



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-025

May 20, 2014

The Honorable Andrea Lea
State Representative
Post Office Box 1342
Russellville, Arkansas 72811

Dear Representative Lea:

You have requested my opinion on the following question concerning a petition for annexation under A.C.A. § 14-40-601– 606:

In a landowner petition for annexation under Ark. Code Ann. § 14-40-601 *et seq.*, after the county court approves the landowner request for annexation into a city, is there a timeframe for which the city must act to pass an ordinance or resolution to accept the petitioning landowner and territory?

RESPONSE

This question is a little unclear. It may assume, on the one hand, that the city must act to accept the territory, the only question being whether such action must occur within a certain timeframe. Or it may be asking whether the city is under any obligation at all to accept the territory after the county court has accepted the adjoining landowners' request for annexation. While I am therefore somewhat uncertain regarding the exact focus of your question, I believe it is a sufficient response to state that in my opinion the city in all likelihood is under no obligation to accept the territory, notwithstanding the county court order granting the adjoining landowners' petition.

DISCUSSION

Subchapter 6 of title 14, chapter 40, sets forth a procedure whereby the owners of land adjoining a municipality may petition the county court to conduct a hearing and, if the allegations of the petition are supported by proof, to grant the petition and order annexation.¹ The statutes further direct that any action relating to any such annexation be deferred for a period of 30 days to enable any interested person to challenge the annexation in circuit court.² The circuit court may, upon making certain findings, annul the county court order and restrain any further action under it. Or it may affirm the county court order, in which case the proceedings to prevent annexation will be dismissed.³

Of particular significance for purposes of your question, the annexation is effective upon acceptance by the city or town council:

If no notice shall be given within thirty (30) days from the making of the order of annexation by the county court, the proceeding before the court shall in all things be confirmed, *if the city or incorporated town council shall, by ordinance or resolution, accept the territory.*⁴

As noted by one commentator, “[t]his acceptance is mandatory, apparently on the theory that a city may not be compelled to accept territory it does not want....”⁵

¹ A.C.A. § 14-40-601– 603 (Repl. 2013).

² A.C.A. § 14-40-604(a)(1).

³ *Id.* at (2).

⁴ A.C.A. § 14-40-605(a) (emphasis added). *See also id.* at (b)(1) (requiring the county clerk to certify the county court order and plat of the annexed territory to the Secretary of State and Arkansas Public Service Commission Tax Division “*if the council accepts the territory.*”) (Emphasis added).

⁵ Morton Gitelman, *Changing Boundaries of Municipal Corporations in Arkansas*, 20 Ark. L. Rev. 135, 139 (1966). I assume that by “mandatory,” the author means the annexation is contingent upon acceptance by the city. This author goes on to posit an argument that “such an interpretation requires a useless act in holding hearings and going through judicial proceedings when the city may cavalierly reject the preferred territory.” *Id.* at 139-40. I have no way of predicting with certainty what a court would hold if faced with this argument, as there are no reported cases squarely on point. I will note, however, that in one case involving a collateral attack on an annexation, the court refers in passing, without comment, to the city council’s passage of a resolution or ordinance “some fifteen or sixteen years thereafter” (i.e., after the county court order approving the petition). *Posey v. Paxton, Sheriff*, 201 Ark. 825, 827-28, 147 S.W.2d 39 (1941). The court rejected the annexation in that case due to defects in the earlier annexation proceedings. *Id.* at 829-30. But arguably implicit in the ruling is an assumption that acceptance by the city is a prerequisite to the effectiveness of an annexation order. *Accord Van Marion v. Hawkins, Collector*, 224

It thus appears that the city is under no obligation to accept territory embraced in a petition for annexation that has been granted by the county court. This is perhaps logical, under the premise that the city should be able to determine what its boundaries will be. It might also seem logical for the city to make that determination and convey its decision within some reasonable period of time following the entry of the county court order. However, there is no requirement to that effect on the face of the statutes. And without clarification by the legislature, I cannot read such a requirement into the statutory scheme. I am instead constrained in the issuance of legal opinions, as a court would be, to interpreting the plain language used by the legislative branch, and giving effect to that language absent an ambiguity.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL
Attorney General

DM:EAW/cyh

Ark. 199, 203, 272 S.W.2d 199 (1954) (holding that there was never a proper annexation because “the City acquired no jurisdiction to pass the resolution of acceptance” where the facts showed a total lack of compliance with the statutory annexation procedures). Other cases similarly do not question the necessity of acceptance by the city, turning instead on whether the facts evidence such acceptance. *See, e.g. Gowers v. City of Van Buren*, 210 Ark. 776, 197 S.W.2d 741 (1946) (finding substantial evidence of acceptance by the city, notwithstanding that the city could not find an ordinance or resolution accepting the annexation).