacent and contiguous to a municipality are void *ab initio*); describing annexed territory where the boundaries do not close, *State ex rel. Rose v. City of La Porte*, 386 S.W.2d 782, 787-89 (Tex. 1965); attempting to reannex property by repealing a disannexation ordinance, *City of Harlingen v. Lee*, 2013 WL772661, *5 (Tex. App.—Corpus Christi 2013, no pet. h.); and passing annexation ordinances that contain vague and ambiguous property descriptions or that contain property descriptions that do not close, *City of Missouri City v. Senior*, 583 S.W.2d 444, 446 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.).

Many annexation errors have never been classified by the courts, *e.g.*, where the annexation ordinance and city council minutes are irreconcilable; where annexation proceedings involve constitutional infirmities (*e.g.*, serving simultaneously in two municipal offices (councilmember and city secretary), in violation of article XVI, section 40 of the Texas Constitution; and, where the annexations may have involved crime or fraud (*e.g.*, tampering with a governmental record in violation of Texas Penal Code § 37.10). The line dividing void and voidable errors is often blurry. Therein lies the rub.

2. ***"Never Kick A Fresh Turd On A Hot Day" — President Harry S. Truman*** Once the annexation error has been classified, the proper procedure follows. If a city fails to follow annexation procedures, the annexation ordinance is merely voidable and only the State of Texas can file suit by *quo warranto* proceedings. *Earthman*, 121 S.W.3d at 807; *May,* 479 S.W.2d at 120; *City of Houston v. Harris County Eastex Oaks Water & Sewer Dist.,* 438 S.W.2d 941, 944 (Tex. App.—Houston [1st Dist.] 1969, writ ref'd n.r.e.); *City of Irving v. Callaway,* 363 S.W.2d 832, 834-35 (Tex. Civ. App.—Dallas 1962, writ ref'd n.r.e.); *Lefler v. City of Dallas,* 177 S.W.2d 231, 233-34 (Tex. Civ. App.—Dallas 1943, no writ);. This is the exclusive remedy, which means that a neighboring municipality or property owner has no standing to challenge the annexation. *Laidlaw Waste Systems (Dallas), Inc v. City of Wilmer*, 904 S.W.2d 656, 658 (Tex. 1995)(plaintiff had no standing to challenge alleged failure to meet the notice and signature requirements); *Hall v. City of Bryan*, 2011 WL 4712243, *2

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