

Annexation, meaning of "metes and bounds";

Number: INFORMAL

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Mr. Joseph M. Stokes, Jr.
City Surveyor
Orlando City Hall
400 South Orange Avenue
Orlando, Florida 32801

Dear Mr. Stokes:

Thank you for contacting the Florida Attorney General's Office regarding the meaning of the phrase "metes and bounds" as it is used in sections 171.0413(2)(b) and (c) and 171.044(2), Florida Statutes. Attorney General Crist has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may formally comment. The Florida Attorney General is statutorily limited to providing legal opinions to governmental agencies and officers on questions relating to their official duties.[1] A question such as yours relating to the duties and responsibilities of a city department should most appropriately come from either the city commission or the city attorney on behalf of the commission. However, I offer the following informal comments in an effort to be of some assistance to you.

Chapter 171, Florida Statutes, the "Municipal Annexation or Contraction Act," [2] was adopted by the Legislature "to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place[.]" [3] Florida courts and this office have stated that the power to extend municipal boundaries must be exercised in strict accordance with the statutes conferring such authority. For example, in *SCA Services of Florida, Inc. v. City of Tallahassee*, [4] the court construed sections 171.021 and 171.022, Florida Statutes, in concluding that "it is apparent that the legislature intended to provide a clearly defined and *exclusive method* by which an annexation could be accomplished." (e.s.)

In Attorney General Opinion 77-133, this office stated that a municipality is precluded, absent express authorization by general or special law, from enacting any annexation procedures contrary to Chapter 171, Florida Statutes, regardless of whether such procedures would be less stringent or more stringent than those provided in Chapter 171. Subsequently in Attorney General Opinion 81-22, this office concluded that a municipality could annex unincorporated property only in accordance with the procedures provided in Chapter 171. Thus, this office stated that a city charter could not require an ordinance providing for the voluntary annexation of property to be submitted to a referendum on such annexation when section 171.044, Florida Statutes, providing for voluntary annexations, does not require such an approving referendum.[5]

In sum, the terms of Chapter 171, Florida Statutes, provide an exclusive method for

accomplishing municipal annexation and contraction. To the extent a provision of chapter 171 requires a "metes and bounds" description of property to the exclusion of any other, that method of description must be used.[6] In those situations where the Legislature has determined that alternative forms of legal descriptions are acceptable, it has clearly expressed its intent.[7]

I trust that these informal comments will be helpful to you. If you continue to have questions regarding your duties and responsibilities under Chapter 171 and any local ordinances or rules relating to implementation of this chapter, please discuss these issues with the city attorney or legal counsel for your department.

Thank you for contacting the Florida Attorney General's Office to express your concerns.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tzg

[1] See Department of Legal Affairs Statement of Policy Concerning Attorney General Opinions and s. 16.01(3), Fla. Stat.

[2] See s. 171.011, Fla. Stat., for the short title of the act.

[3] See s. 171.021, Fla. Stat.

[4] 418 So.2d 1148 (Fla. 1st DCA 1982), *pet. for rev. den.*, 427 So.2d 737 (Fla. 1983).

[5] *And* see Op. Att'y Gen. Fla. 04-24 (2004) concluding that a municipality may not require an ordinance providing for a voluntary annexation to be submitted for referendum when the statute providing for voluntary annexation does not provide for such a referendum; and Ops. Att'y Gen. Fla. 96-74 (1996) and 86-73 (1986).

[6] It is the rule that a legislative direction as to how a thing is to be done is, in effect, a prohibition against its being done in any other way. *Alsop v. Pierce*, 19 So.2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So.2d 815, 817 (Fla. 1976).

[7] For example, the terminology "metes and bounds or other legal descriptions of the land" is used in ss. 718.403(2)(a), and 719.403(2)(a), Fla. Stat. *Cf.*, ss. 177.132(1), and 582.10(1)(c), Fla. Stat.