

ANNEX OR ELSE!

A Cautionary Tale for Townships and Their Residents

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This is a tale of two families, who, although situated differently, suffered the same fate. Since it is a tale that could well play out in your township, understanding what happened - and why - is important.

In 1978, Richard Smith, of Perrysburg Township, purchased property and built a home in a subdivision neighboring the City of Perrysburg. The City extended water and sewer services to his property without requiring that he sign a written agreement. Shortly thereafter, the City began thinking more strategically. In 1983, it enacted an ordinance providing that, after that date, extraterritorial utility customers would have to agree to petition for annexation in order to receive services. Then in 1988, the City mandated that all current extraterritorial customers sign an agreement to annex their property. Smith never took any action in response to any of this legislation. He continued to receive the services.

Time passed without incident for Smith. Then in 1998, new neighbors - Mr. and Mrs. Bakies - purchased a home in the same subdivision. The City of Perrysburg was now 20 years older, and considerably more cunning, than it was when it first provided Smith with water and sewer services. The City required the Bakies to sign, which they did, a contract for service in which they agreed to cooperate with Perrysburg's annexation plans or face termination of their services. *Annex or else!*

Again, time passed without incident for these township residents. But in June of 2002, the City, implementing its stated goal of annexing all adjacent urbanized areas, mailed letters to 260 township property owners requesting that they

sign a petition for annexation. Being happy as township residents, both Smith and the Bakies refused to sign the annexation petition. As a result, the City notified them that their water and sewer service would be terminated. *Annex or else!*

These two families weren't about to put up with such a demand. They filed a complaint in the court of common pleas seeking a court order preventing the City from terminating their water and sewer services. The City wasn't about to put up with such a refusal. It counterclaimed, asking the court to (1) declare enforceable the Bakies' original agreement to annex, and (2) compel these township residents to immediately sign the annexation petition. The court ruled in favor of the City and ordered the owners to sign the annexation petition within 60 days. *Annex or else!*

Recall that when Mr. and Mrs. Bakies first received services they signed an agreement with the City that they would annex when asked. But Smith had never signed any such agreement. Thus, Smith's situation is of greater interest in assessing the significance of this case. Smith claimed he had an oral agreement with the City whereby the City would provide service conditioned only on timely payment and that the City could not now unilaterally change the terms of that agreement. The existence and nature of the alleged oral contract was a question of fact before the court. Ultimately, the Ohio Supreme Court, in a unanimous decision, agreed with the court of appeals that "the record does not evidence the terms of any oral contract involving [Mr. Smith's] water and sewer services." The court also reasoned that Smith's continued receipt of services after the City had enacted the ordinances requiring annexation for extraterritorial users of City services subjected him to the provisions of those ordinances. The court upheld the lower court's order that these township residents sign the annexation petition or have their services terminated. *Annex or else!*

This is no fairy tale. It is a true story, as played out in the case of *Bakies v. City of Perrysburg*, decided by the Ohio Supreme Court in 2006. While not a terribly new decision, nearly four years later, its ramifications are more and more beginning to be experienced throughout the state.

What can township officials learn from this case? Clearly, the decision poses a serious dilemma for township residents who have relied for years on municipal services, have paid their tap-in fees, have paid the municipality's surcharge fees, and who have absolutely no interest in



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becoming city residents. It is a grim reminder to township officials that things can rapidly change - township residents will be outraged and township budgets threatened. Is there nothing that can be done?

While the state of the law is certainly not favorable for townships and their residents, there are steps township officials can take. A few things to consider:

1. **What are the facts?** It is important to remember that the *Bakies* decision is, in some measure, based upon the facts of that particular case. Yes, a municipality can force annexation in exchange for retaining services *if* there is no contract that receipt of services will not require annexation. But don't assume there is no such contract - or other circumstances precluding the city's action. Not all contracts are written contracts. Smith asserted he had an oral agreement with the city - but he simply did not have the proof. If you learn that township residents are being told "annex or else" and they look to you for help, dig deep to determine whether your situation differs from the facts in *Bakies*. Is there a contract? Has the city acted in such a way that the legal principle of equitable estoppel may bar their actions? You should not assume a city always has the indisputable right to force annexation. There will be times when a city's attempt can be successfully challenged.
2. **Fight back.** It's just another annexation petition! Just because some residents have signed a petition forced upon them by the city, there is no guarantee it will be granted. The petition will be subject

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to the same statutory process as any other annexation petition. The owner fulfills his or her obligation by signing the petition. It is your board of county commissioners that will determine whether the petition should be granted. The board will have to determine whether each of the statutory conditions for annexation has been met. In the case of a petition that is signed by fewer than all the owners and therefore filed as a non-expedited petition, that determination will include, for example, a finding that the annexation would be to the general good of the annexation territory and the surrounding territory. That involves a board finding that the benefits of the proposed annexation outweigh the detriments. You know how to challenge that.

3. **Apply public pressure.** When challenging an annexation petition, public outcry can be a powerful tool. I have experienced instances in which township officials have educated and organized their residents to bring 100 or more township residents to attend and provide evidence at annexation hearings. It can truly make a difference.

4. **Be pro-active.** Township officials should look to the future. Are there options that will keep the "annex or else" letter from hitting the mailboxes of your residents and businesses? There may be other sources of services (counties, other municipalities,

water or sewer districts) that can be explored. Investigate them before it is too late.

5. **Negotiate.** Finally, there will certainly be times when the writing is on the wall. The facts, the politics, the timing may be against you. There may be no practical options for service other than the municipality that requires annexation for services. Most homeowners cannot afford to risk the loss of water and sewer services. Ohio statutes have provided tools for townships and municipalities to negotiate to resolve these kinds of issues. For example, cities and townships can enter into annexation agreements or CEDAs (RC 709.192 and 701.07) to resolve issues of annexation, the provision of services, inside millage allocation, and more. The creation of Joint Economic Development Districts (JEDDs) can satisfy (without annexation) a municipality's need to collect more tax dollars in exchange for providing the services only they can provide, while satisfying a township's desire to establish certainty for its residents and businesses that they will be able to remain township residents while still receiving necessary services. Of course, township officials must face the hard realities and remember that negotiation means compromise. Sometimes, being pro-active and negotiating with your neighboring municipality on these issues can avoid the last minute "annex or else" crisis experienced by the property owners in *Bakies*.

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