

Approved February 6, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on February 4, 1986 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Emalene Correll, Theresa Kiernan, Lila McClafllin

Conferees appearing before the committee: Representative Fred Rosenau, 39th District, Kansas City, KS.

The minutes of the meetings of January 29 and 30 were presented. Senator Langworthy moved to adopt the minutes. Senator Daniels seconded the motion. The minutes were adopted.

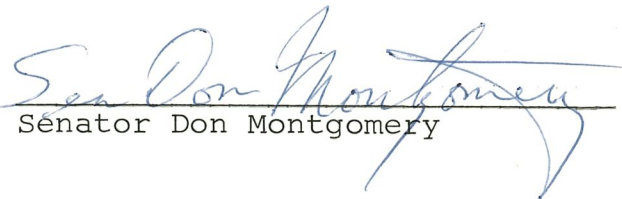
Rep. Fred Rosenau presented a proposed amendment to S.B. 427. The amendment concerns taxing districts and gives a five year period after annexation before taxes are levied. (Attachment I) He had a copy of the 1966 Interim Legislative report on annexation. He stated most of the people that served on that committee are no longer in the Legislature, but the problem of annexation is still around. He favors the Board of County Commissioners as the review board.

Senator Bogina presented an amendment to H.B. 2117, the bill passed the House last session. The amendment would require cities to present detailed service plans for annexations. If the services were not extended after five years there could be a review by the Board of County Commissioners, after two years following the review if the services are still not extended the area can be deannexed. (Attachment II)

Committee discussion followed on the amendment.

There was a policy discussion, the amendment did not included the 51% petition with a review process before either the Board of County Commissioners or a boundary commission. The Interim Committee recommendation considered this, also H.B. 2117 which passed the House, therefore, it should be included in a bill from this committee.

The meeting adjourned until 9:00 a.m., February 5, 1986.


Senator Don Montgomery

Proposed Amendment to Senate Bill No. 427

On page 10, following line 351, by inserting two new sections as follows:

"Sec. 6. K.S.A. 79-1807 is hereby amended to read as follows: 79-1807. (a) Except as provided in subsection (b) of this section and section 7, whenever any of the territory of a municipality or other taxing district is annexed, attached, or transferred to another municipality or other taxing district, other than a city, on or before April 1 of any year, or whenever an entire municipality or other taxing district is merged or consolidated with another municipality or taxing district on or before April 1 of any year, such annexation, attachment, transfer, merger, or consolidation shall take effect for tax purposes as of the last day of December preceding such annexation, attachment, transfer, merger or consolidation: Provided,--That. The taxes due on November 1 next preceding the date said such organization, incorporation, or change takes effect for taxation purposes shall be collected and distributed as before assessed and levied;.

(b) Whenever any of the territory of a school district or community ~~junior~~ college district is attached or transferred to another school district or community ~~junior~~ college district on or before July 1 of any year, or whenever any school district or community ~~junior~~ college district is organized on or before July 1 of any year, or whenever any entire school district or community ~~junior~~ college district is attached to or consolidated with one or more other school districts or community ~~junior~~ college districts on or before July 1 of any year, such attachment, transfer, consolidation or organization shall take effect for tax purposes as of the last day of December preceding the effective date of such attachment, transfer, consolidation or organization: --Provided,--That. The taxes due on November 1 next preceding the date said such attachment, transfer, consolidation

(Attachment I)

2/4/86

or organization takes effect for taxation purposes shall be collected and distributed as before assessed and levied.

"New Sec. 7. Whenever any territory of a municipality or other taxing district is annexed to a city, such annexation shall take effect for tax purposes as of the last day of December, five years after the effective date of the annexation.";

Re-number sections accordingly; make title and repealer amendments.

PART I
REPORT AND RECOMMENDATIONS
OF THE
KANSAS LEGISLATIVE COUNCIL
SEVENTEENTH BIENNIAL
SUBMITTED TO THE 1967 LEGISLATURE

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· JERRY L. GRIFFITH, <i>Representative</i>	— JOE WARREN, <i>Senator</i>
· GEORGE W. HALEY, <i>Senator</i>	

· Appointed March 16, 1966, to fill vacancy created by resignation of Representative Frank Lill.

RESEARCH DEPARTMENT

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W. ROBERT ALDERSON, *Assoc. Revisor*

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JOHN C. WEEKS, *Revisor of Statutes*
Secretary of Kansas Legislative Council
Topeka, Kansas

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1966



31-7034

(Attachment I)
314186

PROPOSAL No. 11

A PROPOSAL authorizing and directing the Kansas legislative council to make a study, report and recommendations concerning city annexation laws and the effect of annexation on the administration of the property tax [to carry out 1965 Senate concurrent resolution No. 39].

This proposal to carry out 1965 Senate concurrent resolution No. 39 was assigned to the council committee on judiciary.

The council has examined the Kansas annexation statutes in detail with representatives of the league of Kansas municipalities and persons from Johnson county where there seems to be some special problems. In summary, the council notes the following findings as a background to its recommendations.

(1) There are several statutes providing for annexation. There are specific statutes for cities of the first and second class in chapters 13 and 14. Chapter 15 applies to cities of the third class. There is disagreement as to whether chapter 12 has a general annexation law, applying to all cities, or whether it is only applicable to first- and second-class cities.

(2) The terminology in the various statutes differs and some provisions appear inconsistent. For example, K. S. A. 12-502 refers to territory subdivided into "lots and blocks"; but elsewhere the phrase "blocks and lots" is used and K. S. A. 15-11a02 refers to "lots and blocks, streets and alleys." Still another annexation statute provides for subdividing into "lots and blocks or tracts and parcels."

Similarly, some of the terms in the laws appear to be intended to be synonymous but are not always construed so by the courts. Examples are such terms as "adjacent," "adjoining or touching," "lies upon or touches," "circumscribed," and "lies within."

(3) Cities may annex up to 5, 20, 30, or 60 acres of unplatted land, depending upon the class of the city and the statute used.

(4) With the exception of Overland Park, cities of the first class do not have authority to permit annexation by agreement of the city and landowners without going through the regular procedure of first petitioning the county commissioners.

(5) A city of the second class (under K. S. A. 14-447 or 14-448) may annex across a county line. If the city proceeds under the general law of K. S. A. 12-502, it cannot so annex unless it is now located in more than one county. Council cities of the first class.

can annex across a county line if they proceed under K. S. A. 13-202 but cannot if they use K. S. A. 12-502. Commission cities must comply with an entirely different law for an annexation of this type.

(6) If a group of land owners protest an annexation, certain statutes are not clear about where the protest should be filed or what form should be used.

Based on these examples and others, the council has concluded that a general uniform annexation law should be enacted which allows cities to annex more easily in order to meet the demand for city services and orderly control of land uses. If cities cannot adjust their boundaries in a reasonably easy manner, special districts and small cities are often formed in order to provide essential municipal services, or land is developed in an uncontrolled manner. Such actions usually result in increased complexity of local government, divided responsibility, and increased cost for services.

The council requested the league of municipalities to prepare for its consideration a draft bill which would correct the deficiencies noted above and which league members could support. The proposal that resulted was a single uniform annexation law that was approved by the appropriate city associations and by the members attending the convention of all cities in September, 1966.

After examining the bill carefully, the council believes that the bill does an excellent job of meeting the criticism of the present laws and recommends it to the legislature for introduction. Its general provisions are as follows:

(1) The bill is intended as a uniform annexation law for all cities and as a supplement to the present laws. Because of the complexities of some annexation, it was suggested that the new law should be used for a year or in time to "test it." After such a period, the present laws should be repealed. Section 1 contains definitions of some of the terms noted previously in this report. The most significant one is "platted" (1[e]) which is broadened considerably from the present law to "mean a tract mapped or drawn to scale, showing a division or divisions . . ."

(2) General annexation by ordinance is authorized in such cases as: (a) land is platted and adjoins city, (b) land is held in trust or owned by city, (c) land has a common perimeter with the city boundary line of more than 50 percent, (d) land adjoins city and if annexed will make the city boundaries harmonious and straight (limit of 30 acres), (e) tract is so situated that $\frac{2}{3}$ of any boundary line adjoins the city (limit of 30 acres) and, (f) land adjoins city

and the owners petition for a new but are essentially a rewording of the present statutes.

(3) The acreage limitation is 30 acres. At the present time, it is 60 acres.

(4) If the annexation does not meet the requirements of the present laws provide, then a hearing must be held. The city now must find among other things a manifest injury to the owner in the interest of the city, this proposition.

(5) The city may appeal a decision as the landowner. Presently, the city must find a manifest injury to the owner.

(6) The proposed bill allows that is, areas adjoining high city can thus annex within or depth of one thousand feet from the city. This gives the city some control over roads leading into the city which do not conform to city but do not conform to city designed to prevent further subdivision occurs on the outskirts of major roads.

(7) The present laws are such that ownership can protest or control an annexation action. This bill corrects this.

(8) The proposed bill provides that the bill be published within thirty days of the county, city or school election day following the election. This is related to the council's study of the procedural requirement of public elections.

The legislative council submitted Bill No. 7 to the proper authorities together with available information.

proceed under K. S. A. 1-502. Commission cities have the law for an annexation of

at an annexation, certain protest should be filed or

the council has concluded that a law should be enacted which would meet the demand for various uses. If cities cannot do so in an easy manner, special provisions should be developed in order to provide for the increased complexity of local government and increased cost for services.

The municipalities to prepare a law which would correct the deficiencies the members could support. A uniform annexation law that would be passed by the associations and by the members in September, 1966.

The council believes that the law will meet the criticism of the present law and its future for introduction. Its

uniform annexation law for all cities under present laws. Because of the criticism suggested that the new law be "tested" after such a period, section 1 contains definitions of terms used in this report. The most important change is that the map which is broadened considerably and mapped or drawn to scale,

the council is authorized in such cases as follows: (b) land is held in trust or on a non-perimeter with the city; (d) land adjoins city and if the relationship is harmonious and straightened that 2/3 of any boundary be maintained; and, (f) land adjoins city

and the owners petition for annexation. These categories are not new but are essentially a rewording of a section found in the current statutes.

(3) The acreage limitation for unplatted areas is set uniformly at 30 acres. At the present time, the limits in the law are 5, 20, 30, and 60 acres.

(4) If the annexation does not meet one of the above conditions, then a hearing must be held by the county commissioners as some of the present laws provide. However, whereas the commissioners now must find among other things that the annexation is in the best interest of the city, this proposed bill requires only a finding of "no manifest injury to the owner."

(5) The city may appeal a decision of the commissioners as well as the landowner. Presently, only the owner can appeal a finding.

(6) The proposed bill allows annexation of strip developments, that is, areas adjoining highways providing access to cities. Any city can thus annex within one-half mile of the city boundary to a depth of one thousand feet from the center line of such highway. This gives the city some control over those properties adjacent to roads leading into the city which benefit from the proximity of the city but do not conform to city zoning or regulatory codes. It is designed to prevent further substandard strip development which occurs on the outskirts of many cities.

(7) The present laws are not clear whether one party of a joint ownership can protest or consent or bind the other owners in an annexation action. This bill clarifies this matter by defining owner.

(8) The proposed bill provides that annexation ordinances published within thirty days of a primary or general statewide, county, city or school election shall not become effective until the day following the election. This section of the proposed bill is related to the council's study on election laws. It will simplify the procedural requirement of publishing precinct boundaries before elections.

The legislative council submits this report on Proposal No. 11 and Bill No. 7 to the proper committees of the 1967 legislature, together with available information.

BILL No. 7

(To carry out 1965 Proposal No. 11)

AN ACT concerning annexation by cities.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. *Definitions.* As used in this act:

2 (a) "Tract" means real property outside the corporate limits of a
3 city, platted and/or unplatted, publicly or privately owned.

4 (b) "Land" means a part of a tract or one or more tracts.

5 (c) "Owner" means the one who has record title to a tract. In
6 the event two or more have record title to a tract, "owner" shall
7 be defined as follows:

8 (1) If joint tenants, "owner" means a majority of the number
9 of joint tenants;

10 (2) if tenants in common, "owner" means both a majority of
11 the number of tenants in common and the holders of a majority
12 of the undivided interests in the tract;

13 (3) if the tract is held by a life tenant and a remainderman,
14 "owner" means the life tenant;

15 (4) if the tract is held by a tenant for years and a remainder-
16 man, "owner" means both such tenant and remainderman;

17 (5) if one holds title to the surface and another holds title to
18 the minerals, "owner" means the surface title holder.

19 (d) "Adjoins" means to lie upon or touch the city boundary line
20 or a highway, railway or watercourse which lies upon the city
21 boundary line.

22 (e) "Platted" means a tract mapped or drawn to scale, showing
23 a division or divisions thereof, which map or drawing is filed in the
24 office of the register of deeds.

25 SEC. 2. *Annexation by ordinance.* The governing body of any
26 city may by ordinance annex land to such city if any one or more
27 of the following conditions exist:

1 (a) The land is
2 the city.

3 (b) The land is
4 agency thereof.

5 (c) The land adjo
6 for any governmenta

7 (d) The land has
8 line of more than fifty

9 (e) The land if ar
10 or harmonious and
11 land in excess of thir

12 (f) The tract is so
13 line adjoins the city.
14 shall be annexed und

15 (g) The land adjo
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23 standard strip develo
24 may by ordinance at
25 boundary which adjo

26 city. Land shall not
27 excess of one thousan
28 of such highway. No

29 second or successive t
30 annexed under this s
31 used for agricultural p

1 (a) The land is platted, and some part of such land adjoins
2 the city.

3 (b) The land is owned by or held in trust for the city or any
4 agency thereof.

5 (c) The land adjoins the city and is owned by or held in trust
6 for any governmental unit other than another city.

7 (d) The land has a common perimeter with the city boundary
8 line of more than fifty percent (50%).

9 (e) The land if annexed will make the city boundary line straight
10 or harmonious and some part thereof adjoins the city, except no
11 land in excess of thirty (30) acres shall be annexed for this purpose.

12 (f) The tract is so situated that two-thirds ($\frac{2}{3}$) of any boundary
13 line adjoins the city, except no tract in excess of thirty (30) acres
14 shall be annexed under this condition.

15 (g) The land adjoins the city and a written petition for or con-
16 sent to annexation is filed with the city by the owner.

17 The governing body of any city may by one ordinance annex one
18 or more separate tracts or lands each of which conforms to any
19 one or more of the foregoing conditions.

20 SEC. 3. *Annexation of strip development.* Upon a finding of the
21 governing body of any city that annexation is advisable to secure
22 and protect the orderly growth of the city and to prevent sub-
23 standard strip development adjacent thereto, the governing body
24 may by ordinance annex land within one-half ($\frac{1}{2}$) mile of the city
25 boundary which adjoins a highway providing direct access to such
26 city. Land shall not be annexed under this section to a depth in
27 excess of one thousand (1,000) feet measured from the centerline
28 of such highway. No annexation shall be made in this manner a
29 second or successive time to annex land adjoining that previously
30 annexed under this section when the land sought to be annexed is
31 used for agricultural purposes.

1 SEC. 4. *Annexation by petition to county.* Whenever the gov-
 2 erning body of any city deems it advisable to annex land which
 3 does not conform to any of the conditions specified in sections 2
 4 and 3, the governing body in the name of the city may present a
 5 petition to the board of county commissioners of the county in
 6 which the land sought to be annexed is located. The petition
 7 shall set forth a legal description of the land sought to be annexed
 8 and request a public hearing on the advisability of such annexation.

9 Notice of the time and place of said hearing, together with a
 10 legal description of the land sought to be annexed and the names
 11 of the owners thereof, shall be published once a week for three (3)
 12 consecutive weeks in some newspaper of general circulation in the
 13 city. The board may for good cause shown continue said hearing
 14 beyond the time specified in the notice without further publication.

15 On the day set for hearing, the board of county commissioners
 16 shall hear testimony as to the advisability of such annexation, and
 17 if said board shall be satisfied that such annexation will cause no
 18 manifest injury to the owners, they shall so find and grant the peti-
 19 tion by order; and thereupon the city may annex the land by
 20 ordinance. All orders of the board of county commissioners granting
 21 or denying petitions for annexation shall be spread at length upon
 22 the journal of proceedings of said board.

23 The owner or the city aggrieved by the decision of the board of
 24 county commissioners may appeal from the decision of such board
 25 to the district court of the same county in the manner and method
 26 set forth in K. S. A. 19-223. Any city so appealing shall not be re-
 27 quired to execute the bond prescribed therein.

28 SEC. 5. *Filing copies of annexation ordinance.* The city clerk
 29 shall file a copy of any proposed annexation ordinance with the
 30 county clerk at least ten (10) days before the passage of such ordi-
 31 nance as proposed or as amended. The proposed ordinance may

1 be amended after filin
 2 without refiling the a
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10 SEC. 6. Annexation
 11 cation as provided by
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 19 and general city elec
 20 elections. The provis
 21 special election.

22 SEC. 7. This act is
 23 method and procedure
 24 under this statute or a

25 SEC. 8. This act sha
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ordinance. The city clerk
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 he proposed ordinance may

1 be amended after filing with the county clerk and prior to passage
 2 without refileing the amended ordinance with the clerk. Upon the
 3 passage and publication of any annexation ordinance authorized
 4 under this act, the city clerk shall file a certified copy of such ordi-
 5 nance with the county clerk, the register of deeds, and the county
 6 election commissioner, if any, of the county or counties in which
 7 such city is located. No fee shall be charged for such filings, and
 8 the register of deeds shall file, but not record, the certified copies
 9 of such ordinances filed with him.

10 SEC. 6. Annexation ordinances of cities shall take effect on publi-
 11 cation as provided by law, except that any annexation ordinance
 12 published within thirty (30) days before any election specified in
 13 this section shall become effective on the day following such elec-
 14 tion, unless such day is also within thirty (30) days before any
 15 election specified in this section in which case such ordinance shall
 16 become effective on the day following the last such election. Elec-
 17 tions to which this section shall apply are: (1) Primary and gen-
 18 eral election of state, county and national officers, and (2) primary
 19 and general city elections, and (3) primary and general school
 20 elections. The provisions of this section shall not apply to any
 21 special election.

22 SEC. 7. This act is alternative to any other statute prescribing
 23 method and procedure of annexation by cities. Any city may annex
 24 under this statute or any other statute applicable to such city.

25 SEC. 8. This act shall take effect and be in force from and after
 26 its publication in the statute book.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N -- Statehouse

Phone 296-3181

February 2, 1986

TO: REPRESENTATIVE FRED ROSENAU

Office No. 281-W

RE: ANNEXATION MATERIALS

Enclosed is a copy of a 1966 interim legislative report on annexation which recommended a uniform annexation law be enacted. Also enclosed is a report entitled "Annexation -- A Manual for City Officials of Kansas" published in 1967 by the League of Kansas Municipalities which describes the newly enacted uniform annexation law.

I hope this information is useful.



Mike Heim
Principal Analyst

MH/jsf

Enclosure

(Part of attachment I)

ANNEX A

FOR
SPECIAL
SUSPENSE

Annexation Manual

For Officials Of

Kansas Cities

Explanation of the new uniform law with forms.

"All roads lead to Rome; no road
leads away from Rome; no road
leads away from a city."

-A. B. Martin

The League of Kansas Municipalities
112 West 7th Street
Topeka, Kansas 66603

July, 1967

price \$2.00

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PREFACE

Any private business that never planned for growth, acquired additional land for expansion only when required by crises, and acquired land only after it had been developed in a manner unsuitable for its purposes would soon go bankrupt--and rightly so. Yet this is exactly what many Kansas cities have done for years in the field of annexation.

Some city governing bodies have been afraid to publicly plan for future annexation--their critics would assert annexation was only to increase the city ad valorem tax base. Others have not annexed because the cost of servicing annexed areas normally exceeds the revenue from such areas for some years, and they want to postpone the problem to the future. Cities have annexed land in many instances only after the residents "demanded" services because of a crisis. They have permitted the entrance ways to their cities to develop without planning, without sound construction requirements, without sanitation and adequate protection for public health, without police protection and fire protection, without planned streets--and without protest until the situation became intolerable and beyond correction by the area residents. Then there may be annexation and massive injections of city funds, attempts to correct conditions which never should have existed, problems in providing utility services, and proving again the adage-- "an ounce of prevention is worth a pound of cure."

It is time the cities of Kansas established orderly programs of planned annexation which recognize that adjacent urbanizing land areas should be part of the city and that it may be no real kindness to the residents thereof to temporarily delay annexation. As the Virginia Appellate court so pointedly put the matter:

"It is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire and health protection and even tolerate inadequacy of sewerage, water and garbage collection service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that he needs the city government as it is that the area in which he lives needs it."

When the owner of the hot dog stand adjoining the city resists city annexation and asserts he does not need the city, what is he really saying? He is saying, "I already have the benefits of the city's population density with its hundreds of hot dog lovers. I have the benefits of city streets providing access to the doorstep of my business. I have the benefit of all the city rules and regulations which in spite of their restrictive nature make the city a more agreeable place for all my hot dog lovers to stay together. I just don't want any of the burdens that go with such benefits that hot dog stand owners have within the city."

The unreasonableness of such a position requires no answer. Nor can it be asserted that because the adjoining land does not presently contain a hot dog stand the city has no justification in annexing it. The very fact the city exists in close proximity often changes the value and use of land from rural to urban. Why must the city wait until the hot dog stand is built?

Cities in Kansas, through their League Statement of Municipal Policy adopted September 27, 1966, developed a platform for annexation which reads, in part, "The logical solution to the fringe area problem of cities, and the metropolitan problem in certain areas, is an adequate and workable annexation procedure which gives primary consideration to total community needs. State laws should frankly favor annexation to functioning cities as the preferred avenue of providing municipal services to unincorporated areas now urbanized or which will become urbanized in the foreseeable future.

"Cities should have the authority to initiate and consummate, by governing body action under state law and subject to reasonable criteria, the annexation of unincorporated territory where necessary to promote the health, welfare, safety and economic development of the area and the entire community. The dwellers within, or owners of, 'fringe area'-- whose location is largely meaningful only in relation to the central city--should not be given a veto power over the geographic, economic and governmental destiny of the city which is the source of the economy of the area and whose proximity gives affected properties whatever tangible and intangible desirability they have as places of urban-type residence or economic activity."

The 1967 legislature has been in some degree responsive to the position of cities on annexation, as stated in the League Statement of Policy. It enacted a new annexation law, applicable to all cities and supplemental to existing annexation statutes. This manual explains this new law, outlines the procedures to be followed and presents forms for operating under it.

This manual was prepared by Wright W. Crummett, League Attorney, who was active in the preparation of the legislation in cooperation with the 1965-66 Kansas Legislative Council and the League's Special Committee on Annexation.

-E. A. Mosher
Executive Director

July, 1967

Chapter 1

INTRODUCTION

Chapter 98, Laws of 1967, establishes a new annexation law for Kansas, applicable to all cities and supplemental to all previously existing annexation statutes. It provides cities of the third class, for the first time, general authority to annex by ordinance land meeting certain qualifications. It provides cities of the first class new general authority to annex land by ordinance when the owners so agree. It should be used by all cities in preference to any previously existing annexation laws.

The new law defines certain basic terms--something no previous annexation law has attempted. It is important to remember that most terms are defined consistent with prior court decisions but some terms have been arbitrarily defined for the purposes of this act and prior case law will not be helpful in interpretation. The explanation offered in this manual will assist in determining which terms are based upon court construction in prior decisions. Every effort has been made in the law to avoid the existing multiplicity of terms apparently identical in meaning but really different in intent such as: "piece of land", "portion of a piece", "parcel" or "real estate."

The new law provides for annexation by ordinance when the land to be annexed meets any one of seven different classifications. It is patterned after K.S.A. 14-447 for cities of the second class. In the event the land the city desires to annex does not fall within one of the seven classifications, there is a procedure available for the city to petition the board of county commissioners for annexation. This procedure is patterned after K.S.A. 12-501 et seq. It is anticipated that every city will find it advantageous to use the new law with two exceptions: cities of the second class annexing for the purpose of making the city boundary line straight or harmonious can annex up to 30 acres under existing K.S.A. 14-447; whereas, under the new law, the maximum limitation is 20 acres; and the city of Wichita can annex a tract up to 60 acres which is so situated that 2/3 of any one boundary line lies upon the city boundary under existing K.S.A. 13-1602a; whereas the new law limits such tract size to a maximum of 20 acres. In these two instances the city intending to use the provisions of the "old law" should state the statutory authority in their ordinances so no confusion will exist as to the statute the city intends to follow. This will avoid confusion of procedures. Future legislatures will be requested to repeal those existing annexation laws that are made obsolete by the uniform annexation law after it has had time to "prove itself."

Chapter 2

UNIFORM ANNEXATION LAW (with footnotes)

Chapter 98, Laws of Kansas, 1967
K.S.A. 1967 Supp. 12-519 et seq.

SECTION 1. As used in this act: (a) "Tract" means a single unit of real property under one ownership^{1/}, outside the corporate limits of a city, platted and/or unplatted^{2/}, title to which is publicly^{3/} or privately held by an owner as defined by subsection (c) herein.

(b) "Land" means a part of a tract or one or more tracts.^{4/}

(c) "Owner" means the one who has record title to a tract.^{5/} In the event two (2) or more have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ten (10) years or longer and a remainderman, "owner" means both such tenant and remainderman;^{6/} (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface titleholder.

(d) "Adjoins" means to lie upon or^{7/} touch (1) the city boundary line; or (2) a highway,^{8/} railway or watercourse which lies upon the city boundary line and separates such city^{9/} and the land sought to be annexed by only the width of such highway, railway or watercourse.^{10/}

(e) "Platted" means a tract mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds^{10/} by the owner of such tract.^{11/}

SEC. 2. Annexation by Ordinance. The governing body of any city^{12/} may by ordinance^{13/} annex land to such city if any one^{14/} or more of the following conditions exist:

(a) The land is platted, and some part of such land adjoins the city.^{15/}

(b) The land is owned by or held in trust for the city or any agency thereof.^{16/}

(c) The land adjoins the city and is owned by or held in trust for any governmental unit^{17/} other than another city.^{18/}

(d) The land^{19/} has a common perimeter with the city boundary line of more than fifty per cent (50%).^{20/}

(e) The land^{21/} if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land^{22/} in excess of twenty (20) acres shall be annexed for this purpose.

(f) The tract^{23/} is so situated that two-thirds (2/3) of any^{24/} boundary line adjoins the city, except no tract^{25/} in excess of twenty (20) acres shall be annexed under this condition.

(g) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.^{26/}

The governing body of any city may by one ordinance annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by such ordinance and which conform to any one or more of the foregoing conditions.^{27/}

SEC. 3. Whenever the governing body of any city deems it advisable to annex land which does not conform to any of the conditions specified in section 2,^{28/} the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located;^{29/} Provided, No unplatted tract of over twenty (20) acres shall be annexed under this section if the owner thereof files a written protest thereto with both the clerks of such city and county at least five (5) clear days^{30/} before the hearing date published as hereinafter provided in this section. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation.

Notice of the time and place of said hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published once a week for three (3) consecutive weeks in some newspaper of general circulation in the city. The board may for good cause shown continue said hearing beyond the time specified in the notice without further publication.

On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and if said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury^{31/} to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

The owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K.S.A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein.

SEC. 4. Upon the passage and publication of any annexation ordinance authorized under this act, the city clerk shall file a certified copy of such ordinance with the county clerk, the register of deeds, and the county election commissioner, if any, of the county or counties in which such city is located. No fee shall be charged for such filings, and the register of deeds shall file, but not record, the certified copies of such ordinances filed with him.

SEC. 5. Annexation ordinances of cities shall take effect on publication as provided by law, except that any annexation ordinance published within thirty(30) days before any election specified in this section shall become effective on the day following such election, unless such day is also within thirty (30) days before any election specified in this section in which case such ordinance shall become effective on the day following the last such election. Elections to which this section shall apply are: (1) primary and general election of state, county and national officers, and (2) primary and general city elections, and (3) primary and general school elections. The provisions of this section shall not apply to any special election.

SEC. 6. Nothing of this act shall be construed to authorize any incorporated city to annex any part or the whole of any other incorporated city.

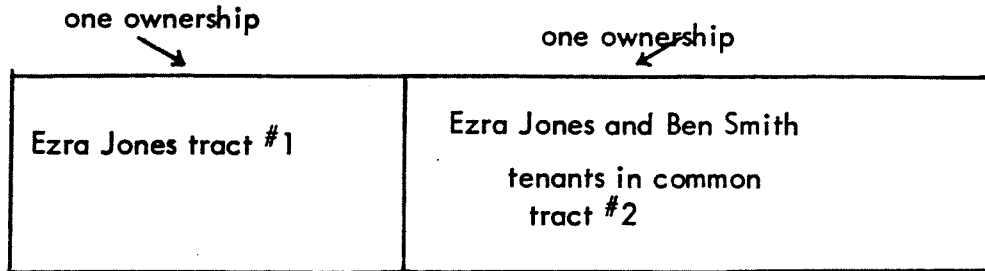
SEC. 7. This act is alternative to any other statute prescribing method and procedure of annexation by cities. Any city may annex under this statute or any other statute applicable to such city. 32/

SEC. 8. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

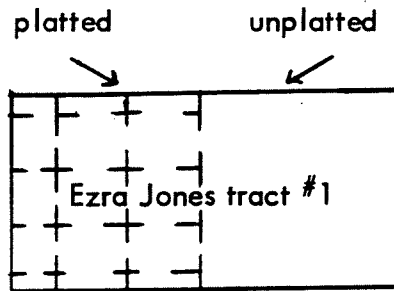
SEC. 9. This act shall take effect and be in force from and after its publication in the statute book.

FOOTNOTES

1. Tract is the specific term describing a single piece of land under one ownership. It is determined in size by ownership. (See definition of owner).

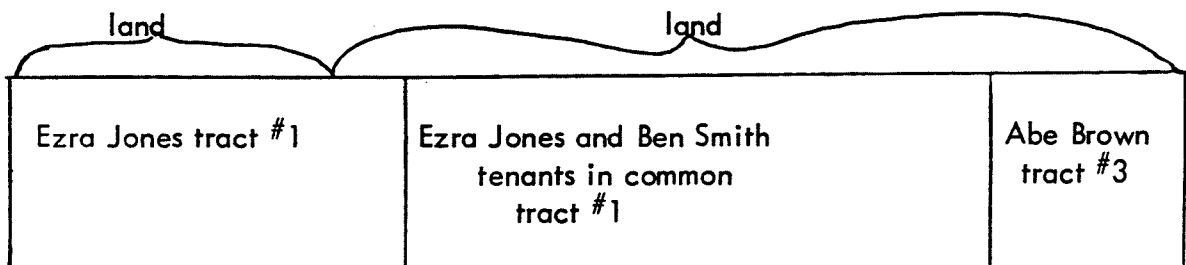


2. A tract can be platted or unplatted or both.



3. The real property subject to annexation may be titled to the city, any agency thereof, or any governmental unit other than another city.

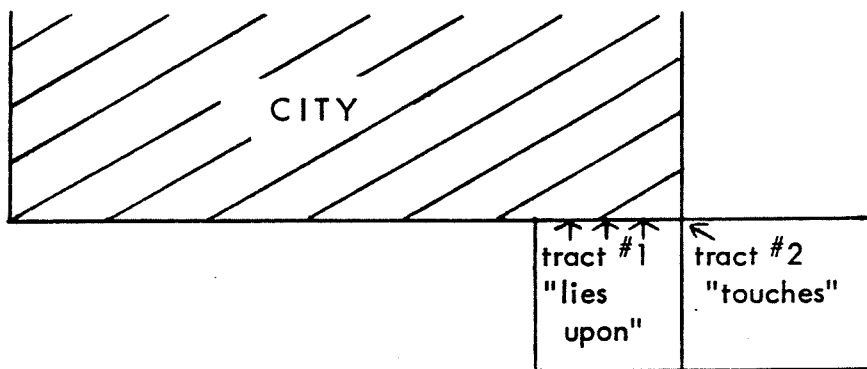
4. Land is given the broadest definition possible. It is meant to indicate multiple tracts under different owners and it can mean a part of a single unit of real property under one ownership.



5. This provides a definite method for determination of the owner--something no previous annexation law ever sought to clarify. Those who claim title must have their instruments showing title of record. In most instances a determination of the tract owner is immaterial to annexation, but there are several instances when it is important that the owner be identified. In Section 2 (g) it is necessary that the owner be clearly identified in the event there is a written petition or consent to annexation. In section 3 it is necessary that the owner be known to publish his name in the notice of annexation hearing and to determine the validity of any written protest filed.

6. Unless the tenant is in possession under a written lease of record providing a term of ten years or longer, he has no standing to protest, consent to, or petition for annexation. The lessor-owner would be the complete determiner of those matters.

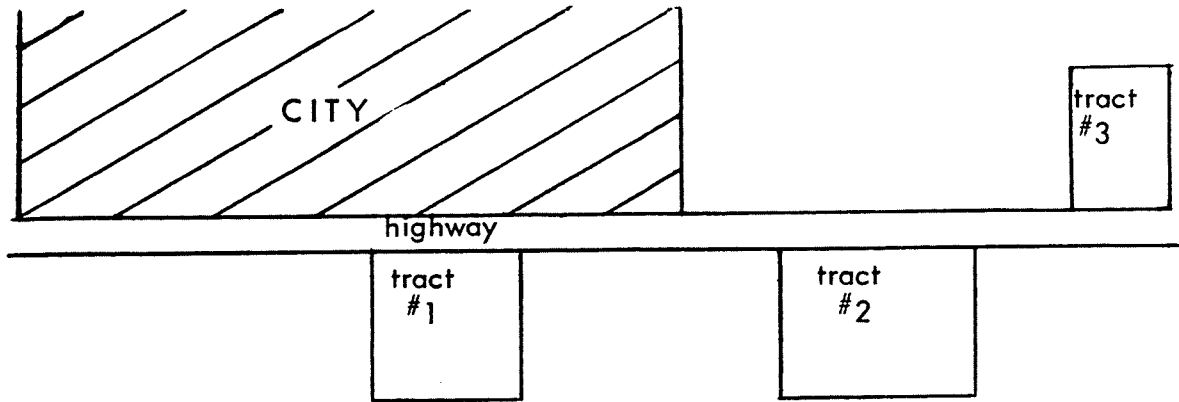
7. "Lie upon" and "touch" are not synonymous. Both terms are not defined and have their ordinary dictionary meanings. "Lie upon" means to be stretched out or extended. "Touch" means to come in contact. Use of the term "adjoins" makes it clear that some point of boundary of the land to be annexed must come in contact with the city boundary.



8. "Highway" is defined at K.S.A. 1965 Supp., 77-201, fifth, as equivalent to "county way", "county road", "common road," "state road." The Kansas supreme court has defined the term as a travelled way common to all without distinction. B.K. & S.W. Rld. Co. v. Johnson, 38 Kan. 142, 148. Highways within areas to be annexed become city streets after annexation under McGrew v. Stewart 51 Kan. 185.

9. (d) (2) permits annexation when a highway, railway or watercourse lies between the city and the land which otherwise meets all qualifications for annexation. Absence of the term "or touch" and the further descriptive language makes it clear for example, that just because a river flows through a city, a city has no right to proceed up river to its source and annex the land at the headwaters.

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Tract #1 adjoins the city. Tracts 2 and 3 do not.

It is recommended that any ordinance which annexes land across the width of a highway, railway or watercourse include in the description of the land annexed, the highway, railway or watercourse. This will prevent any confusion in the office of the register of deeds on what area is within or without the city.

10. For the purposes of this annexation law, any mapped division of a tract filed with the register of deeds by the owner is a plat, regardless of whether streets, alleys or blocks are shown. This will change the decisions of such cases as *State, ex. rel. v. City of Kansas City*, 181 Kan. 870 and *James v. City of Pittsburg*, 105 Kan. 462 which held that land to be platted must be subdivided into blocks, streets and/or alleys.

11. Requiring the plat to be filed by the owner prevents the land being subject to annexation by action of the county clerk in filing a plat for tax purposes under K.S.A. 79-405 et seq.

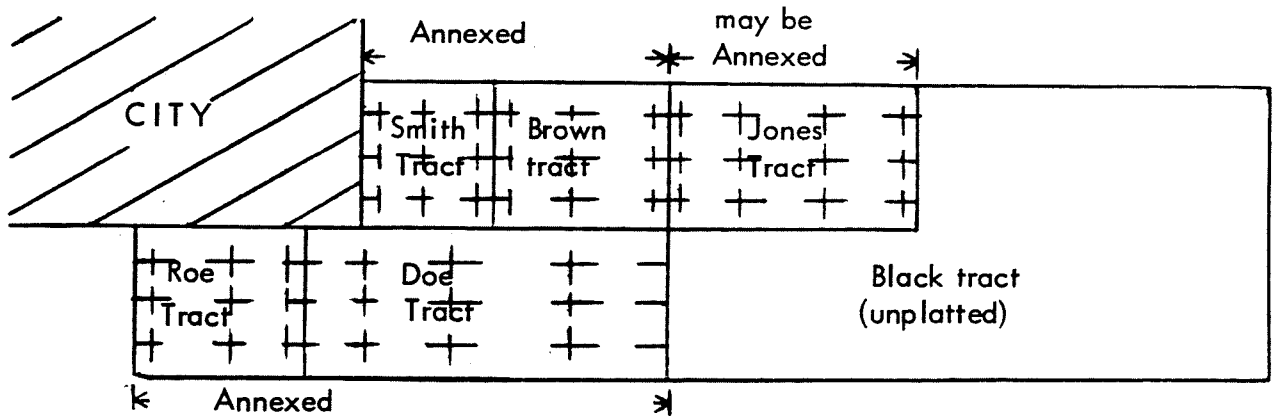
12. The provisions of section 2 as well as the entire act are applicable to any city regardless of its class or population. There is no prohibition upon cities annexing across county boundary lines by ordinance.

13. All such ordinances are considered at a public meeting. K.S.A. 12-3001. No ordinance is valid unless a majority of all the members-elect of the council or commission vote in favor thereof, except that in council cities the mayor may vote to decide the ordinance if the number of votes is one less than required. K.S.A. 12-3002.

14. The land to be annexed need meet only one of the classifications described in section 2 (a) through 2 (g) inclusive.

15. Use of the term "land" permits the taking of several tracts or part of one tract without regard to ownership.

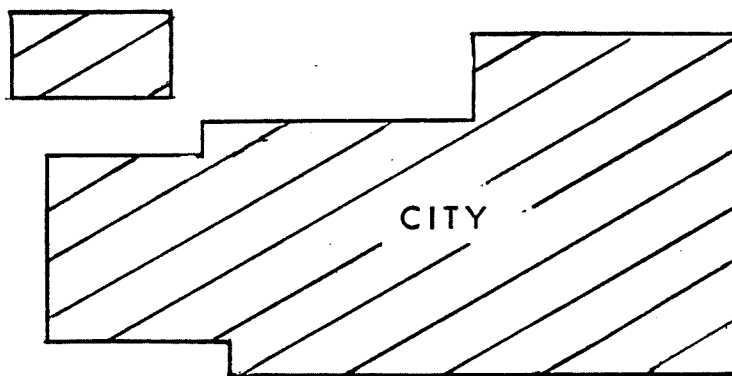
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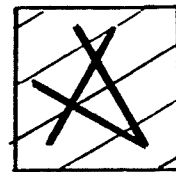
This is not a new concept in annexation, in *Mason v. Kansas City*, 103 Kan. 275, property consisting of one body of land was held subject to annexation although parts of the land were owned by different persons.

16. Section 2(b) permits annexation of city land such as airports, dump sites and waterworks regardless of whether the land adjoins the city. This will enable all cities to exercise city regulations and police power over the area. It should be mentioned that cities of the second class are granted police powers over certain lands outside the city by statute K.S.A. 14-2001.

dump annexed



airport annexed



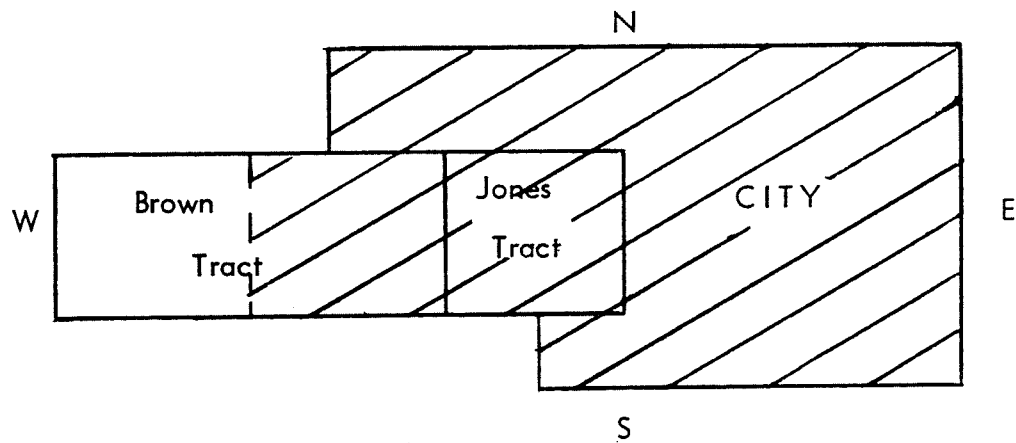
CAVEAT. After a city has annexed non-contiguous territory, it is recommended the city consider future annexation by ordinance with reference to the central city rather than the outlying territory. Although there appears to be no express provision prohibiting consideration of outlying territory as a starting point, it is doubtful the legislature intended such a process in liberalizing annexation to permit incorporating non-contiguous city-owned territory. Of course at some point such a restrictive construction of the law becomes meaningless, e.g., where the city surrounds unincorporated territory - see section 2(d).

17. Publicly-owned land would have to adjoin the city (Lie upon or touch) to be subject to annexation. The purpose of this classification is to prevent islands of other governmental lands from restricting annexation where city growth would logically justify annexation.

18. Territory belonging to other cities may not be annexed for obvious reasons. The definition of the term "tract" makes it abundantly clear the only real property subject to annexation is that which is "outside the corporate limits of a city." In addition section 6 of the act expressly prevents annexation of one city by another. There exists a law for the consolidation of cities, K.S.A. 12-301 et seq.

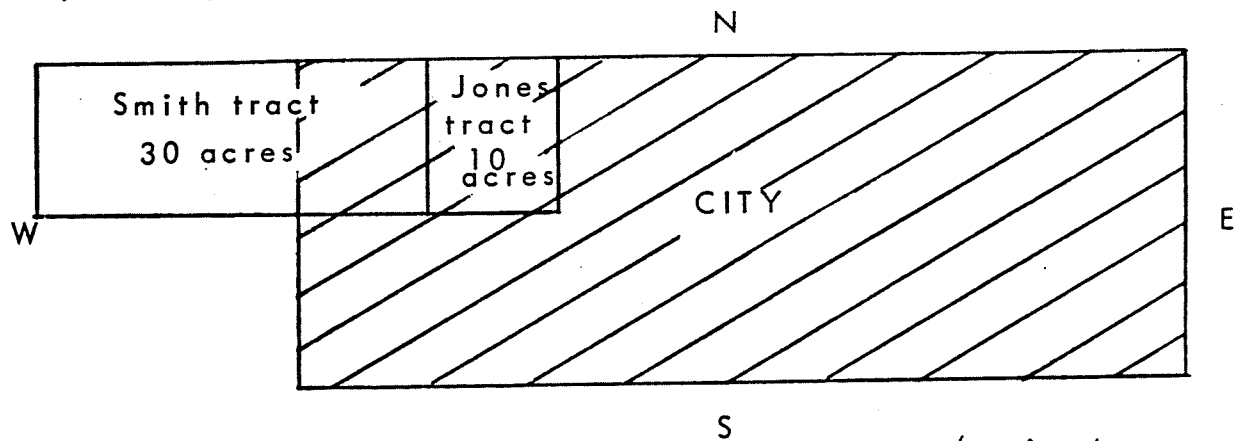
19. Use of the term "land" shows the property subject to annexation under this classification is not limited by ownership. Tracts can be divided or more than one tract can be annexed.

20. This definition is taken from the Kansas supreme court opinion in State, ex. rel. v. City of Kansas City, 181 Kan. 870, 876. It was the court's definition of the term "mainly within" found in the annexation law G.S. 1955 Supp., 13-1602a.



In the illustration above, the land comprising the east half of Brown's tract and all of Jones's tract has a common perimeter with the city boundary line of more than fifty percent and that land may be annexed.

21. Use of the term "land" shows the property subject to annexation under this condition is not limited by ownership. Tracts may be cut in two to permit annexation.



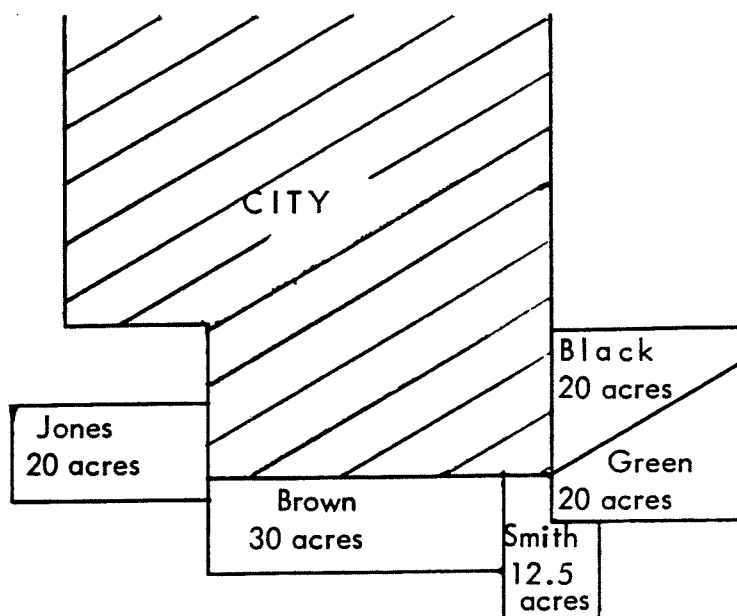
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In the illustration on the preceding page the land comprising the east third of Smith's tract and all of Jones's tract may be annexed under this condition. The total land annexed does not exceed twenty acres.

22. See note 21 above.

23. Use of the term "tract" shows the land subject to annexation is determined by ownership.

24. Use of the term "any" means whenever two-thirds of any single boundary-line or side of a tract lies upon the city boundary line. The word "any" is construed in the sense of one indifferently, out of an indefinite number. The State, ex rel. v. Kansas City, 93 Kan. 420. The following illustration shows application of this condition to annexation.



The Jones, Smith and Black tracts can be annexed, because each has a boundary line that adjoins the city for two-thirds or more of its length. The Brown tract cannot be annexed under this condition because it is in excess of twenty acres. The Green tract cannot be annexed at present under this condition because it does not have a boundary line adjoining the city.

25. See note 23 above.

26. This condition permits the annexation by ordinance of one or more tracts or parts thereof when the owners desire annexation.

27. This provision permits consolidation of separate annexations in one procedure. It is permissive. It is not intended to authorize annexation of land which depends upon the completion of other pending annexations before the conditions for annexation exist.

28. The procedure outlined in section 3 is to be used only when annexation is not authorized under section 2. It is available to annex land that does not lie upon or touch the city boundaries, providing the board of county commissioners so order.

29. Annexation across the county lines is permitted, if the board of county commissioners in which the land is located approves the annexation by order.

30. The owner of an unplatted tract in excess of 20 acres, to file an effective protest, must file in writing with the appropriate city and county clerks in advance of the hearing date stated in the publication. If the hearing date is set for the 21st of the month in the publication, the protest must be filed on or before the 15th to meet the requirement of "five clear days."

31. "Manifest injury" is used in existing laws: K.S.A. 12-502 et seq. and 15-11a01 et seq. It is a matter subject to court review, by appeal from the decision of a board of county commissioners. *Fairfax Drainage District v. City of Kansas City*, 190 Kan. 308.

32. It is recommended that annexation under this law be identified by reference to the appropriate chapter number of the 1967 laws of Kansas or statute number when it becomes available. Other statutory annexation procedures should not be commingled in a proceeding under this law.

Chapter 3

ANNEXATION FORMS

A. ANNEXATION ORDINANCE

Ordinance No. _____

An Ordinance annexing certain land to the city of _____, Kansas, in conformity with the provisions of (Chapter 98, Sec. 2, of the Laws of Kansas, 1967). (K.S.A. 1967 Supp. 12-520).*

Be it ordained by the governing body of the city of _____:

SECTION 1. The following described land, to-wit: all of blocks 1,2,3 and 4 of South Park Addition, a subdivision of _____ county, Kansas; and the land commencing at the northwest corner of the Southwest quarter of section nineteen (19), township (17) south, range thrity-three (33) west of the sixth principal meridian; thence south 150 feet, thence east 150 feet, thence north 150 feet, thence west 150 feet to the point of the beginning in _____ county, Kansas, meeting one or more of the classifications for annexation prescribed by (Chapter 98, Sec. 2, of the Laws of Kansas, 1967). (K.S.A. 1967 Supp 12-520) is hereby annexed and made a part of the city of _____.

Sec. 2. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Passed by the (council) (commission) the _____ day of _____, 19_____.

Signed _____
Mayor

(SEAL)

Attest: _____
City Clerk

* The use of the 1967 Supp. rather than Chapter 98 as a reference will only be correct after publication of the 1967 Supp. This will be some time after July, 1967.

B. Petition for Annexation

TO THE CITY OF _____:

Sam Jones and Mary Jones as owners of the land legally described as blocks 1,2,3 and 4 of South Park Addition, a subdivision of _____ county, Kansas, hereby petition the city of _____, Kansas, for annexation of such land.

Sam Jones

Dated: _____

Mary Jones

C. Consent to Annexation

Sam Jones and Mary Jones as owners of the land legally described as blocks 1,2,3 and 4 of South Park Addition, a subdivision of _____ county, Kansas, hereby consent to the annexation of such land by the city of _____.

Dated: _____

Sam Jones

Mary Jones

D. Petition to Board of County Commissioners
for Annexation

To the board of county commissioners of _____ county, Kansas:

The governing body of the city of _____, Kansas, deems it advisable to annex and make a part of the city, the following described land, to-wit: the land commencing at the northwest corner of the southwest quarter of section nineteen (19), township (17) south, range thirty-three (33) west of the sixth principal meridian; thence south 150 feet; thence east 150 feet; thence north 150 feet; thence west 150 feet to the point of beginning in _____ county, Kansas, owned by Robert Smith and June Smith, whose legal residence and post office address is RR #1, _____, county, Kansas. A public hearing on the advisability of such annexation is requested and the city requests the board hear testimony, make findings and issue an order in accordance with the provisions of (Chapter 98, Sec.3, of the Laws of Kansas, 1967). (K.S.A. 1967 Supp. 12-521.)

(SEAL)

Mayor

Attest: _____
City Clerk

E. NOTICE OF HEARING ON PETITION FOR ANNEXATION*

City of _____, before the board of county commissioners of _____, Kansas, to all persons concerned:

Notice of Hearing on Petition for Annexation

You are hereby notified that a petition has been presented to the board of county commissioners of _____, county in the name of the city of _____, Kansas, requesting a public hearing on the advisability of annexing to said city the following described land owned by the following named persons:

Beginning at the northwest corner of the southwest quarter of section nineteen (19), township (17) south, range thirty-three (33) west of the sixth principal meridian; thence south 150 feet; thence east 150 feet; thence north 150 feet; thence west 150 feet to the point of beginning in _____ county, Kansas, owned by Robert Smith and June Smith.

Said public hearing will be held on the 21st day of August, 1967, at the courthouse in _____ (city) _____, (county) _____ Kansas, by the board of county commissioners at which time the owners and other interested persons will be heard. (Those owners herein of unplatted tracts of over twenty (20) acres desiring to protest such annexation should file a written protest with the city clerk of _____, county, Kansas, and also a written protest with the county clerk of _____, county, Kansas, on or before the 15th day of August, 1967).

(SEAL)

Mayor

Attest: _____

City Clerk

* The city publishes and pays for the notice. City officials should consult with the board of county commissioners to ascertain hearing dates.

F. Protest to Annexation

Joe Walters as owner of an unplatted tract of land of over twenty (20) acres described as: Beginning at a point which is 1500 feet north and 300 feet east of the southwest corner of section eighteen (18) township eighteen (18) south, range thirty-two (32) west of the sixth principal meridian, _____ county, Kansas; thence east and parallel to the south line of section 18, a distance of 1300 feet; thence north and parallel to the west line of section 18, a distance of 1600 feet; thence west and parallel to the south line of section 18, a distance of 1300 feet; thence south and parallel to the west line of section 18 a distance of 1600 feet to the point of beginning; hereby protests the annexation of said land by the city of _____, Kansas which is pending by petition before the board of county commissioners of _____, county, Kansas.

Joe Walters

DATED: _____

G. Order Granting (or Denying) Annexation *

On this 21st day of August, 1967, before the board of county commissioners of _____ county, Kansas, testimony is heard upon the petition of the city of _____, Kansas, as to the advisability of the annexation by said city of the following described land:

(enter property description)

The board being satisfied that the annexation of said land will cause (no) manifest injury to the owner thereof, so finds and hereby (grants) (denies) the annexation (, which shall take effect upon passage and publication of the appropriate ordinance).

(SEAL)

Chairman, Board of County Comm.

Attest: _____
county clerk

*City should prepare order and request a certified copy for city records. The spreading of the order upon the journal of proceedings of the board of county commissioners is the responsibility of that body.

H. ANNEXATION ORDINANCE (after hearing before county)

Ordinance No. _____

An ordinance annexing certain land to the city of _____, Kansas, in conformity with the provisions of (Chapter 98, Sec.3, of the Laws of Kansas, 1967). (K.S.A. 1967 Supp. 12-521).

Be it ordained by the governing body of the city of _____:

SECTION 1. The following described land, to-wit:

(insert property description)

is hereby annexed and made a part of the city of _____ pursuant to an order of the board of county commissioners of _____ county, Kansas made on the 21st day of August, 1967, and in conformity with (Chapter 98, Sec. 3, of the Laws of Kansas, 1967). (K.S.A. 1967 Supp. 12-521).

Sec. 2. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

Passed by the (council) (commission) the _____ day of _____, 19____.

(SEAL)

Signed _____
Mayor

Attest: _____
city clerk

Chapter 4.

TAXATION AND SERVICES IN NEWLY ANNEXED AREAS

A. EFFECT OF ANNEXATION ON TAXATION

1. 1965 Supp. 79-1807. Change in boundary of taxing district; effective for tax purposes, when. Any organization or incorporation of any municipality or other taxing district, or any alterations, additions to, or changes in, the boundaries of any municipality, or other taxing district, of the state of Kansas, made according to law, shall take effect for taxation purposes on the last day of December, following any such organization, incorporation, alteration, change or addition except in the following instances:

(a) Whenever any city of the first or second class shall annex all of the territory of an adjacent school district on or before June 30 of any year, such annexation shall take effect for school taxation purposes as of the first day of January preceding such annexation;

(b) Whenever any city of the first or second class shall annex a part of the territory of an adjacent school district for all purposes, such annexation shall take effect for school taxation purposes as provided by K.S.A. 72-5316a to 72-5316j, inclusive, whenever any city of the first or second class shall annex territory for all purposes except school purposes, such annexation shall have no effect for school taxation purposes;

(c) Whenever all of the territory of a municipality or other taxing district is annexed, attached, or transferred to another municipality or other taxing district on or before June 30 of any year, or whenever an entire municipality or other taxing district is merged or consolidated with another municipality or taxing district on or before June 30 of any year, such annexation, attachment, transfer, merger, or consolidation shall take effect for tax purposes as of the first day of January preceding such annexation, attachment, transfer, merger or consolidation: Provided, That the taxes due on November 1 next preceding the date said organization, incorporation, or change takes effect for taxation purposes shall be collected and distributed as before assessed and levied;

(d) When city annexation of a portion of any taxing district, except school taxing districts, occurs prior to April 1, 1965, or prior to April 1, of any subsequent year, it shall take effect for city taxation purposes on the last day of December preceding any such annexation;

(e) None of the provisions of this section shall apply to any unified district established under any of the school unification acts, nor to any community junior college or community junior college district.

2. It is recommended that the county clerk be informed in January if the city intends to annex any land prior to April 1 of the year. This will assist the clerk by putting him on notice as to the intended change in the land subject to taxation and avoid last minute changes in the clerk's tax computations.

B. CONTINUING SERVICES

K.S.A. 1967 Supp. 12-503a. Taxation and Financial Matters After Annexation. Whenever all or any part of any township, improvement district, or other governmental unit is annexed to any city, such township, improvement district or other governmental unit may continue to furnish services for the year for which taxes have been levied or collected in those areas of the district annexed, or in the alternative, shall surrender the taxes collected to the annexing city to be used specifically for the purposes for which the tax was collected. No improvement district shall continue to make a levy for its general fund upon territory annexed to any city, from and after the effective date of such annexation.

Chapter 5

DECISIONS AND OTHER LAWS AFFECTING ANNEXATION

A. MEMORANDUM ON ANNEXATION DECISION

Babcock v . The City of Kansas City, et al
197 Kan. 610

The Kansas supreme court November 4, 1966, in the annexation case of Babcock v . The City of Kansas City, No. 44,682, held in favor of the city. Babcock, a private citizen, filed a quo warranto action against the city challenging several annexation proceedings. The district court upheld Babcock's right to attack the annexation proceedings even though the city challenged his standing as the proper person to bring the action. The supreme court reversed the district court and directed that Babcock's suit be dismissed. The court ruled that a private citizen has no standing in court to attack a city annexation ordinance when his standing is properly challenged by the city. In such an instance the attack upon the city's annexation can only be brought by the county attorney or the attorney general within one year after the effective date of the ordinance under the provisions of K.S.A. 12-502c. The quo warranto procedure set forth in K.S.A. 60-1203, enacted by the 1963 legislature, did not give the private individual the right to attack city annexation.

B. STATUTE OF LIMITATION

12-502c. Limitation of certain actions challenging validity of ordinances adding territory. An action or proceeding in the nature of quo warranto challenging the validity of any city ordinance adding territory to the corporate limits of such city commenced and maintained in the name of the state on relation of the attorney general or the county attorney of the county wherein said city is situated can only be commenced within the period of one (1) year after the effective date of such city ordinance.

C. REDEFINING CITY BOUNDARIES

12-517. Ordinance declaring boundary, when. Before the last day of December in any year in which any territory has been added to or excluded from any city, the governing body of such city shall declare by ordinance the entire boundary of the city.

12-518. Same; filing of certified copies. Whenever the governing body of any city shall by ordinance declare the entire boundary of such city, the city clerk shall forthwith file a certified copy of such ordinance as published with the county clerk, with the register of deeds of the county or counties in which such city is located, with the state highway engineer, and the city clerk of any city in a county having an election commissioner shall also file a certified copy of such ordinance as published with the election commissioner. No fee shall be charged for such filings, and the register of deeds shall file but not record the certified copy of any such ordinance which is filed in his office.

Begin

UNPROOFED

PAH211

PROPOSED AMENDMENTS TO H.B. NO. 2117
As Amended by House Committee of the Whole

Be amended:

On page 1, by striking all of lines 22 to 47, inclusive;

On page 2, by striking all of lines 48 to 84, inclusive;

On page 3, by striking all of lines 85 to 121, inclusive;

On page 4, by striking all of lines 122 to 158, inclusive;

On page 5, by striking all of lines 159 to 195, inclusive;

On page 6, by striking all of lines 196 to 232, inclusive;

On page 7, by striking all of lines 233 to 270, inclusive,

and inserting the following:

"AN ACT concerning municipalities; relating to annexation; amending K.S.A. 12-519, 12-520, 12-520b and 12-521 and repealing the existing sections."

tf "Be it enacted by the Legislature of the State of Kansas:

"Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract" means a single unit of real property under one ownership, outside the corporate limits of a city, which may be platted and/or or unplatted, title to which is publicly or privately held by an owner as defined by subsection (c) herein.

(b) "Land" means a part of a tract or one or more tracts.

(c) "Owner" means the one who has record title to a tract.

In the event two {2} or more persons have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means

the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ~~ten-(10)~~ 10 years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

(d) "Adjoins" means to lie upon or touch (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

(f) ~~"Agricultural purposes" as applied to the use of land means the planting, cultivation and harvesting of crops and/or raising and feeding of livestock for profit.~~ "Land devoted to agricultural use" means land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

Sec. 2. K.S.A. 12-520 is hereby amended to read as follows: 12-520. Except as otherwise hereinafter provided by K.S.A. 12-520c, and amendments thereto, the governing body of any city

may by ordinance may annex land to such city if any one or more of the following conditions exist:

(a) The land is platted, and some part of such land adjoins the city.

(b) The land is owned by or held in trust for the city or any agency thereof.

(c) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity, without the express permission of the board of county commissioners of such county.

(d) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than fifty percent-~~(50%)~~ 50%.

(e) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of twenty-~~(20)~~ 41 acres shall be annexed for this purpose.

(f) The tract is so situated that ~~two-thirds--(2/3)~~ 2/3 of any boundary line adjoins the city, except no tract in excess of twenty-~~(20)~~ 26 acres shall be annexed under this condition.

(g) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

No unplatted tract of land ~~of-fifty-five-(55)-acres-or-more~~ which ~~is-used-only-for-agricultural-purposes~~ devoted to agricultural use in excess of 41 acres shall be annexed by any city under the authority of this section without the written consent of the owner thereof.

Whenever any city shall annex any land under the authority of subsection (b) ~~of--this-section~~ which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until such adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

No city shall be authorized to annex the right-of-way of any highway under the authority of this section unless at the time of such annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

The governing body of any city may annex by one ordinance annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by such ordinance and which conform to any one or more of the foregoing conditions.

Any owner of land annexed by a city under the authority of this section may within ~~thirty-(30)~~ 30 days next following the publication of the ordinance annexing such land may maintain an action in the district court of the county in which such land is located challenging the authority of the city to annex such lands and the regularity of the proceedings had in connection therewith.

Sec. 3. K.S.A. 12-520b is hereby amended to read as follows: 12-520b. The governing body of any city proposing to annex land under the provisions of K.S.A. 12-520, and amendments thereto, shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in K.S.A. 12-520a, and amendments thereto, prepare a report setting forth such plans. The report shall include:

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereof;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth ~~the plans~~ a detailed plan of

the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such statement shall also include a timetable of the plans for extending each major municipal service to the area annexed. The plan shall state the means by which the services currently provided in the area to be annexed may be maintained at the same level following annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

The preparation of a plan for the extension of services as hereinbefore required shall not be required for or as a prerequisite to the annexation of land all of the owners of which petition for or consent to such annexation in writing.

Sec. 4. K.S.A. 12-521 is hereby amended to read as follows:
12-521. Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under the authority of K.S.A. 12-520 and amendments thereto, the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city

utility lines, and the proposed extension thereto;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth ~~the plans~~ a detailed plan of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such plan shall include a timetable of the plans for the extension of major municipal service to the area proposed to be annexed. The plan shall state the means by which the services currently provided in the area to be annexed may be maintained at the same level following annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

The date fixed for such public hearing shall be not less than ~~sixty-(60)~~ 60 nor more than ~~seventy-(70)~~ 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of said hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in some newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of land proposed to be annexed not more than ~~ten-(10)~~ 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board may for good cause shown continue said hearing beyond the time specified in the notice without further publication.

On the day set for hearing, the board of county commissioners

shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

If said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

Any owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

New Sec. 5. Before any city annexes any land pursuant to K.S.A. 12-520 or K.S.A. 12-521, and amendments thereto, the governing body of the city shall submit its resolution of intent to annex adopted pursuant to K.S.A. 12-520, and amendments thereto, or a copy of the petition submitted to the board of county commissioners pursuant to K.S.A. 12-521, and amendments thereto, to any planning commission having jurisdiction over the area to be annexed. If the annexation is by petition pursuant to K.S.A. 12-521, and amendments thereto, a copy of such petition shall be submitted to the planning commission within 20 days of the date on which the petition was presented to the board of county commissioners. The planning commission shall review the proposed annexation and make a finding of the compatibility or the incompatibility of the annexation with the overall development of the city and area to be annexed. A copy of the planning commission's findings shall be sent to the city. If the city is annexing property pursuant to K.S.A. 12-521, and

amendments thereto, a copy of such findings shall be filed with the board of county commissioners at the time of presentation of the petition for annexation. The ^{planning} ~~commissioner's~~ findings shall be available for public inspection in the office of the city clerk.

New Sec. 6. (a) Five years following the annexation of land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, five years following the conclusion of such litigation, the owner ^{of} any land within the area may petition the board of county commissioners to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. Within 10 days after receipt of the petition, the board of county commissioners shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in section 7, if the services are not provided within two years of the date of the board's findings.

New Sec. 7. (a) If, within two years following the conclusion of the hearing required by section 6, or, where there has been litigation relating to the hearing, two years following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the owner of such land may petition the board of county commissioners to exclude such land, or portions thereof, from the boundaries of the city. Within 10 days after

receipt of the petition, the board shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The owner; (2) the city; (3) the township into which the property, if deannexed, would be placed; and (4) the governing body of any fire district, sewer district, water district or other special district governments which have jurisdiction over territory adjacent to the area sought to be deannexed. The notice shall be sent by certified mail no less than 21 days before the date of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner provided in K.S.a. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The county clerk shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the owner, the register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

(d) After the effective date of the order to exclude the land from the city, it shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for such special assessments levied by the city as are necessary to pay its proportionate share of the interest and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of

the land from the city.

(e) The board shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition of some or all of the owners of land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(d) Any owner or the city aggrieved by the decision of the board or commission may appeal the decision to the district court in the manner provided in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

New Sec. 8. Any written agreement entered into between a city and the owner of the land proposed for annexation by the city which conditions the delivery or extension of municipal water, sewer, electrical, gas or other services to the land on the consent of the owner to annexation on a later date shall be deemed to be a sufficient consent to annexation under K.S.A. 12-520, and amendments thereto, by the owner and any successors in interest. Such agreements shall be filed by the city in the office of the register of deeds of the county where the property is located within 30 days after being executed by all parties. Any such agreement executed prior to the effective date of this

act shall be binding upon the owner and any successors in interest if the agreement is filed by the city in the office of the register of deeds of the county where the property is located within 180 days following the effective date of this act, however, the failure to so file any written agreement within 180 days shall not make such agreement void or otherwise unenforceable. No fee shall be charged for such filing.

New Sec. 9. The governing body of any city annexing property pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, may enter into contractual agreements with the owners of land proposed to be annexed to guarantee the apportionment of the costs of improvements made in the area to be annexed between the city at large and the area to be annexed. The term of such agreements shall not exceed 10 years.

This section shall not preclude the formation of a benefit district to make such improvements upon petition by landowners in the area to be annexed.

Sec. 10. K.S.A. 12-519, 12-520, 12-520b and 12-521 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.";

And the bill be passed as amended.