Municipal Annexations in Louisiana

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BASIC ANNEXATION PRINCIPLES

I. Definition and Source of Power.

A. "[T]he acquisition of territory or land by a nation, state, or municipality..."

Black's Law Dictionary, 5th ed., p. 81.

B. Power of state legislature over municipal boundaries, except for constitutional limitations, is absolute, and legislature may extend municipal boundaries or authorize such extension without consent of municipality or inhabitants of annexed territory. State ex rel. Kemp v. City of Baton Rouge, 215 La. 315, 40 So.2d 477 (1949); Kansas City So. Ry. Co. v. City of Shreveport, 354 So.2d 1362 (La. 1978), cert. denied, 439 U.S. 829, 99 S.Ct. 103, 58 L.Ed.2d 122 (1978).

C. In the absence of a statutory requirement, there is no duty to notify property owners or obtain their approval before annexing their property, and such annexation causes no liability in tort or for a deprivation of civil rights under 42 U.S.C. § 1983. Lassen v. Caruso, 578 So.2d 940 (La. App. 1st Cir. 1991), writ denied, 585 So.2d 568 (La.).

D. Likewise, the annexation of property, with the accompanying application of municipal regulations to the annexed territory, does not constitute a "taking" of the annexed territory for which compensation is due. Cheshire v. City of Minden, 83 So.2d 526, 527 (La. App. 2nd Cir. 1956); Dan Rhodes Enterprises, Inc. v. City of Lake Charles, No. 03-0195 (La. App. 3rd Cir. 10/8/03), 857 So.2d 1256, 1260 ("[T]he fact that property in the territory proposed to be annexed will become subject to regulations provided by the existing municipal ordinances, with the possible loss of revenue from the operation of a business establishment located therein, does not constitute a taking of such property for a public purpose.")

D. State legislature may delegate annexation power to municipality, and municipality is held to strict compliance with statutory scheme by which such power has been delegated.

Pyle v. City of Shreveport, 215 La. 257, 40 So.2d 235 (1949);
Kennedy v. Town of Georgetown, 746 So.2d 663 (La. App. 3rd Cir. 1999).

II. Delegation of Annexation Power in Louisiana -- 33:151-180.

A. Annexation by petition and election--33:151-161.

B. Annexation by petition and ordinance--33:172(A).

C. Annexation of areas 90% contiguous to boundary of municipality -- 33:172(C).

D. Annexation by petition, ordinance, and election -- 33:172(D).

E. Annexation of land owned by public body -- 33:180.

METHODS OF ANNEXATION AND ANNEXATION CHALLENGES

I. Annexation by Petition and Election--33:151-161.

A. Petition percentage requirements (33:151).

1. 1/3 in number and value of bona fide owners of any lots or land contiguous and adjacent to territorial corporate limits of any city or town except city of New Orleans, or

2. ½ in number and value of bona fide owners of any lots of land contiguous and adjacent to corporate limits of any city located in parish with population between 115,000 and 125,000, or

3. 1/4 in number (only) of bona fide owners of any lots or land contiguous and adjacent to corporate limits of any city located in Rapides Parish.

B. Form of petition and documents which must accompany petition.

1. Statement "setting forth their desire that said lots or land shall be annexed to and included in the territorial corporate limits of such city or town, so as to constitute a part thereof" (33:151).

2. "[T]herein also fully setting forth the boundaries and accurate description of such lots or land which they desire to be annexed..." (33:151).

3. Proces verbal and plat of survey of lots or land desired to be annexed must be prepared by "parish surveyor" and must accompany petition (33:152).

(a) Must be "first made by such surveyor for such purpose." (33:152).

(b) Must "set forth the boundaries and accurate description of such lots or land..." (33:152).

(c) Must be "certified to be correct" by parish surveyor (33:152).

C. Upon presentation of petition, proces verbal, and plat of survey, all must be recorded and transcribed in municipality's records "wherein the ordinances and official proceedings of the municipal authorities are usually recorded", and also permanently preserved among official records of municipality (33:153).

D. First election--municipality MAY order election on question of annexation within area desired to be annexed (33:153).

1. Persons entitled to vote--those qualified under general election laws who reside in area proposed to be annexed (33:155, 33:153).

2. Procedure for election--same as "under the general election laws," (See La. R.S. 18:1 et seq.)

(a) Contents of notice (33:154).

(1) Manner in which election is to be conducted.

(2) Boundaries and description of lots or land proposed to be annexed.

(3) Designation of polling place, election commissioners, and manner of counting votes and making returns.

(b) Returns of election must be made to municipality within 48 hours after closing of polls (33:156).

(c) Returns of election must be recorded and transcribed in municipality's records "wherein the ordinances or official proceedings of the municipal authorities are usually recorded," and also permanently preserved among official records of municipality (33:156).

(d) Municipality must publish election results "for ten days in one or more newspaper in the city or town, or if there be none by posting as

required in sheriffs and constable's sales." (33:156) Apparently not required to publish in official journal of municipality.

E. Second election--after publication of election results, if a majority in number and value of qualified electors residing in and upon area proposed to be annexed have voted in favor of annexation, municipality MAY thereafter order election on question of annexation within corporate limits of municipality. (33:157).

   1. Permissive language allowing election does not mean that annexation can be effective without second election and positive vote of electorate within corporate limits of municipality as established prior to annexation--see 33:160(A).

   2. Persons entitled to vote--"qualified electors residing within the corporate limits of the city or town as theretofore established" (i.e., as established prior to the proposed annexation). (33:157, 33:159).

   3. Question to be submitted--"whether they consent to such proposed annexation to the corporate limits of the city or town." (33:157).

   4. Procedure for election--same as first election held within area proposed to be annexed. (See Section D(2), supra).

F. After publication of election results, if a majority in number and value of qualified electors residing in territorial corporate limits of municipality as theretofore established have voted in favor or annexation, annexation takes place as of expiration of publication period for election results (33:160(A)).

G. Exception to requirement of second election--Rapides Parish--"the municipal authorities of the city or town may then accept or reject such proposed annexation..." (33:157.1).

H. If any election on question of proposed annexation fails, no new election proposing same annexation can be held for 12 months (33:161).

I. Problems with Annexation by Petition and Election.

   1. Determination of "number and value" of property owners--is assessor's certificate sufficient?

   2. Meaning of "contiguous and adjacent".

3. Determination of accuracy of survey of area proposed to be annexed.

4. Time and expense of two elections and publication of required notices.

II. **Annexation by Petition and Ordinance--33:172(A),(B); 33:173**.

A. Petition percentage requirements within area proposed to be annexed (33:172(A)).

1. Majority of registered voters.

2. Majority of resident property owners.

3. 25% in value of property of resident property owners.

B. Valuation of property within area proposed to be annexed must be certified by assessor according to assessment of each owner signing petition (33:172(A)(1),(2)).

1. Changes in ownership since last assessment--assessor must certify valuation of present owner according to last assessment of previous owner (33:172(A)(3)).

2. Property not assessed--assessor must estimate value of property for current year and certify estimate as value of property (33:172(A)(3)).

C. Upon request of municipality contemplating annexation, registrar of voters must provide certified list of registered voters residing in area proposed to be annexed (33:172(A)(2)).

D. Registrar of Voters and Assessor are *required*, upon request of annexing municipality, to issue certification as to whether municipality meets required percentages of registered voters and property owners (33:172(A)(2), as amended by Acts 1993, No. 995, § 1).

1. These certificates "shall be the sole evidence" of meeting the required percentages of registered voters and property owners "[f]or all purposes pertaining to municipal annexations, including, but not limited to, the filing of a suit contesting an annexation pursuant to the procedures established in this Chapter...." (33:172(A)(4), as added by Acts 1993, No. 995, § 1).

2. "The parish assessor, the parish registrar of voters, and the annexing municipality may rely ~~conclusively~~ upon the certificates of the parish assessor

and the parish registrar of voters, *said evidence establishing a rebuttable presumption."* (33:172(A)(4), as added by Acts 1993, No. 995, § 1).

(a) The differences between the version of this sentence in the original bill and the final version are shown above. The Legislature deleted the word "conclusively" and added the language regarding the so-called "rebuttable presumption." The original version of this sentence was intended to strengthen the rule of Hider v. Town of Lake Providence, 91 So.2d 387 (La. App. 2d Cir. 1956); Dupre v. Mayor and Board of Aldermen of City of Houma, 126 So.2d 637 (La. App. 1st Cir. 1961); and Leblanc v. City of Lafayette, 543 So.2d 1040, writ denied, 548 So.2d 337 (La.) that the certificates of the assessor and registrar are presumed valid. The Legislature apparently attempted to limit the conclusive effect of this presumption and retain the question of the accuracy of the assessor's and registrar's certifications as an issue in annexation lawsuits.

(b) Did the Legislature succeed in this purpose? How do you rebut the presumption of validity of the assessor's and registrar's certifications if their certificates are the *"sole evidence"* of the written assent of the required percentages of property owners and voters per the preceding sentence in the same statutory provision (33:172(A)(4))?

(c) The only reported case as of this writing that has invalidated a certificate of an assessor or registrar under this standard is Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959, the court invalidated purported certificates of the parish assessor on the grounds that, on their face, they did not certify the matter required by La. R.S. 33:172(A)(1) – the number of *resident* property owners who signed the Town's annexation petition. The certificate only certified the total property owners in the proposed annexation area.

The certificates were invalidated on the testimony of none other than the Assessor himself, along with his Deputy Assessor, that they were not asked to certify, nor did they attempt to certify, anything regarding the *resident* property owners in the annexation area.

Thus, because 33:172(A)(1) required the Town to obtain a certificate "prior to the adoption" of its annexation ordinance showing that the required percentages of resident property owners had signed its

annexation petition, its annexation failed because it did not obtain such a certificate. See Jarrell, 973 So.2d at 956.

The court in Jarrell did not discuss the "rebuttable presumption" or "sole evidence" language of 33:172(A)(4). However, it is clear that the court found the "presumption" to have been "rebutted" – in this case by the testimony of the Assessor and Deputy Assessor to the effect that their certificates did not certify the matter specified in 33:172(A)(1).

E. Publication of notice of filing of petition for annexation (33:172(B))

1. Only one publication required at least 10 days before adoption of annexation ordinance

2. Notice must be published "in some newspaper published or having general circulation in the municipality." Apparently not required to be published in official journal of municipality.

F. "Anyone desiring to be heard with reference to the proposed ordinance shall notify the clerk or secretary in writing and the governing authorities, before adopting any such ordinance, shall grant such hearing." (33:172(B))

G. Annexation ordinance may be adopted 10 days after notice published (33:172(B))

H. Annexation ordinance must "define with certainty and precision" the area to be annexed (33:178)

I. After adoption, annexation ordinance must be published once in a newspaper having general circulation in municipality. If no such newspaper, written copies or ordinance must be posted "in three public and conspicuous places in the municipality." (33:173)

J. Effective date of annexation--30 days after publication or posting of adopted annexation ordinance, unless suit filed within 30 day period (See "Annexation Challenges/Lawsuits," Part VII, infra) (33:173-4)

K. Within 10 days after adoption of ordinance, "a description of the entire boundary of the municipality as changed" must be filed by municipal clerk with clerk of district court where municipality located. "Such description so filed shall become the official boundary of the municipality on the effective date of the ordinance." (33:178)

1. Filing of description of area annexed should be sufficient compliance with requirement of filing of entire boundary as changed, but cases are unclear.

   See Cheshire v. City of Minden, 83 So.2d 526 (La. App. 2d Cir. 1955); Leblanc v. City of Lafayette, 543 So.2d 1040 (La. App. 3rd Cir. 1989), writ denied, 548 So.2d 337 (La.).

2. Failure to timely file annexation ordinance does not invalidate annexation; only affects effective date of annexation.

   Leblanc v. City of Lafayette, supra.

III. Annexation of Areas 90% Contiguous to Boundary of Municipality--33:172(C).

A. Only available in instances in which "at least ninety percent of the boundary of the area to be annexed is common to the boundary of the municipality."

B. Requires positive vote of majority of registered voters residing in the area proposed for annexation voting in election "held according to the provisions of R.S. 33:154 through 161" (see "Annexation by Petition and Election," Part I, Sections D-H, supra).

C. Problem--33:154-161 requires two elections: (1) election in area proposed for annexation, and (2) election in municipality as it exists prior to annexation. 33:172(C) probably intended to provide for one election only within area proposed for annexation, but reference to 33:154-161 conflicts with apparent intent.

D. Safest use of 33:172(C)--areas 90% contiguous when no registered voters reside in area to be annexed. "No election as provided herein shall be necessary if there are no registered voters residing in the area to be annexed." (33:172(C)).

E. Query: How document fact of annexation under 33:172(C) if no registered voters in area to be annexed and no election held? Probably should pass ordinance to document annexation, attach map or plat showing that area is 90% contiguous to existing boundary of municipality, and attach certificate of registrar of voters showing no registered voters within area to be annexed.

F. Presumably, annexation ordinance should be published and recorded under provision of 33:173 and 33:178 (see "Annexation by Petition and Ordinance," Part II, Section H-J, supra).

IV. Annexation by Petition, Ordinance and Election--33:172(D).

A. Petition must be presented to municipality requesting election on question of annexation.

1. Petition must be signed by at least 25% of resident property owners and 25% in value of resident property owners in area proposed to be annexed.

2. Property valued by assessor in same manner as 33:172(A) (see "Annexation by Petition and Ordinance," Part II, Section B).

3. Petition must contain "an accurate description of the area proposed to be annexed".

B. Election on question of annexation must be submitted to qualified voters residing in area proposed to be annexed at special election called by municipality "in the same manner as are other special elections called for bond and tax purposes by municipalities" (See R.S. 18:1281 et seq.).

C. After election results are final, if majority of voters in area proposed to be annexed have voted for annexation, annexation ordinance may be passed by municipality.

D. Presumably, annexation ordinance should be published and recorded under provision of 33:173 and 33:178 (See "Annexation by Petition and Ordinance," Part II, Sections H-J, supra).

V. Annexation of Land Owned by Public Body--33:180.

A. 33:180(A): "The governing body of any municipality other than the city of New Orleans may, by ordinance, enlarge the boundaries of the municipality to include territory within which all of the land is owned by a state agency, political subdivision, or public body, but only upon petition of the governing body of the agency, political subdivision, or public body owning the land which is to be so included. Except as otherwise provided by this Section, the governing body of the municipality may, in its discretion, upon majority vote thereof, adopt such an ordinance without the necessity of compliance with any of the procedures of advertisement, petition by residents, public hearing, or other procedures set forth in this Subpart."

B. Land owned by state agency, political subdivision, or public body may be annexed by petition of the owner and ordinance of the annexing municipality.

C. No further formalities required--ordinance must be adopted by majority vote.

D. Amendments to this section by Acts 1997, No. 1304:

1. 33:180(B): *"No municipality may annex the paved portion of a public road without including in such annexation all property adjacent to at least one side of the road, the paved portion of which is included in the annexation."*

2. 33:180(C): *"A municipality may annex a portion of the right-of-way of a public road as a corridor connecting other property which is not contiguous to the municipality but which is to be annexed without including the property adjacent to the corridor. Any annexation pursuant to this Subsection shall be in accordance with the following:*

   1. *The municipality shall, by certified mail, notify the state agency or political subdivision which owns the road proposed to be annexed at least thirty days prior to the introduction of the ordinance proposing such annexation.*

   2. *The petition or written consent of the state agency or political subdivision must be received by the municipality prior to the adoption of the ordinance."*

E. Reconciling 33:180(B) and (C): Subsection (B) was intended to prohibit annexations of " fingers" of roadways for the sole purpose of establishing speed traps to increase municipal revenue. Note that (B) prohibits annexation when the <u>only</u> property being annexed is " the <u>paved portion</u> of a public road," while (C) permits annexation of " a portion of the <u>right-of-way</u> of a public road <u>as a corridor</u>."

F. Amendments to 33:180(B) by Acts 2012, Nos. 594 and 794:

" No municipality may annex the paved portion of a public road without including in such annexation all property adjacent to at least one side of the road, the paved portion of which is included in the annexation. *At the discretion of the Department of Transportation and Development, the paved portion of an interstate highway right-of-way may be excluded from the annexation without the annexation being considered as not contiguous."*

F. Unanswered questions under 33:180(B) and (C):

1. Meaning of " <u>all property</u> adjacent to at least one side of the road." What depth?

2. What if the annexation includes "a portion of the right-of-way of a public road" (See 33:180(C)) and "the paved portion of a public road" (See 33:180(B))? "The paved portion of a public road" is "a portion of the right-of-way of a public road." Is annexation permitted or prohibited in such a case? Both provisions were enacted to deal with specific circumstances, so which provision is the more specific?

3. Can a municipality annex all of "the right-of-way of a public road" under 33:180(C), or is it required by the express terms of the statute to annex only "a portion of the right-of-way of a public road?"

4. If an annexation fully complies with the requirements of 33:180(C), is the annexation per se "reasonable" under 33:174(B)(1), since it is arguably "blessed" by statute? On the general requirement of "reasonableness," see "Factors showing reasonableness," Section VII(G)(3)(b), infra.

5. Who is the proper representative of "the state agency or political subdivision" under 33:180(C) to give a "petition" or "written consent" to the annexation?

G. Some of these unanswered questions were addressed for the first time in Caldwell Parish Police Jury v. Town of Columbia, 40,865 (La. App. 2nd Cir. 5/17/06), 930 So.2d 65 (on rehearing). In this case, the Town of Columbia annexed property outside the existing corporate limits through the use of a portion of U.S. and state highways as a corridor, as permitted by 33:180(C). On original hearing, the court declared the annexation invalid, apparently because (a) the annexation used the entire right-of-way (instead of a "portion of the right-of-way" as stated in 33:180(C)) of the relevant sections of highway to connect the (otherwise) non-contiguous property, and (b) the annexation included "the paved portion" of highways without including "all property adjacent to at least one side" of those roads, as would be required by 33:180(B). On rehearing, the court recognized its error and sustained the annexation under 33:180(C). Here is the court's language on the issue:

> It is clear from the legislative history that subparts B and C pertain to different situations. Subpart B serves the intention of Representative Wright's bill by preventing municipalities from annexing the paved portions of public roads for creating speed traps. To annex the paved portion of the roadway, a municipality must also annex all the property adjacent to at least one side of the roadway. This requirement burdens municipalities with the responsibility of complying with the requirements for annexation such as La. R.S. 33:172, and of

> providing services to the annexed areas, thereby deterring annexations for creating speed-traps.
>
> Subpart C addresses the concern that municipalities be able to extend their limits to encompass commercial areas that may not be contiguous to the city limits. A municipality is allowed to annex a "portion of the right-of-way of a public road as a corridor" to connect that municipality to noncontiguous property. Municipalities are relieved of the burden of also annexing the property adjacent to one side of the road as in subpart B.
> …
> [W]e erred in concluding that the annexation of the corridor by the Town of Columbia exceeded what is allowed under La. R.S. 33:180(C) by annexing the paved portion of the public roads without annexing property adjacent to at least one side…We find that a "portion of the right of way of a public road" refers to that measure of the roadway serving as the corridor from the limits of the municipality to the property being annexed, rather than to some nebulous section along the right-of-way as suggested in our prior opinion.
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> Caldwell Parish, 930 So.2d at 74-75.

H. Subsequently, in Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959, the court was faced with an interesting wrinkle in applying 33:180. In this case, the Town of New Llano attempted to annex certain territory by means of two separate ordinances: Ordinance 1 attempted to annex approximately 2 ¼ miles of U.S. Highway 171, and Ordinance 2 attempted to annex certain private property adjoining both sides of the portion of U.S. Highway 171 attempted to be annexed in Ordinance 1.

New Llano contended that its annexation of U.S. Highway 171 (Ordinance 1) was authorized under 33:180(C), but the court rejected that contention (arguably in dicta) because "the Town attempted to annex the right-of-way of a public road that is directly adjacent to other property attempted to be annexed at the same time. By its plain wording, R.S. 33:180(C) does not provide for that scenario." Jarrell, 973 So.2d at 957.

New Llano's attempted annexation of property adjoining U.S. Highway 171 (Ordinance 2) was attempted under other statutory authorization, namely, 33:172.

However, the court invalidated the annexation of this adjoining property on the grounds that the assessor's certificate was defective.

Once the annexation of the property adjoining U.S. Highway 171 (Ordinance 2) was invalidated, this left only the attempted annexation of U.S. Highway 171 (Ordinance 1). However, because New Llano was now left with a mere annexation of roadway and right of way, this remaining annexation was a clear violation of 33:180(B).

"Without the territory attempted to be annexed in Ordinance Number Two, the roadway attempted to be annexed by Ordinance Number One plainly violates La. R.S. 33:180(B). It is an invalid annexation of the 'paved portion of a public road without including in such annexation all property adjacent to at least one side of the road.'" Jarrell, 973 So.2d at 957.

I. In Riverside Homeowners Assn. v. City of Covington, 2007-0886, 0887 (La. App. 1st Cir. 4/16/08), 986 So.2d 70, the court was faced with yet another unique situation under 33:180. The City of Covington attempted to annex a parcel of (otherwise) non-contiguous private property by the use of a portion of a state-owned *river bottom* as a corridor. To get the requisite consent for the annexation of the state-owned river bottom, the City of Covington obtained the consent of the State Land Office.

[Note that a river bottom is not a "public road" or the "right of way of a public road" such that the attempted annexation would be governed by either 33:180(B) or 33:180(C). Instead, if this attempted annexation is to be valid, it would be governed by 33:180(A).]

Plaintiffs attacked the annexation, arguing that:

(1) the City of Covington could not annex the property under 33:180; and
(2) the State Land Office is not the proper party to give consent to the annexation of the state-owned river bottom.

The opinion does not indicate that Plaintiff argued that the private property attempted to be annexed failed to meet the procedural requirements of 33:172 (petitions with the required percentages of registered voters and resident property owners). This would seem to be an important issue to address, but the opinion does not mention anything about it.

Nevertheless, the opinion considers the first issue to be "whether a municipality can annex noncontiguous private land under La. R.S. 33:172(A)." Riverside, 986 So.2d at 73.

To answer this question, the court reviewed 33:172(A) and found a situation in which the statute envisioned a situation in which property sought to be annexed was not contiguous to the existing corporate limits.

Specifically, 33:172(A)(1)(d)(iv) [which pertains only to an annexation of vacant land where there are no registered voters and no resident property owners] allocates burdens of proof of "reasonableness" or "unreasonableness" differently in an annexation lawsuit, depending upon whether the property to be annexed is contiguous to the existing corporate limits. This provision specifically envisioned a situation in which the annexed property "is not contiguous to the existing corporate limits" in allocating burdens of proof between the municipality and the challenger.

Relying upon this provision, the court in Riverside concludes that "a noncontiguous annexation is possible in at least some circumstances, as shown in La. R.S. 33:172(A)(1)(d)(iv), which shifts the burden of proving the reasonableness of the annexation to the municipality when the property to be annexed is noncontiguous." Riverside, 986 So.2d at 74.

However, the Riverside court then describes the annexation of noncontiguous property as "the exception to the general rule," without ever articulating what or where the "general rule" is. Id.

With the premise that noncontiguous annexations are "the exception to the general rule," the Riverside court then turns to "the 'corridor' annexation described in La. R.S. 33:180(C)," describing this type of annexation as "one such exception" to the "general rule." Id.

Inexplicably, the Riverside court then turns to an analysis of 33:180(C), which allows the use of "a portion of the right-of-way of a public road as a corridor," in spite of the fact that no "portion of the right-of-way of a public road" is involved in this case. At least according to the text of the opinion, the only public property being annexed by the City of Covington was the state-owned river bottom, which is not a "public road."

Considering the amount of space devoted to an explanation of 33:180(C), the casual reader might be inclined to think that the Riverside court is about to state that the annexation of the river bottom is valid under 33:180(C). However, at the end of its discussion of this statute, the Riverside court merely states that:

> Our reading of La. R.S. 33:180(C) within the applicable overall legislative scheme shows that *contiguity is required for annexations except where specifically authorized by another law*, such as La. R.S. 33:180(C). Thus, in the present case, we find that the City of

> Covington could not annex the Pacaccio property without also annexing the river bottom in order to create contiguity.
>
> Riverside, 986 So.2d at 75.

With this analysis in hand, the court in Riverside had no trouble holding that the state-owned river bottom could be annexed under 33:180. "Louisiana Revised Statutes 33:180 does not limit what sort of state-owned lands may be annexed under its provisions." Riverside, 986 So.2d at 75.

[Actually, this statement is true only for 33:180(A), since 33:180(B) and (C) deal specifically and exclusively with various portions of public roads and their associated rights-of-way.]

The Riverside court also noted that annexation does not transfer ownership from the state to the City of Covington, nor does it limit the authority of the state "in controlling and leasing encroachments on the riverbed according to state policy." Id.

After holding that the state-owned river bottom was subject to annexation under 33:180, the Riverside court finally turned to the issue of how the state would give its consent to such an annexation – essentially, who is the "governing body" in 33:180(A) authorized to "petition" for annexation.

The specific issue before the court was whether the State Land Office was the proper state agency to give such consent.

Two members of the three-judge panel in Riverside held that "the State Land Office, as the party responsible for the administration of all state land and water bottoms under La. R.S. 41:1701 would be the agency to do so." Riverside, 986 So.2d at 75-6.

A dissenting opinion held that "it is the Department of Natural Resources that has the responsibility for the overall management of state owned property and water bottoms" and that "the State Land Office is assigned a more limited responsibility for the 'control, permitting, and leasing of encroachments upon public lands,' . . . and certain 'programs' pertaining to 'water bottoms'."

Interestingly, the majority opinion cited 33:180(C)(1) in support of its proposition that the "governing body of the agency or public body that owns the land" must petition the municipality for annexation under 33:180." Riverside, 986 So.2d at 75. The "governing body" language only appears in 33:180(A), and, as noted above, 33:180(C) does not apply to this case at all, because it only applies to public property that is a "right-of-way of a public road."

The Riverside court traversed a very circuitous route to validate the City of Covington's annexation. So long as the river bottom annexation complied with 33:180(A), there was no need to discuss anything about 33:180(B) or (C), which, on their face, would not appear to apply to publicly owned water bottoms at all. In this light, the only issue truly needing resolution by the Riverside court with regard to the annexed river bottom was whether the State Land Office was the "governing body" to give consent to the annexation under 33:180(A). The Riverside court unnecessarily confused the analysis by liberally referring to 33:180(B) and (C), which have nothing to do with this situation. The court never attempted to equate the river bottom with "the right-of-way of a public road," and to attempt to do so would be a great stretch of any traditional use of this term.

Further, so long as the private property annexation complied with 33:172, there was no need for the court to discuss the contiguity requirement for the private property annexation, because once the court validated the river bottom annexation, the private property would be contiguous anyway.

Therefore, it seems clear that the Riverside court's views on the contiguity requirement, as well as the Riverside court's views on the proper application of 33:180(B) and (C), whether correct or not, are mere dicta.

The case does legitimately raise the issue of the proper state actor to give consent to an annexation under any of the provisions of 33:180, and this may be a trap for the unwary in the future. DOTD traditionally gives consent to annexation of road rights-of-way. *Query*: is there any role for the State Land Office or the Department of Natural Resources in this process after the Riverside decision?

J. Relationship between challenges of annexations attempted under 33:172 and challenges of annexations attempted under 33:180 — the limitations to a challenge to an annexation attempted under 33:172 (governed by peremption and standing rules of 33:174-175) do ***not*** apply to challenges to an annexation attempted under 33:180. See Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, 957-8, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959 (holding that challenges of annexations under 33:180 are not governed by the standing rules of 33:174); Caldwell Parish Police Jury v. Town of Columbia, supra, 40,865 (La. App. 2nd Cir. 5/17/06), 930 So.2d 65, 69 (holding that Parish had standing to sue to contest 33:180 annexation by suit filed more than 30 days after publication of annexation ordinance; 33:174 held inapplicable to annexation under 33:180); Parish of Jefferson v. City of Kenner, 96-73 (La. App. 5th Cir. 5/15/96), 675 So.2d 1177, 1180 writ

denied, 96-563 (La. 9/27/96) (similarly holding that Parish had standing to sue to contest 33:180 annexation; "Section 180 is not governed by Section 174.").

VI. Special Local Limitations and Powers.

A. City of New Orleans cannot annex by means of petition and election (33:151), cannot annex by means of ordinance (33:171), cannot annex any area of Jefferson, Plaquemines or St. Bernard Parish (33:712(A)), and cannot annex territory owned by a public body by means of petition and ordinance (33:180).

B. Rapides Parish municipalities--annexation by petition and election--petition for annexation only requires 25% of resident property owners and 25% in value of property within area proposed to be annexed.

C. Jefferson Parish municipalities-annexation by petition and ordinance (33:172.1).

1. Petition for annexation only requires 25% of resident property owners and 25% in value of property within area proposed to be annexed.

2. If area proposed to be annexed receives services from Jefferson Parish "such as water, sewerage, road lighting, garbage disposal, etc.," petition must contain assent of more than 50% of resident property owners and 50% in value of property within area proposed to be annexed.

D. City of Shreveport--whenever any annexed territory is located within Bossier Parish, boundary change should be filed with Clerk of Caddo and Bossier Parishes (33:178(B)).

E. City of Westlake (33:172.2) may annex non-contiguous and non-adjacent property of 20 acres or less "by means of annexation of such property and a right of way corridor connecting the property and the municipality." The annexation "may be accomplished by ordinance, as provided in this Part," but when there are no registered voters in the area to be annexed, "the required petition shall also contain" written assent of owners of majority of acreage of property to be annexed and at least 25% of value of property to be annexed.

F. Town of Broussard (33:172(E), added by Acts 1999, No. 1126, §1):

1. " In addition to all other requirements and restrictions established by law, no municipality which is not wholly within the boundaries of St. Martin Parish on July 9, 1999, shall annex territory in St. Martin Parish without the approval of the governing authority of St. Martin Parish. This Subsection

shall apply to any annexation by ordinance adopted by a municipality but which has not taken effect on July 9, 1999."

2. " The provisions of this Subsection shall apply only to the city of Broussard."

3. Intended solely to address the situation which was litigated in St. Martin Parish Police Jury v. Town of Broussard, 745 So.2d 113 (La. App. 3d Cir. 1999), writ denied, 753 So.2d 218 (La. 2000). See also 33:171(B), added by Acts 1999, No. 176, §1, which was for the same purpose.

G. Municipalities within St. Tammany Parish, except for "a municipality of more than twenty-five thousand persons" (i.e., Slidell) – La. R.S. 33:172(F), as amended by Acts 2011, 1st Ex. Sess., No. 20.

1. Establishes an elaborate non-judicial procedure to annex "vacant land contiguous to its borders."

2. The governing authority of the annexing municipality first passes a resolution declaring its intent to annex.

3. The St. Tammany Parish Council then has 45 days to "concur with, reject, or take no action regarding the proposed annexation."

4. If the St. Tammany Parish Council "rejects" the annexation, an "annexation panel" is formed, consisting of the chief executives of the annexing municipality and St. Tammany Parish, as well as an arbitrator.

5. Within sixty days after the St. Tammany Parish Council "rejects" the proposed annexation, the "annexation panel" must hold a public hearing "to consider and "render a decision on whether to *recommend* the proposed annexation. *The decision of the panel shall be binding on the parties."* (33:172(F)(2)(e)(ii) (emphasis added)).

[Note: the term "recommend" seems inconsistent with the next sentence mandating that the decision is "binding on the parties."]

VII. **Annexation Challenges/Lawsuits (33:174-5, 177)**.

A. Lawsuit contesting annexation must be filed within 30 day period after publication of annexation ordinance (33:173-4). "If no suit is filed within the thirty day period,... [the annexation ordinance] shall then become operative and cannot be contested or

attacked for any reason or cause whatsoever….*The periods established by this Section are peremptive* and apply to any and all purported rights and causes of action to contest or attack an ordinance enlarging the boundaries of a municipality for any reason or cause whatsoever, except for any rights or causes of action under the Voting Rights Act of 1965, as amended. " (33:175).

Warning: without discussion, some cases have *not* considered a suit outside of this time period to be barred, apparently on the theory that the suit was filed for an ultra vires act of the municipality (in adopting an annexation statute without compliance with the statutory requirements) and was not filed under the annexation statutes. See, e.g., Kennedy v. Town of Georgetown, 746 So.2d 663 (La. App. 3d Cir. 1999)(no mention of suit being time-barred under 33:175; suit filed *two years* after passage of annexation ordinance on theory that ordinance was void ab initio as an ultra vires act); Cf. Parish of Ouachita v. Town of Richwood, 697 So.2d 623 (La. App. 2d Cir 1997), writ denied, 703 So.2d 1267 (La.), reconsideration denied, 707 So.2d 48 (La. 1998)(although case involves an injunction *in advance* of adoption of annexation ordinance, court found the rules of annexation lawsuits contained in 33:174 inapplicable because plaintiff's challenge was to an ultra vires act of the municipality under the so-called "general law" and not under the annexation statutes).

Further Warning: Cases which have thus far considered the issue have also held that annexations pursuant to 33:180 (annexation of public property or annexation via use of public road as corridor) are *not* governed by the same challenge rules as annexations pursuant to 33:172. See Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, 957-8, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959 (holding that challenges of annexations under 33:180 are not governed by the standing rules of 33:174); Caldwell Parish Police Jury v. Town of Columbia, supra, 40,865 (La. App. 2nd Cir. 5/17/06), 930 So.2d 65, 69 (holding that Parish had standing to sue to contest 33:180 annexation by suit filed more than 30 days after publication of annexation ordinance; 33:174 held inapplicable to annexation under 33:180); Parish of Jefferson v. City of Kenner, 96-73 (La. App. 5th Cir. 5/15/96), 675 So.2d 1177, 1180 writ denied, 96-563 (La. 9/27/96) (similarly holding that Parish had standing to sue to contest 33:180 annexation; "Section 180 is not governed by Section 174."). Although these cases focused upon the standing rule of 33:174, their rationale could easily apply to the peremption rule of 33:175, and in fact, in Caldwell Parish Police Jury, the court did, in fact, reject defendant's argument that the Parish's suit was time-barred because it was filed after the 30-day period of 33:175 (although the court does not discuss the issue).

B. So now, there are at least two areas in which the courts appear to be rejecting application of the 30-day peremptive period of 33:175:

1. Cases which are supposedly not filed under the annexation statutes, but instead are filed under the "general law" to contest an *ultra vires* act of the municipality in allegedly failing to follow the annexation statutes.

2. Cases which challenge an annexation attempted pursuant to 33:180.

C. So what is the period of limitations to sue to contest an annexation not governed by the 30-day peremptive period of 33:175(A)? The Legislature somewhat came to the rescue on this issue by the 2005 enactment (by Acts 2005, No. 227) of what is now codified as 33:175(B), which states as follows:

> *Notwithstanding any other provision of this Subpart, an ordinance enlarging the boundaries of a municipality cannot be contested or attacked based on the inadequacy of the notice after the passage of five years from the date of its enactment, and the implementation and operation of such an ordinance for that period shall be adequate notice of its existence.*

This provision automatically ties into 33:175(C) (newly designated as such after insertion of the new subsection (B)) which provides that "the periods established by this Section are peremptive…." Thus, it now appears that in no event will a future annexation be subject to challenge "after the period of five years from the date of its enactment."

D. Standing to sue/right of action granted to "any interested citizen of the municipality or of the territory proposed to be annexed thereto." "Interested" is defined as "a real and actual personal stake in the outcome of the contest of the extension of the corporate limits." (33:174(A), as amended by Acts 1993, No. 995 § 1). This is an attempt to limit those who may have standing by incorporating the general standard which has been used by federal courts in denying standing to sue based solely upon taxpayer status. See, e.g., Frothingham v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078 (1923); Flast v. Cohen, 392 U.S. 83, 88 S.Ct. 1942, 201 L.Ed.2d 947 (1968); Warth v. Seldin; 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

In *Jenkins v. City of Baton Rouge*, 2014-1235 (La. App. 1 Cir. 3/9/15); --- So.3d ---, plaintiff Woody Jenkins asserted that had a "real and actual personal stake" in an annexation of the City of Baton Rouge because he lived in a high crime area of the City of Baton Rouge and he had recently been a victim of a crime. Jenkins filed suit to challenge the subject annexation on the grounds that he would be particularly affected by any reduction in police or fire protection services that would result from the proposed annexation, which services might be reduced at his home as a result of

the annexation. Based on evidence presented at the hearing on the City's Exception of No Right of Action, the First Circuit determined that there would be no impact on police or fire protection services at the citizen's home as a result of the annexation. The First Circuit affirmed the District Court's granting of the Exception, holding that Jenkins had no real and actual personal stake in the annexation as required by LSA-R.S. 33:174.

Warning: without discussion, some cases have allowed plaintiffs who do not meet the full test of 33:174(A) to bring suit to challenge an annexation. See, e.g., St. Martin Parish Police Jury v. Town of Broussard, 745 So.2d 113 (La. App. 3d Cir. 1999), writ denied, 753 So.2d 218 (La. 2000)(suit brought by Police Jury, 911 Commission, Sheriff, an individual who apparently did not reside either in the municipality or in the annexation area, and a corporation); Parish of Ouachita v. Town of Richwood, 697 So.2d 623 (La. App. 2d Cir. 1997), writ denied, 703 So.2d 1267 (La.), reconsideration denied, 707 So.2d 48 (La. 1998)(suit brought by Police Jury).

Further Warning (Again): Cases which have thus far considered the issue have also held that annexations pursuant to 33:180 (annexation of public property or annexation via use of public road as corridor) are *not* governed by the same challenge rules as annexations pursuant to 33:172. See Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, 957-8, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959 (holding that challenges of annexations under 33:180 are not governed by the standing rules of 33:174); Caldwell Parish Police Jury v. Town of Columbia, supra, 40,865 (La. App. 2nd Cir. 5/17/06), 930 So.2d 65, 69 (holding that Parish had standing to sue to contest 33:180 annexation by suit filed more than 30 days after publication of annexation ordinance; 33:174 held inapplicable to annexation under 33:180); Parish of Jefferson v. City of Kenner, 96-73 (La. App. 5th Cir. 5/15/96), 675 So.2d 1177, 1180 writ denied, 96-563 (La. 9/27/96) (similarly holding that Parish had standing to sue to contest 33:180 annexation; "Section 180 is not governed by Section 174.")

E. Venue--"the district court having jurisdiction over the municipality" (33:174).

Even in a case in which the annexation in question extends into another parish, proper venue lies in the parish where the annexing municipality is located before the annexation. La. R.S. 13:5104, which also allows alternative venue for suits against a political subdivision in "the district court having jurisdiction in the parish in which the cause of action arises," does not allow for suit in the parish into which the annexation extends. The "cause of action arises" in the municipality when the annexation ordinance is adopted, so venue is proper in the parish where the municipality is located before the annexation. St. Martin Parish Police Jury v. Town

of Broussard, 745 So.2d 113 (La. App. 3d Cir. 1999), writ denied, 753 So.2d 218 (La. 2000).

F. Scope of inquiry.

1. Prior version of statute -- "[T]he question shall be whether the proposed extension is reasonable" (33:174, prior to amendment by Acts 1993, No. 995 § 1).

2. Nevertheless, even terms of old 33:174 did not preclude attack on validity of annexation ordinance or petition requesting annexation. Grice v. Mayor and Council of Morgan City, 164 So.2d 370 (La. App. 1st Cir. 1964). In general, could not presume, even under prior law, that reference only to "reasonableness" in 33:174 limited the scope of review of annexation proceedings.

3. Four broad (non-exclusive) grounds of annexation challenge:

   (a) Reasonableness;

   (b) Whether certificates were obtained from assessor and registrar which show assent of statutory percentages of voters and property owners;

   (c) Compliance with statutory publication, notice, and filing requirements; and

   (d) Compliance with municipal requirements for adoption of ordinances.

4. These grounds have been expressly incorporated into the new 33:174(B), as revised by Acts 1993, No. 995, § 1. Note, however, that compliance with statutory publication, notice, and filing requirements is not explicitly mentioned. In light of the manner in which Grice expanded the old 33:174 beyond the issue of "reasonableness" expressly mentioned in the statute, it is doubtful that a court will consider this inquiry prohibited.

5. The main purpose of this addition was to eliminate the lengthy and extensive inquiry into the validity of the certifications of the assessor and registrar. Note that 33:174(B)(2) attempts to limit the inquiry regarding these certificates to *whether they were obtained*, not *whether they are accurate*. This was intended to work hand-in-hand with the original amended version of 33:172(A)(4), which would have provided that these certificates were the sole

and conclusive evidence of obtaining the required percentages of voters and property owners.

6. The Legislature's addition of the "rebuttable presumption" language in 33:172(A)(4) purports to limit the conclusive language of the original bill. However, how can the presumption of validity of the assessor's and registrar's certificate be rebutted if the certificates are the "sole evidence" of meeting the percentage requirements for annexation? Further, what difference does rebutting the presumption of validity of the certificates make when the "sole question" triable by the court on the certificates is whether they were obtained and whether they show the required percentages on their face?

7. In Jarrell v. Town of New Llano, 2007-787 (La. App. 3rd Cir. 12/28/07), 973 So.2d 952, writ denied, 2008-0234 (La. 3/24/08), 977 So.2d 959, the court invalidated purported certificates of the parish assessor on the grounds that, on their face, they did not certify the matter required by La. R.S. 33:172(A)(1) – the number of *resident* property owners who signed the Town's annexation petition. The court in Jarrell did not discuss the "rebuttable presumption" or "sole evidence" language of 33:172(A)(4). However, it is clear that the court found the "presumption" to have been "rebutted" – in this case by the testimony of the Assessor and Deputy Assessor to the effect that their certificates did not certify the matter specified in 33:172(A)(1).

8. The Legislature has also inserted special specific grounds of inquiry for suits involving an annexation under La. R.S. 33:172(A)(1)(c), which involves a situation in which there are no registered voters and no resident property owners on the property to be annexed. In such a case, 33:172(A)(1)(d)(iii) describes the court's "reasonableness" inquiry as "an evaluation of the desires of the owners of the property proposed to be annexed, the anticipated public benefit of the proposed annexation, and the fiscal and financial impact that the extension of the corporate limits of the municipality will have on the municipality, the parish, and the neighboring property owners." In Parish of Acadia v. Town of Duson, 2005-688, 689, 690 (La. App. 3rd Cir. 7/1/05), 909 So.2d 642, 645-6, a 5-judge panel of the Third Circuit applied traditional "reasonableness" jurisprudence to an annexation challenge under this special provision and upheld the trial court's findings of "unreasonableness" due to the lack of direct access of the property sought to be annexed to the annexing municipality, and due to the annexing municipality's admission that it did not have any foreseeable plans to extend any municipal services to the annexed area.

G. Effective date of annexation of suit timely filed and judgment rendered in favor of municipality.

1. If no suspensive appeal--conflict in statutes.

(a) "The ordinance shall go into effect <u>ten days</u> after the judgment is rendered and signed" (33:174).

(b) "[I]f no appeal is taken <u>within the legal delays</u> from a judgment of the district court sustaining the ordinance, same shall then become operative and cannot be contested or attacked for any reason or cause whatsoever." (33:175) Minimum appeal delays--7 days for motion for new trial (See CCP Article 1974) plus 30 days (See CCP Article 2123).

(c) Attorney General Opinion 88-76, February 19, 1988--annexation ordinance not effective until expiration of suspensive appeal delays (minimum 37 days)--gives no effect to 10 day period of 33:174.

2. If suspensive appeal taken.

(a) Annexation statutes are silent as to effective date of annexation once annexation case is in appellate court on suspensive appeal.

(b) Refer to CCP articles regarding appellate procedure and effective date of judgment of courts of appeals and Louisiana Supreme Court (CCP 2161-2167).

3. Terms of La. R.S. 33:174(C), which states that "the ordinance shall go into effect ten days after the judgment is rendered and signed unless a *suspensive appeal* therefrom has been taken within the time and manner provided by law," does not preclude a *devolutive* appeal. <u>Hollingsworth v. City of Minden</u>, No. 2001-C-2658 (La. June 21, 2002), 828 So.2d 514.

H. Effect of judgment adverse to municipality--"If the proposed extension is adjudged invalid, the ordinance shall be vacated and the proposed extension denied, and no ordinance proposing practically the same extension shall be introduced for one year thereafter." (33:174). Activities <u>not</u> precluded within one year period--different proposed annexations involving part of previous area (so long as not "practically the same," whatever that means); initiation of new annexation process in same area so long as annexation ordinance not <u>introduced</u>.

I. Strategies for defense of annexation lawsuits.

1. Early motion for summary judgment if investigation shows procedural requirements met.

(a) Allegations of challenges frequently pro forma--insufficient to raise genuine issue of material fact.

CCP 966(B); Equipment, Inc. v. Anderson Petroleum, Inc., 471 So.2d 1068 (La. App. 3rd Cir. 1985); City of Baton Rouge v. Cannon, 376 So.2d 994 (La. App. 1st Cir. 1979).

(b) Municipality in control of most or all relevant documents--most are self-authenticating, if certified, and most are exceptions to hearsay rule.

La. Code of Evidence Articles 902-905 (self-authentication); La. Code of Evidence Article 803(6) (business records exception); La. Code of Evidence Article 803(8) (public records exception).

(c) Certificates of assessor and registrar are prima facie proof of their contents and are presumed valid; they are now the "sole evidence" of statutory compliance with percentage requirements and establish a "rebuttable presumption."

Hider v. Town of Lake Providence, 91 So.2d 387 (La. App. 2d Cir. 1956); Dupre v. Mayor and Board of Aldermen of City of Houma, 126 So.2d 637 (La. App. 1st Cir. 1961); Leblanc v. City of Lafayette, 543 So.2d 1040 (La. App. 3rd Cir. 1989), writ denied, 548 So.2d 337 (La.); La. Rev. Stat. Ann. § 33:172(A)(4), as amended by Acts 1993, No. 995 § 1.

(d) Primarily legal issues involved--only significant factual issue will be reasonableness. To attempt to show no genuine issue regarding reasonableness--introduce certified copy of map of annexation area showing proximity of area to existing city limits; introduce affidavits of municipal officials showing ability of city to provide municipal services upon annexation, etc. (see "Factors Showing Reasonableness," Section 3(b) infra).

2. Rescind annexation ordinance or enter into consent judgment vacating annexation ordinance early if procedural requirements not met.

   (a) If ordinance rescinded without any determination made as to reasonableness, one-year moratorium on annexing “practically the same” area does not apply. Allen Parish Water Dist. No. 1 v. City of Oakdale, 540 So.2d 564 (La. App. 3rd Cir. 1989).

   (b) If annexation is found unreasonable, must wait one year before introducing "practically the same" annexation ordinance (33:174)--early consent judgment will start clock running if municipality would have been likely to lose on merits anyway.

   (c) May wish to re-draw annexation area to overcome objections in interim.

3. Legal principles governing challenge to "reasonableness" of annexation.

   (a) Burden of proof of unreasonableness is upon challenger, and unreasonableness must be demonstrated by "abundant" evidence.

   Kansas City So. Ry. Co. v. City of Shreveport, 354 So.2d 1362 (La. 1978), cert. denied, 439 U.S. 829, 99 S. Ct. 103, 58 L.Ed.2d 122 (1978); Barbe v. City of Lake Charles, 216 La. 871, 45 So.2d 62 (1949); Leblanc v. City of Lafayette, supra.

   (b) Factors showing reasonableness (non-exclusive).

      (1) Extension (prompt) of municipal services to area proposed to be annexed.

      (2) Configuration of boundaries of annexation areas--use of natural boundaries and filling in gaps in corporate boundaries.

      (3) Area is urbanized or residential, or may be needed for future urban expansion.

      (4) "The court considers generally the benefits and detriments to both the municipality and the area to be annexed." Kansas City So. Ry. Co. v. City of Shreveport, supra.

(5) See also Nix v. Village of Castor, 116 So.2d 99 (La. App. 2d Cir. 1959); Leblanc v. City of Lafayette, supra; City of Monroe v. Noe, 340 So.2d 616 (La. App. 2d Cir. 1976); Barbe v. City of Lake Charles, 45 So.2d 62 (La. 1949).

(6) Annexation is unreasonable when made for sole purpose of increasing municipal revenue through taxation. Barbe v. City of Lake Charles, supra.

J. Challenger's efforts to bypass the statutory rules for annexation lawsuits.

1. Parish of Ouachita v. Town of Richwood, 697 So.2d 623 (La. App. 2d Cir. 1997), writ denied, 703 So.2d 1267 (La.), reconsideration denied, 707 So.2d 48 (La. 1998).

a. The court held that annexation by petition and ordinance requires that the property to be annexed by contiguous, even though 33:172 does not explicitly require contiguity and some other annexation methods do.

b. Because this annexation was not contiguous, the court regarded it as an ultra vires act of the municipality. Because the annexation was found to be an ultra vires act, Plaintiff successfully argued that it was not challenging the annexation under the annexation statutes, but under the "general law" (whatever that means), which carried the following consequences:

(1) 33:174 does not control the lawsuit.

(1) The lawsuit may be brought on grounds other than those stated in 33:174. In this case, the lawsuit may be brought on the ground that the annexation is non-contiguous, even though 33:174 does not authorize such a challenge (except on "reasonableness" grounds, which, for whatever reason, were apparently not asserted in this case).

(2) An injunction may issue to prevent the legislative body of the municipality from passing the ordinance, and is not considered to be an impermissible interference with the actions of a legislative body.

c. Note also that the Parish was allowed to be the plaintiff in this action, although this is not discussed in the opinion. The Parish would not appear to meet the full test of 33:174(A).

2. St. Martin Parish Police Jury v. Town of Broussard, 745 So.2d 113 (La. App. 3d Cir. 1999), writ denied, 753 So.2d 218 (La. 2000).

a. An Exception of No Right of Action was held to have been correctly overruled by the trial court as to (1) an individual who was not alleged in the petition to have been either a citizen of the annexing municipality or of the annexed area and (2) a corporation which owned a business in the area to be annexed. There is no discussion of the reasons for the overruling of the exception in the opinion; the opinion only states that the trial court correctly overruled the exception. Neither of these plaintiffs would appear to meet the test of 33:174(A).

b. A Police Jury, the St. Martin Parish Sheriff, and the St. Martin Parish 911 Commission were also named as plaintiffs. None of these plaintiffs would appear to meet the test of 33:174(A) either, but the opinion does not address their right/cause of action in any respect.

3. Kennedy v. Town of Georgetown, 746 So.2d 663 (La. App. 3d Cir. 1999).

a. Decided on the same day by the same panel of the Third Circuit which decided St. Martin Parish Police Jury v. Town of Broussard, supra.

b. The court finds two attempted annexations of roadways by two different towns under 33:180 (prior to the 1997 amendments) without compliance with the statutory requirement of a petition from the State of Louisiana. With these facts, the court describes the issue as "whether failure to follow the procedure set forth in the statute results in the ordinances being void ab initio." The court describes the issue as being "res nova," in spite of the fact that Parish of Ouachita v. Town of Richwood, supra, had addressed a similar issue two years earlier.

c. The court holds that the two annexation ordinances at issue are "ultra vires acts," and "[a]s such, they are null and void."

d. One of the annexation ordinances was adopted on December 4, 1995, and the other was adopted on February 10, 1996. The two suits which were filed to challenge these annexation ordinances were not filed until *January 22, 1998, almost 2 years after the latest of the ordinances at issue*. Nevertheless, for unknown reasons, the court does not address the issue of the timeliness of these suits in its opinion.

COMMON ANNEXATION PROBLEMS AND PRACTICAL STRATEGIES

I. Form of Petition for Annexation.

A. Must be in writing. No special form is necessary, but "the petition shall provide a description of the general area to be annexed which shall be attached thereto." (33:172(A)(5), as amended by Acts 1993, No. 995, § 1). Legislatively overrules Leblanc v. City of Lafayette, 543 So.2d 1040 (La. App. 3rd Cir. 1992), writ denied, 548 So.2d 337 (La).

B. No need to circulate two different petitions -- one for property owners and one for registered voters. See Kansas City So. Ry. Co. v. City of Shreveport, supra, 354 So.2d 1362 (La. 1978).

C. If municipality determines that sentiment exists for annexation in a particular area, municipality should attempt to coordinate annexation effort and circulate petitions to insure compliance with legal requirements.

D. Reject annexation petitions with conditions attached. Example: "I hereby petition the city for annexation provided that my street is resurfaced within 3 months of annexation," etc.

1. Argument could be made that this is a suspensive or resolutory condition (depending upon phrasing of condition) which could invalidate annexation if event desired by petitioner (e.g. resurfacing of streets) does not occur. No known cases. See CC Articles 1767-1776.

2. Possible counter-arguments: petition for annexation is not a contractual offer; contrary to public policy for municipality to contract with individual citizen for construction of particular public improvements. No known cases.

II. Meeting Required Percentages of Registered Voters.

A. Additions to voter rolls prior to certification -- circulate petition for annexation among new voters.

B. Voters who have moved and are still registered in precinct of old residence -- challenge voters as being improperly registered. Can only bring this to attention of registrar of voters under La. R.S. 18:193 (mandatory duty to notify registrant and cancel registration if no response).

III. Inclusion of Community Property Interests in Number and Value of Resident Property Owners.

A. Primary issue: Does such resident spouse count as a "resident property owner" for purposes of 33:172(A) due to his/her community property interest?

B. Governing legal principles.

1. CC 2336 -- "Each spouse owns a present undivided one-half interest in the community property."

2. CC 2340 -- presumption that things in possession of spouse during existence of community are community property.

3. CC 2346 -- "Each spouse acting alone may manage, control, or dispose of community property unless otherwise provided by law."

4. CC 2347 -- "The concurrence of both spouses is required for the alienation, encumbrance, or lease of community immovables ..."

C. Secondary issue: Is the signing of an annexation petition an act of "alienation, encumbrance, or lease" of community immovables requiring concurrence of both spouses?

1. Clearly not "alienation" or "lease".

2. "Encumbrance": "A claim, lien, charge, or liability attached to and binding real property ..." Black's Law Dictionary, 5th Ed., p. 473.

D. Solution not clearly established in Louisiana jurisprudence. Only completely safe approach -- count each spouse as a resident property owner. Terms of 33:172(A) allow municipality to rely on certificate of parish assessor, but annexation challenger is not precluded from attacking accuracy of assessor's certificate and records. Annexation petition should "require" spouse to sign (i.e., have signature line for "husband" and "wife," not just "owner"). If household is in favor of annexation, all occupants of household above age of majority should sign.

E. If courts are to count each spouse as a separate property owner, where will rule stop and how will it apply to other property interests which are less than fee? Consider the following individuals which might be considered "property owners" under an expansive reading of this rule:

1. Lessees;

2. Usufructuaries and naked owners;

3. Owners in indivision;

4. Owners of mineral interests;

5. Dominant estates under servitudes;

6. Good or bad faith possessors.

F. Attempted legislative clarification -- Addition to 33:172(A)(3) by Acts 1993, No. 995, § 1:

"In any case in which multiple property owners are assessed under a single assessment, neither the assessor, nor the annexing municipality shall be required to make further inquiry beyond the face of the assessor's records as to the identity of unnamed property owners. Neither the assessor nor the annexing municipality shall be required to count or consider the existence of multiple fractional property interests in determining whether the percentages required in this Subsection have been met."

IV. Exclusion of Objectors by Changing Boundaries -- Avoiding Allegations of Gerrymandering.

A. Hider v. Town of Lake Providence, supra, 91 So.2d 387 (La. App. 2d Cir. 1956) -- Municipalities have discretion to include or exclude particular property from annexation, so long as no abuse of discretion.

B. Dupre v. Mayor and Board of Alderman of City of Houma, 126 So.2d 637 (La. App. 1st Cir. 1961) -- Meetings and informal testing of sentiment for annexation, followed by annexation of areas where annexation favored, not per se abuse of discretion.

C. Although changes in boundaries of proposed annexation area to exclude objectors does not invalidate annexation per se, keep in mind other factors showing reasonableness of annexation when changing boundary (See "Methods of Annexation and Annexation Challenges, Part VII, Section G(3)). Also beware of Voting Rights Act (See "Voting Rights of Annexed Residents," infra).

D. Don't change boundaries of proposed annexation *after* certification of petitions or publication of required notices without *re-certifying* petitions and *re-publishing notices* for changed annexation area.

V. **Withdrawal of Signatures on Annexation Petition**.

A. Withdrawal permitted at any time until "significant actions" taken toward annexation by municipality's governing body.

Kansas City So. Ry. Co. v. City of Shreveport, supra, 354 So.2d 1362 (La. 1978), cert. denied, 439 U.S. 829, 99 S. Ct. 103, 58 L.Ed.2d 122 (1978); Barbe v. City of Lake Charles, supra, 216 La. 871, 45 So.2d 62 (1949).

B. Both Kansas City and Barbe declined to fix a specific point at which withdrawal would no longer be permitted.

1. Kansas City -- withdrawal not permitted on day municipal governing authority was to hold final vote on adoption of annexation ordinance.

2. Barbe -- withdrawal not permitted after adoption of annexation ordinance.

C. Warning -- beware of questionable representations made regarding "benefits" of being annexed to induce signing of petition. Barbe court indicates that later withdrawal would be permitted if annexation petitioner could show that signature was obtained "fraudulently or in bad faith."

EFFECTS OF ANNEXATION

I. Rights and Obligations of Annexed Residents and Municipality.

A. "Where the corporate limits of municipalities have been extended or enlarged as hereinabove provided, the inhabitants thereof, and the owners of property therein shall enjoy as to themselves and their property all the rights, immunities, and privileges granted and enjoyed by the citizens of the municipality to which the territory has been annexed." (33:179).

B. "Dry" area which is annexed into "wet" area does not become "wet" merely by virtue of an annexation. Doughty v. Town of Tullos, No. 82-260 (La. App. 3d Cir. 11/12/82), 425 So.2d 814.

C. Responsibility for road maintenance – La. R.S. 33:224.

1. Annexation must include all portions of any parish roads located within annexed areas and municipality must maintain all such portions of parish roads. If road "adjacent to but not within" annexed territory, municipality and parish equally share maintenance of road. Does not apply to city-parish form of government.

2. This statute was added by Acts 1983, No. 123, § 1, effective August 30, 1983. The Attorney General has opined that La. R.S. 33:224 is not retroactive meaning that parish roads annexed before the effective date of the statute, August 30, 1983, are not required to be maintained by the municipality. Atty. Gen. Op. 98 - 422, March 19, 1999; Atty. Gen. Op. 84-234, March 9, 1984.

D. Annexation of territory located within water, sewer, or fire protection district -- 33:221, 222, 223.

1. These statutes were originally parts of Article 14, § 48 of the Louisiana Constitution of 1921. They were continued as statutes by Article 14, § 16 of the Louisiana Constitution of 1974 and Acts 1975. No. 142, § 1.

2. Municipality and special service district may contract to give either the exclusive right to provide service in annexed area. (33:221)

3. Special service district must continue to levy taxes for debt service on tax-secured bonds and may continue to levy previously authorized maintenance

tax; no new taxes for new tax-secured bonds in annexed area, and no new maintenance taxes in annexed area. (33:221)

4. "The parties may provide in the contract that in order to avoid unnecessary duplication of facilities either party will convey its respective facilities in the annexed area to the party granted exclusive jurisdiction over the area for the purpose of serving the inhabitants thereof. Such reasonable compensation as is agreed upon by the parties shall be paid in consideration of the transfer, and no such conveyance shall be made with out such compensation or in such a manner as to impair any outstanding obligations of either party." (33:222)

5. "An executed copy of the contract shall be recorded in the mortgage records of the parish in which the municipality is located and shall be binding upon the parties thereto as of the date such contract is so filed for recordation." (33:223)

6. If there is no contract between the annexing municipality and the special service district providing for exclusive service by the municipality in the annexed area, the special service district may continue to provide service and levy, collect, and renew its taxes in the annexed area.....

   Caddo Parish Fire Districts, Two, Three, Five, and Six v. Clingan, No. 26,453 (La. App. 2d Cir. 12/5/95), 649 So.2d 156; Atty. Gen. Op. 04-0178, July 20, 2004.

7. ....However, Attorney General's opinions indicate that the special service district does not have exclusive service rights in the annexed area, and the annexing municipality may provide competing service in the annexed area.

   Atty. Gen. Op. 95-17, March 25, 1997; Atty. Gen. Op. 92-296, June 3, 1992.

8. Caddo Parish has special rules.

   a. La. R.S. 33:221.1 *requires* that the municipality and special service district enter into a contract establishing service rights and related issues, and if the parties are unable to reach agreement, a mediation is required upon request by either party. The statute *implies*, but does not explicitly state, that an annexation cannot proceed unless mediation has been conducted and fails to produce an agreement.

   b. La. R.S. 33:221.3 is specific to fire protection districts. It requires that the annexing municipality will take over fire protection and

emergency response service, but must continue to remit to the fire protection district certain revenues the district would have earned (see the statute) into the future, at least until such time as any bonded indebtedness is retired.

E. Annexation of territory located within garbage protection district – La. R.S. 33:8801-8804; 33:7702(A).

1. The boundaries of a parish garbage protection district must be "outside of the corporate limits of municipal corporations." (33:8801) Further, if a parish chooses to consolidate multiple garbage districts, "no consolidated garbage district shall include territory within the corporate limits of any municipality." (33:7702(A)).

2. In IESI LA Corp. v. LaSalle Parish Police Jury, No. 2007-1096 (La. App. 3rd Cir. 3/5/08), 979 So.2d 597, writ denied, Nos. 2008-0696 (La., 4/7/08), 2008-0725 (La., 6/20/08), the court applied these provisions, along with 33:179 (see above), to hold that an area that is part of a consolidated garbage district prior to annexation is no longer part of the consolidated garbage district after annexation. "Once Pollock annexed the subject property, the property ceased to be under the control of the Solid Waste District since Pollock is not a member of it. Therefore, the LaSalle-Grant Parish Solid Waste District has no jurisdiction over the subject property." IESI, 979 So.2d at 602.

F. Taxation of newly annexed residents.

1. Municipal sales tax -- prohibited on sales of goods or personal tangible property delivered outside territorial limits of municipality, or if services outside territorial limits of municipality. (33:2716). Effective date of annexation should control as to imposition of municipal sales tax.

2. Municipal ad valorem tax.

a. Note time for preparation and listing on assessment lists of newly annexed property, corrections of assessments by Louisiana Tax Commission, publication of assessment lists, hearings on allegedly erroneous assessments by board of review, and preparation and filing of final tax roll by assessor (47:1987-1993).

b. Query -- Can municipal millage rates apply immediately to newly annexed areas when residents of those areas were not City residents at the time the millages were last adjusted? See R.S. 47:1705, which

provides a procedure for millage adjustment which includes "a public hearing held in accordance with the open meetings law." Potential due process problem.

II. Application of Municipal Land-Use Regulations.

A. La. R.S. 33:4725.1:

“ A. Except as provided by Subsection B of this Section, if after August 15, 1999, a municipality annexes property the use of which is governed by a parish zoning ordinance at the time of annexation, and the annexation causes a change in the zoning classification, the parish zoning classification shall remain in effect until the owner of the property has applied for rezoning with the appropriate municipal governing authority, board or commission or for a period of six months, whichever occurs first. The municipality shall notify, by certified mail, the owner of the property of the change in zoning classification within thirty days of the date of the annexation.

B. The owner of property subject to Subsection A of this Section may waive the provisions of Subsection A with respect to his property. Any such waiver shall be in writing and shall be filed in the parish conveyance records. A municipal governing authority may prescribe the form for any such waiver or may authorize a municipal officer, agency, or employee to prescribe such form for the filing of such waivers. A municipal governing authority may adopt additional requirements for the filing of such waivers.”

B. Pre-existing lawfully established non-conforming uses.

1. "Vested right" -- right to enjoyment, present or prospective, which has become property or particular person as present interest; right must be absolute, complete, unconditional, independent of contingencies, and not mere expectancy of future benefits or contingent interest in property.

   Tennant v. Russell, 214 La. 1046, 39 So.2d 726 (1949); Rodriguez v. City Civil Service Commn., 337 So.2d 308 (La. App. 4th Cir. 1976); Berteau v. Weiner Corp., 362 So.2d 806 (La. App. 4th Cir. 1978), writ denied, 365 So.2d 242 (La.); Rico v. Vangundy, 461 So.2d 458 (La. App. 5th Cir. 1984).

2. Customary zoning provision -- pre-existing lawfully established non-conforming use can remain, subject to following restrictions:

a. No expansion or change to more intensive use.

b. Termination (or alternatively, reconstruction to same or less intensive use) if nonconforming use destroyed.

c. Termination if property vacant for specified period of time (and, where reconstruction permitted, no reconstruction of destroyed nonconforming building occurs within specified period).

3. Possible alternative to perpetual allowance of pre-existing non-conforming uses -- use of "amortization schedule."

a. Time period for removal of non-conforming use sufficient to allow owner reasonable return on investment.

b. Query: What repairs are permitted during term of "amortization schedule?"

c. Concept of "amortization" upheld in Louisiana. State ex rel. Dema Realty Co., v. Jacoby, 168 La. 752, 123 So. 314 (1929).

d. "Amortization" in other states -- City of Los Angeles v. Gage, 127 Cal.App.2d 442, 274 P.2d 34 (1954); Harbison v. City of Buffalo, 4 N.Y.2d 553, 176 N.Y.S.2d 598, 152 App. 572, 371 A.2d 706 (1977); Art Neon Co. v. City and County of Denver, 488 F.2d 118 (10th Cir. 1973), cert. denied, 417 U.S. 932, 94 S.Ct. 2644, 41 L.Ed.2d 236 (1974); Metromedia, Inc. v. City of San Diego, 26 Cal.3d 848, 610 P.2d 407, 164 Cal. Rptr. 510 (1980), reversed on other grounds, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981), on remand, 32 Cal.3d 180, 185 Cal. Rptr. 260, P.2d 902 (1982).

C. Nuisances.

1. Municipal power to abate -- old cases.

Coreil v. Town of Welsh, 120 La. 557, 45 So. 438 (1908); State ex rel. National Oil Works of Louisiana v. McShane, 159 La. 723, 106 So. 252 (1925).

2. Problem -- definition of nuisance.

City of Shreveport v. Leiderkrantz Society, 130 La. 802, 58 So. 578 (1912).

3. Municipality may be able to require immediate removal and termination of nuisance. Query: Is compensation due for termination of nuisance as a "taking?"

See Dolan v. City of Tigard, 114 S.Ct. 2309 (1994); Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992); Keystone Bituminous Coal Assn. v. DeBenedictis, 107 S.Ct. 1232 (1987); First Evangelical Lutheran Church of Glendale v. County of Los Angeles, 107 S.Ct. 2378 (1987); Nollan v. California Coastal Comm'n., 107 S.Ct. 3141 (1987); Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 U.S. 272, 48 S.Ct. 246, 72 L.Ed. 568 (1928).

III. Gaming Revenue.

A. Video poker-- pursuant to La. R.S. 33:171(C) as amended by Acts 2003, No. 1058, for annexations effective after July 1, 2003, the municipality gets no revenue from any video poker devices which were in operation prior to the annexation, but the municipality does get the video poker revenue from devices which begin operation after the annexation. However, amounts distributed pursuant to this Subsection may be redistributed among the authorized recipients pursuant to a written agreement, ratified by a vote of the governing authority of each recipient. (33:171(C)(3))

B. Off-track betting--pursuant to La. R.S. 4:218, the parish is authorized (but not required) to impose a license fee for off-track betting facilities in the parish. If such a facility is later annexed into a municipality, the parish keeps the fee if imposed. If such a facility is established within the corporate limits of a municipality, the parish must split the fee with the municipality if imposed. Allocation of funds under this Subsection shall be based on the status of the site of an off-track wagering facility at the time that facility is licensed by the Louisiana State Racing Commission. Subsequent annexation by a city, town, or municipality shall not affect allocation. (La. R.S. 4:218(B)(2))

VOTING RIGHTS OF ANNEXED RESIDENTS

I. Submission Under Section 5 of the Voting Rights Act.

NOTE: **Pursuant to *Shelby County v. Holder*, 570 U.S. ___, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), Section 5 of the Voting Rights Act is not presently enforceable. Therefore, until such time as Congress remedies the issues addressed in *Shelby County*, submissions under Section 5 of the Voting Rights Act are not required. See La. A.G. Op. No. 13-0124 (attached.) This section is nevertheless retained for informational purposes and future reference. (MDH 3/27/15)**

A. Source of Requirements.

1. 42 U.S.C. § 1973(c) -- prohibits enforcement in any jurisdiction covered by 42 U.S.C. § 1973b(b) (includes Louisiana since November 1, 1964) of any new voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting, until one of the following is accomplished:

(a) Declaratory judgment is obtained from U.S. District Court for District of Columbia that new qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, ***OR***

(b) Qualification, prerequisite, standard, practice, or procedure has been submitted to U.S. Attorney General and Attorney General has interposed no objection within 60-day period following submission.

(c) Note that although submission to Attorney General is customary method of submission, *failure of Attorney General to object does not bar subsequent judicial action to enjoin enforcement of voting changes.*

2. Implementation of preclearance requirements -- 28 CFR §§ 51.1 - 51.67.

(a) Annexations are specifically mentioned as being subject to preclearance requirements (28 CFR § 51.13(e)).

(b) Attorney General has delegated preclearance powers to Assistant Attorney General, Civil Rights Division, and Chief of Voting Section is authorized to act on behalf of Assistant Attorney General, except in cases of objections and decisions following reconsideration of

objections (28 CFR § 51.3). All are officers of the U.S. Department of Justice.

B. Procedure for submissions (all references are to sections of 28 CFR).

1. Any written form is acceptable (51.20(a)).

2. Time of submission.
   (a) "Changes affecting voting should be submitted as soon as possible after they became final." (51.21).

   (b) Submission possible <u>before</u> change is final, under following conditions (see 51.22, last sentence):

      (1) Approval by referendum or approval by state or federal court or agency is required;

      (2) Proposed voting change is not subject to "alteration" in final approving action;

      (3) All other action necessary for approval has been taken;

      (4) Justice Department has customarily allowed submission of annexation before expiration of 30-day period between publication of annexation ordinance and effective date of annexation (see "Methods of Annexation and Annexation Challenges," <u>supra</u>, Part II, Section I; La. R.S. 33:173-4).

   (c) Premature submissions (51.22).

      (1) Proposed change submitted prior to final enactment or administrative decision.

      (2) Proposed change which has "direct bearing" on another change which has not been precleared.

3. Contents of submissions (51.26 - 51.28).

   (a) Very detailed requirements -- not rigidly enforced.

   (b) Highlights of requirements for contents as applied to annexations:

(1) Copy of annexation ordinance (51.27(a));

(2) Name, title, address and phone number of person making submission (51.27(d));

(3) Name of submitting authority (51.27(e));

(4) Identification of person or body responsible for annexation and the mode of decision (i.e., ordinance, etc.) (51.27(g));

(5) Statement identifying statutory or other authority by which annexation made and procedures required for annexation under that authority (51.27(h));

(6) Date of adoption and effective date of annexation (51.27(I), (j));

(7) Statement that annexation has not yet been enforced or administered for voting purposes (51.27(k));

(8) Statement of anticipated effect of annexation on members of racial or language minority groups (51.27(n));

(9) Statement identifying any past or pending litigation concerning the annexation or related voting practices (51.27(o));

(10) Statement that all prior annexations subject to preclearance requirements have been submitted for review, or statement that identifies all prior unsubmitted annexations subject to preclearance requirement (51.27(p); 51.28(c)(3));

(11) Total and voting age population of annexed area by race and language group, or reference to pages of any census publications which contain this information (51.28(a)(1));

(12) Maps of the annexed area (51.28(b)(1));

(13) Present and expected future use of annexed land (51.28(c)(1));

(14) Estimate of expected population by race and language group when any anticipated development completed (51.28(c)(2)); and

(15) Etc. (many other more minor requirements -- read 51.26 - 51.28 in detail before making submission).

(c) "Where information requested by this subpart [51.26 - 51.28] is relevant but not known or available, or is not applicable, the submission should so state...." (51.26(f)).

4. Time period for Justice Department review -- 60 days.

(a) Commences upon Justice Department receipt of submission (51.9(b)).

(b) Calendar days -- date of receipt not counted (51.9(c)).

(c) If submission does not meet minimum requirements (51.27), additional information can be requested from submitting authority, and new 60-day period commences upon receipt of requested information -- subsequent requests for additional information do not further suspend new 60-day period (51.27(c)).

(d) Supplementary submissions -- if cannot be considered independently of first submission, new 60-day period commences upon receipt of supplementary submission.

5. Decision on submission after 60 days.

(a) Decision not to object -- notification sent to submitting authority (51.21).

(b) Failure of Justice Department to respond within 60 days constitutes preclearance, if submission properly addressed and appropriate for response on merits (51.42; 51.24 [address]; 51.35 [appropriateness]).

(c) Decision to object -- notification sent to submitting authority (51.44).

(1) Request for reconsideration may be made at any time by municipality (51.45).

(2) Request for reconsideration may be made at instance of Attorney General if substantial change in operative fact or relevant law (51.47).

(3) Conference to discuss objection may be requested by submitting authority (51.47).

(4) Attorney General shall decide whether to continue or withdraw objection within 60 days of receipt of reconsideration request or 15 days after conference, whichever is later (51.48).

(5) If Attorney General persists in objection, submitting authority may file for declaratory judgment in U.S. District Court for District of Columbia as to absence of discriminatory purpose or effect (51.48, 42 U.S.C. § 1973(c)).

C. Standards for Justice Department review of annexations (51.61).

1. General -- "In analyzing annexations under Section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting." (51.61(a)).

2. Factors for review particular to annexations (51.61(c)).

(a) "The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons." (51.61(c)(1)).

(b) "The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future." (51.61(c)(2)).

(c) "Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See City of Richmond v. United States, 422 U.S. 358, 367-72 (1975)." (51.61(c)(3)).

3. General standards for review applicable to all voting changes -- 51.51 - 51.60.

D. Effect of failure to obtain preclearance -- voters in annexation cannot be lawfully placed on voting rolls of municipality; i.e., voting change cannot be "enforced". 42 U.S.C. § 1973(c).

II. Compliance with Louisiana Requirements Related to Voting.

A. Copy of submissions to Justice Department and all responses to Justice Department must be furnished to Louisiana Secretary of State (18:1941).

B. Municipal governing authority must furnish Registrar of Voters copy of all municipal annexation ordinances and map and written description of annexed territory (33:160(B); 33:171).

C. Easy way to comply -- include copy of ordinance, map, and written description of annexed area in submission to Justice Department; copy Secretary of State and Registrar of Voters on submission and responses from Justice Department.

D. Query -- can Registrar of Voters/Secretary of State/Commissioner of Elections refuse to place annexed residents on municipal voting rolls until municipality complies with 18:1941 and 33:160(B)/33:171? Problem arises when municipal election is pending and voting authorities have actual knowledge of annexation of particular voters, but municipality has not strictly complied with these statutory notification requirements. Answer unknown -- no "penalty" specified for violation of these statutes. Could argue that these statutes establish a duty which is enforceable by mandamus (See CCP Articles 3861-3866), but denial of voting rights not available remedy unless expressly stated by Legislature. See also 18:101(A) -- any "actual bona fide resident of this state, and the parish, municipality, if any, and precinct in which he offers to register as a voter" who meets age requirements and is not disfranchised is eligible to register as a voter.

E. Beware of Election Code deadlines if election pending during annexation process.

1. Deadline for closure of voting rolls -- 18:135 -- 24 days before election.

2. Deadline for furnishing of election materials -- 18:552(A) -- 22 days before primary election, and as soon as possible before general election. Query: How does this apply to proposition elections?

3. Deadline for changes in precinct boundaries -- 18:532.1 -- Parish governing authority has sole authority to change precinct boundaries; change must be by ordinance in accordance with the following deadlines:

   (a) No precinct change, by annexation or otherwise, from opening of qualifying period to date of general election (18:532.1(E)(1)). Opening of qualifying period -- see 18:467.

   (b) Bond, tax and proposition elections -- no precinct change between 46th day before election and the election itself (18:532.1(E)(2)).

   (c) No precinct change shall be effective unless statement of no objection is received by Louisiana Secretary of State prior to expiration of above time periods (18:532.1(E)(3)).