



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Annexation of Territory of Local Governments

Constitutional & Statutory Authority

Counties, Cities, Towns and Villages– Authorized. Requires the filing of a petition by at least 20 percent of the qualified voters or by the owners of a majority of the assessed value of real estate within the territory to be annexed. The annexing municipality must have a public hearing to determine whether annexation is in the overall public interest. The boards of each affected local government must approve annexation by a majority. If one board fails to approve, there is a procedure for judicial review. Once approved by the boards, the proposition must be submitted for election by the voters in the territory to be annexed. [Constitution, Article IX, § 1(d); General Municipal Law, §§ 702, 703]

Restrictions and prohibitions on annexation. [General Municipal Law § 716]

Counties - Legislature may divide county or alter its boundaries. [County Law § 50]

School Districts – Provides for effect on certain school districts involved in municipal annexation. [General Municipal Law §715]

See: *Guide to the Reorganization of School Districts in New York State*, available on the website of the NYS Education Department,
http://www.emsc.nysed.gov/mgtserv/sch_dist_org/GuideToReorganizationOfSchoolDistricts.htm

Selected Court Cases

City of Utica v Town of Frankfort (2008) 10 NY3d 128. Special election is required following approval of annexation by Appellate Division. City's annexation of property from town and county was warranted, where annexation was in the public interest. The annexation would give property owner superior police and fire protection, and the owner would be able to streamline the elder and health-related services it provided since its facilities would be located in one county.

Town of Niagara v. City of Niagara Falls, 2005, 19 A.D.3d 1076, 797 N.Y.S.2d 207. Annexation of city territory by adjacent town did not benefit public interest. The city already provided better police and fire than would be provided by the town, water and sewer connections would have to be duplicated if there was an annexation, and city would lose almost \$500,000 in tax revenue.

City Council of City of Watervliet v. Town Bd. Of Town of Colonie (2004) 3 NY3d 508. State Environmental Quality Review Act (SEQRA) review is required before a municipality adopts a resolution approving the annexation of real property from an adjacent municipality pursuant to General Municipal Law article 17.

Incorporated Village of Ilion v. Town Bd. Of Frankfort, 1999, 261 A.D.2d 952, 690 N.Y.S.2d 350. Village's proposed annexation of residential area of town was in overall public interest; even though annexation would result in increased property taxes for residents of annexed area, annexation would eliminate fees paid for water, fire protection and garbage collection, and would result in expanded fire protection, improved water service, and better police protection and loss to town of less than \$1,000 in tax revenue.

In the Matter of An application of the Dannemora Union Free School District, and Scott Kanaly, a Resident and voter of the Dannemora Union Free School District, v. Thomas Sobol personally and as Commissioner of Education of the State of New York, and William A. Fritz, personally and as District Superintendent, Clinton County, 1988, 140 Misc.2d 807, 531 N.Y.S.2d 498, 48 Ed. Law Rep. 612. Voters in school district that had approved district dissolution and annexation proposal brought Article 78 proceeding to challenge decision of Education Commissioner denying their petition seeking revote. The Supreme Court, Albany County held that provision of Education Law, which only allowed reconsideration of school district dissolution, and annexation proposal by voters in district, which had previously defeated dissolution, did not deprive voters of district who had approved proposal of due process. Petition dismissed.

Matter of arbitration between Cuba-Rushford Central School District, and The Rushford Faculty Association, Betsy Orlando, President, 1992, 182 A.D.2d 127, 585 N.Y.S.2d 913, 76 Ed. Law Rep. 517. Faculty association for teachers in annexed central school district filed grievance to have annexing district continue contractual benefits due under collective bargaining agreement. Annexing district moved to stay arbitration. The Supreme Court, Allegany County, Feeman, J., stayed arbitration. Association appealed. The Supreme Court, Appellate Division, Fallon, J., held that agreement expired upon annexation of district. Affirmed.

Prudence J. Camardo et al., v. The Board of Education the City School District and the City of Rochester et al., 1975, 50 A.D.2d 1073, 376 N.Y.S.2d 344. Plaintiffs presented a constitutional challenge to a statute which abolished certain common and union free school districts in the Rochester area, added their territory to that of another district, provided for the assessment of School tax on real property within the abolished districts and limited the right of students in those districts to attend Rochester public schools without paying tuition. A preliminary injunction was granted and defendants appealed. The Supreme Court, Appellate Division, held that plaintiffs' constitutional challenge raised factual issues and failed to prove the likelihood of ultimate success on the merits, irreparable injury and balancing of equities in their favor. Order reversed, and preliminary injunction denied.

Town of Lansing v. Village of Lansing, 80 A.D.2d 942, 438 N.Y.S.2d 29. It is well settled that the burden of proof that annexation is in the overall public interest [General Municipal Law, § 705], is on the municipality seeking the annexation.

Village of Skaneateles v. Town of Skaneateles, N.Y.S.2d 185, 115 A.D.2d 282. Annexation by village of property in town would not be in overall public interest where sole reason for annexation was to avoid restrictive effect of town zoning ordinance on landowner.

Connel v. Town Bd. of Town of Wilmington, 482 N.Y.S.2d 964, 126 Misc.2d 474. Annexation of over 5,000 acres in one town by another town invoked compliance with the requirements of the State Environmental Quality Review Act. [Environmental Conservation Law, § 8-0101 et seq.]

Opinions of the Comptroller and Attorney General

Attorney General Opinion [2002-14](#): General Municipal Law §§ 709, 712, 713, 716; Town Law §§ 170, 173, 182(1); L. 1824, Ch. 129. The Cadyville Fire District has responsibility for providing fire protection to territory annexed to the Town of Plattsburgh and previously included within the Town of Saranac. Neither annexation of the territory nor, under the facts presented, an earlier judicial decision defining the towns' common boundary, affected the boundaries of the Cadyville Fire District.

Attorney General Opinion No. 92-11. Town territory intended to be annexed which is separated from the annexing village by a town highway does not “adjoin” the village within the meaning of General Municipal Law §703 (Municipal Annexation Law) and therefore, is not subject to annexation.