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# ANNEXATION BY MUNICIPALITY OF ADJACENT AREA IN MISSOURI: JUDICIAL ATTITUDE TOWARD THE 'SAWYER ACT

In 1953, the Missouri legislature enacted Section 71.015 of the Revised Statutes,<sup>1</sup> popularly known as the Sawyer Act. Prior to this time, a city council, with the consent of a majority of city voters, had power to extend the city limits to include adjacent territory by the passage of an ordinance.<sup>2</sup> This procedure gave city officials the authority to expand "the city limits in such manner as in their judgment and discretion may redound to the benefit of the city."<sup>3</sup> The ease of annexation often resulted in such a scramble for incorporation by unincorporated areas to avoid annexation that coordination, orderly planning and development were rendered impossible. This note proposes to trace the development of annexation law in Missouri and to examine the effect of (1) the change in procedure prescribed by the Sawyer Act, and (2) a change in judicial attitude toward annexation discernible in the administration of the Act.

## PRE-SAWYER ACT HISTORY

Prior to the passage of the Act, after city council passage of the annexation ordinance, the only method of challenge available to adjoining landowners was a suit in equity to have the annexation declared invalid as being unreasonable.<sup>4</sup> But because the annexation was by ordinance, there arose a presumption of reasonableness<sup>5</sup> which

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1. Mo. Rev. Stat. § 71.015 (1959).

2. Mo. Laws 1949, p. 388, § 3 (first class cities); Mo. Rev. Stat. § 75.020 (1959) (second class cities); Mo. Rev. Stat. § 77.020 (1959) (third class cities); Mo. Rev. Stat. § 79.020 (1959) (fourth class cities).

3. *Ibid.*

4. *Stoltman v. City of Clayton*, 205 Mo. App. 568, 583, 226 S.W. 315, 320 (1920).

5. *State ex inf. Mallet v. City of Joplin*, 332 Mo. 1193, 62 S.W.2d 393 (1933); *Hislop v. City of Joplin*, 250 Mo. 588, 157 S.W. 625 (1913); *Williams v. City of Illmo*, 279 S.W.2d 196 (Mo. Ct. App. 1955); *Mauzy v. City of Pagedale*, 260 S.W.2d 860 (Mo. Ct. App. 1953); *Dressel v. City of Crestwood*, 257 S.W.2d 236 (Mo. Ct. App. 1953); *Rogers v. City of Deepwater*, 240 Mo. App. 795, 219 S.W.2d 750 (1949); *Seifert v. City of Poplar Bluff*, 112 S.W.2d 93 (Mo. Ct. App. 1938); *Central Missouri Oil Co. v. City of St. James*, 232 Mo. App. 142, 111 S.W.2d 215 (1937); *Algonquin Golf Club v. City of Glendale*, 230 Mo. App. 951, 81 S.W.2d 354 (1935); *Bingle v. City of Richmond Heights*, 68 S.W.2d 866 (Mo. Ct. App. 1934); *Winter v. City of Kirkwood*, 296 S.W. 232 (Mo. Ct. App. 1927); *State ex inf. Lashly v. City of Maplewood*, 193 S.W. 989 (Mo. Ct. App. 1917).

the adjacent landowners usually found difficult to overcome.<sup>6</sup> Thus, it was relatively simple to annex adjoining territory by ordinance. Only obvious "tax-grab" annexations, found to be primarily for the purpose of securing license fees and additional revenues for the annexing city without other justification, were held to be unreasonable and declared invalid.<sup>7</sup>

Since a city could always annex an adjacent unincorporated area if it were "reasonable" to do so,<sup>8</sup> it became necessary for the courts to determine under what conditions an annexation would or would not be deemed reasonable. In the leading case of *State ex inf. Major v. Kansas City*,<sup>9</sup> Kansas City sought to annex a large adjoining area by an amendment to its charter. The owners of this area raised the objections that the land was unsuitable for city purposes, disconnected, not divided into lots and blocks, unsuitable for subdivision; that no advantage would accrue to the area as a result of the annexation; that annexation would unduly burden the area with taxes and license fees, and deprive the area's residents of property rights without just compensation. The Missouri Supreme Court upheld the annexation after considering the factors utilized in an Arkansas decision<sup>10</sup> to decide the issue of reasonableness.

The factors to be considered may be restated as follows:<sup>11</sup>

I. Municipalities *may annex* contiguous areas

- (1) if platted and offered for sale or use as city lots,
- (2) held by the owner to be marketed as city property when they reach in value the owner's asking price,

6. *Ibid.*

7. See, e.g., *Ozier v. City of Sheldon*, 218 S.W.2d 133 (Mo. Ct. App. 1949); *Stoltman v. City of Clayton*, 205 Mo. App. 568, 226 S.W. 315 (1920).

8. See, e.g., *State ex inf. Taylor v. North Kansas City*, 360 Mo. 374, 228 S.W.2d 762 (1950); *Arbyrd Compress Co. v. City of Arbyrd*, 246 S.W.2d 104 (Mo. Ct. App. 1952); *Jones v. City of Ferguson*, 164 S.W.2d 112 (Mo. Ct. App. 1942).

9. 233 Mo. 162, 134 S.W. 1007 (1911).

10. *Vestal v. Little Rock*, 54 Ark. 321, 15 S.W. 891 (1891).

11. 2 *McQuillan, Municipal Corporations* 304-06 (3d ed. 1949), which states that:

The conditions under which the municipal limits may be extended and territory annexed, and the nature of such territory, are well outlined in general terms in an Arkansas case which is usually followed. The general rule, as declared in that case and subsequent cases, is that municipal limits may be extended to take in contiguous lands—

- (1) When they are platted and held for sale or use as town lots.
- (2) Whether platted or not, if they are held to be bought on the market and sold as town property when they reach a value corresponding with the views of the owner.

- (3) if factually, they represent municipal growth beyond old legal boundaries,
- (4) necessary to provide adequate municipal services,
- (5) valuable primarily because of their proximity to the municipality.

II. Municipalities *may not annex* contiguous areas

- (1) used primarily for agricultural purposes and valuable solely for that reason,<sup>12</sup>
- (2) vacant and not valuable because of their adaptability for urban use,
- (3) merely to increase tax revenues.

Many Missouri cases have considered these factors, virtually creating a format for the pleading and proof of reasonableness in annexation proceedings.<sup>13</sup> The Missouri decisions emphasize that these fac-

- (3) When they furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundaries.
- (4) When they are needed for any proper urban purpose as for the extension of streets or sewers, drainage, electric, gas or water system or to supply places for the abode or business of residents, or for the extension of needed police regulation.
- (5) When they are valuable by reason of their adaptability for prospective town or city purposes; but the mere fact that their value is enhanced by reason of their nearness to the corporation, would not give ground for their annexation, if it did not appear that such value was enhanced on account of their adaptability to town or city uses.

But municipal limits should not be extended to take in contiguous lands—

- (1) When they are used only for purposes of agriculture or horticulture and are valuable on account of such use.
- (2) When they are vacant and do not derive special value from their adaptability for urban use, although their value may be enhanced by reason of their nearness to the city. The limits of a city cannot be extended to take in undivided lands merely for the purpose of increasing the city's revenues.

12. 2 McQuillan, *op. cit. supra* note 11, at 314-15, which comments that: Most of the statutes, as usually construed by the courts, permit, to a reasonable extent, farm or agricultural lands to be included within the limits of the municipal corporation. However, the reasonable view is that the power to enforce incorporation upon farming lands which are sparsely settled must be expressly given and will not be implied against private consent.

13. See, e.g., *State ex inf. Taylor v. North Kansas City*, 360 Mo. 374, 228 S.W.2d 762 (1950); *Arbyrd Compress Co. v. City of Arbyrd*, 246 S.W.2d 104 (Mo. Ct. App. 1952); *Jones v. City of Ferguson*, 164 S.W.2d 112 (Mo. Ct. App. 1942).

tors are not mutually exclusive but rather that their cumulative effect is controlling, with each factor being accorded its proper weight.<sup>14</sup>

Pre-Sawyer Act cases tended to ascribe greater weight to those factors most favorable to the annexing city. This is best illustrated by statements in the cases that "plans of the [adjacent] owners are entitled to consideration but they cannot in and of themselves alone balance the scales against the necessity of the community"<sup>15</sup> and "Municipal need must be liberally viewed and is, of course, entitled to dominance over all other considerations."<sup>16</sup> Only in cases of gross inequality were adjoining landowners successful in defeating the annexation.<sup>17</sup> Briefly stated, then, the pre-Sawyer Act cases reflect the courts' preoccupation with municipal need, and virtual disregard of whether annexation was desirable from the standpoint of the annexed area.

#### CHANGES UNDER THE SAWYER ACT

With the passage of the Sawyer Act,<sup>18</sup> the procedure for annexation was changed. The annexing city was required to file an action in the circuit court seeking a declaratory judgment on the validity of the annexation. The burden fell upon the annexing city to plead and prove that its action was "reasonable and necessary." Therefore, the courts were given, in advance of the annexation, the power to test reasonableness, a power which heretofore could only be exercised after

14. "It appears to us that all considerations and all factors must be weighed and balanced against each other. . . ." *Faris v. City of Caruthersville*, 301 S.W.2d 63, 70 (Mo. Ct. App. 1957).

15. *Ibid.*

16. *City of Sugar Creek v. Standard Oil Co.*, 163 F.2d 320, 323 (8th Cir. 1947).

17. See, e.g., *Ozier v. City of Sheldon*, 218 S.W.2d 133 (Mo. Ct. App. 1949); *Stoltman v. City of Clayton*, 205 Mo. App. 568, 226 S.W. 315 (1920).

18. Mo. Rev. Stat. § 71.015 (1959), which reads as follows:

Whenever the governing body of any city has adopted a resolution to annex any unincorporated area of land, such city shall, before proceeding as otherwise authorized by law or charter for an annexation of unincorporated areas, file an action in the circuit court of the county in which such unincorporated area is situated, under the provisions of chapter 527 RSMo, praying for a declaratory judgment authorizing such annexation. The petition in such action shall state facts showing:

1. The area to be annexed;
2. That such annexation is reasonable and necessary to the proper development of said city; and
3. The ability of said city to furnish normal municipal services of said city to said unincorporated area within a reasonable time after said annexation is to become effective. Such action shall be a class action against the inhabitants of such unincorporated area under the provisions of section 507.070, RSMo.

passage of the annexation ordinance.<sup>19</sup> This shift in the burden of proof has increased the difficulty of annexation and forced closer court scrutiny of city action.<sup>20</sup>

In defining the ultimate questions of fact which the city is required to prove, the Act provides, in part, that the annexation must be "reasonable and necessary to the proper development of [the] . . . city."<sup>21</sup> Although the city, instead of adjoining landowners, now has the burden on the issue of reasonableness, substantively, this provision would appear only declarative of the existing law. However, the Missouri Supreme Court, in the recent case of *City of Olivette v. Graeler*,<sup>22</sup> approached the concept of reasonableness from a new perspective. The probable effect of this case on future annexations justifies a detailed analysis.

### *The Graeler Case*

The City of Olivette, Missouri, a third class city in St. Louis County, following the Sawyer Act procedure, filed its action for a declaratory judgment validating the annexation of three hundred acres of adjoining land. The circuit court first rendered a judgment authorizing the annexation, but on defendants' motion for a new trial, the judgment was vacated, the court concluding that the Sawyer Act was not applicable because the area to be annexed was not "unincorporated" within the meaning of the Act. The court reasoned that "unincorporated" and absence of municipal services were synonymous, and since the area was being furnished with municipal services by St. Louis County pursuant to the authority granted to it by its home rule charter under Article VI, Section 18 of the Missouri Constitution,<sup>23</sup> the ultimate effect was to make all of St. Louis County

19. See *State ex rel. Womack v. City of Joplin*, 332 Mo. 1193, 62 S.W.2d 393 (1933).

20. See *City of St. Joseph v. Hankinson*, 312 S.W.2d 4 (Mo. 1958); *City of Creve Coeur v. Patterson*, 313 S.W.2d 739 (Mo. Ct. App. 1958). The constitutionality of this procedure was challenged on the ground that the legislature was delegating its power to the judiciary by allowing judicial relief before the annexation on the issue of the action being reasonable and necessary. The Missouri Supreme Court upheld the constitutionality of the Act by declaring it to be merely a procedural change and one which did not usurp the legislative function. *City of St. Joseph v. Hankinson*, supra.

21. Note 18 supra.

22. 338 S.W.2d 827 (Mo. 1960).

23. Section 18 (a). Any county having more than 85,000 inhabitants, according to the census of the United States, may frame and adopt and amend a charter for its own government as provided in this article, and upon such adoption shall be a body corporate and politic.

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Section 18 (c). The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic,

incorporated. Hence, the area was without the purview of the statute and the court lacked jurisdiction of the subject matter. Therefore, the meaning of the phrase "reasonable and necessary" as used in the statute, and the issue of whether the annexation was reasonable and necessary to the proper development of Olivette were by-passed by the court's declaration of "no jurisdiction."

On appeal, the Missouri Supreme Court, summarily holding that the area was "unincorporated" within the meaning of the Act,<sup>24</sup> then turned its attention to the interpretation of the requirement that the annexation be "reasonable and necessary."

Plaintiff city contended that the clause "that such annexation is reasonable and necessary to the proper development of said city," was intended to restrict court inquiry to a consideration of the proper development of the annexing city only. Defendants countered that annexation must be reasonable in relation to *all* areas affected by the proposed annexation. The court held that the proper interpretation was not that the annexation must be "reasonable" solely from the standpoint of the development of the annexing city, an interpretation which the court said "is confusing and tends to preclude a judicial inquiry into the reasonableness of the annexation from the standpoint of the area to be annexed,"<sup>25</sup> but construed the word "reasonable" as modifying the word "annexation" and not as modifying "necessary to the proper development of said city." Although it would appear that the interpretation requested by the city was more in keeping with past decisions, the court, nevertheless, adopted the defendants' position. Further, the opinion stated that a "reasonable" annexation was one which took into consideration the needs of the adjoining as well as the annexing area; that "Both parties are entitled to the test of reasonableness."<sup>26</sup>

The city's contention that reasonableness should be viewed from the

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building construction, and planning and zoning, in part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality, or political subdivision in the county, except school districts, when accepted by a vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote.

24. In essence the holding was to the effect that although St. Louis County has the permissive power to furnish services of a municipal nature to the area proposed to be annexed, nevertheless its primary obligation is as a subdivision of the state to perform state functions imposed upon it, and that characterizing St. Louis County as a municipal corporation did not necessarily mean that the land was "incorporated" within the meaning of the Sawyer Act.

25. *City of Olivette v. Graeler*, 338 S.W.2d 827, 837 (Mo. 1960).

26. *Ibid.*

standpoint of the proper development of the city, appeared justified on the basis of a prior decision under the Act.<sup>27</sup> However, the *Graeler* decision made it quite clear that a determination of reasonableness requires an examination of the needs of both the annexing city and annexed area.<sup>28</sup> It is difficult to see why it should have ever been otherwise, but the court's statement that both parties are entitled to the test of reasonableness, represents the first clear articulation of the principle.

### *A New Analysis*

In future annexation cases, the courts will give equal consideration or weight to the needs of both areas, and, of course, this represents a change in the policy of favoring the annexing city. Perhaps the best explanation of this is suggested by the unique approach of Missouri annexation cases up to and including the *Graeler* decision. The practice has been to assign a weight to each factor that has a bearing on reasonableness or unreasonableness, and then to compare the two sets of factors and make a judgment.<sup>29</sup> The weight assigned by the courts to each factor reflects the judicial attitude toward annexation in general, and, it is submitted, provides the ratio decidendi of the cases.

In pre-Sawyer Act annexations, the adjoining landowners had to adduce sufficient proof of unreasonableness to rebut the presumption in favor of the city, or the annexation would be upheld. What constituted *sufficient* proof, therefore, depended largely on a balancing of the factors enumerated in the *Major* case.<sup>30</sup> There, relative weight was accorded to each factor. Thus, for example, if the area sought to be annexed were exclusively agricultural, the annexation would immediately receive negative consideration by the court. On the other hand, if the area were desperately needed by the annexing city for expansion or development, this would be given positive consideration in favor of annexation. In comparing factors of reasonableness with those of unreasonableness, the court's attitude toward annexation was reflected in the relative weight assigned to each.<sup>31</sup>

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27. *City of St. Ann v. Buschard*, 299 S.W.2d 546 (Mo. Ct. App. 1957).

28. Compare *City of St. Ann v. Buschard*, supra note 27, with *City of Creve Coeur v. Patterson*, 313 S.W.2d 739 (Mo. Ct. App. 1958).

29. The approach has been suggested in the language of some of the cases, e.g., "We conclude that the value set forth in the second negative factor of the rule is a comparative value in relation to the value which the land has because of its adaptability to city purposes. . . . It appears to us that all considerations and all factors must be weighed and balanced against each other." *Faris v. City of Caruthersville*, 301 S.W.2d 63, 70 (Mo. Ct. App. 1957).

30. 233 Mo. 162, 134 S.W. 1007 (1911).

31. See notes 9-12 supra, and accompanying text.

The conclusion appears warranted that before the Sawyer Act, the courts favored annexation, or at least made no great effort to strike doubtful annexations down. When the evidence as to reasonableness was doubtful, the city was given the benefit of that doubt.<sup>32</sup> With cities enjoying both the presumption of reasonableness and a benevolent court policy favoring annexation, adjoining landowners experienced little success in resisting annexation.

The Sawyer Act has apparently deprived the cities of both advantages. The burden of proof of reasonableness has shifted from the annexed area to the city. The cities now have the burden of establishing a prima facie case for annexation. However, it was not until the *Graeler* case that those factors that would tend to show reasonableness from the city's standpoint were not given a weight advantage over those tending to favor the position of the adjoining landowners. With both sides now receiving equal consideration on the reasonableness issue, and with adjoining owners enjoying the procedural advantage, it appears that cities may face in the future the same difficulties in the courts which adjoining owners experienced in pre-Sawyer Act cases.

#### RECENT ANNEXATION DECISIONS

The size of the task now facing the annexing city is well illustrated by two cases decided in the St. Louis County Circuit Court within weeks after the *Graeler* decision, the first of which was *City of St. Louis v. Berkeley*.<sup>33</sup> The City of Berkeley, a small municipality in north St. Louis County, sought to annex 1400 acres of land, a major portion of which was owned by the City of St. Louis, about 125 acres by McDonnell Aircraft Corporation, and 50 acres by the United States Government. The City of St. Louis had established a municipal airport on its land which was used solely for that purpose. McDonnell had established a manufacturing plant for the design and manufacture of military aircraft. Thus, the land in question was a highly developed area limited to use for specific purposes. The court's memorandum, noting the old tests of reasonableness elaborated in the *Major* case,<sup>34</sup> found that by each test the annexation would be unwarranted and that both parties were entitled to the test of reasonableness.

Why . . . should the services presently rendered available be supplemented by the services of the City of Berkeley. The City of Berkeley did absolutely nothing to attract the enterprise to the annexed area and it has contributed nothing in the past to their advancement. It would not only be unreasonable to permit

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32. State ex rel. Womack v. City of Joplin, 332 Mo. 1193, 62 S.W.2d 393 (1933).

33. St. Louis County Cir. Ct., Div. No. 4, Case No. 228652 (1960).

34. 233 Mo. 162, 134 S.W. 1007 (1911).

Berkeley to obtain jurisdiction over this annexed area and subject these enterprises to the governmental control of Berkeley but it would be unjust to permit Berkeley to reap where it has not sown—to assess and collect taxes and license fees for which the occupants of the annexed area would receive little or no benefit.<sup>35</sup>

From the viewpoint of the annexed area, the action was unreasonable.<sup>36</sup>

The case of *Emerson Elec. Mfg. Co. v. City of Ferguson*<sup>37</sup> was decided soon after the *Berkeley* case. The City of Ferguson sought to annex property owned by Emerson Electric. The area in question again was highly industrialized. The court held against annexation, and said that although there were certain factual differences between this and the *Berkeley* case, the same rules of law were controlling.

The property of the company is devoted exclusively to the company's needs and is not available for any residential, commercial or industrial expansion of the city. The property has available from its own revenue resources every needed municipal service and annexation will subject the property to taxation from which the property will acquire no reasonable corresponding benefit. . . . Both on the basis of the tests initially outlined by the Missouri Supreme Court in the *Major* case and repeatedly approved by that court on the basis of the more recent requirement laid down by the Supreme Court in *City of Olivette v. Graeler* that an annexation must be justifiable from the viewpoint of the annexed as well as the annexing territory . . . the annexation . . . is unreasonable and oppressive.<sup>38</sup>

### CONCLUSION

In light of these decisions, it is submitted that areas of substantial industrial and commercial development, or areas for which such use is contemplated, will be difficult to annex under the new doctrine. The courts will give closer scrutiny to the relative needs of the two areas involved with particular reference to the effect of resulting taxes and license fees.

The Sawyer Act has given Missouri a new annexation procedure which has regulated more strictly the pleading and proof of the pertinent issues in annexation cases. The recent *Graeler* case has so construed the Sawyer Act that the annexing city no longer has an advantage over the area sought to be annexed. These tighter controls should obviate the need felt by many areas to incorporate solely

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35. Note 33 supra.

36. On February 20, 1961, the city council of Berkely voted to drop the appeal of the case.

37. St. Louis County Cir. Ct., Div. No. 4, Case No. 219662 (1960).

38. Ibid.

to avoid annexation by an adjacent city,<sup>39</sup> so that the great number of extremely small incorporated municipalities should not significantly increase in the future.

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·39. See *City of Olivette v. Graeler*, 338 S.W.2d 827 (Mo. 1960).

There were 99 incorporated cities in St. Louis County at the time of the trial. . . . It is obvious that some of them were originally incorporated as a defensive measure to avoid annexation by an adjoining city. Some of them are completely surrounded by other incorporated cities and have no opportunity to extend their boundaries. There is a great deal of competition between other cities for the unincorporated territory adjoining them. . . . It would seem to be in order for the court to consider what the 'proper development' of a city is in these circumstances as an element of the issues of necessity and reasonableness. *Id.* at 837-38.