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INDIANA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
INVOLUNTARY ANNEXATION CONCEPTS

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In 1999, the Indiana General Assembly amended the annexation law to give landowners in an involuntary annexation territory a "real" right of remonstrance. IC 36-4-3-13 provides that if the landowners could establish certain elements, the trial court shall order a proposed annexation not to take place. When this law passed, cities and towns argued that involuntary annexations in Indiana would come to an end.

This is a summary of some of the Indiana appellate court decisions, since 1999, that have significantly weakened the impact of that law for remonstrators.

1. General Annexation Review Principles Limit Remonstrator's Rights.

Annexation is subject to judicial review only so far as the General Assembly has authorized it by statute and [t]he larger object of the annexation statute is, as it has always been, to permit annexation of adjacent urban territory." *City of Carmel v Certain Southwest Clay Township Annexation Territory Landowners* 868 N. E. 2d 793, 796 (Ind. 2007)

"In assessing a municipality's ordinance and plan, a court should keep in mind that annexation is a legislative function." *Id.* (quotation omitted). "Moreover, a trial court hearing a remonstrance is not an examiner conducting an audit of a challenged fiscal plan. ... In other words, trial courts play a "limited role" in annexations. *City of Ft. Wayne v. Certain Sw. Annexation Area Landowners,* 764 N.E.2d 221, (Ind.2002).

However, "[w]e start from the premise that there can be no protected property interest in adherence to established procedure .... and the mere failure to follow applicable rules or procedures does not, without more, amount to a due process violation." *Bradley v City of New Castle* 764 NE2d 212 (Ind. 2002)

[N]o property is taken from the owner, by annexation, no private right of the owner is affected; the act simply changes the property and its owner, in their civil relation to certain public authority. This power the State has the right to exercise, directly or indirectly, within constitutional limits, at any time. ... Property owners have no vested interest in the maintenance of municipal boundaries in any particular location. *Bradley v City of New Castle* 764 NE2d 212 (Ind. 2002)

Therefore, a remonstrator's challenge to annexation is not a regular lawsuit, but rather a special proceeding the General Assembly may control. *Bradley v City of New Castle* 764 NE2d 212 (Ind. 2002)

2. Remonstrators Cannot Effectively Challenge Procedural Defects.

Remonstrators must file petitions signed by the owners of 65% of the parcels or 75% of the AV within 90 days of publication of the annexation ordinance.

Municipalities are required to publish within 30 days of passage. The lack of timeliness is not a defect remonstrators can challenge. *Certain Westfield Southeast Area I Annexation Territory Landowners v Westfield* 977 N. E. 2d 394 (Ind. App. 2012)

3. Remonstrators Cannot Effectively Challenge the Validity of a Municipalities Fiscal Plan.

> "In assessing a municipality's ordinance and plan, a court should keep in mind that annexation is a legislative function. Moreover, a trial court hearing a remonstrance is not an examiner conducting an audit of a challenged fiscal plan. Rather, it should focus on whether that plan represents a credible commitment by the municipality to provide the annexed area with comparable capital and non-capital services. In other words, trial courts play a "limited role" in annexations. ... Courts are not authorized to dissect the minutiae of what are essentially legislative decisions." *City of Carmel v Certain Home Place Annexation Territory Landowners* 874 N.E. 2d 1045 (Ind. App. 2007) Trans. Den.

4. Municipalities Can Amend the Fiscal Plan up to and at the Hearing

"The trial court acknowledged that Indiana law has long been to the contrary. (City allowed to amend and supplement fiscal plan at evidentiary hearing); (trial court should have considered evidence at trial about adequacy of plan). The Code instructs courts to enter judgment "according to the evidence that either party may introduce" at the evidentiary hearing. If everything had to be contained in the written fiscal plan, then it would not be necessary to conduct a section 12 hearing. ("There would be no need for an evidentiary hearing ... if all proof ... had to be set out in the written plan. We cannot read legislative intent as requiring the courts to ignore the evidence adduced at the hearing.").
City of Carmel v Certain Southwest Clay Township Annexation Territory Landowners 868 N. E. 2d 793, 796 (Ind. 2007)

5. Court Decisions have Significantly Impacted Elements Remonstrators Must Prove at Trial

IC 36-4-3-13 provides that if the landowners could establish certain elements, the trial court shall order a proposed annexation not to take place. Those elements are:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

Open question as to whether fire provided by municipality under contract with township is "furnished by a provider other than the municipality". *City of Carmel v Certain Southwest Clay Township Annexation Territory Landowners* 868 N. E. 2d 793, 796 (Ind. 2007)

(ii) Street and road maintenance.

Trial court held that the need of annexation territory people to drive through municipality to access interstate was basis to hold that adequate street and road maintenance was not provided.

(B) The annexation will have a significant financial impact on the residents or owners of land.

"Furthermore, we note that all annexations add a municipal tax layer. Therefore, to find that any tax increase would cause a significant financial impact would essentially bring every annexation under the purview of this subsection, rendering this portion of the statute meaningless. As the amici observe, "[w]hen it drafted Section 13(e) the General Assembly understood and expected that all annexations would result in a new layer of municipal taxes, and therefore required the remonstrators to demonstrate that, given that inevitability, the particular annexation will impose something beyond the norm—something 'significant.' " *City of Muncie v Certain Halteman Village Section 1 and Brewington Woods Landowners* 914 N. E. 2d 796,

"In finding that the Landowners established that the annexation would have a significant financial impact on them, the trial court relied on a potential increase in property tax payments following annexation. There was no evidence of how much any given Landowner's taxes would increase, however, and none of the three Landowners who testified stated that the increase would have a significant financial impact. The trial court noted that some of the Landowners are on a fixed income. The Landowners did not testify, however, as to how low—or high—their income is fixed or whether a tax increase would cause a significant change in their lives." *City of Muncie v Certain Halteman Village Section 1 and Brewington Woods Landowners* 914 N. E. 2d 796,

The Circuit Breaker can effectively eliminate or reduce any net property tax increase.

(C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).

(D) One (1) of the following opposes the annexation:
(i) At least sixty-five percent (65%) of the owners of land in the territory proposed to be annexed.
(ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.
Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

Courts are silent as to whether the original petition can be used as sufficient evidence. If a new petition is needed, the 60 day trial requirement after certification would make it virtually impossible. This was the basis to allow the settlement in Southwest Clay

"Here, the only evidence in the record on this issue is the testimony of two officials in the respective neighborhoods' associations, each of whom testified that no Landowners had indicated that they had changed their minds since signing the petition. Both witnesses also testified that they did not know how many people continued to oppose the annexation and could only venture a guess as to the number in opposition. We do not find that this evidence supports a conclusion that 65% of the Landowners *continued* to oppose the annexation; therefore, the trial court erred by reaching a contrary conclusion." *City of Muncie v Certain Halteman Village Section 1 and Brewington Woods Landowners* 914 N. E. 2d 796,

In *City of Carmel v Certain Southwest Clay Township Annexation Territory Landowners* 868 N. E. 2d 793, 800 (Ind. 2007) that proof that a number of remonstrators had changed their minds, was sufficient to offset the existing petitions. In that case a referendum was held on a settlement and enough remonstrators voted in favor of the settlement to make the required percentage opposition at trial mathematically impossible.

6. Courts have Limited Remonstrators Right to Appeal

IC 36-4-3-14
Remonstrances; hearing; change of venue; status of annexation pending
Sec. 14. In a hearing under section 12 of this chapter, the laws providing for change of venue from the county do not apply, but changes of venue from the judge may be had as in other cases. Costs follow judgment. Pending the remonstrance, and during the time within which the remonstrance may be taken, the territory sought to be annexed is not considered a part of the municipality.

"Once the trial court has decided whether to approve an annexation ordinance, either the municipality or the remonstrators may appeal." *Rogers v Municipal City of Elkhart* 688 N. E. 2d 1238.) An action is considered pending so long as it is subject to review by an appellate court. "Territory sought to be annexed shall not deemed to be a part of the annexing city until the completion of the applicable process of appellate review." *Citizens for St. Joseph Township., Inc v Auditor of Allen County*, 625 N. E. 2d 1324 (Ind. Ct. App. 1993)

"If the trial court orders the proposed annexation to take place, "the annexation is effective when the clerk of the municipality complies with the filing requirements of Indiana Code section 36–4–3–22(a)." "..we conclude that the Remonstrators' challenges to the annexation of the parcels of land at issue are moot because the annexation has become effective. In order to preserve the instant challenge to the trial court's order, the Remonstrators should have requested a stay of the annexation pending appeal.." *Annexation Ordinance F-2008-15 v City of Evansville* 955 N. E. 2d 769 (Ind., Ct. App 2011)