MUNICIPAL CORPORATIONS--ANNEXATION-VIOLATION OF DUE PROCESS

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Municipal Corporations—Annexation—Violation of Due Process—
The City of Silver Grove brought a proceeding to incorporate within its boundaries a parcel of defendant railroad's land under a general law of annexation. It was shown that the land sought to be annexed contained nothing but switchyards, roundhouses, refrigeration plants and other facilities designed exclusively for railroad purposes. It was further shown that the city could make no use of the land nor could it benefit the land in any way since the railroad had complete electrical, sanitation and police facilities. Defendant railroad entered a remonstrance to which the city generally demurred. The trial court sustained the demurrer. On appeal, held, reversed. Annexation of land by the municipality constitutes a violation of the state due process clause because in essence it is nothing more than a device to tax the defendant railroad and thereby benefit the taxpayers of the city at the defendant's expense. Chesapeake and Ohio Ry. Co. v. City of Silver Grove, (Ct. App. Ky. 1952) 249 S.W. (2d) 520.

As a general rule, the legislature has complete control over the political subdivisions of the state, especially in relation to the acquisition or detach-

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ment of neighboring parcels of land by the subdivision. Although it is frequently said that this control is limited by provisions in the state or federal constitution, the due process clause is rarely relied upon to prevent abuse by annexation or detachment. This is clearly shown by the overwhelming number of decisions indicating that the due process clause will not be invoked even where the adverse effect upon the territory annexed is staggering. The question of the applicability of the due process clause in this connection has, to a large extent, been avoided through the operation of general, as opposed to special, laws of annexation. Under general laws of annexation, which set out the conditions under which the municipal corporation may act, the courts have no difficulty in preventing abuse by holding that the particular body has exceeded its authority in annexing the disputed land. This is done by ruling that the annexation was unreasonable and hence done without authority since the courts presume that the legislature would not intend an unreasonable annexation. However, in the rare situation where the legislature does pass a special law of annexation, the courts are squarely faced with the choice of allowing injustice or invoking the constitution when in fact the annexation is oppressive. The choice is made easier in some states by "uniformity of taxation" provisions in the constitution. Under such a provision the courts can readily find that the annexation was accomplished with an eye toward increased tax revenue from the annexed area with no corresponding increase in benefits to it. Without such a provision the courts are usually reduced to the due process clause. The traditional reluctance to apply the due process clause in such a situation probably stems from the ancient concept of legislative supremacy over political subdivisions. Thus one court in enunciating this doctrine said: "It [municipality] has no vested . . . powers or franchises.

4 In the leading case, Hunter v. Pittsburgh, 207 U.S. 161 at 178, 28 S.Ct. 40 (1907), the Court said: "The state, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or part of it with another municipality, repeal the charter and destroy the corporation . . . In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unstrained by any provision of the Constitution of the United States." Accord: Toney v. Macon, 119 Ga. 83, 46 S.E. 80 (1903), appeal dismissed in 195 U.S. 625, 25 S.Ct. 791 (1904).
5 See 64 A.L.R. 1358 (1930).
7 See 16 McQuillin, MUNICIPAL CORPORATIONS, 3d ed., §44.19 (1950), for a compilation of the various constitutional provisions dealing with "uniformity of taxation" and their effects.
8 E.g., Banks v. City of Raleigh, 220 N.C. 35, 16 S.E. (2d) 413 (1941). Reasonableness of annexation is not always determined by reference to the probability of benefit to the land in question. See Town of Narrows v. Giles County, 184 Va. 628, 35 S.E. (2d) 808 (1945).
9 McQuillin, "Limitations of Legislative Control of Municipal Corporations," 34 AM. L. REV. 505 (1900).
Its charter or act of right to incorporation is in no sense a contract with the state. It is subject to the control of the legislature, who may enlarge or diminish its territorial extent or its functions, and may change or modify its internal arrangement or destroy its very existence at discretion."\textsuperscript{10} The importance of this concept in judicial thinking is clearly demonstrated by the great disparity in the amount of "injustice" necessary for holding an annexation unreasonable under a general law and the amount sufficient to invoke the due process clause under a special law. Thus one court when faced with a special act allowing a clearly unreasonable annexation refused to consider, much less act upon, the inequities of the plan.\textsuperscript{11} Yet many courts, when investigating an annexation under a general law, have been scrupulous in examining every single facet of the scheme almost to the point of demanding complete mutuality of benefit.\textsuperscript{12} However, the gravity of the question, to a large extent, has been diminished because of the infrequency of special annexation laws.\textsuperscript{13} While the result reached in the instant case seems sound, it was hardly necessary to invoke the due process clause since the court could have simply held the annexation unreasonable and hence done without authority of the general annexation law of Kentucky.

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\textsuperscript{10} Coyle v. Gray, Atty. Gen., 7 Houst. (Del.) 44 at 91, 30 A. 728 (1884).
\textsuperscript{11} McGraw v. Merryman, 133 Md. 247, 104 A. 540 (1918).
\textsuperscript{12} Nolting v. City of Overland, 354 Mo. 960, 192 S.W. (2d) 863 (1946); State v. City of Reno, 64 Nev. 127, 179 P. (2d) 366 (1947).
\textsuperscript{13} 2 McQuillen, \textit{Municipal Corporations}, 3d ed., §7.23 (1949).