

1980

## Sweetwater Properties et al v. Town of Alta, Utah : Brief of Amicus Curiae

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

\* \* \* \* \*

SWEETWATER PROPERTIES, SBC :  
INVESTMENT COMPANY and :  
BLACKJACK TRUST, :

Plaintiffs and :  
Respondents, :

Case No. 17064

vs.

TOWN OF ALTA, UTAH, a municipi- :  
pal corporation, :

Defendant and :  
Appellant. :

\* \* \* \* \*

BRIEF OF AMICUS CURIAE  
UTAH LEAGUE OF CITIES AND TOWNS

\* \* \* \* \*

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## TEXTS CITED

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BRIEF OF AMICUS CURIAE  
UTAH LEAGUE OF CITIES AND TOWNS

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STATEMENT OF FACTS

Amicus believes the only relevant statement of facts, not contested by the parties, is that Sweetwater Properties, SBC Investment Company and Blackjack Trust (hereinafter "Sweetwater") sought and seeks to develop land which is contiguous to the boundaries of the Town of Alta (hereinafter "Alta"). The parties contest whether the policy statement adopted by Alta sufficiently complies with the requirements of Part 4, Chapter 2, Title 10, Utah Code Annotated 1953, as amended. The disputed facts are set forth in the parties' brief.

## ARGUMENT

### POINT I

THERE ARE SOUND POLICY REASONS FOR ENABLING MUNICIPALITIES TO ANNEX CONTIGUOUS UNINCORPORATED TERRITORY PROPOSED FOR URBAN DEVELOPMENT

Prior to 1957, the Utah law provided that annexation to a municipality could be accomplished by petition of a majority of the real property owners as shown on the most recent assessment rolls in the office of the county recorder. See Section 15-3-1, Utah Code Annotated 1933 and Section 15-3-1, Utah Code Annotated 1943.

In Laws of Utah 1957, Chapter 14, the Legislature amended the statute to include the requirement that the petitioners also include those owning at least one-third in value of the land as shown on the most recent assessment rolls. The reason for the amendment was to prevent municipalities from accepting a petition for annexation of unincorporated territory signed only by a majority of the real property owners, but also having as part of the territory valuable commercial or industrial property which was located adjacent to the municipality, but the owners of which did not want to be subjected to municipal taxation. The primary proponent of the "assessed valuation" criteria was Utah Power and Light which often locates its substations just beyond municipal boundaries.

By 1979, annexations, primarily in Salt Lake County, had added two new dimensions. First, the local option sales tax, originally authorized at one-half of one percent in 1959, was amended in 1977 to enable cities and counties to impose



up to three-fourths of one percent. See Sections 11-9-1 et seq., Utah Code Annotated 1953. Sales tax has become an increasingly important source of revenue for cities, towns and counties accounting for as much as 30 to 40% of the total general fund revenue. The sales tax looms more important as a revenue source as political pressures force reduction of the property tax.

The sales tax, in turn, is collected at the point of sale and returned by the state tax commission to the point of sale e.g., the jurisdiction which imposed the tax. Naturally, all taxing entities desire to annex commercial property, realizing that "residential property never pays for itself."

Amicus, through its annual convention, has adopted policy resolutions regarding the interrelationship of annexation to taxation. Copies are attached as exhibits "A" and "B." Essentially, the resolutions set forth the rationale of Utah's cities and towns for enabling municipalities to initiate annexation of the unincorporated territory adjacent to municipalities.

In "Adjusting Municipal Boundaries, Law and Practice," Department of Urban Studies, National League of Cities, 1966 at pages 1 and 2, the purpose of annexation is set forth:

The major purpose of annexation is to promote orderly urban growth. Annexation is an instrument that, properly used, may preserve an expanding metropolitan area as a unified whole; it permits an urban society to conduct its affairs in an economic and comprehensive fashion. Its proponents contend that annexation is the best single solution to the political, social, and economic problems caused by fragmented and overlapping local governments in growing urban areas. Annexation of areas



in the urban fringe to core cities is advocated for more specific reasons. Chief among these reasons are:

1. The fringe area is needed by the city for continued orderly growth and the prosperity of the metropolitan area.
2. Fringe lands are needed so that public service facilities such as water and sewer systems, street extensions, and recreational facilities may be planned and provided on a rational and economic basis.
3. The fringe area may be brought within and developed under city land use controls; e.g., planning, zoning, housing codes, and building regulations.
4. The fringe regions may be subject to city protective regulations and receive city police and fire services.
5. The fringe area may be subjected to city health and sanitation regulations and receive these services.
6. Residents of the fringe area actually benefit from many of the services and facilities provided by city government and should bear their full share of the costs.

The central theme of these objectives is to provide a sound base for area-wide action, orderly growth, and essential governmental services to the inhabitants of the region. There is an honest recognition of the inevitable degree of interdependence which exists between the core city and its environs. There is an implicit acknowledgement that municipal boundaries are no guarantee against the spread of such evils as crime, disease, deterioration of neighborhoods and blighting land uses. Annexation brings the unincorporated fringe within the city and thus widens the application of standardized services and facilities, minimizes the creation of additional incorporated places and special districts, and permits area-wide planning. Annexation permits a city to control its own destiny.

In its statement of the "Basic Principles for a Good Annexation Law," id., at page 64, the National League of Cities states in its principles and commentaries:

## PRINCIPLE 1

Municipalities should have the authority to initiate and consummate, by council action, the annexation of unincorporated territory to promote the health, welfare, safety and economic development of the area and the entire community.

### Commentary

Annexation without requiring the consent of residents or property owners in the affected area is frankly contemplated by this item and elsewhere in the statement. We reject the untenable idea that dwellers within, or owners of, fringe areas (whose location is meaningful only in relation to the central city) should be given a veto power over the geographic, economic and governmental destiny of the city that is the source of the area's economy and whose proximity solely gives affected properties whatever tangible and intangible desirability they have as places of residence or economic activity. This is not to say that affected residents or owners need be denied a hearing prior to decision, or the opportunity to present a remonstrance (if quantitatively and qualitatively substantial) afterward. Annexation without required consent is established in at least 32 states by laws that provide some 76 methods of unilateral annexation, albeit of often limited application, in which the area neither initiates nor consents to the action. It accords with the view of many authorities in the field, e.g., Dean Jefferson B. Fordham of the University of Pennsylvania Law School, who declares "I am zealous to leave no doubt as to the proposition that the people in an area proposed to be annexed should not have a veto."

Absence of a requirement does not mean that consent, or even impetus, from the area may not continue to be prerequisite to annexation where city governing bodies specify it as a matter of their policy; establishment of such policy should be within their province.

and at page 65:

## PRINCIPLE 3

A municipality should have the opportunity to adopt reasonable policies in relation to physical facilities and certain other conditions that will govern its consideration of area-originated annexation proposals.

## Commentary

As an example, pre-installed water or sewer mains may be unsuitable for connection to the city system; hence an understanding of modifications to facilities must be reached before a city council, in fairness to either its present or prospective citizens, can approve an area-originated request for annexation.

Section 10-2-401, Utah Code Annotated 1953, provides:

The legislature hereby declares that it is legislative policy that:

(1) Sound urban development is essential to the continued economic development of this state;

(2) Municipalities are created to provide urban governmental services essential for sound urban development and for the protection of public health, safety and welfare in residential, commercial and industrial areas, and in areas undergoing development;

(3) Municipal boundaries should be extended, in accordance with specific standards, to include areas where a high quality of urban governmental service is needed and can be provided for the protection of public health, safety and welfare and to avoid the inequities of double taxation and the proliferation of special service districts;

(4) Areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality as soon as possible following the annexation;

(5) Areas annexed to municipalities should include all of the urbanized unincorporated areas contiguous to municipalities, securing to residents within the areas a voice in the selection of their government;

(6) Decisions with respect to municipal boundaries and urban development need to be made with adequate consideration of the effect of the proposed actions on adjacent areas and on the interests of other government entities, on the need for and cost of local government services and the ability to deliver the services under the proposed actions, and on factors related to population growth and density and the geography of the area; and

(7) Problems related to municipal boundaries are of concern to citizens in all parts of the state and must therefore be considered a state responsibility.

Section 10-2-418 provides:

Urban development shall not be approved or permitted within one-half mile of a municipality in the unincorporated territory which the municipality has proposed for municipal expansion in its policy declaration, if a municipality is willing to annex the territory proposed for such development under the standards and requirements set forth in this chapter; provided, however, that a property owner desiring to develop or improve property within the said one-half mile area may notify the municipality in writing of said desire and identify with particularity all legal and factual barriers preventing an annexation to the municipality. At the end of 12 consecutive months from the filing with the municipality of said notice and after a good faith and diligent effort by said property owner to annex, said property owner may develop as otherwise permitted by law. Urban development beyond one-half mile of a municipality may be restricted or an impact statement required when agreed to in an interlocal agreement, under the provisions of the Interlocal Co-operation Act [11-13-1 to 11-13-27].

It is amicus' position that the two sections are integrally related to the initial formulation of a state urban policy and that the policy is to encourage urbanizing areas to annex to municipalities.

#### POINT II

SUBSTANTIAL COMPLIANCE WITH THE STATUTORY REQUIREMENTS FOR FORMULATION, CONTENTS AND ADOPTION OF AN ANNEXATION POLICY DECLARATION IS ALL THAT SHOULD BE REQUIRED.

Strict compliance with the requirements for adopting the annexation policy declaration would (1) frustrate the basic policy of the Legislature in which it is contemplated that urbanizing areas should annex to cities and (2) be



inconsistent with Section 10-1-103, Utah Code Annotated, which provides:

The powers herein delegated to any municipality shall be liberally construed to permit the municipality to exercise the powers granted by this act except in cases clearly contrary to the intent of the law.

Additionally, the courts are almost unanimous in holding that substantial, not strict, absolute compliance with the annexation law is all that is required. Scottsdale v. State ex rel. Pickrell, 98 Ariz. 382, 405 P.2d 871 (1976); Town of Windsor Heights v. Colby, 89 N.W.2d 157 (Iowa 1958); City of Tucson v. Garrett, 77 Ariz. 7, 267 P.2d 717 (1954).

The annexation law is to be liberally construed in order to implement its purposes. City and County of Denver v. Board of County Commissioners, 550 P.2d 862 (Colo. 1976) on remand 556 P.2d 486 (Colo. 1976). It is submitted that the purpose of the Utah annexation law is clear--to enable municipalities to require the annexation of unincorporated territory proposed for "urbanization." To that end, the law should be liberally construed. Strict, absolute compliance with the requirements of the policy declaration should not be required as such a constriction on the power of a municipality to annex would be in opposition to the stated purposes of the annexation law.

In City of Clinton v. Owners of Property, 191 N.W.2d 671 (Iowa 1971), the form of the ballot to determine by popular vote the question of annexation failed to describe the territory to be annexed by metes and bounds and instead described

the territory by governmental survey units. The court held that failure to literally comply with every work of the annexation law is not fatal, that substantial compliance with the statutory procedure is sufficient and that the statutory procedure for extending corporate boundaries is to be construed in favor of the public. The courts will not find substantial compliance where a required statement is completely absent or where the minimum number of signatures on the petition has not been met.

### POINT III

THIS IS NOT AN APPROPRIATE CASE IN  
WHICH TO DECIDE THE QUESTION OF WHEN  
A PERSON'S RIGHTS VEST IN A CONSTRUCTION PERMIT

Amicus does not believe that this is a proper case, nor should it really raise the issue of when Sweetwater's property rights vested in its building permits. That issue should be raised in the context of an application to Alta for a building permit after Alta has had an opportunity to grant or deny the permit. Moreover, the only Utah case in point, Contracts Funding and Mortgage Exchange v. Maynes, 527 P.2d 1073 (Utah 1978), is confusing and, if read as conferring a vested right at the time an application for a permit is made, is outside the mainstream of American Jurisprudence. See 49 ALR 3d 13 and 82 Am Jur 2d, Zoning and Planning, Section 237.


### CONCLUSION

It is the position of Amicus that the 1979 changes in the annexation law signaled change in legislative policy regarding annexation and urban development. The Alta case

raises in a unique context the classical problem traditionally confronted by cities and towns under the former law e.g., business locating just outside the city to take advantage of proximity to the city including all of the benefits of urban life, while not paying the city property tax.

Even if Sweetwater prevails in its contention that it has a vested right to continue development, it is Amicus' position that the development should be within the boundaries of Alta.

Respectfully submitted this 11th day of September, 1980.

  
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing  
brief were personally delivered to the persons at the  
addresses listed below this 11<sup>th</sup> day of September, 1980.

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## URBAN POLICY

E, THE MEMBERS OF THE UTAH LEAGUE OF CITIES AND TOWNS FIND:

.. LACK OF AN URBAN POLICY.

1.1. As municipalities face the decade of the 1980's, they are confronted with growth and cost problems. The legislature has been reluctant to grant municipalities power to regulate growth with the municipalities. Nowhere is there authority to adopt comprehensive construction or building standards. Municipal authority to regulate subdivisions is implied from a negative power--the power to refuse to approve a subdivision plat before it is filed in the office of the county recorder. Efforts to modernize the statutes to specifically enable municipalities to adopt building and construction standards and to regulate subdivision development has continuously been defeated in the Utah Legislature.

1.2. Additionally, the tax structure of the state discourages sound, comprehensive urban development. In Utah, municipalities and counties can levy a three-quarters of one percent sales tax. The jurisdiction in which the sales tax generating business is located receives the proceeds. As sales tax increases, the pressure is removed from the property tax as well as the local officials who are not perceived as increasing the sales tax. Consequently, cities, towns and counties compete for commercial development and commercial developers frequently shop among competing local governments for which will give the best deal. Unfortunately, these deals are not always in the best interests of the general public. Local governments promise to let the developer "off" for storm improvements, road and gutter construction--even permit fees. The developer assures the local jurisdiction that the proceeds from the increased sales tax will more than pay the costs which the local government promises to install.

1.3. When counties become involved in the development business, they start with a real advantage over municipalities. Whenever a municipality levies a property tax, the tax is in addition to the general uniform county property tax e.g., if a county levies ten mills to pay its costs, and a city levies ten mills to provide services within the city, the property tax is ten mills in the county, but 20 mills in the city. It should surprise no one that commercial and industrial developers prefer to build in the unincorporated county and resist annexation to the city. Such a tax structure also encourages people to move into the unincorporated area.

1.4. The urbanization of unincorporated territory produces two problems for cities. First, it decreases the value of city real estate. Second, the people in the unincorporated areas demand--and receive--urban services from the county. But urban services in unincorporated areas are expensive. It is a fundamental proposition of government that space is cost e.g., the larger the area services the more expensive is the cost of the service. High density populations cost less per unit than low density populations. If each person living on a one or two acre lot had to personally pay the cost of providing water lines, sewer lines, road construction and maintenance, curbs, gutters, lighting, police and fire protection and garbage collection, only the wealthy could afford that kind of suburban lifestyle. But counties are able to provide urban services at less-than-cost per unit served as the city taxpayer is contributing to the county's general fund! Essentially, the county levies a uniform county-wide tax and uses a part of the proceeds to pay the cost of municipal services, in the unincorporated area of the county. City governments levy additional taxes to finance urban services to their residents. The effect is "double taxation" e.g., city residents are taxed by the city to provide the same services to

the city residents. Part of the solution has been to require counties to establish county service districts which tax only the county residents for services provided only to county residents. See 17-34-1 et seq., Utah Code Annotated 1953. The result in Salt Lake County where approximately 50 percent of the total population lives in the unincorporated area has been a closing of the gap between city and county taxpayers. In other counties, the tax structure still encourages people to move out of cities.

## 2. THE COST FACTOR.

2.1. Unincorporated areas should be discouraged from having urbanization for two reasons. First, subsidized growth in the unincorporated territory is too frequently unplanned. In short, urban sprawl is encouraged. Second, the actual unit cost of services in the unincorporated territory is substantially higher than for cities. Third, counties are constitutionally prevented, as a practical matter, from providing municipal services. In order to circumvent the constitutional debt limitations (Article XIV, Section 4, Constitution of Utah) of two percent, counties have had to create multiple special service districts. These districts are area wide. Anyone having property within the district is entitled to demand--and usually receives--the services provided by the district. Accordingly, there is no incentive to plan growth patterns in the district. Again, the result is urban sprawl. It should surprise no one that the greatest growth in the cost of government and in the proliferation of taxing units is in the unincorporated areas. Special district taxes rose three times faster than city taxes in Salt Lake County during 1978. Again, the rapid increase in costs is attributal, in part, to the large areas and low population density in the area served.

2.2. As the cost of constructing streets, curbs, gutters, waste disposal systems and water treatment standards increases, and the public continues to resist increases in taxes, municipalities and local governments must develop cost containment programs. Additionally, municipalities must assume responsibility to eliminate artificial or unnecessary costs to the private sector. Building and construction codes must be updated to eliminate unnecessary building costs. Municipalities must develop innovative zoning and land use ordinances. High density, multiple unit building lots must be permitted. Urban planning and zoning must reduce fuel consumption. Proper urban planning can reduce the costs of municipal government and the cost of housing, commercial construction and other private sector costs resulting from unplanned urban growth.

2.3. If Utah law is to encourage sound, systematic, planned, and cost effective urban growth, the new annexation law fails to move far enough in that direction. It does little to prevent urban growth in the unincorporated areas, except within one-half mile of a municipality.

## 3. ANNEXATION POLICY.

3.1. In the 1979 general session, the Utah Legislature completely rewrote Utah's annexation laws in H.B. 61. House Bill 61 was initially introduced by Representative Lee W. Farnsworth following a year and a half of public hearings held throughout the state on the issues related to annexations.

3.2. Since statehood, municipalities have been restricted in their ability to annex territory. Utah law has always required that annexations occur only after a petition signed by a majority of the real property owners owning at least one-third of the assessed valuation in a majority requirement has some rationale in



a democracy, but the one-third assessed valuation demonstrates the power of special interest groups which locate valuable buildings and construction on the periphery of cities, but oppose annexation. Annexation is opposed for two reasons. The first is that cities generally have higher property taxes. The second, declining in recent years as the result of increased state and federal regulation, was that cities tended to regulate businesses more than did counties.

3.3. The new annexation law continues, with minor modifications, the former petition requirements for annexation.

#### 4. TAX POLICY.

4.1. Utah's tax structure encourages disorderly, unplanned and expensive local government. Already addressed above was the double taxation problem. As the result of pressure for municipal services in unincorporated areas, the Utah Constitution was amended to enable counties to form special service districts. The rationale for such districts was that a municipality lacked sufficient taxing powers to provide the revenues necessary to pay for municipal services in rapid growth areas, particularly where the people lived in a municipality but the property with high assessed valuation was located in the county.

4.2. Many authorities argue that the Constitution of Utah prohibits the Legislature from providing revenues from taxes to local units of government.

4.3. The Constitution of Utah also prohibits one unit of government from imposing property taxes for the benefit of another unit.

4.4. Special districts have the advantage of providing a large property tax basis for the government. It is difficult to move outside a special district the boundaries of which include most developable areas within a county. Jurisdiction shopping is discouraged. But persons having property within special purpose districts demand and frequently receive all of the services of the special service district. Accordingly, the per unit costs of the special service district are higher than the per unit costs for the same service within compact areas e.g., cities. As the services offered by special service districts are available throughout the service district, there is great pressure to develop outside cities and in the open spaces. As the cost for special district services is about the same for the person living on five acres "in the county" as for the city dweller on half an acre, people move to the county. (The fuel shortage may reverse this trend.)

4.5. As counties are limited in the mills they may levy, and in the total debit they may incur, urban counties have had to establish special purpose districts. These districts exist in unincorporated areas and allow the county commissioners to impose taxes in the unincorporated area and to incur additional debit. The result is a multiplicity of taxing districts, and, where there is a board elected or appointed, other than the county commissioners, unknown persons operate shadow governments.

THEREFORE, THE UTAH LEAGUE OF CITIES AND TOWNS RECOMMENDS:

1. URBAN POLICY. The Utah Legislature should establish a comprehensive state urban policy. The policy should encourage the location of people, commerce and industry within cities and towns.

2. LAND USE POLICY. The Legislature should enact legislation which encourages municipalities to develop efficient service areas, encourages land use, reduces the cost of municipal services, encourages open spaces and agricultural uses. To this end municipalities should be given the authority to regulate subdivision developments, impose reasonable impact fees and to update planning and zoning control.

Municipalities should be given authority to control and regulate urban development within three miles of the municipal boundary in the unincorporated territory. Municipalities should be able to unilaterally annex unincorporated territory after a reasonable hearing process.

3. TAX POLICY. The Utah Legislature must develop revenue and taxation policies which encourage the reduction in the cost of municipal government. To this end, the state must develop revenue sharing policies which encourage efficient land use by municipalities and which discourage urban sprawl. The state must eliminate tax policies which foster double taxation and encourage the degeneration of the city by promoting urban sprawl. Municipalities should be encouraged to develop and enforce efficient land use and compact urban living. Properly adopted and enforced land use regulations will reduce the cost of municipal services, housing and the use of the nation's energy resources. Municipalities should be given considerable latitude in determining their basic tax structure based on their own local needs.

4. The Legislature should establish a local government committee to recommend to the Legislature legislation which will encourage the development of compact satellite residential municipalities, which reduces the use of private motor vehicles in urban areas, which eliminates the competition for commercial centers, and which discourages the movement of people, commerce or industry into unincorporated territory, except where the commerce or industry does not properly belong in a municipality or does not impact on a municipality.

## RESOLUTION NO. 79-8

## ANNEXATION

WHEREAS, Utah needs a good annexation law; and

WHEREAS, the present law is inadequate to provide for systematic urban growth; and

WHEREAS, the present law has been held unconstitutional;

NOW, THEREFORE, THE UTAH LEAGUE OF CITIES AND TOWNS URGES the legislature to enact into law an annexation policy that includes:

1. Municipalities should have the authority to initiate and consummate, by council action, the annexation of unincorporated territory to promote the health, welfare, safety and economic development of the area and the entire municipality.
2. Provisions must also be made for annexations in which the initiative arises in the outside area involved, and which are desired by the municipality. Relatively simple procedures should be provided for annexation of such areas by a city whose governing body is willing to receive them.
3. A municipality should have the opportunity to adopt reasonable policies in relation to physical facilities and certain other conditions which will govern its consideration of area-originated annexation proposals.
4. Annexation solely for the purpose of increasing municipal revenue, without an ability or intent to benefit the area by rendering municipal services, when and as needed, is indefensible; annexations of that apparent effect may, however, be meritorious in cases of valid need for an area, not presently requiring services, for purposes of future development.
5. Statutory standards to define the nature of annexable areas are a relatively new development, generally acceptable when applicable to municipalities operating under general law but not acceptable as to cities operating under home rule charters.

Such standards must be framed with a disposition toward the expansion of municipal boundaries to include territory having a community of interest--economic, social and cultural--with the central city; provisions must be made for inclusion of not only already "urbanized" or built-up areas but, very importantly, also territory which is undergoing, or is suitable and needed for, urban development.

6. Determination of adherence to statutory standards may best be achieved by vesting the determination in the municipal governing body concerned.

While in several states the determination of adherence to statutory standards has been vested in the courts or in continuing or *ad hoc* administrative or quasi-judicial bodies--initially or upon review--experience to date has not as yet been such as to demonstrate the superiority, or desirability, of such devices to make determinations better vested in local city governing bodies.

7. Annexation statutes should provide simple, clear-cut procedures, uncomplicated with unnecessary detail, thus preventing lengthy and frivolous litigation on statutory construction.
8. Notably unjustified, in any annexation law, are:
  - (a) Requirements for preponderant or compound majorities for initiation by, or consent to, annexation; conversely, granting a minority the means to obstruct or defeat an annexation;
  - (b) Requirements for consent to an annexation by the voters or governing body of an unincorporated local (e.g., township) government in cases when less than the whole is slated for annexation;
  - (c) Restrictions to prohibit the renewal of an attempt to annex during an arbitrary interval following lack of success with a prior effort.
9. In all cases, the law of any state should make it a simpler and easier procedure to annex an area to an adjacent already functioning municipality than to incorporate the area as an entirely new municipality of dubious, or at least untested, capabilities for municipal service.
10. Where annexation of the same unincorporated area is proposed by two or more municipalities, or where area-initiated annexation is proposed to two or more municipalities, the final determination of which municipality shall be the annexing municipality should not be based upon strictly chronological priorities.
11. Territory to be annexed to a city should, as a general rule, be contiguous thereto.
  - (a) Areas lying on the other side of so-called "barriers" of a natural (e.g., water courses) or artificial (e.g., railroads, highways) nature should be considered contiguous to a city for the purposes of annexation.
  - (b) Provisions attempting to establish a mathematical formula for expressing a required degree of contiguity should be avoided.
  - (c) The statutes may well provide for special circumstances present in particular situations which may justify annexation of non-contiguous territory.
12. Unincorporated territory that is "enclaved"--wholly surrounded--by a city should in any case be annexable by the city by ordinance or resolution of the governing body, without conformance to such standards as may govern other types of annexation.



13. Municipal annexation of unincorporated territory should not be limited by county lines or the boundaries of other political subdivisions within the state.

There is, in general, no reason for requiring the extent of an annexation to be governed by the boundaries of school districts or other special-purpose districts existing in the area.

14. The statutes should inhibit the creation of new municipalities to prevent the incorporation of areas so lacking in financial and human resources as to be incapable of providing an adequate level of municipal services--particularly when such an area is adjacent to an existing municipality which could annex the area and provide the necessary governmental services.
  - (a) Similarly, the laws governing the creation of special-purpose districts to render a stipulated municipal service within unincorporated territory should be such as to prevent their creation in areas where their intended service might more appropriately be provided by annexation to an adjacent established municipality.
  - (b) Protecting the expansion opportunities of sizeable cities by creating about them a "buffer zone" of specified radius and forbidding therein the incorporation of new municipalities, without the consent of the central city, has merit; but a period of years within which the city must annex or permit an incorporation is a desirable concomitant to avoid inequity to residents who desire, and should be able to obtain, municipal services via one route or the other.
15. Some statutory authority for delaying the effective date of an annexation may have merit in reassuring the city that a particular enlargement of its boundaries will be affected and enabling it to perfect its readiness to serve the area at the appropriate time; at the same time equitable treatment will be accorded property owners therein by avoiding the customary constitutional necessity of imposing full city taxes before substantially complete city services may be received.
16. Interjurisdictional financial adjustments are often necessary when an annexation, even of unincorporated territory, involves city acquisition of all or a part of the area of any type of special-purpose district, and --on some occasions--territory theretofore merely within county jurisdiction.

Necessary arrangements for division of property and assets, the responsibility for debt and liabilities, the collection and allocation of current and delinquent revenues, etc., can usually be safely entrusted to determination by negotiation and agreement between the governing bodies of the city and the unit involved; a stand-by provision for adjudication in the event of their inability to reach agreement within a reasonable time should be sufficient to assure proper solution of the problems and still leave statute books uncluttered by seldom-needed procedures.

17. One type of financial arrangement involving local governments, though not primarily a part of annexation law, deserves consideration by most states in connection with such laws because it operates in practice to deter annexation and thus inhibits the desirable normal expansion of municipal boundaries to embrace contiguous urbanized territory.

The growing tendency of county governments to render "municipal" services in built-up areas peripheral to established cities deserves severe scrutiny to insure that the too-common practice of financing these localized services from general county revenues (raised primarily within the cities) is curbed. Simple equity demands that such services, which would be available from the cities via annexation, must--if furnished under county auspices--be financed wholly from revenues derived from within the area thus served.

18. In addition to simple, workable and effective laws in relation to annexation of unincorporated areas, the statutes should also provide laws, having the same attributes, to provide adequately safeguarded procedures for:
  - (a) Consolidation of adjacent municipalities, whether by annexation of a smaller by a larger or by merger of cities of substantially equal stature; and for
  - (b) Transfer of territory between abutting municipalities by detachment from the one and coincident annexation to the other.

CERTIFICATE

I, Herschel G. Hester, III, being first duly sworn, depose and state, that I am the duly acting and appointed executive director of the Utah League of Cities and Towns and that the foregoing resolutions Nos. 79-7 and 79-8 are true and correct copies of resolutions adopted by the members of the Utah League of Cities and Towns at their annual Convention held September 8, 1979 in Salt Lake City, Utah.

DATED this 11<sup>th</sup> day of September, 1980.

  
HERSCHEL G. HESTER, III

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day  
of September, 1980.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_