Annexation, across a body of water

Number: INFORMAL

Date: October 26, 2007

Mr. Joseph A. Miller
Fire Chief
North Bay Fire Control District
1024 White Point Road
Niceville, Florida 32578-4218

Dear Chief Miller:

You ask whether the two parcels proposed to be annexed by the City of Niceville are contiguous and compact.

According to your letter, the owners of the parcels have petitioned the city to annex the property pursuant to section 171.044, Florida Statutes. Both parcels are separated from the municipality by a body of water that is a navigable waterway and are surrounded on the other sides by unincorporated territory.

Regrettably, this is not a matter upon which that this office may formally comment. This office is authorized to render opinions to public officials on questions involving their own duties under state law. This office is not authorized to comment upon the duties of one governmental entity at the request of another governmental entity. Your inquiry concerns the authority of the municipality to annex the property. Absent a request from the city, this office is precluded from commenting on this matter.

In an effort to be of some assistance, however, I would generally note that section 171.044, Florida Statutes, controls the voluntary annexation of unincorporated land by municipalities in the State of Florida in counties that do not have charters which provide for an exclusive method of municipal annexation. Pursuant to section 171.044(1), Florida Statutes, the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality. Pursuant to section 171.044(5), Florida Statutes, the land may not be annexed through voluntary annexation when such annexation results in the creation of enclaves. Thus, under the voluntary annexation procedure set forth in section 171.044, the only limitations are that the property is contiguous, reasonably compact and that its annexation does not create enclaves.

Section 171.031(11), Florida Statutes, defines the term "Contiguous" to mean

"that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. *The separation of the territory sought to be annexed from the annexing municipality by* a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or *a body of water, watercourse*, or other minor

geographical division of a similar nature, *running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically.* However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity; and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act." (e.s.)

Thus, the fact that a body of water running parallel with and between the territory sought to be annexed and the annexing municipality does not, in and of itself, prevent annexation. However, while the presence of such a division does not prevent the annexation, it must not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically.

Section 171.031(12), Florida Statutes, defines "Compactness" as a "concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact." "Enclave," as provided by section 171.031(13), Florida Statutes, means:

"(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality."

Cf. Sanford v. Seminole County, 538 So. 2d 113, 115 (Fla. 5th DCA 1989) (in absence of definition of "pocket" in Ch. 171, Fla. Stat., and using rules of construction, "pocket" is "a small isolated area or group.").

Section 171.081, Florida Statutes, authorizes a "party affected" who believes he or she will suffer material injury by reason of the failure of the city to comply with the statutory procedure for annexation to seek certiorari review of the proposed ordinance in the circuit court for the county in which the municipality or municipalities are located. If the district is concerned about the proposed annexation and constitutes an affected party, section 171.081, Florida Statutes, provides the method for challenging the proposed annexation. You may wish to discuss this matter further with the attorney who advises the fire control district.

I hope that the above information may be of assistance.

Sincerely,

Joslyn Wilson

Assistant Attorney General

JW/t