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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Dale Bagley, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Colette Thompson, Borough Attorney *CT*

DATE: September 1, 2015

SUBJECT: Voter Approval of Municipal Annexation

This memorandum responds to the question raised by Assembly Member Kelly Wolf during the August 18, 2015 assembly meeting as to whether there are any Attorney General opinions or case decisions regarding obtaining voter approval of a municipal annexation. As discussed in more detail below, the Alaska Supreme Court held in 1962 that voter approval was allowed but not required for municipal annexation of surrounding property.¹

Preliminarily, the Constitution of Alaska requires a local boundary commission to be established and authorizes it to consider proposed local government boundary changes.² All petitions for a boundary change must be approved by the Local Boundary Commission before they may take effect.³ There are basically two methods of annexations: (1) Local Action and (2) Legislative Review.

Annexation by local action occurs if the annexation meets applicable state standards, the petition is approved by the Local Boundary Commission, and local approval is provided in one of the following three ways:

- (1) by municipal ordinance if the territory is wholly owned by the annexing municipality;
- (2) by municipal ordinance and a petition signed by all the voters and property owners of the territory; or
- (3) by approval by a majority of votes on the question cast by voters residing in
 - (A) the territory; and
 - (B) the annexing municipality.”⁴

Annexation by legislative review occurs when an annexation petition is approved by the Local Boundary Commission, which then submits it to the Legislature during the first 10 days of

¹*Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

² Alaska Const. Art. 10, §12.

³ *Id.*, AS 29.06.040, AS 44.33.812.

⁴ AS 29.06.040(c), 3 AAC 110.150, 3 AAC 100.210.

a regular session with a recommendation for approval. If the Legislature adopts a resolution denying the recommendation within 45 days of the date it was filed or by the end of the session, whichever occurs first, then it is denied. If the Legislature takes no action within the time provided the petition is deemed approved.⁵

Per AS 29.04.040(d), any boundary change effected by state action prevails over one initiated by local action.

In *Fairview Public Utility District Number One v. City of Anchorage*, the Alaska Supreme Court held that voter approval was not required for the City of Anchorage to annex a public utility district. The court reviewed the proceedings of the Constitutional Convention and determined that when the article calling for establishment of the boundary commission was drafted the delegates had in mind “that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.”⁶ The committee indicated the advantage of this method “lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.”⁷

After acknowledging that the state may permit local residents to decide annexation questions at an election, the court clarified that “when this has been done, the state is not irrevocably committed to that arrangement.”⁸ The court also held that failing to put this out for voter approval did not violate due process rights:

Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.⁹

Accordingly, under state law a municipality may annex adjacent property either with or without voter approval.

⁵ AS 29.06.040 (a) and (b).

⁶ 368 P.2d at 543, quoting *Alaska Constitutional Convention Minutes of Committee on Local Government*, Nov. 28 and Dec. 4, 1955.

⁷ *Id.*, quoting Alaska Constitutional Convention, Commentary on Proposed Article on Local Government, Dec. 19, 1955 at 6.

⁸ *Id.* at 545.

⁹ *Id.* at 545-546. Citations omitted.