

Indiana Advisory Commission on Intergovernmental Relations

Thursday October 1, 1998, Meeting, 2:00 PM

Conference Room 4 and 5

Indiana State Government Center South

MINUTES

CALL TO ORDER

Chair William W. Bailey announced that there was a quorum present (see attendance sheet attached) and called the meeting to order at approximately 2:15 P.M.

AGENDA

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| - Call to Order | Chair Bailey |
| - Approval of Minutes of Annexation Forums, dates: 6/8/98, 7/29/98, 8/12/98, 8/13/98, 8/18/98, and 8/27/98 | Commission Members |
| - Public Comments | |
| - Update on Annexation Study | John L. Krauss
Greg Lindsey
Jamie Palmer |
| - Discussion of Forum Testimony | Commission Members |
| - Next Meeting | |
| - Adjournment | |
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PUBLIC COMMENT

Representative Bailey gave a brief overview of the order of business that would include: fifteen minutes for any final comments from the public, twenty minutes of staff discussion on the annexation study, and time for member discussion. He then requested comments from members of the public.

Putnam Robbins, resident of Porter County, thanked the commission for the chance to be heard. He stated that current annexation law is dictatorial and that property owners should be able to vote. He further indicated that there are cities that are having financial trouble due to annexation.

Representative Bailey complimented the group from Porter County that went to great expense of time and effort to participate in all five forums.

Rich Carlucci, Plainfield Town Manager stated that since 1989, Plainfield has handled almost one hundred annexations and that none has faced a remonstrance or has gone to court. He went on to say that 98 percent of annexations are routine and do not raise local issues. The law works well for Plainfield and the state, except for maybe a few. There are some changes that need to be made. All residents in Plainfield receive a notice by first class mail. Local governments can support changes such as expanding the remonstrance period from 60 to 120 days.

Arthur Kurth, resident of Porter County, said that involuntary annexation is unacceptable. There are no checks and balances.

Mel Daniel, attorney for the Town of Plainfield, stated that he does not see a statewide crisis, but there is a need for some "tweaking." Annexation is an important part of planning services including water, sewer, roads, and sidewalks. Plainfield works with landowners. The town has agricultural zoning within the its limits. To allow people just outside the city to enjoy services without being taxed is not fair.

Jim Bradley, resident of Henry County, indicated that he does not believe referendum is the solution. He and his neighbors currently are litigating an annexation case. He stated that if the city (New Castle) had approached them with a plan, they would not have had this problem. They were paying double because the cost of upgrades already were included in the price of the lots. People have to be involved in the process. The only notice they received was via newspaper for an one-hour meeting. He further indicated that cities are selective about annexation. They do not want to annex areas with problems. The concept that municipalities have total control is not right.

David Heath, Mayor of Lafayette: (written testimony - Attachment 1).

Gary Eckard stated that he has lived in Carmel for thirty years. This is an emotional issue for those who are being annexed. They have no protection at all.

Mike Shaver, Wabash Scientific, Inc., stated that his firm prepares fiscal plans for municipalities. He said that in his experience only one of those plans has been questioned through remonstrance. No one is going to vote to pay more taxes. Indiana needs a stronger statutory definition regarding the services that must be provided. The town of Shadeland covers the entire township but has no infrastructure. Specifically, there are two issues that need to be addressed, state statute should define the fundamental nature and purpose of municipalities and which services must be provided. The law is based on contiguity. Cities should be able to annex non-contiguous properties that have been provided services.

Senator Zakas asked about the relationship between property tax and utility revenues. Specifically, he asked whether municipally owned utilities are self-sustaining and fiscally independent.

Tonya Galbraith, Indiana Association of Cities and Towns, indicated that most municipally-owned utilities are separate fiscal entities but that there may be some utilities in small communities that are supported via property tax revenues. She indicated that she would check and report back to he commission.

Senator Craycraft asked Mr. Bradley about the ruling made by the State Board of Accounts regarding the New Castle case.

Gerald Gilles said that evidence gathered at the forums indicated that municipalities annex properties that are contiguous and not really wanted in order to get to the other properties.

Representative Scholer said that Lafayette annexations largely have been voluntary. She clarified that Shadeland was an incorporation, rather than an annexation. She indicated that annexation in Lafayette generally has worked well. Some people have been unhappy, but many strides have been made by going out and talking to people. Through communication and education Lafayette has been able to work things out.

Tonya Galbraith stated that Marilyn Morrison, Clerk-Treasurer for the Town of Warren, was unable to attend the meeting. Ms. Galbraith offered Ms. Morrison's written testimony for review by the commission (Attachment 2).

Representative Bailey asked if there were any other comments from the audience, there were none.

APPROVAL OF MINUTES

A motion was made and seconded for approval of the minutes from meetings of 6/8/98, 7/29/98, 8/12/98, 8/13/98, 8/18/98, and 8/27/98. The minutes for the six meetings were approved unanimously.

STAFF PRESENTATION:

John Krauss reviewed the history of the annexation study effort. Over time there have been numerous bills proposed in the General Assembly. During the 1997 legislative session, legislative leaders decided to request a study of the issue. The annexation study was assigned to the IACIR and began in mid-1997.

He clarified that the Commission has not been asked for one position. Particular legislators inside and outside the IACIR, however, may propose specific legislation.

Greg Lindsey gave an update on the annexation study (Attachments 3 and 4).

After the presentation, John Krauss asked commission members who attended the forums if they had any comments about the format. Commission members indicated that they liked to format of the forums.

Representative Bailey opened discussion among commission members about the testimony heard at the five public forums.

Senator Zakas asked if we can look at examples of laws in other states for involvement of county or township government, particularly veto power.

Jamie Palmer said that most of the states that give counties veto power are in the western United States. She agreed to report more specifically at the next commission meeting.

Mayor John Fernandez said that the way the forums were conducted is a good model for future issues. It allowed participants to have reasonable discussions. There were a large number of participants who wanted a referendum. He said that such a process is not the right solution. He said commission should not propose new rules that punish those who are doing the right things. There may be unintended consequences of making the process too difficult, including limiting municipalities' abilities to provide services in an efficient manner. The vast majority of annexations take place without being contested. There were other issues including perceived inequality in the process. Several people mentioned that remonstrance requires significant resources. Municipalities have easy access to these resources. Such an imbalance creates frustration.

Representative Scholer (referring to attachment 3), questioned the change regarding county approval in Indiana.

Palmer said that she did not know without further research.

Dave Bohmer stated that during the forums, commission members benefitted from hearing both sides. It seemed to come down to communication. Those annexations that involved good communication went well and those that involved poor or nonexistent communication had problems. People should have more power. The legislature may not want to impose a referendum in every case, but a remedy should exist for cases that are not handled well. On one hand, "if it ain't broke don't fix it." On the other hand, we need a way to censure communities that do not act in the interest of citizens. Is there a way we could have referenda for problem cases?

Linda Williams said that there needs to be a clearly defined fiscal plan to be followed with a mechanism of checks and balances. Given the discussions of referenda, notification and communication with citizens and townships are important. There needs to be a longer period for remonstrance and a process that does not create such a financial burden.

Sue Paris said that it is difficult to legislate communication. She stated that she has serious questions about referenda. Communication should be the focus. Indiana has a history of representative government. She then indicated that she would like to dispel the misconceptions about how county property tax revenues are spent. The largest portion of these revenues go to welfare, jails, and courts. These are services that benefit all county residents.

John Ryan stated that the forums were a success. The process was good; members received good input. He likened annexation to a business transaction. The problem seems to be that an offer is made, but not accepted by some because it is not explained. The offer needs to be clear, translated into

dollars and cents. People respond emotionally to tax issues. Municipalities need to approach them with a benefit-cost analysis.

John Fernandez said that municipalities file fiscal plans but no one looks at them. The state should not mandate things that have no value. If there is genuine interest in this, we should consider it.

Gerald Gilles stated that there should be a punishment for non-compliance. If cities don't provide what they say they will, then the territory will be de-annexed.

Jamie Palmer indicated that currently there is a provision in state law for de-annexation for failing to provide services.

Senator Zakas asked what the time frame is for de-annexation.

Jamie Palmer responded that it is three years.

Senator Zakas asked if it is a judicial process.

Jamie Palmer indicated that it is.

Linda Williams said that the forums were great; those that were very irate were calmed with the help of the moderator. It seems that during local public hearings on annexation people are not always able to have a voice.

Representative Scholer stated that she thinks one reasonable change would be to require written notification. Members also heard that some communities have denied people the right to speak at a public hearing. One possible solution is to institute a planning effort, a process that would involve elected officials in the area to be annexed but outside the municipality. Will a referendum solve the problem? As a commission we need to offer suggestions that we feel would be good parameters for legislation. There is a lot of education and communication that needs to go on.

Greg Lindsey said that records are supposed to be filed with the state, but that doesn't always happen. The records are incomplete.

Linda Williams stated that if someone wins a remonstrance, it is not recorded.

John Ryan requested information on the number of volunteer annexations.

Greg Lindsey stated that the data will not tell us the exact percent that are "voluntary." Our data indicate that most annexations in 1996 and 1997 were voluntary. There are times when people waive their right to remonstrate or there may have been an agreement with the municipality.

Gerald Gilles asked what happens if an area is undesirable.

John Ryan asked how Indiana defines growth. How do we substantiate the cost-benefit?

John Fernandez said that there are different definitions of growth. He questioned how desirable a legislative definition might be. Growth often follows sanitary sewer services. With these services comes increased demand for other services. Services increase assessed valuation, giving property owners added economic benefit.

John Ryan said that referenda will mean less annexation. He questioned who then would provide services. If the legislature limits this ability, it will limit the state's economic growth. He is afraid that people who want a referendum, want it for emotional reasons. The cost- benefit may not have been explained.

Leslie Goss asked whether the law requires cities to file a fiscal plan with the state.

Jamie Palmer answered that only the ordinance or court order is filed. The fiscal plan may only be incorporated in the ordinance or order by reference.

John Krauss said that there is no place to send it.

Leslie Goss stated that we need to reinstate the state certifying official. It is hard to mandate communication but the legislature should consider requiring a first-class mailing. Requirements for preparation and review of fiscal plans should be strengthened. A summary of the plan could be included in the mailing.

John Fernandez asked who votes in a referendum and what are the specific rules for these elections.

Greg Lindsey answered that these vary across states.

Following the Commission members discussion, Representative Bailey summarized the discussion. He suggested that with regards to what is sent to the legislature, one option is to do nothing. Over the course of the forums and the meeting's discussion, however, there have not been any commission members proposing this option. Representative Bailey introduced seven areas of concern that the annexation report should address, including:

- Notification/communication;
- Calendar issues: timeline for extension of services, lengthen the period for filing remonstrance;
- Fiscal issues: address tax "sticker shock" by phasing in property taxes?;
- Fiscal plans/infrastructure provision: penalty be for not providing the services promised in the plan?
- Pre-agreement (temporal fairness issues associated with a developer making an agreement not to remonstrate and limited recourse allowed to subsequent owners);

- Grounds for remonstrance; and
- Clerical filing requirements: where to file, what to file, with whom to file, and who follows up.

Gerald Gilles requested that commission members be allowed to send additional issues to commission staff.

Representative Bailey suggested that commission members mail additional issues to staff within one week.

Bailey further indicated that the commission meets one more time on this issue. The staff would have one month to complete the report. He requested a motion from commission members to direct staff to address the issues outlined previously as well as additional issues identified by commission members over the coming week in the upcoming annexation study.

A motion to accept options to be addressed in the study and subsequently given to legislature was made and seconded.

Representative Bailey asked that Rose Mroczka (staff) poll the members for a vote. Individual votes are as follows:

Rep. Bailey	aye
Sen. Gard	aye
Sen. Craycraft	aye
Rep. Scholer	aye by proxy
Sen. Zakas	aye
Sen. Young	not in attendance at vote, no proxy
Rep. Goeglein	aye by proxy
Rep. Klinker	aye by proxy
Stephen Carter	not in attendance
Sue Paris	aye
Joyce Poling	not in attendance
Gerald Gilles	aye
Leslie Goss	aye
Gardest Gillespie	not in attendance
John Fernandez	aye
James Beery	not in attendance
Linda Williams	aye
Susan Craig	not in attendance
Sonya Margerum	not in attendance
Rick Cockrum	not in attendance
Dave Bohmer	aye
Robert Kovach	not in attendance

John Ryan aye
Bob Lain (for Peggy Boehm) aye

NEXT MEETING

Representative Bailey polled the group for availability. The next meeting will be held November 12, 1998. The location will be announced in the coming weeks.

ADJOURNMENT

The meeting was adjourned at approximately 3:50 P.M.