1993

Municipal Annexation in Ohio: Putting an End to the Bitter Battle

Mary Shannon Place

Follow this and additional works at: https://engagedscholarship.csuohio.edu/clevstlrev

Part of the State and Local Government Law Commons

How does access to this work benefit you? Let us know!

Recommended Citation

This Note is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.
MUNICIPAL ANNEXATION IN OHIO: PUTTING AN END TO THE BITTER BATTLE

I. INTRODUCTION .................................................. 346

II. THE STATUTORY SCHEME IN OHIO .......................... 348
   A. Annexation on Application of the Landowners .......... 349
   B. Annexation on Application of the Municipal Corporation .................................. 350
   C. Statutory Remedies ......................................... 350
       1. Injunctive Remedy of Section 709.07 ................. 350
       2. Administrative Appeal of Chapter 2506 .......... 351
       3. Standing of Township Trustees ....................... 352

III. POLICY ANALYSIS ............................................ 354
   A. Annexation Procedure ....................................... 354
   B. Standards and Discretion of the Board of County Commissioners .................................. 356
       1. General Good of the Territory Sought to be Annexed .................................................. 356
       2. Territorial Scope: Unreasonably Large .............. 358
   C. Limited Statutory Remedies to Challenge Annexation ............................................... 359
   D. The Statutory Role of Ohio's Townships ............... 360

IV. APPLICATION OF THE ANNEXATION STATUTE IN OHIO .... 361

V. NEGOTIATION AND MEDIATION AS A SOLUTION TO ANNEXATION DISPUTES IN OHIO ............... 366
   A. An Overview of ADR Methods ............................... 367
   B. Advantages and Disadvantages of ADR Methods ........ 369
   C. Negotiation and Mediation in the Annexation Context ................................................. 371
       1. Dispute Dynamics of Annexation ......................... 371
           a. The Parties to the Dispute ......................... 371
           b. Territory in Question ............................ 372
       2. Motivation to Negotiate or Mediate ............... 373
       3. Coming to the Table ................................... 375
           a. Focus on the Interests of the Parties .......... 376
           b. Develop Options for Agreement ................. 377
       4. Legal Authority and a Proposed Amendment .......... 378

VI. CONCLUSION ................................................... 380

Published by EngagedScholarship@CSU, 1993
I. INTRODUCTION

Recent decades, marked by steady population growth, have seen the evolution of a distinctly urban nation.1 Metropolitan areas, unrestrained by local territorial boundaries, have mushroomed and a complex system of highly decentralized local governments has emerged in an effort to meet the growing demand for municipal services.2 The multiplicity of local governments within metropolitan areas has raised serious questions about the efficiency and equity of fragmented government organizations. Critics argue that the existence of multiple local governments in metropolitan areas leads to an inequitable allocation of public goods and services,3 inefficient patterns of area land use and development,4 and counterproductive competition for new fiscal resources and territorial autonomy.5 Moreover, the urbanized landscape poses problems of community leadership:

The typical urban government faces the following problems: it lacks a broad enough jurisdiction to deal with its many physical problems; it lacks the resources to make a meaningful assault on its social problems; it is unable to apply long-term perspective because of the urgency of the immediate needs; and, in many cases, it is constrained by outmoded organizational forms or constitutional limitations on its powers, placing the governmental unit in the position of attempting to operate with one arm tied behind its back.6 Crime, pollution, land use, traffic patterns, adequate housing and health standards are problems facing central cities that simply cannot be contained

---


2One of the central roles of local government is to produce, distribute and regulate consumption of goods and services. See Robert E. Agger et al., Politics and the Scope of Government in the Community: Conceptual Considerations, in PERSPECTIVES ON URBAN POLITICS, supra note 1, at 61-62. For the purposes of this note, "municipal services" refer to those services traditionally provided by a local governmental body and include such things as police and fire protection, water and sewer services, road and park maintenance, health and safety regulations and solid waste disposal.


4Id.; See also FRANK SENGSTOCK, EXTRATERRITORIAL POWERS IN THE METROPOLITAN AREA 61 (1962).

5Reschovsky, supra note 3, at 55.

within territorial boundaries. Nor are the fringe areas self-sufficient units, able to operate independent of the core city. Fringe areas are frequently unable to sustain adequate public services such as fire and police protection, waste disposal, public transportation, and water and sewer services. This is true particularly where the smaller fringe communities suffer fiscal disparities in relation to wealthier, larger communities.

Despite the interdependence between central cities and the fringe areas, attempts to exercise extraterritorial powers by extending needed services and imposing area-wide regulations frequently leads to "jurisdictional conflicts, bickering and hard feelings, rather than cooperation between governments of metropolitan areas." As one scholar warns:

[Problems are created] when the provision of public goods cannot be confined to the boundaries of the existing units of government. These situations involving serious spill-over effects are apt to provoke conflict between the various units of the system. Arrangements must be available for the resolution of such conflicts . . . . Otherwise, competition and conflict are apt to become acute.

Clearly, urbanization has created area-wide problems that require area-wide solutions, uninhibited by territorial boundaries. Municipal annexation of

---

7 Sengstock, supra note 4, at 3. See also Kent Mathewson, Councils of Governments: The Potential and Problems, in EMERGING PATTERNS IN URBAN ADMINISTRATION, supra note 6, at 197.

8 Id. See also Vincent Ostrom et al., The Organization of Government in Metropolitan Areas: A Theoretical Inquiry, 55 AM. POL. SCI. REV. 831 (1961) in PERSPECTIVES ON URBAN POLITICS, supra note 1, at 98. The authors describe one theory of the problem of metropolitan government: "the people of a metropolitan region have no general instrumentality of government available to deal directly with the range of problems which they share in common. Rather, there is a multiplicity of federal and state governmental agencies, counties, cities and special districts that govern within the metropolitan region." Id. at 98.

9 Mathewson, supra note 7, at 197.

10 Reschovsky, supra note 3, at 56.


12 Ostrom, supra note 8, at 117.

13 Territorial boundaries are in many respects impractical. Urban areas are fragmented by local government organizations, yet are substantially unified economically and socially. At early common law, a municipality was defined by its community of interest and not by geographic boundaries. One scholar argues: Had the early common law definition of a municipal corporation prevailed, today's metropolitan area problems, created because of the multiplicity of governmental organizations, would cease to exist. There would be no fringe areas receiving inadequate governmental services . . . . No legal problems would be encountered by the core city in extending its services into the metropolitan peripheral areas. As the metropolitan area grew, the jurisdiction of the city to police and to zone newly settled areas
unincorporated fringe territory holds significant potential to be a possible solution. The utility of annexation as a solution to metropolitan problems, however, depends largely on the statutory procedure and its effective implementation. Sadly, municipal annexation in Ohio has fallen far short of its potential to be a viable solution to the State’s urban problems.

This note will examine the statutory scheme for annexation in Ohio, analyze the policy reasons underlying the statute, and review how the statute and its application have inhibited its usefulness in servicing the needs of Ohio’s urban areas. Finally, the note will advocate the implementation of alternative dispute resolution methods as a means of increasing the potential utility of annexation under Ohio’s current annexation statute.

II. THE STATUTORY SCHEME IN OHIO

There are two methods for annexing unincorporated territory to a municipality under Ohio’s annexation statute: (1) annexation on application of the owners of real estate adjacent to a municipal corporation; and (2) annexation on application of a municipal corporation. These two methods of annexation have several elements in common. Both methods require mutual consent of the municipality and the fringe territory sought to be annexed. Both methods require the local board of county commissioners to rule on whether the proposed annexation will serve the "general good" of the territory sought to be annexed and whether the territory is not unreasonably large. Finally, both methods frequently result in similar judicial battles between the

would automatically follow. Questions concerning extraterritorial powers would be moot. Municipal corporations would represent a combination of interests common to a community which could increase and decrease.

SENGSTOCK, supra note 4, at 2.

14See FRANK SENGSTOCK, ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM (1985) [hereinafter ANNEXATION: A SOLUTION]. "Annexation is perhaps the most significant means by which metropolitan political unity can be achieved; it is the most commonly employed device for adjusting local governmental boundaries in urban areas." Id. at 7 (citing COUNCIL OF STATE GOVERNMENTS, THE STATES AND THE METROPOLITAN PROBLEM 25 (1956)).


16OHIO REV. CODE ANN. §§ 709.02-.12 (Baldwin 1980).

17§ 709.13-.21. Ohio’s annexation statute also provides for the annexation of all or part of one municipal corporation to another municipal corporation. See §§ 709.22-.34. While the merger or consolidation of two municipalities may involve some of the same issues and present many of the same problems as annexation of unincorporated territory to a municipality, the procedure differs significantly and is beyond the scope of this note.

18§ 709.033. See also Dixon, supra note 15, at 150.

19§ 709.033.
proponents and opponents of annexation. For the purposes of this note, the two methods will be treated as one. An overview of each method is warranted, however, since there are significant procedural differences between the two methods.

A. Annexation on Application of the Landowners

Annexation on application of the landowners is initiated by the filing of a petition with the board of county commissioners of the county in which the territory is located. The petition must be signed by a majority of the landowners in territory adjacent to the municipal corporation. In addition, the petition must contain a full legal description and accurate map or plat of the territory to be annexed, a statement of the number of real estate owners in the territory, and the name of the person or persons acting as agent for the petitioners. The board of county commissioners conducts a public hearing on the petition, accepting evidence and hearing testimony in support of and against the proposed annexation. The board will then grant the petition upon a finding that: (1) the statutory and procedural requirements have been met; (2) the petitioners are all owners and constitute a majority of the landowners in the territory; (3) the map or plat is accurate; (4) the territory is not unreasonably large; and (5) the general good of the territory will be served if annexed to the municipality. The legislative authority of the municipal corporation then must accept the application for annexation by resolution or ordinance. The annexation takes effect and the territory becomes part of the municipality thirty days after passage of the resolution or ordinance.

20See discussion infra part IV.
21§ 709.02.
22Id.
23Id.
24§ 709.032.
25§ 709.033. In the event that the board of county commissioners denies the petition for annexation, notice is sent to both the agent for the petitioners and to the clerk of the municipal corporation to which annexation was proposed. Appeal may then be made to the courts which, upon a finding that the board’s denial of the annexation petition was contrary to law, may order the board of county commissioners to approve the annexation. Id.
26§ 709.04. If the municipality refuses to accept the territory for annexation, all proceedings on the annexation cease. A rejection by the municipality, however, does not bar future attempts by the landowners of the same territory to repetition the board of county commissions for annexation. § 709.05.
27§ 709.10.
B. Annexation on Application of the Municipal Corporation

Annexation on application of the municipal corporation is initiated by petitioning the board of county commissioners to allow the municipality to annex unincorporated territory adjacent to the city. The legislative authority of the municipality must first pass an ordinance authorizing the annexation of contiguous territory. A petition is then filed with the board of county commissioners along with a description of the territory proposed for annexation and an accurate map or plat. Where the territory is owned by the municipality, the board of county commissioners must approve the annexation without further proceedings; however, annexation of county-owned territory may be approved or disapproved at the discretion of the board. In all other cases, a vote by the electors of the unincorporated area proposed for annexation must be taken on the question of annexation. If the electors vote against annexation, the election operates as a veto and no further proceedings for annexation are permitted for five years. If the electors approve the annexation, the petition proceeds in the same manner as a petition filed by the landowners. The board will conduct a public hearing and will exercise the same limited discretion regarding whether the general good of the territory will be served by annexation and whether the territory is not unreasonably large. As with annexation on petition of the landowners, the annexation becomes effective thirty days after the legislative authority of the municipality passes a resolution or ordinance accepting the annexation. The territory becomes part of the municipality and its inhabitants share all of the rights and privileges afforded to the original residents of the municipality.

C. Statutory Remedies

1. Injunctive Remedy of Section 709.07

Under either method of annexation, interested persons are permitted to petition the court of common pleas for an injunction restraining the board-approved annexation petition from being presented to the legislative

28§§ 709.13-.21.  
29§ 709.14.  
30§ 709.15.  
31§ 709.16. It is common for a municipality to purchase or acquire property outside of the city's boundaries for use as such things as storage facilities or to house a water tower.  
32§ 709.17.  
33Id.  
34§ 709.16.  
35§ 709.10.  
36§ 709.20.
authority of the municipality. An order staying further proceedings until final disposition of the petition for injunction may be issued by the court while deliberating the matter. The court of common pleas will grant the petition for injunction only upon a finding:

by clear and convincing evidence that the annexation would adversely affect the legal rights or interests of the petitioners, and that: (1) there was error in the proceedings before the board of county commissioners, ... or that the board's decision was unreasonable or unlawful; or (2) there was error in the findings of the board of county commissioners.

An order enjoining further proceedings will bar the clerk of the annexing municipality from presenting the county approved annexation petition to the legislative authority. Landowners of the territory proposed for annexation are not barred from subsequently petitioning the board of county commissioners again for the annexation of the same territory.

2. Administrative Appeal of Chapter 2506

In In re Petition to Annex 320 Acres to the Village of S. Lebanon, the Ohio Supreme Court held that, unless standing was conferred on a party by another statutory provision, section 709.07 was the "exclusive remedy for persons who challenge a board of county commissioners' approval of a landowners' annexation petition." Township trustees, however, have argued that section 505.62 of Ohio Revised Code confers standing upon boards of township trustees to appeal annexation decisions of county commissioners under chapter 2506 of the Ohio Revised Code in addition to the injunctive remedy of section 709.07. Chapter 2506, which provides a "virtual de novo examination of the record" from the hearing before the board of county commissioners,

---

37§ 709.07.
38§ 709.07.
39§ 709.07(D).
40Id.
41Id.
42597 N.E.2d 463 (Ohio 1992).
43Id. at 471.
45OHIO REV. CODE ANN. § 2506 (Baldwin 1987) (appeal from an administrative decision). See discussion infra part IV.
46In re Petition to Annex 320 Acres, 597 N.E.2d at 470.
places less of a burden on a complaining party than does the section 709.07 injunctive action, making it an attractive remedy for a township.47

Specifically, section 2506.01 permits review by the court of common pleas of any "final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state."48 This administrative appeal is allowed in addition to any other remedy of appeal provided by law.49 Transcripts are filed with the court by the administrative body from which appeal is made.50 Such transcripts become the sole record for review by the court provided that they are complete and additional testimony and evidence is not deemed necessary for a fair review.51 After reviewing the record of the administrative proceedings, the court may find:

[T]hat the order, adjudication, or decision [of the administrative body] is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.52

Based on its findings, the court may then act accordingly:

[T]he court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court.53

3. Standing of Township Trustees

The use of the injunctive remedy of section 709.07 and the administrative appeal of chapter 2506 by township trustees has been frequently litigated in the last several years. Pursuant to section 505.62, a board of township trustees is authorized to hire an attorney to represent the township at an annexation hearing before the board of county commissioners and "upon any appeal of the board's decision pursuant to section 709.07 or chapter 2506 of the Revised

47Id. As discussed supra part II.C.1., the section 709.07 injunction requires the party bringing the action to show by clear and convincing evidence, that the board of county commissioners made an error in its determination. "This standard of review is highly deferential to the board of county commissioners." In re Petition to Annex 320 Acres, 597 N.E.2d at 470.

48Id.

49Id.

50§ 2506.02.

51§ 2506.03.

52§ 2506.04.

53Id. Any party may subsequently appeal the decision of the court of common pleas pursuant to law as provided by the Rules of Appellate Procedure. Id.
Code."\textsuperscript{54} This section was amended in 1984 to include appeals under chapter 2506.\textsuperscript{55} The amendment was made in response to an Ohio Supreme Court decision holding in part that township trustees have no standing to appeal the \textit{denial} of an annexation petition under chapter 2506.\textsuperscript{56} This same court held that township trustees had standing to challenge the \textit{allowance} of a petition only through the injunctive remedy of section 709.07.\textsuperscript{57} Thus, township trustees could only challenge the allowance of an annexation petition through use of the section 709.07 injunction and had no mechanism available to challenge the denial of an annexation petition.

Following the amendment to section 505.62, which seemingly authorized use of the chapter 2506 administrative appeal for township trustees, townships began utilizing both the section 709.07 and the chapter 2506 mechanisms to challenge the \textit{allowance} of an annexation petition by the board of county commissioners. Recently, however, the Ohio Supreme Court again limited the use of chapter 2506 by township trustees. In \textit{In re Annexation of 311.8434 Acres of Land,}\textsuperscript{58} the court held that use of the chapter 2506 administrative appeal was limited to challenges to a board of county commissioners' \textit{disallowance} of an annexation petition.\textsuperscript{59} Therefore, "township trustees may challenge a board of county commissioners’ \textit{allowance} of a landowners’ petition for annexation \textit{only} through an R.C. 709.07 injunction action."\textsuperscript{60}

The court cited the legislative analysis of the section 505.62 amendments as support for its interpretation of the revised statute: "The bill [amending section 505.62] should confirm standing upon a board of township trustees in an appeal of a denial of an annexation petition as well as in an appeal of a decision granting such petition."\textsuperscript{61} The court interpreted the legislative analysis to mean that the amended section 505.62 conferred standing on township trustees for chapter 2506 purposes only when appeal was being made for a \textit{denial} of an


\textsuperscript{55}§ 505.62. Prior to the amendment, only the injunctive remedy of § 709.07 was specified in § 505.62.

\textsuperscript{56}\textit{In re Appeal of Bass Lake Community, Inc.}, 449 N.E.2d 771, 774 (Ohio 1983).

\textsuperscript{57}\textit{Id.} The court drew the distinction between the section 709.07 injunction and the chapter 2506 appeal largely because of the different standards of review for the two remedies. \textit{See supra} note 47. The differences in the standards of review made the two remedies irreconcilable and therefore mutually exclusive.

\textsuperscript{58}597 N.E.2d 460 (Ohio 1992).

\textsuperscript{59}\textit{Id.} at 462-63.

\textsuperscript{60}\textit{Id.} at 463.

annexation petition. Thus, the procedure for challenging an allowance of an annexation petition is still limited to the section 709.07 injunction.

III. POLICY ANALYSIS

Understanding the policy that underlies Ohio's annexation statute lends insight into the way the General Assembly intended the statute to operate. Stated in its most general terms, the policy embodied by the statute is the encouragement of comprehensive, orderly urban growth and the extension of municipal services. This is clear from both the current procedural requirements under the statute and from the standards for determining when annexation shall be permitted, the limited statutory remedies available to challenge annexation, and the statutory role of Ohio's townships.

A. Annexation Procedure

The procedural ease with which annexation can be accomplished under the statute reflects the desire for the growth of existing cities, both in terms of territorial expansion and community unity. The statute provides two possible methods for annexing territory, one initiated by petition of a majority of the landowners and one by petition and ordinance enacted by the municipality. Taken together, the two methods provide an option in annexation mechanisms which allows the most effective means of extending municipal boundaries to be utilized depending on the local circumstances.

62Id. at 462-63.


64The policy of urban growth encompasses a broad range of elements. In general, growth may be defined as the attempt by governments to "enhance the economic attractiveness of their locality, to increase the intensity of land use by enticing mobile wealth to enter their boundaries." Todd Swantstrom, The Crisis of Growth Politics: Cleveland, Kucinich, and the Challenge of Urban Politics 3 (1985). In practical terms, growth of a municipality entails territorial expansion, extension of goods and services to fringe areas, economic and population growth, and land development.

65A primary purpose underlying the "not unreasonably large" test used by county commissioners in reviewing an annexation petition, pursuant to § 709.033, is to ensure that the territory to be annexed is not so large as to frustrate the ability of the annexing city to service the new area. See discussion infra part III(B)(2).


67See discussion supra part II. Having a variety of annexation methods is common among the states. See Annexation: A Solution, supra note 14, at 9. In addition to annexation, the General Assembly has provided mechanisms for incorporation of new cities, Ohio Rev. Code Ann. § 707 (Baldwin 1980), consolidation of two municipal corporations, §§ 709.22-.34, and merger of two municipalities or of a township and a municipality, §§ 709.38-.48.
Having an option as to who initiates an annexation proceeding is important, given the different needs and interests of landowners and city officials. Under the landowner alternative, annexation initiated by the owners vests the owners with a degree of self-determination—the direct political power of the people to determine "under what form of government they shall live." In contrast, initiation of annexation by the municipality provides the city with the opportunity to extend its boundaries, satisfy its growing territorial demands, and address the needs of the entire urban area.

It also is significant that mutual consent of the landowners and the city is required regardless of which procedure is utilized. This ensures that the landowners can exercise self-determination when annexation is initiated by a municipality and that the municipality can act in the best interest of the city when annexation is initiated by the landowners. Although annexation can be initiated in two possible ways, the ultimate desire to annex must be mutual—a quality that, theoretically, promotes cordial and cooperative future relations between the city and its new citizens. Ideally, it is in the midst of such cooperation that orderly urban growth will be achieved.

The landowner alternative also furthers the policy favoring urban growth in an additional way: the class of persons eligible to petition for annexation is broad. In 1969, the General Assembly revised the statute to extend the right to petition for annexation to "owners of real estate within territory adjacent to a

---

68 Landowners have a very direct interest in annexation. While annexation generally increases property value, real property taxes frequently increase as well. ANNEXATION: A SOLUTION, supra note 14, at 52. Resident property owners have an additional interest, and in some cases, even a need, for more and better municipal services. Id. at 53. Landowners clearly should have a right to initiate annexation proceedings. The municipality, on the other hand, has an interest in planning for the territorial and economic future growth of the city. Id. at 54. It is equally important, therefore, that the city be able to initiate annexation proceedings. Id.

69 ANNEXATION: A SOLUTION, supra note 14, at 14. See Middletown v. McGee, 530 N.E.2d 902 (Ohio 1988). "In enacting the statutes governing annexation, one of the intentions of the legislature was 'to give an owner of property freedom of choice as to the governmental subdivision in which he desires his property to be located.'" Id. at 904 (quoting Toledo Trust Co. v. Bd. of Comm'rs, 404 N.E.2d 764, 766 (Ohio 1977)). Accord In re Annexation of 118.7 Acres, 556 N.E.2d 1140 (Ohio 1990).

70 ANNEXATION: A SOLUTION, supra note 14, at 19, 22-23.

71 Under annexation initiated by the landowners, mutual consent is satisfied by the municipality passing an ordinance accepting the annexation of the territory. § 709.04. Under annexation initiated by the municipality, mutual consent is satisfied by a vote of the electors of the unincorporated township territory. § 709.17.

72 Unfortunately, despite the availability of the two statutory methods, annexation under either method can and often does fail to manifest a cooperative and pleasant quality. Bickering between those landowners opposed to annexation and those in favor of annexation, and political and legal battles between township trustees and city officials severely limits the potential for productive future relations within newly annexed territory and over the whole region—city and fringe. See discussion infra part IV.
municipal corporation."73 Prior to the revision, only "adult resident freeholders" were permitted to petition, a limitation that effectively excluded private corporations, partnerships and individuals who owned property but resided elsewhere.74 The expansion of the class to include corporations and trustees is significant because it empowers a group of owners who possess substantial potential to initiate growth in the urban area.

B. Standards and Discretion of the Board of County Commissioners

The standards established for determining when annexation shall be permitted also reflect the policy supporting urban growth. Indeed, the standards, or rather, the discretion afforded to the county boards of commissioners under Ohio's annexation statute significantly favor the proponents of annexation and leave little room for objection by opponents.75 The discretion of the board of county commissioners is limited to determining whether the general good of the territory will be served if annexed and whether the territory is unreasonably large.76 The statute itself, however, does not offer clear guidelines for determining what is unreasonably large and when the general good of the territory will be served by annexation. Consequently, the courts have played a major role in clarifying the scope of discretion afforded county boards of commissioners under the annexation statute. In doing so, the courts have consistently recognized and honored the policy decisions articulated by the legislature in the annexation statute.

1. General Good of the Territory Sought to be Annexed

Over the years, the Ohio courts have articulated the relevant factors the boards of commissioners should consider when determining if an annexation will serve the general good of the territory. In Lariccia v. Mahoning County Bd. of Comm'rs,77 the Supreme Court of Ohio held that the Board had exceeded the scope of its discretion in denying a petition for annexation on the grounds that the "changing of municipal boundaries may cause jurisdictional problems, viz. accident, police and fire protection, road maintenance and other varying conditions pertinent thereto."78 The record of the hearing before the Board

73§ 709.02.

74OHIO REV. CODE ANN. § 709.02 (Baldwin 1960) (amended 1969). See also Essner, supra note 66, at 667; OHIO GEN. ASSEMBLY, ANALYSIS OF H.B. 491 (July 17, 1969).

75Essner, supra note 66, at 666.

76§ 709.033. The board must also find that the petition meets the procedural and statutory requirements: the map or plat must be accurate, the petition must contain valid signatures of a majority of the landowners, and notice of the hearing must have been published. Id. These are factual findings and do not require an exercise of discretion on the part of the board of county commissioners.

77310 N.E.2d 257 (Ohio 1974).

78Id. at 258.
demonstrated that there was probative evidence that annexation would benefit the territory commercially.\textsuperscript{79} In addition, the testimony in opposition to the annexation focused on the impact annexation would have on the Township.\textsuperscript{80} The court indicated that the Board's focus on the effect of annexation on the Township ignored the clear meaning of section 709.033 of the Ohio Revised Code. The court stated that the "statute directs that the ultimate focus of annexation proceedings be on 'the general good of the territory sought to be annexed,' and requires granting of the petition when it is shown that such benefit will result."\textsuperscript{81}

More recently, in \textit{In re Annexation of 118.7 Acres},\textsuperscript{82} the Ohio Supreme Court reiterated that a board of county commissioners is not to determine whether the annexation would be in the best interests of the political subdivision from which the territory would be detached. Although the court acknowledged that the "implications for the community to which the property would be annexed and for the property remaining after detachment may well be of some consequence," where there is a showing that the territory sought to be annexed will demonstrate a benefit if annexed, the board must grant the petition.\textsuperscript{83}

In \textit{In re Annexation of Territory in Olmsted Township},\textsuperscript{84} the court reversed a decision of the Olmsted Township Board of County Commissioners denying a petition for annexation. Testimony at the hearing offered by the landowners in favor of annexation indicated that the development of the land would not be economically feasible unless annexed to the City of Olmsted Falls.\textsuperscript{85} Testimony in opposition to annexation was submitted by area residents who wanted the rural character of the area to be maintained.\textsuperscript{86} The court held, in part, that the clear economic benefit to the owners of the territory sought to be annexed was sufficient evidence to show that the general good of the territory would be

\begin{itemize}
\item \textsuperscript{79} The territory proposed for annexation was the site of a retail grocery store. Annexation to the City of Youngstown would permit the owners to sell beer and wine at their store. Boardman Township, the area in which the territory was originally located, was a "dry" community. \textit{Lariccia}, 310 N.E.2d at 257.
\item \textsuperscript{80} \textit{Id.} at 259.
\item \textsuperscript{81} \textit{Id.}
\item \textsuperscript{82} 556 N.E.2d 1140 (Ohio 1990).
\item \textsuperscript{83} \textit{Id.} at 1146. The court stated that the determination of whether the general good of the territory will be served by annexation is a question of fact for the board. Judicial review of this factual determination is therefore limited to finding that the board's determination was "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable and probative evidence." \textit{Id.} at 1147. \textit{See also In re Petition for Annexation of 141.8 Acres}, 494 N.E.2d 1165 (Ohio 1985).
\item \textsuperscript{84} 470 N.E.2d 912 (Ohio Ct. App. 1984) (initiated in Cuyahoga County).
\item \textsuperscript{85} \textit{Id.} at 915.
\item \textsuperscript{86} \textit{Id.}
\end{itemize}
served by annexation. In so holding, the court stated that "the personal benefit to the sole owners of the territory to be annexed is sufficient, though not necessarily alone, to qualify as general good of the territory under the statutory language and to require the mandated annexation."88

The court has thus left county boards of commissioners with very limited discretion on the issue of the general good of the territory. Indeed, "the judiciary has established what seems to be a strong rebuttable presumption that if a majority of landowners sign the petition [or vote in favor of annexation where an election on the issue is held], then the general good of the territory is served by permitting the annexation."89 This presumption supports the policy in favor of self-determination articulated by the annexation statute—landowners may choose under which subdivision they wish to be governed.90 Moreover, by limiting the discretion of the board of county commissioners in favor of allowing annexation, the judiciary helps to effectuate the legislative policy decision to encourage urban growth.

2. Territorial Scope: Unreasonably Large

"The issue of what constitutes an 'unreasonably large' area of territory which is to be annexed is not numerically or geographically defined in the statute."91 This leaves to the courts the task of devising a framework for determining when territory proposed for annexation is unreasonably large. And although there is no single accepted approach for testing the territorial scope of an annexation, there is general accord on the relevant factors to be weighed.

Olmsted Township92 and In re Annexation of 1,544.61 Acres93 are the two most recent cases to address the issue of territorial scope. In Olmsted Township,94 the territory proposed for annexation constituted approximately three percent of the territory of Olmsted Township. In determining whether this was "unreasonably large," the court compared the relative size of the territory proposed for annexation with the size of the township from which the territory would be taken. Finding nothing in the record to indicate that three percent of the township territory was "disproportionately important" to the Township, the court held that the territory was not so unreasonably large as to preclude annexation.95

87Id.

88Id. at 915 (quoting In re Char, 392 N.E.2d 1312 (Ohio Ct. App. 1978)).

89Essner, supra note 66, at 670.

90See discussion supra part III(A).


92Id.


94470 N.E.2d 912.

95Id. at 915. In so holding, the court noted that the territory was undeveloped land.
The Summit County Court of Appeals articulated the test for determining the reasonableness of territorial scope in more definitive terms. Citing the unreported decision of *Herrick v. Bd. of County Comm’rs*, the court presented a three-part balancing test for judging whether territory is unreasonably large:

(1) The geographic character, shape and size (acreage) of the territory to be annexed in relation to the territory to which it will be annexed (the city), and in relation to the territory remaining after the annexation is completed (the remaining Township area);

(2) the ability of the annexing city to provide the necessary municipal services to the added territory. (Geographic as well as financial 'largeness' may be considered);

(3) the effect on remaining township territory if annexation is permitted. If the territory sought to be annexed is so great a portion of the township's tax base that the annexation would render the remaining township incapable of supporting itself, then the Board might reasonably conclude the proposed annexation is unreasonably large.

Balancing these considerations, the court found that the geographic size and shape of the territory proposed for annexation was unreasonably large in relation to both the annexing city and the township.

This test, and the "unreasonably large" provision of the annexation statute in general, endeavor to ensure that the attempted annexation actually will serve the ends for which the statute was created: the extension of municipal services and the facilitation of orderly growth. Where the territory to be annexed is too large and increases the size of the city to such an extent that it cannot be said to be manageable or "orderly" growth, the board may deny the annexation petition. Likewise, where annexation would result in a deterioration in the services the township is able to supply to the remaining township areas, denial of the petition is appropriate. Thus, the "unreasonably large" standard also safeguards the township's ability to maintain services to the areas remaining within their jurisdiction after annexation detaches a portion of revenue generating territory.

C. Limited Statutory Remedies to Challenge Annexation

The policy favoring urban growth is also reflected in the limited statutory remedies provided for opponents to challenge annexation. As discussed in Part
II of this note, section 709.07 of the Ohio Revised Code provides the only statutory remedy to challenge the allowance of an annexation petition by a board of county commissioners. The remedy of section 709.07 is an action for injunction that carries with it a heavy burden for the party bringing the action to prove by clear and convincing evidence that the board of county commissioners erred in their decision. Moreover, even when an injunction is granted, the landowners are not precluded from filing a subsequent annexation petition for the same territory.

The lost battle over whether a township has standing to bring a chapter 2506 administrative appeal to challenge the allowance of an annexation petition similarly reflects the policy for urban growth. Indeed, in its holding in In re Annexation of 311.8434 Acres of Land, that the chapter 2506 appeal was limited to challenges made to the denial of an annexation petition and not to the allowance of one, the court quoted its earlier statement in Middletown v. McGee, that "it is the policy of the state of Ohio to encourage annexation by municipalities of adjacent territory." The court then stated: "This policy would be thwarted to a great extent if township trustees were provided the broad appeal rights contained in R.C. Chapter 2506."

D. The Statutory Role of Ohio's Townships

Understanding the statutory status and role of Ohio's townships also provides important insight into the intended operation of the annexation statute and supports the argument that the General Assembly favors orderly urban growth. Ohio townships are not vested with the general powers of a municipal corporation and can exercise only those powers conferred by statute or necessarily implied by statute so as to enable the trustees to perform the duties imposed upon them. Townships and their trustees are "creatures of statute" whose existence depends entirely on the state legislature and whose role is limited to their delegated powers.

In addition, the General Assembly has vested the board of county commissioners with the authority to create or change the boundaries of townships within counties through a process remarkably similar to the annex-

---

99 See supra part II.C.1.
101597 N.E.2d 460 (Ohio Ct. App. 1992); see discussion supra part II.C.3.
102530 N.E.2d 902 (Ohio 1988); see supra note 69 and accompanying text.
103 Id. at 903.
ation procedure.107 The formation of a township or alteration of an existing township boundary is initiated in one of two ways: (1) by petition of a majority of the residents in the township territory proposed for boundary adjustment,108 or (2) by petition of the legislative authority of a municipality whose boundaries do not conform to township lines.109

The creation and alteration of townships by counties and the statutorily limited authority conferred upon townships and their trustees by the General Assembly, suggests that townships are intended, in some respects, to take a back-seat to municipal corporations. Townships are created by county authorities to meet the needs of the areas outside of municipal jurisdiction. In rural settings, townships are very capable of meeting the service needs within their jurisdiction. When the township grows more urban in character, however, they often lack sufficient resources to meet the demands. Since municipalities are better equipped to meet local needs and are capable of providing needed services more effectively, one may presume that the services provided by townships are intended to be marginal and temporary depending on the rate of urban growth in the area. Indeed, as cities grow and as the need for more and better services in the township areas increases, annexation rightly permits the municipalities to assume the burdens and receive the benefits of servicing fringe areas.

Given the policy choices reflected in the annexation statute, it is clear that the goal of the legislature was to facilitate the comprehensive and orderly growth of the State's urban areas in order that needed services might be available to all citizens on a uniform basis. By keeping the number of local governments at a minimum, jurisdictional conflicts would be less frequent, fiscal distributions would be more equitable, urban development and land use decisions would be more comprehensive and efficient, and, finally, areas of common interests would be serviced on a uniform basis.

IV. APPLICATION OF THE ANNEXATION STATUTE IN OHIO

Despite a statute that articulates a legislative policy decision in favor of urban growth and the extension of uniform municipal services, the annexation statute in Ohio is seriously flawed. In providing the injunctive remedy of section 709.07 of the Ohio Revised Code as a means to challenge an annexation, the statute incorporates a procedural safeguard to protect the interests of those residents and township trustees who oppose the annexation attempt. But, as this section of the note will illustrate, the use of injunctive relief in annexation proceedings has proven to be more of a tactical mechanism used to stall the inevitable rather than a legitimate safeguard for opposing interests. Indeed, the

108§ 503.02.
109§ 503.07.
injunctive remedy has contributed to the problems of protracted litigation and strained interlocal relations surrounding annexation in Ohio by providing the only statutory tools for opponents to use in fighting annexations. As a result, the application of the annexation statute in Ohio has failed to realize its potential as a viable solution to some of the State's urban problems.

Initiation of an annexation proceeding is an initiation of a legal battle likely to last for years. Municipalities planning for economic growth are fighting townships struggling for the survival of their tax base and independent local form of government. Neighbors desiring the services of the city and increased land values are fighting neighbors who have consciously chosen respite in the rural areas, away from what they perceive to be the evils of urban life.

The legal arsenal of annexation proponents is far more extensive than that of opponents, a fact which reflects the underlying policy in favor of urban growth. This disparity has forced opponents of annexation to rely on the injunctive remedy of section 709.07, devising procedural arguments and other creative legal and political schemes in hopes of blocking annexation attempts. These legal and political battles rarely meet with success, but they do manage to stall annexation proceedings for years.

Just such a heated intergovernmental conflict over annexation is currently taking place in Middletown, Ohio. The conflict centers around several hundred acres of unincorporated territory adjacent to the eastern boundary of Middletown. The territory is valuable: it is comprised of both highly developed residential and commercial properties and acreage still ripe for development. Combined, the territory covers three townships, is situated in two counties, and is centrally located in the close vicinity of two cities and one

---

110 See discussion supra part II.C.1.


As revealed by the statutes enacted by the General Assembly that are currently in force, it is the policy of the state of Ohio to encourage annexation by municipalities of adjacent territory. Indeed, after an election approving annexation, the laws of this state offer little protection to those who would oppose such annexations.

Id. at 903.

113 Interview with Sheldon A. Strand, Director of Law of the City of Middletown, in Middletown, Ohio (Feb. 18, 1992).

114 The value of the territory is substantial. In addition to several residential developments, there is a great deal of commercial property which includes, among other things, a medium size mall, several restaurants, a gas station, a super market and a super-store (market and department store combined). The territory in dispute also sits next to an interstate exchange, separating Middletown from the interstate. Being located next to an interstate exchange substantially increases the potential for commercial development.
large village.\textsuperscript{115} Given the tremendous value of the territory and its location, it is not surprising that annexation attempts by Middletown have sparked fierce intergovernmental battles.

The conflict began in August, 1985 when the City of Franklin, Ohio adopted an ordinance authorizing a petition for annexation pursuant to section 709.14 of the Ohio Revised Code.\textsuperscript{116} This annexation attempt was in response to indications from Middletown that it was considering annexing larger portions of Franklin Township.\textsuperscript{117} The territory proposed for annexation by the City of Franklin was several miles of roadway in Franklin Township that extended south from Franklin's city boundary.\textsuperscript{118} If successful, the annexation by the City of Franklin would make it impossible for Middletown to annex Franklin Township territory because it would place City of Franklin territory between Middletown and the territory it sought to annex.\textsuperscript{119}

An election was held on the issue in November, 1985, and the electors of Franklin Township approved the annexation.\textsuperscript{120} The board of commissioners for Warren County held a public hearing on the petition in January, 1986, and approved the annexation shortly thereafter.\textsuperscript{121} In March, 1986, the City of Middletown and two property owners residing in Franklin Township petitioned the Warren County Common Pleas Court for an injunction to prevent the annexation from taking effect.\textsuperscript{122} The injunction was denied in May, 1986 and the Twelfth Appellate District affirmed in August, 1987.\textsuperscript{123} In November, 1988, over three years after Franklin originally filed its petition for annexation, the Ohio Supreme Court reversed and remanded the decision of

\textsuperscript{115}With the exception of a small portion of city-owned territory and some annexed territory, Middletown is primarily located in Butler County; its eastern boundary is largely coterminous with the Butler and Warren County line. The territory in conflict spans three townships: Franklin Township on the northern portion, Turtlecreek Township to the south, and Lemon Township in the middle. The townships themselves are all located in Warren County. The city of Franklin, Ohio sits to the east of the territory at issue and the Village of Monroe is south-east.

\textsuperscript{116}Ohio Rev. Code Ann. § 709.14 (Baldwin 1980). See discussion supra part II.B.

\textsuperscript{117}City of Middletown v. McGee, 530 N.E.2d 902 (Ohio 1988). The City Manager and Mayor of the City of Franklin had admitted to the trial court that their “primary motivation for the annexation [was] to prevent a suspected future attempt by the City of Middletown to expand into Warren County.” Id. at 906.


\textsuperscript{119}Interview with Sheldon A. Strand, supra note 113.

\textsuperscript{120}Id.

\textsuperscript{121}Id.

\textsuperscript{122}Id. The injunction was filed pursuant to § 709.07.

the court of appeals with instructions to enjoin the annexation.\textsuperscript{124} Middletown's victory marked the end of round one.

Over the next several years, Middletown and property owners of territory in Franklin, Lemon and Turtlecreek townships initiated a series of seven petitions requesting annexation to Middletown.\textsuperscript{125} One of the petitions was for a tract of territory located wholly within Butler County and was approved by the Butler County Board of Commissioners. The second petition involved property owned by Middletown but was located in Warren County, and therefore had to be filed with the Warren County Board of Commissioners who likewise approved the annexation.\textsuperscript{126} Both of these annexations are now final and the territories are officially part of Middletown.\textsuperscript{127}

The remaining five petitions, however, are still being contested by the township trustees of two of the three townships.\textsuperscript{128} The tactics used by the trustees, while not likely to be successful in preventing the annexations, will manage to stall the procedure for several more years. The townships used their only real weapons: filing for injunctive relief under section 709.07 of the Ohio Revised Code\textsuperscript{129} and attempting to use the administrative appeal under chapter 2506.\textsuperscript{130}

Franklin and Turtlecreek townships have used these appellate avenues in their efforts to stop the annexation of a 311 acre tract of land, the majority of which is undeveloped territory. In 1989, a majority of the property owners in the territory filed a petition with the Butler County Board of Commissioners. After a public hearing in August, the Board approved the annexation on

\textsuperscript{124}City of Middletown v. McGee, 530 N.E.2d 902 (Ohio 1988). The court held that the decision of the Board to approve the annexation was unlawful because the territory, a roadway extending outward for several miles away from the city's boundaries, was not sufficiently contiguous to the City of Franklin. Id. at 905. The court found that the annexation, a corridor-like tract of land that was only contiguous where the roadway met the city's boundary, violated the concept of municipal unity—the notion that a city should be a unified body of common interests. Id.

\textsuperscript{125}Interview with Sheldon A. Strand, supra note 113.

\textsuperscript{126}\$ 709.18. A certain amount of tension exists between Warren County and Middletown officials. The tension may be attributed to a tendency on the part of county commissioners to hold a certain amount of bias in favor of officials from their own jurisdiction. Since Middletown is located almost entirely in Butler County, and since the territories proposed for annexation are located almost entirely in Warren County, Warren County has not welcomed Middletown's annexation efforts. Interview with Sheldon A. Strand, supra note 113.

\textsuperscript{127}Interview with Sheldon A. Strand, supra note 113.

\textsuperscript{128}Interview with Sheldon A. Strand, Director of Law of the City of Middletown, in Middletown, Ohio (Nov. 11, 1992). The two townships contesting the annexations are Franklin and Turtlecreek. Both are located in Warren County.

\textsuperscript{129}OHIO REV. CODE ANN. (Baldwin 1980).

\textsuperscript{130}OHIO REV. CODE ANN. (Baldwin 1987).
November 16, 1989.\textsuperscript{131} Turtlecreek and Franklin townships petitioned the Court of Common Pleas of Warren County for a section 709.07 injunction.\textsuperscript{132} That same day, they filed an appeal under chapter 2506 with the Court of Common Pleas of Butler County and later, also initiated an independent injunction proceeding in Butler County under section 709.07.\textsuperscript{133}

As to the section 709.07 injunction filed in Warren County, the Court of Common Pleas of Warren County stayed further annexation proceedings which caused Middletown to file for a writ of prohibition to the Ohio Supreme Court.\textsuperscript{134} The Supreme Court ordered the common pleas judge to show cause why the writ should not be granted.\textsuperscript{135} Instead, the judge filed a motion for summary judgment.\textsuperscript{136} The Supreme Court denied the motion for summary judgment and granted Middletown’s writ of prohibition, holding that the Court of Common Pleas of Warren County was without jurisdiction to consider the action under section 709.07 since the annexation proceedings originally took place in Butler County.\textsuperscript{137}

As to the chapter 2506 appeal, the Court of Common Pleas of Butler County granted Middletown’s motion to dismiss the appeal on the grounds that this avenue of appeal was not open to township trustees where an annexation petition is granted and that trustees were limited only to the injunctive relief of section 709.07.\textsuperscript{138} The Court of Appeals for the Twelfth District reversed the dismissal, however, holding that chapter 2506 was intended to provide a remedy in situations where township trustees were challenging the approval of an annexation petition.\textsuperscript{139} Appeal on this issue was made by Middletown to the Ohio Supreme Court who reversed the Court of Appeals and reinstated the trial court’s order dismissing the chapter 2506 appeal.\textsuperscript{140}

The final action challenging the annexation was the section 709.07 appeal filed in Butler County Court of Common Pleas. This action for injunction was dismissed in July 1992, after the Court of Common Pleas ruled that the Butler County Commissioners had made the correct decision in approving the annex-

\textsuperscript{131}State ex rel. Lewis v. Court of C.P., 556 N.E.2d 1154 (Ohio 1990).
\textsuperscript{132}Id.
\textsuperscript{134}State ex rel. Lewis v. Court of C.P., 556 N.E.2d 1184 (Ohio 1990).
\textsuperscript{135}Id. at 1185.
\textsuperscript{136}Id.
\textsuperscript{137}Id. at 1186.
\textsuperscript{139}Id. at 461.
\textsuperscript{140}Id. See discussion supra Part II.C.2.-3.
The Middletown City Commission promptly accepted the annexation of the 311 acre tract in an emergency ordinance on July 23, 1992, making one of the five remaining annexations final.\footnote{Id.}

The battle in Middletown is not unlike the battles that occur throughout the state when an annexation petition is filed.\footnote{Id.} For Middletown, the process is not expected to be over until 1997 at the earliest.\footnote{Id.} In the meantime, the litigation costs to the City and to the townships will continue to soar.

V. NEOTIATION AND MEDIATION AS A SOLUTION TO ANNEXATION DISPUTES IN OHIO

As is clear from the problems in Middletown, annexation more often than not leads to what may be labeled "intergovernmental wars."\footnote{Monica Lee Schifsky, Annexation Action Legal, Judge Says: Townships' Lawyer Says Battle Not Over, THE MIDDLETOWN J., Aug. 6, 1992, at 1. Interview with Sheldon A. Strand, supra note 128.} Townships view annexation as a losing proposition and utilize every available legal and political means to oppose annexation attempts. The interjurisdictional litigation invariably pits city against township residents, creating bitterness that can linger for years.\footnote{Id.} Clearly, if the annexation statute is to be at all effective in fostering orderly urban growth, promoting efficient and uniform public services and furthering the reduction of multiple, fragmented local government units, efforts must be made to reduce the interjurisdictional conflicts and the costly, protracted litigation that annexation invariably sparks. This section focuses on how alternative dispute resolution (ADR) methods,

\footnote{Two other annexations have been approved by the appropriate County Commissioners but are still being contested by the Franklin Township Trustees. The Butler County Board of Commissioners approved the annexation of a 99.54 acre-track in May 1991. This track contains a shopping mall, car dealership, cinema complex, several restaurants and an apartment complex. Mary Lolli, Towne Mall annexation appealed; Franklin Twp. trustees oppose Middletown expansion, THE MIDDLETOWN J., Oct. 9, 1993, A1. The Franklin Township Trustees have vigorously challenged the approval using the injunctive remedy of § 709.07. The Butler County Common Pleas Court denied the injunction and the Township Trustees have now filed an appeal to the Twelfth District Court of Appeals seeking review of the proceedings which led to the annexation petition being approved. Id.}

\footnote{The Township was planning on filing for an injunction to seek to stop the annexation, as it has done with the other annexation petitions upon approval. Id.}

\footnote{See Essner, supra note 66, at 673 n.68.}

\footnote{Interview with Sheldon A. Strand, supra note 113.}

\footnote{Richman, supra note 111, at 511.}

\footnote{Id.}
utilized in connection with annexation proceedings, may help to resolve annexation disputes.147

A. An Overview of ADR Methods

Local governments are increasingly taking advantage of alternative dispute resolution methods to resolve public and intergovernmental conflicts in a more cost effective and less adversarial manner.148 In the context of intergovernmental conflicts, alternative dispute resolution methods refer to a variety of approaches that bring the parties together, opening communication channels "in an effort to reach a mutually acceptable resolution of the issues in a dispute or potentially controversial situation."149 This section of the note will focus on the application of two particular methods of ADR to annexation disputes: negotiation and mediation.150

147 Alternative dispute resolution methods refer to a variety of processes used to prevent and resolve disputes. The disputing parties meet face to face and attempt to reach an acceptable resolution, either by way of consensus or by submitting the issue to a neutral third party for determination. See GAIL BINGHAM, RESOLVING ENVIRONMENTAL DISPUTES 5 (1986). Among the various methods are arbitration, mediation and negotiation. See also Frank E.A. Sander, Alternative Methods of Dispute Resolution: An Overview, 37 U. FLA. L. REV. 1 (1985).

148 Barbara McAdoo & Larry Bakken, Local Government Use of Mediation for Resolution of Public Disputes, 22 URBAN LAWYER 179 (1990). See also Jeffrey B. Groy & Donald L. Elliott, Using Arbitration and Mediation to Resolve Land Use Disputes, 15 CURRENT MUN. PROBS. 190 (1988-89). "Cities, counties and other public entities routinely use arbitration and mediation techniques to resolve labor disputes, construction contract disputes and disputes over the value of property taken through eminent domain." Id. at 197. Use of ADR techniques has even extended to the land use arena, as intergovernmental conflicts over land development in urban areas increases. Id.

149 BINGHAM, supra note 147, at 5.

150 A third, commonly utilized alternative dispute resolution method is arbitration. Like mediation, arbitration is a process in which the parties voluntarily agree to submit their dispute to a neutral party whom they have selected. The arbitrator does possess the authority to impose a solution, however, which generally takes the form of a binding contractual obligation. See Leonard L. Riskin, The Special Place of Mediation in Alternative Dispute Processing, 37 U. FLA. L. REV. 19, 21 (1985); Groy & Elliott, supra note 148, at 192-93. Arbitration does offer an alternative to litigation and has the advantage of being less formal, more expedient and more private than the judicial process. Riskin, supra at 21. However, because the arbitration process results in a decision imposed by an arbitrator and not in consensus among the parties, the losing party is more likely to be dissatisfied with the results. The bitterness and strained relationships that negotiation and mediation attempt to quell are more likely to linger any time a party loses, whether the defeat is on the judicial battlefield or around the arbitration table. As discussed earlier, the purpose of utilizing alternative dispute resolution methods in the annexation context is to increase communication among disputing parties and to avoid protracted litigation. See discussion infra part V.B. Given that arbitration is less likely to realize these goals, it will not be included within the scope of this note. For a thorough bibliography on dispute resolution methods, see CAROLE L. HINCHCLIFF, DISPUTE RESOLUTION: A SELECTED BIBLIOGRAPHY (1987-88).
Negotiation and mediation are two general categories of dispute resolution methods most adaptable to public and intergovernmental disputes. Both processes have the advantage of allowing the parties to work out their own settlements. 151 In the context of an intergovernmental dispute between neighboring communities who will share an ongoing relationship, collaboration in the resolution process has greater potential to strengthen the relationship than more adversarial methods such as arbitration or adjudication. 152 The goal of any negotiation or mediation effort is to "produce a wise agreement if agreement is possible," to do so in an efficient manner, and to "improve or at least not damage the relationship between the parties." 153

Negotiation is a process in which the disputing parties themselves work out a mutually acceptable solution. 154 The parties conduct discussions personally or through representatives, voluntarily coming together to settle existing conflicts or avoid potential future conflicts. 155 Participants act as both the decision-makers and advocates, working to resolve a range of problems: the substantive issues of the dispute, communication gaps, and stylistic differences. 156 Mediation, on the other hand, is a process in which the disputing parties voluntarily accept the aid of a neutral third party in working out a solution. 157 The mediator does not possess the authority to impose a solution,

151 Stephen B. Goldberg et al., Dispute Resolution 10 (1985).
152 Id.
153 Roger Fisher, et al., Getting to Yes 4 (2d ed. 1991). The authors define a "wise agreement" as "one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account." Id.
154 See Riskin, supra note 150, at 22.
155 Id.
156 Susan M. Leeson & Bryan M. Johnston, Ending It: Dispute Resolution in America 103 (1988). The negotiation process generally follows a common pattern. The first phase of negotiation involves the orientation of the parties to one another and to the general proceedings prior to the substantive discussions. In the second phase, the parties exchange information and begin discussing the substantive issues of the dispute, the various positions and the desired goals of the parties. The discussions typically reach a "crisis" point where the parties hit an apparent impasse and grow frustrated. From this stage, the parties will either manage to compromise and reach a settlement or will experience a breakdown and failure of the negotiation efforts. Id. at 105. Negotiation as a dispute resolution method is "conducted in the shadow of adjudicatory processes that can be resorted to if negotiations fail." Id. at 103. Neither negotiation nor mediation in any way precludes resort to the courts, a fact which may offer significant incentive and security to local governments when deciding whether to utilize alternative dispute resolution methods in the annexation context. But see discussion infra part V.B.
157 Riskin, supra note 150, at 22. The neutral third party, or mediator, is selected by the parties. A list of experienced mediators is available from a number of organizations, including the American Bar Association Standing Committee on Dispute Resolution or the Ohio State Bar Association Committee on Alternative Dispute Resolution. See McAdoo & Bakken, supra note 148, at 186 n.19.
but instead functions to assist the parties in reaching their own agreement.\textsuperscript{158} The advantage of mediation is that a skilled mediator can lead parties beyond an impasse to a mutually acceptable settlement.\textsuperscript{159}

B. Advantages and Disadvantages of ADR Methods

ADR methods such as negotiation and mediation offer several advantages over litigation. First, they are more flexible in terms of timing, scope and formality of the proceedings.\textsuperscript{160} Judicial proceedings are conducted by formal rules of evidence: they proceed according to the court's schedule and the issues are narrowly defined. In negotiation and mediation, the parties create and control the process.\textsuperscript{161} They can set convenient schedules and have unlimited latitude in defining the scope of the discussions and the manner in which issues will be addressed. In the context of interjurisdictional disputes such as annexation, the flexibility in defining the issues is extremely advantageous: "In direct interlocal negotiations . . . considerably more freedom may exist for local governments to address local concerns."\textsuperscript{162} With annexation disputes in particular, the issues span the spectrum of interlocal relations, touching on adequacy of local services such as water, sewer and police protection, future land use and development, economic planning and local leadership.

Another advantage to the use of ADR methods is that the costs, both monetary and temporal, are generally lower.\textsuperscript{163} Moreover, since resolutions tend to be win-win scenarios, rather than win-lose, the bitterness and resentment that often linger after adversarial proceedings like litigation are not as prevalent.\textsuperscript{164} The parties are more inclined to accept the solutions reached since they played such an integral role in the dispute settlement process.\textsuperscript{165}

\textsuperscript{158}The mediation process follows the same general pattern as negotiation: orientation of the parties and the mediator, discussion of substantive issues, crisis point and resolution. See discussion supra note 156. The mediator plays a significant role in defining the issues, setting the agenda and moving the parties beyond the "crisis" point to a solution. McAdoo & Bakken, supra note 148, at 187-88.

\textsuperscript{159}Groy & Elliott, supra note 148, at 195.

\textsuperscript{160}Id. at 196.

\textsuperscript{161}Leeson & Johnston, supra note 156, at 133.

\textsuperscript{162}Annexation: A Solution, supra note 14, at 511.

\textsuperscript{163}Groy & Elliott, supra note 148, at 196. Caution must be exercised in making quantitative judgments as to whether ADR methods are actually cheaper and quicker than adjudication. There are few studies that have examined the cost-effectiveness and speed of ADR methods. It does appear safe to assume that in many cases, negotiation and mediation do save time and money, but this assessment must be closely tied to the quality of the outcome. See Roman Tomasic, Mediation as an Alternative to Adjudication: Rhetoric and Reality in the Neighborhood Justice Movement, in Neighborhood Justice: Assessment of an Emerging Idea 215, 237-39 (1982).

\textsuperscript{164}Groy & Elliott, supra note 148, at 196.

\textsuperscript{165}McAdoo & Bakken, supra note 148, at 188.
Finally, negotiation and mediation offer a unique opportunity to educate the parties on the underlying problems and issues involved.\textsuperscript{166} Taken together, these characteristics increase the potential for improved relationships and better communication between the parties in the future.\textsuperscript{167} This is critical where the parties are neighboring local governmental units and residents who literally have to live with each other.

While these advantages make negotiation and mediation appealing, there are some serious drawbacks to using ADR methods to resolve disputes—drawbacks that must be considered in assessing ADR's usefulness in the annexation context. One of ADR's greatest advantages, its flexibility, also tends to operate as one of its greatest disadvantages. Litigation offers security: the procedural standards are well developed; the application of rules is reasonably consistent and predictable; and there is no need to make sacrifices in the name of cooperation.\textsuperscript{168} On the other hand, negotiating parties and mediators are not bound by the procedural and evidentiary rules of the courts.\textsuperscript{169} They operate based on their collective or personal judgment. Consequently, the parties are less certain about how they are to proceed and the opportunity for surprise is greater than it would be in the courtroom.\textsuperscript{170}

Another disadvantage is that use of negotiation and mediation offers no certainty that a decision or settlement will be reached.\textsuperscript{171} Whereas adjudication ultimately settles the legal issues, there is no assurance that any of the issues addressed in negotiation or mediation will be resolved.\textsuperscript{172} Indeed, a significant disadvantage of negotiation and mediation, particularly when used as mechanisms to resolve interjurisdictional disputes, is that "unregulated dispute dynamics [may] move the parties toward litigation... despite the

\textsuperscript{166}Id.

\textsuperscript{167}Id. at 189.

\textsuperscript{168}Id. at 186. \textit{See also} Groy & Elliott, \textit{supra} note 148, at 196. Groy and Elliott suggest that, where one party is confident that it has a very good case, it may not want to submit to mediation or arbitration and run the risk of having to compromise. This is particularly relevant in the case of annexation disputes. Since annexations are usually approved despite the litigation attempts by opponents, proponents of annexation may prefer to take their chances in court rather than make concessions in mediation proceedings. \textit{See} discussion \textit{infra} part V.C.1.

\textsuperscript{169}Groy & Elliott, \textit{supra} note 148, at 196.

\textsuperscript{170}Id.

\textsuperscript{171}McAdoo & Bakken, \textit{supra} note 148, at 189.

\textsuperscript{172}Id. Despite the fact that litigation will ultimately resolve the legal issues, the dispute between the parties over policy and personal issues may continue to rage. Even where negotiations and mediation are not entirely successful in resolving the legal and practical issues of an annexation dispute, the parties may come away with a better understanding of each other and of the underlying policy and political concerns involved.
parties' interests in settling the issues through negotiation."\textsuperscript{173} Significant issues are at stake in interjurisdictional disputes. Local politics are a strong factor and adversarial positions are firmly rooted.\textsuperscript{174} Maintaining open lines of communication and cooperation among the parties can be extremely challenging and where efforts fail, on-going relationships may be even more strained than they were prior to ADR efforts. In addition, even where the parties do reach a settlement in mediation, the mediator has no enforcement authority.\textsuperscript{175} It may be necessary to resort to the courts despite even seemingly successful negotiation and mediation efforts.\textsuperscript{176}

C. Negotiation and Mediation in the Annexation Context

Whether ADR methods offer a better alternative to litigation depends on a variety of factors such as the type of the dispute involved, the interests of the parties to the dispute and the potential of the parties to reach an enforceable agreement. Thus, the wisdom of utilizing negotiation or mediation in annexation disputes must be carefully analyzed. This section of the note will outline some of the important factors that local officials, municipal and township alike, need to consider when determining whether negotiation or mediation will be helpful in the annexation context.

1. Dispute Dynamics of Annexation

\textit{a. The Parties to the Dispute}

In the annexation context, the cast of interested parties will most likely include officials from the municipality to whom annexation is sought, municipal residents, trustees of the township(s) in which the territory proposed for annexation lies, township residents both in and out of the area proposed for annexation, and county officials and residents. It is important for successful negotiation and mediation of any public dispute that all of the key parties be represented but that the size of the group be manageable.\textsuperscript{177} If there are too many individuals representing the same or similar interests, the possibility of escalated conflict increases and the potential for consensus decreases.\textsuperscript{178}

\textsuperscript{173}Richman, \textit{supra} note 111, at 510. Presumably, the same danger exists for meditations, although the presence of a skilled mediator may minimize the possibilities of a breakdown in the dispute resolution process from occurring.

\textsuperscript{174}Id.

\textsuperscript{175}McAdoo & Bakken, \textit{supra} note 148, at 190. Where the parties of negotiation or mediation reach a resolution together, it is likely that they will be satisfied with the results and committed to implementing the settlement. \textit{Id.}

\textsuperscript{176}In such cases, it could not be said that negotiation or mediation had proven to be the most cost effective nor time efficient dispute mechanisms.

\textsuperscript{177}McAdoo & Bakken, \textit{supra} note 148, at 187.

\textsuperscript{178}Id.
It is important to realize that all of the parties to an annexation dispute will be likely to share an ongoing relationship after the dispute is resolved. Although each party may represent different interests depending on whether they are advocating for the township, the city, the county or as residents advocating for their neighborhood and for their own personal interests, they will all remain neighbors and will be likely to interact in the future. For this reason, negotiation and mediation are preferable methods of dispute resolution in the annexation context:

When an ongoing relationship is involved it is important to have the parties seek to work out their own solution for such a solution is more likely to be acceptable to them than an imposed solution and hence more long-lasting. Thus negotiation, or mediation ... appears to be the preferable process in these situations.  

b. Territory in Question

The subject matter of any annexation dispute is the land outlined in the annexation petition. For local governments, "land" translates into power and money, both real and potential. For the parties affected by annexation, there is a presumption that the annexation will result in benefits for some of the actors and deprivations for others. 

The severity, complexity or intractability of a conflict, and hence, the likelihood that negotiation or mediation would be useful, may vary depending on the character of the territory proposed for annexation. A small rural area of undeveloped or undevelopable land may not impassion significant opposition nor activate a wide a range of interests among the parties when proposed for annexation. On the other hand, annexation of highly developed land or land with considerable potential for future development may be vigorously challenged by opponents whose interests in autonomy, economic stability, quality of services, and so on, are threatened by the annexation of valuable territory. Likewise, municipalities desiring the opportunity for territorial and economic growth will vigorously pursue the annexation of valuable territory. The successful resolution of such a dispute will greatly depend on how much is at stake; that is, how significant, complex and entrenched are the

179GOLDBERG, supra note 151, at 10.

180Matthew Holden, Jr., The Governance of the Metropolis as a Problem of Diplomacy, 26 J. POL. 627 (1964) reprinted in PERSPECTIVES ON URBAN POLITICS, supra note 1, at 122, 126.

181For example, the economic loss for a township may not be very severe where the area proposed for annexation is undevelopable, as opposed to the loss when the land is highly developed and raises a large amount of revenue in taxes. Conversely, a very small area may not present the city with the degree of territorial growth offered by a larger tract of land. In these instances, negotiation or mediation may not be the best alternative, and a more truncated procedure or a swiftly resolved judicial resolution may be the most cost and time effective. See GOLDBERG, supra note 151, at 11.

182See discussion supra part IV and note 72.
varied interests of the disputing parties. As has been discussed in this section, the issues surrounding the annexation of valuable territory may grow very complex and the range of possible solutions may be very broad. Negotiation and mediation offer an excellent forum for the resolution of such disputes: "Those disputes presenting novel or complex issues would be appropriately referred to a dispute resolution forum in which there is ample opportunity for the full presentation of evidence and argument."183

2. Motivation to Negotiate or Mediate

As discussed in Part III, townships have very little legal leverage in fighting an annexation through litigation. Public policy, the annexation statute and the courts all favor annexation by municipalities.184 Municipalities thus have a distinct advantage over townships when it comes to litigating annexation disputes. Moreover, municipalities are generally better equipped with the financial, legal and personnel resources to prepare a convincing argument in favor of allowing the annexation.185 These factors place the bargaining power more heavily on the side of municipalities. This advantage is extremely important since successful negotiation and mediation depends on the parties having relatively equal bargaining power.186 There is a danger that municipalities may be less willing to compromise at the negotiation table, since they could ultimately succeed in court without having to make concessions.187

Townships and residents opposing annexation need to acknowledge this power disparity, but they should not resist entering negotiation or mediation because of it. Negotiation and mediation have the potential to produce a better result for the township than that offered by even a successful effort in the courts pursuant to the remedies of sections 709.07 and 2506.01 of the Ohio Revised Code. Moreover, it is possible that the power distribution does not favor the city as much as the parties first perceive. Indeed, as those skilled in the art of negotiation aptly point out, "the relative negotiating power of two parties

183 GOLDBERG, supra note 151, at 11.
184 See discussion supra part III.
185 Successful presentation at a hearing before the local board of county commissioners may include exhibits and reports on such items as improved response times for police, fire and emergency services, decreased water and sewer rates, increased property values, lower insurance premiums and a host of other statistical data aimed at proving a benefit to the territory if annexed to the city. Countering such evidence is a task that requires a significant investment of time, money and expertise that the townships resources may not be able to support. In addition, costs of pursuing an injunction in the courts may be equally taxing on the townships resources.
186 Sander, supra note 147, at 14.
187 Consequently, the other parties at the negotiating table are placed in a frustrating and extremely unfair situation, having entered the negotiations in reliance of a good faith effort to cooperate on the part of the municipality.
depends primarily upon how attractive to each is the option of not reaching agreement.”

For townships, negotiation and mediation offer an opportunity to participate in a settlement rather than submit to a court-imposed solution that is not likely to be desirable. In negotiation or mediation, the township may seek to lose as little land as possible or to formulate other interlocal arrangements that offset the relative territorial losses. In fact, the township and the municipality may both share the desire to address a broad range of area-wide problems that extend well beyond settling the territorial boundaries of annexation, reaching such topics as zoning conflicts, extension of municipal services and area-wide land use and development.

In the case of Middletown, Ohio, discussed in part IV of this note, officials for the City have given a great deal of thought to the potential issues appropriate to negotiating a settlement. In exchange for the townships agreeing to drop their appeals to the Board approved annexations, the city would be willing to negotiate various cooperative agreements for construction and maintenance of township roads at terms very favorable to the townships. In addition, the city is currently under contract with the townships to provide water and sewer services to a significant portion of township territory. These contracts expire in a few years and new ones will need to be negotiated. These contracts provide an additional bargaining chip in negotiating a settlement over the annexation conflicts.

Municipalities may have additional interests that make negotiation and mediation attractive. Even though the ultimate judicial solution may favor the city if it is forced to pursue the dispute in court, negotiation or mediation is still likely to be a better solution since the failure to negotiate or mediate may mean costly protracted litigation. The costs of litigating, the strained interlocal relations and the fact that a judicial proclamation addresses only a fraction of the area-wide problems and issues involved in annexation may be sufficient

188 FISHER ET AL., supra note 153, at 102.
189 Richman, supra note 111, at 513.
190 See Richman, supra note 111, at 511.
191 Interview with Sheldon A. Strand, supra note 128.
192 Id.
193 Id. As discussed in the introduction to this note, local units of government share many of their service needs and problems with the entire urban region. Realizing the need for regional cooperation, local government officials have begun to utilize a variety of approaches aimed at creating regional solutions to regional problems. Not least among the innovative approaches being taken by local officials are intergovernmental agreements that provide for cooperation in planning and development, uniform allocation of public services with shared fiscal responsibilities for the often costly overhead of such operations as waste management facilities, road maintenance, water and sewer services, and police and fire protection.
incentive to the municipality to participate in ADR methods.\textsuperscript{194} As the situation in Middletown, Ohio, illustrates, a simple annexation attempt may take several years under the current statutory procedure and its injunctive appeals process.\textsuperscript{195} Mediation and negotiation offer an attractive alternative to a city concerned about occupying too much of its time and budget with an annexation effort.

Maintaining cordial working relationships with the neighboring communities is another advantage negotiation and mediation offer to both the cities and townships involved in annexation disputes. As discussed in the introduction to this note, the cities and their neighboring communities are interdependent, facing area-wide problems that require cooperation to solve. Litigation runs too great a risk for strained relations to develop or intensify. The good of the entire area can suffer by the inability of the neighboring officials to cooperate in addressing a wide variety of intergovernmental challenges.

Finally, since the municipalities and townships are governmental units, they are under the close scrutiny of their residents. News that city officials are waging a political and legal battle with neighboring communities at the expense of the taxpayers does not sit well among citizens. For all of the reasons listed above, therefore, it is important for municipalities and townships to carefully assess their interests and determine whether the negotiation or mediation of an annexation dispute would offer significant benefits so as to insure a good faith effort to cooperate and compromise.

3. Coming to the Table

The methodology of negotiation and mediation has been the topic of a great deal of research in the last several years.\textsuperscript{196} Consequently, academics and professionals have developed comprehensive recommendations for successful negotiation and mediation. Among these recommendations are two very important techniques that the parties to an annexation dispute should incorporate into the negotiation or mediation process: focusing on the interests

\textsuperscript{194}Richman, supra note 111, at 513. See also Blaine Stokes & Matthew Glasser, ADR Techniques in Municipal Annexation, 18 COLO. LAW. 901 (1989). The authors summarize several additional advantages to the use of negotiation and mediation in the annexation context:

No matter who ultimately wins an annexation lawsuit, both [parties] lose the productive effort of their employees in preparing for and participating in litigation. Moreover, negotiation can avoid creating animosity between municipalities which might endanger their ability to cooperate on other matters of mutual concern. In addition, unlike litigation, in a negotiated settlement, both parties may be able to achieve their goals, at least partially.

Id. at 902.

\textsuperscript{195}See discussion supra part IV.

\textsuperscript{196}FISHER, ET AL., supra note 153 (preface).
of the parties, rather than their positions, and identifying a list of options for settling the dispute.\textsuperscript{197}

\textbf{a. Focus on the Interests of the Parties}

Identifying the various interests of the parties is extremely important for several reasons. First, all sides must have incentive to negotiate a settlement.\textsuperscript{198} Where the interests are too opposite and the positions intractable, negotiation and mediation may not be an appropriate course to resolve the dispute. A second reason why it is important to identify the interest of the parties is that it shifts the focus of the negotiation or mediation to the underlying concerns of the parties. It is far too easy for the parties to develop inflexible, all or nothing positions without ever exploring the motivations and interest that form the bases for the positions they take.\textsuperscript{199} Practitioners warn against taking positions:

As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties. Agreement becomes less likely. Any agreement reached may reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties. The result is frequently an agreement less satisfactory to each side than it could have been.\textsuperscript{200}

The underlying interests of the parties to a negotiation dispute will vary from case to case. There are some interests, however, stated in general terms, that are likely to be factors underlying any annexation dispute. Township officials, for example, usually oppose the annexation of township territory to a municipality. Annexation results in a loss of land area, constituents, public service clients and tax base.\textsuperscript{201} Depending on the size of the area proposed for

\textsuperscript{197}These two techniques certainly do not exhaust the list of considerations. These two are described here, however, because of their particular significance in the annexation context. For a thorough description of negotiation and mediation methods, see FISHER ET AL., \textit{supra} note 153.

\textsuperscript{198}Richman, \textit{supra} note 111, at 513.

\textsuperscript{199}FISHER ET AL., \textit{supra} note 153, at 5.

\textsuperscript{200}Id. The authors describe an alternative method to positional bargaining developed at the Harvard Negotiation Project. The method, called principled negotiation, suggests four basic steps to a negotiation proceeding: Separate the people from the problem; focus on the underlying interests of the parties, not on the positions; develop a variety of creative solutions as options for mutual gain; and base all results on an objective, fair standard that is independent of the individual preferences of the parties. \textit{Id.} at 10-12. The suggestions given in this portion of the note for utilizing negotiation and mediation in the context of an annexation dispute are framed largely upon the model developed by the Harvard Negotiation Project.

\textsuperscript{201}Richman, \textit{supra} note 111, at 511. Virginia's local government structure is quite different from Ohio's. Cities in Virginia are wholly separate from the surrounding counties. When annexation is ordered, territory is transferred from the county to the
annexation and the amount of revenue the area raises for the township, these losses could be so substantial as to threaten the very survival of the township. The township may already be struggling to afford and efficiently provide the needed services to the township residents. A substantial loss in the tax base could financially break a township. Also, townships may see the annexation as a threat to their autonomy. Residents and trustees of the township have grown to identify the township as their home. Removing a portion of the township territory is viewed as an invasion.

Municipal officials, on the other hand, frequently seek annexation. For the city, annexation means growth in terms of land area, tax base and economic development. In addition, cities frequently find themselves providing services to the fringe territory, services that the townships are unable to support such as water, sewer and waste disposal. Annexation allows the city to generate revenues in excess of the costs for these services through property and sales taxes on developed commercial and residential land.

Each party entering the negotiation or mediation process should examine both its own interests and the possible interests of the other parties involved. It is important to realize that all of the parties are likely to have multiple interests. Naturally, communicating and acknowledging the many interests of all of the parties facilitates the reaching of a successful agreement. Once the substantive interests of the parties have been identified, the parties can then direct their energies towards reconciling their various interests.

b. Develop Options for Agreement

Negotiation and mediation offer tremendous potential to improve intergovernmental relations and address a broad range of regional concerns in cases where the disputing parties are local governmental officials. For this reason, it is essential that the parties to an annexation dispute identify what the various settlement options may include in their effort to reconcile their various interests.

There are a range of possible goals for which negotiation and mediation can be helpful in reaching in the context of annexation disputes. Speaking in very general terms, the parties may voluntarily agree to dispute resolution

---

202 See discussion supra part III.A.
203 See Stokes & Glasser, supra note 194.
204 FISHER, ET AL., supra note 153, at 47.
205 Id. at 50-51.
206 McAdoo & Bakken, supra note 148, at 195.
207 A brainstorming session designed to produce a wide variety of settlement options is likely to be very useful for local officials and citizens in developing possible solutions. See FISHER, ET AL., supra note 153, at 60.
methods with only the hope that such efforts will improve communications.\textsuperscript{208} Or the parties may have slightly higher ambitions and hope to agree on recommendations for future planning and consensus building.\textsuperscript{209} Negotiation and mediation work best, however, when the parties agree at the outset that they will reach a mutually acceptable solution.\textsuperscript{210} The parties then enter the process ready to cooperate and compromise. Options for settlement alternatives have been suggested throughout this note. These include such possibilities as the creation of interlocal agreements for the construction and maintenance of the area’s infrastructure, cooperative ventures in economic and land use development, agreements for the provision of water and sewer services to rural areas, a shared responsibility for area-wide environmental and health protection, and co-sponsoring of civic functions. This list could be as expansive as the imaginations of the local officials and residents involved in negotiation or mediation of annexation disputes.

4. Legal Authority and a Proposed Amendment

As illustrated in part IV of this note, Ohio’s annexation statute fails to address the imminent intergovernmental conflicts that arise when annexation proceedings are initiated. Consequently, the statute also fails to realize its policy goal of facilitating orderly urban growth. Clearly, a legislative remedy is required in order to make Ohio’s annexation statute an effective vehicle for municipal expansion. Serious consideration should be given to amending Ohio’s annexation statute in order to provide for the use of ADR methods to resolve annexation disputes.

In the case of Ohio’s current annexation scheme, amending the statute to authorize or mandate the use of negotiation or mediation to resolve disputes would accomplish two very important objectives. First, it would provide local governments with explicit legal authority to engage in ADR methods. Historically, local governments have possessed the legal authority to utilize ADR methods to resolve contractual disputes involving such matters as labor and construction contracts.\textsuperscript{211} Local governments behave much like private entities where contractual obligations are concerned. As consumers of goods and services, "local governments are almost universally authorized to enforce their contract rights by suit or by settlement out of court...."\textsuperscript{212} It follows that they are also permitted to use ADR techniques just as any private entity.\textsuperscript{213} When a municipality decides to annex township territory, however, it is not acting to enforce a contractual right but is acting as a public entity that is

\textsuperscript{208}\textsuperscript{}BINGHAM, supra note 147, at 8.
\textsuperscript{209}\textsuperscript{}Id.
\textsuperscript{210}\textsuperscript{}McAdoo & Bakken, supra note 148, at 186.
\textsuperscript{211}\textsuperscript{}Id.
\textsuperscript{212}\textsuperscript{}Id.
\textsuperscript{213}\textsuperscript{}Id.
obligated to act in the best interest of the public. Consequently, local governments must have the legal authority to engage in ADR methods to resolve public, intergovernmental disputes.

The majority of states, including Ohio, have adopted general arbitration and mediation statutes that sanction the use of dispute resolution methods in various contexts and outline general procedures for these alternative approaches. Very few states, however, have adopted legislation specifically authorizing the use of dispute resolution techniques for resolving public disputes. The fact that Ohio is not counted among these states does not signify that local governments in Ohio lack legal authority to resolve public disputes via ADR methods. Ohio municipalities possess a broad range of home rule powers under Ohio's Constitution, powers which presumably include the authority to resolve disputes through alternative mechanisms. It cannot be argued, however, that clear statutory authority for resolution of public disputes is preferable to a mere presumption of authority, even when the presumption is as strong as that warranted by Ohio's home rule provisions for municipalities.

More importantly, however, a statutory amendment authorizing ADR methods to resolve annexation disputes would offer a potential solution to the serious interjurisdictional conflicts that inhibit the statute's ability to facilitate comprehensive and orderly urban growth. Such a statutory scheme currently operates in Virginia, where a state commission on local government works with

---

214 Id.

215 Id.

216 Id. at 200. See also American Bar Association, Legislation on Dispute Resolution: Federal and State Laws and Initiatives Pertaining to ADR (1990). Ohio has several statutes endorsing alternative dispute resolution methods. Id. at 54-55. See Ohio Rev. Code Ann. § 1345.77 (Baldwin 1988) (consumer warranty disputes with auto manufacturers and dealers); §§ 3117.01-.07 (Baldwin 1988) (domestic relations optional conciliation services); § 3105.091 (Baldwin 1988) (domestic relations court-ordered conciliation services); § 2711.21 (Baldwin 1990) (arbitration of health care claims); § 5123.601 (Baldwin 1990) (mediation of mental health care claims); § 2701.10 (Baldwin 1990) (determinations by retired judges in civil suits); § 4117.02 (Baldwin 1990) (mediation and arbitration of labor disputes).


218 Ohio Const. art. XVIII, § 3. The relevant clause states: "Municipalities shall have authority to exercise all powers of local self-government . . . ." Id.

219 See Groy & Elliott, supra note 148, at 201.
municipal and county officials to resolve major interlocal disputes involving annexation.\textsuperscript{220} One of the Commission’s functions is to serve as a mediator between the disputing local governments and aid them in negotiating out-of-court settlements.\textsuperscript{221} Since the Commission’s creation in 1979, the use of negotiation has met with tremendous success, both in terms of settling the immediate annexation disputes and in opening the scope of negotiations to a broader range of interlocal issues.\textsuperscript{222} Implementation of ADR methods to Ohio’s annexation disputes may prove equally successful and is an option that deserves serious consideration. In the meantime, however, negotiation and mediation are still viable options that local governments may explore on their own to resolve the bitter litigation battles over annexation.

VI. CONCLUSION

Since the growth of Ohio’s urban areas is not likely to slow in the near future, it is imperative that state and local leaders continue to explore creative solutions to problems posed by rapid urban development. Ohio’s annexation statute has significant potential to solve some of the state’s urban problems. Indeed, the statute successfully articulates a policy in favor of urban growth and the extension of uniform municipal services. The current statute and its implementation in Ohio, however, fail to address the interjurisdictional conflicts that accompany annexation proceedings. To compensate for this shortcoming, state and local officials need to seriously consider the use of negotiation and mediation as a means of ending the bitter battle over annexation in Ohio.

MARY SHANNON PLACE

\textsuperscript{220}VA. CODE ANN. § 15.1-945.3 (Michie 1989).

\textsuperscript{221}Id. See also Richman, supra note 111, at 512.

\textsuperscript{222}Richman, supra note 111. Richman describes the success of the commission on local government in resolving annexation disputes:

Between 1980 and the beginning of 1985, of 21 major annexation-related petitions received by the new commission, 18 have been settled through negotiations. Seven cases have been settled through direct bilateral negotiations; in four of these cases the commission provided technical assistance/conciliation services which assisted the parties in negotiating a settlement. In 10 other cases independent mediators were designated by the commission with the parties’ approval. With few exceptions, these mediators have entered cases after bilateral negotiations had been attempted and proved unavailing and the parties were at impasse. The mediated negotiations have resulted in seven interjurisdictional agreements which were subsequently submitted to the commission for factfinding, and, ultimately to the court for an implementing order. In three cases the mediation process broke down. The formal state fact-finding process which followed led either to later bilaterally negotiated settlements or to a court decreed resolution.

\textit{Id.} at 512.