

PROBLEMS CREATED BY MUNICIPAL ANNEXATION OF SPECIAL DISTRICT TERRITORY

The mass emigration in recent decades from central cities to surrounding suburbs has created problems that demand solution if either city or suburban area government is to meet the needs created by population growth and shift. A major problem of suburban areas has been the proliferation of small local governmental units incapable of providing necessary services on an area-wide basis when significant economies can be achieved by doing so.¹ Possibly the most feasible solution to this problem, and one of the most-used,² is the creation of special-purpose districts. The special district³ possesses an autonomous fiscal and administrative structure, and has jurisdiction over a defined territory in which it provides one or more governmental services. It has authority to own and operate facilities necessary to provide these services. The district either receives operating funds from the state or has power to raise revenue by taxation, assessment, or a charge for the services rendered.⁴ The feature of special districts that makes them effective in meeting the area-wide need for services is that they can straddle the haphazard patchwork of suburban municipal boundaries and can administer services throughout the entire area where they are needed.⁵

Unlike special districts, cities, towns, and villages have broadly defined authority, conferred by state statute, constitution, or legislatively granted charter, to provide, within their territories, a wide range of governmental services. These services are the same as those characteristically provided in suburban areas by special districts. For this reason, large central cities do not have the suburban problems arising from the lack of efficient, unified administration of services. They do suffer from another major problem: a general exodus of middle-class residents, commercial enterprises, and industry from the cities has resulted in a reduction of the more affluent portion of their tax bases without correspondingly reducing the demand for governmental services. Suburbanites commute to the cities for work and recreation, adding to the demands made by the cities' own populations, which, despite the exodus to the suburbs, have not decreased their demands for

1. J. BOLLENS, *SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES* 6-11 (1957).

2. *See generally* M. POCK, *INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN PROBLEMS* 3-11 (1962).

3. The term "special district" will be used hereinafter to refer to districts of all kinds, including school districts, but not including metropolitan districts.

4. J. BOLLENS, *supra* note 1, at 1; M. POCK, *supra* note 2, at 10-11.

5. J. BOLLENS, *supra* note 1, at 25-27.

services. Municipal annexation of more affluent suburban areas may be the only practicable method of regaining lost tax revenues.⁶ There is evidence that annexation is, in fact, being used with increasing frequency.⁷

The situation existing in many urban areas is, then, that two potentially conflicting processes are at work simultaneously: the creation of special districts in suburban areas as a means for meeting the needs of these areas, and the annexation of adjacent suburban territory by cities in an effort to meet the cities' needs. Annexation may have the effect of detaching the annexed area from the district's control and may vest in the city title to a part of the district's property. This may reduce the district's capacity to function effectively in the portion of its territory that remains unannexed. The interests of the annexing city are advanced at the expense of those of the constituents of the unannexed portion of the district. This conflict of interests focuses attention on the legal problems arising out of such annexations. This note reviews the law controlling the solution of the most important of these problems and attempts a limited assessment of the extent to which the legal rules represent a practical accommodation of the needs which brought about the creation of special districts. The major legal problems raised by municipal annexation of special district territory will be considered in the following order:⁸ Does a municipality have the power to annex territory that lies within a special district? If so, does the annexing municipality displace the authority of the district? And if it does, what arrangements are to be made for disposition of the district's property, the discharge of its indebtedness, and the performance of its contractual duties?

I. AUTHORITY OF MUNICIPAL GOVERNMENTS TO ANNEX TERRITORY OF SPECIAL DISTRICTS

Both municipalities and special districts are municipal corporations; both are usually created by state legislatures. State legislatures have plenary

6. See Note, *Stumbling Giants—A Path to Progress through Metropolitan Annexation*, 39 NOTRE DAME LAW. 57 (1963); Note, *Municipal Annexation: Florida's Continuing Problem*, 17 U. FLA. L. REV. 129 (1964). See also F. SENGSTOCK, *ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM* 4-6 (1960). But see J. BOLLENS, *supra* note 1, at 54, 101, suggesting that annexation has not, in fact, been effective in alleviating urban problems.

7. Note, *Stumbling Giants—A Path to Progress through Metropolitan Annexation*, 39 NOTRE DAME LAW. 57 (1963).

8. See D. MANDELKER, *MANAGING OUR URBAN ENVIRONMENT* 337-38 (1963), where Professor Mandelker raises the major problems discussed in this note. Other problems of realignment of powers and adjustment of liabilities and assets among municipalities will arise if there is a merger of municipal governments, irrespective of whether one of the merging municipalities lies within a district. These problems of municipal merger may often parallel those arising from the annexation of a district's territory, but they are not discussed in this note.

power, within broad constitutional limits,⁹ to create, abolish, and alter the boundaries of municipal corporations.¹⁰ Therefore, it is within the power of state legislatures to solve, by statute, the problems discussed in this note.¹¹

Annexation is governed almost entirely by state statutes¹² that provide procedures by which a municipality may annex adjacent unincorporated land or may consolidate with an adjacent municipality. The most common method for annexing land requires a petition signed by a specified percentage of the inhabitants of the territory to be annexed. The petition is submitted to the municipality's legislative body, and the annexation is effected by the act of this body, usually subject to a ratifying election in the area to be annexed.¹³ A few states provide that a court or administrative body alone acts on the petition.¹⁴ Under another procedure, the municipality passes an annexation ordinance without prior petition. The ordinance before it becomes effective must usually be ratified by an election in the annexed area or be approved by a court or administrative body.¹⁵

In the absence of specific statutory provision, the courts have unanimously held that these general annexation statutes empower a municipality to extend its boundaries to include territory lying within a special district, regardless of whether or not such an extension would have the effect of displacing the district's authority to function in the annexed territory.¹⁶ They have

9. These consist of requirements that taxation must be uniform, limits on municipal indebtedness, ceilings on tax rates assessable on property, and prohibitions of laws impairing the obligation of contracts. These limitations will be discussed below in relation to the adjustment of indebtedness, contractual obligations, and property of the district upon its annexation to a municipality. The point here is that these limitations are narrowly defined exceptions to, and represent no fundamental defect in, state legislatures' plenary power to change boundaries and re-allocate powers and liabilities among municipal corporations.

10. *See Commissioners of Laramie County v. Commissioners of Albany County*, 92 U.S. 307 (1875); *State v. Kansas City*, 169 Kan. 702, 720-21, 222 P.2d 714, 729 (1950) (dictum); *Starmount Co. v. Town of Hamilton Lakes*, 205 N.C. 514, 171 S.E. 909 (1933); 2 E. McQUILLIN, *MUNICIPAL CORPORATIONS* § 7.03 (3d rev. ed. 1966); *cf. State ex rel. Gibbs v. Couch*, 139 Fla. 353, 190 So. 723 (1939).

11. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alas.), *appeal dismissed*, 371 U.S. 5 (1962); *In re Sanitary Bd. of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 457, 111 P. 368, 370 (1910); *Deneen v. Deneen*, 293 Ill. 454, 459, 127 N.E. 700, 702 (1920) (dictum); *City of Winona v. School Dist. No. 82*, 40 Minn. 13, 16, 41 N.W. 539, 540 (1889) (dictum); *see City of Aurora v. Aurora Sanitary Dist.*, 112 Colo. 406, 149 P.2d 662 (1944).

12. *See generally* Note, *supra* note 7.

13. *Id.* at 69-72.

14. *Id.* at 72-73.

15. *Id.* at 73-77.

16. *See, e.g., Mitchell v. Henry*, 184 Cal. 266, 193 P. 502 (1920); *City of Pass Christian v. Town of Long Beach*, 157 Miss. 778, 128 So. 554 (1930); *State ex rel. Board of Educ. v. Raine*, 2 Ohio G. Dec. 426, 427 (Hamilton County Ct. 1889);

reasoned that a district, having only limited powers, should not, by its mere existence on the fringe of a municipality (whose governmental powers are plenary) fence the latter within its existing boundaries.¹⁷

Moreover, the courts are unlikely to read other related statutes in a way that would deny or restrict a municipality's general power to annex district territory. For example, one case¹⁸ involved a statute which prescribed the consequences of the annexation, by a city having 425,000 or more population, of a levee improvement district's territory. The court stated in dictum that the statute did not by implication deny the power of a city having less than 425,000 to annex territory which lies within a levee improvement district. The statute merely failed to prescribe the effects that such an annexation would have on the district. In another case,¹⁹ the statute provided that no territory of a sanitary district could be detached from the district while it had outstanding bonded indebtedness. This was held not to preclude an annexation of sanitary district territory when the city assumed a proportionate share of the district's outstanding bonded indebtedness. Cases involving statutes that prohibit annexation of the territory of another municipality hold that special districts are not "municipalities" within the meaning of such prohibitions.²⁰

Despite these decisions supporting a municipality's power to annex territory that lies within a special district, the fact that annexed territory lies within a district may place some limitations or burdens on the exercise of a municipality's annexation power. For example, it appears that the district itself, as well as residents of the annexed territory, has standing to contest annexation on grounds that the requirements of the annexation statute have not been met.²¹ Statutes in three states deny a municipality the power to

Winship v. City of Corpus Christi, 373 S.W.2d 844 (Tex. Civ. App. 1964), *cert. denied*, 379 U.S. 646 (1965); Washington Heights Indep. School Dist. v. City of Fort Worth, 251 S.W. 341 (Tex. Civ. App. 1923). Most of the cases cited throughout this note also support this proposition by implication, since none of the problems discussed hereinafter could arise unless the municipality has the power to make a valid annexation of territory lying within a special district.

17. See *People ex rel. Cuff v. City of Oakland*, 123 Cal. 598, 56 P. 445 (1899); *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961); *City of Pelly v. Harris County Water Control and Imp. Dist.*, 145 Tex. 443, 198 S.W.2d 450 (1946).

18. *City of Irving v. Dallas County Flood Control Dist.*, 383 S.W.2d 571 (Tex. Civ. App. 1964).

19. *Fairfax County v. City of Alexandria*, 193 Va. 82, 68 S.E.2d 101 (1951).

20. *State ex rel. East Lenoir Sanitary Dist. v. City of Lenoir*, 249 N.C. 96, 105 S.E.2d 411 (1958); *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961).

21. *City and County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963); *In re Annexation of Sugarloaf Township*, 41 Luz. 297 (Pa. Quart. Sess. 1950); see IND. ANN. STAT. § 28-2346(b) (Supp. 1966). If the grounds for objection are that the annexation is not advantageous to the district's inhabitants, the district may get short shrift in court. See *Watkins v. Cain*, 154 N.E.2d 210 (Ohio C.P. 1956).

annex the real property of school districts.²² And in South Carolina, territory included entirely within a school district can be annexed only if the district's board of trustees petitions the municipality and requests annexation.²³

II. DISPLACEMENT OF SPECIAL DISTRICT'S AUTHORITY BY ANNEXING MUNICIPALITY

Granted, then, that a municipality is not precluded from exercising its statutory power to extend its boundaries when the extension would include the territory of a special district, does this extension have the effect of bringing the territory under the exclusive authority of the municipality for purposes of administering services formerly provided by the district? In the absence of specific statutory provision, courts have taken various approaches. Some have relied on rules derived from the common law; others have attempted to work out practical solutions based on policy considerations; yet others have attempted to divine a legislative intent from statutes which come close to dealing with the problem but which are not quite controlling. The controlling policy considerations are entirely different when all, rather than just a portion, of a district's territory is annexed. For this reason, total and partial annexations will be given separate consideration.

A. *Annexation of Entire District*

1. *Common Law Rule*

If the entire territory of a special district is annexed to a municipality that has authority to provide the services previously provided by the district, the common law rule is that, in the absence of any indication of contrary legislative intent, the district dissolves, and the municipality entirely displaces the district's authority.²⁴ The rationale is that terminating the district's

22. CAL. GOV'T CODE § 35004 (Deering 1963); COLO. REV. STAT. ANN. § 139-10-1 (1963); ILL. ANN. STAT. ch. 24, § 7-1-14 (Smith-Hurd 1967); see MONT. REV. CODES ANN. § 11-511 (1957).

23. S.C. CODE ANN. § 47-19.1 (1962). See also S.C. CODE ANN. § 47-35 (1962) (applicable only to Greenville; vote on proposition to annex territory taken separately in each district).

24. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alas.), appeal dismissed, 371 U.S. 5 (1962); *In re* Sanitary Bd. of East Fruitvale Sanitary Dist., 158 Cal. 453, 111 P. 368 (1910); *People ex rel. City of Downey v. Downey County Water Dist.*, 202 Cal. App. 2d 786, 21 Cal. Rptr. 370 (1962); see *City of Roanoke v. Fisher*, 193 Va. 651, 70 S.E.2d 274 (1952); cf. *People ex rel. City of Bellflower v. Bellflower County Water Dist.*, 55 Cal. Rptr. 584 (Cal. App. 1966); *City of Escalon v. Escalon Sanitary Dist.*, 179 Cal. App. 2d 475, 3 Cal. Rptr. 889 (1960). See also *McGurn v. Board of Educ.*, 133 Ill. 122, 24 N.E. 529 (1890).

The rule has been abolished in California by statute. CAL. GOV'T CODE § 56400 (Deering Supp. 1967).

For an example of circumstances in which the common law rule will yield to an

authority avoids potential conflict between municipal and district authority, as well as possible duplication of services.²⁵ It is doubtful, however, that the potential duplication and conflict are themselves decisive. Rather, the decisive consideration appears to be that there are no constituents of a totally absorbed district whose interest in efficient provision of services should be protected by preserving the district's control and authority.²⁶ In cases of partial annexation, the need to protect constituents in unannexed areas has often prompted holdings that annexation does not result in displacement of the district's authority over the annexed territory.²⁷ This result is reached despite the possible duplication of services and conflict of authority.

2. Statutory Provisions

Statutes re-allocate district authority following total annexation in three ways. The simplest and most widely used is an enactment of the common law rule.²⁸ Under these statutes, the annexed district may retain *de facto* powers for certain limited purposes, such as continuing a lawsuit begun before annexation.²⁹

A second method is to grant authority to an administrative body or court to determine whether the district's authority and functions should be trans-

indication of contrary legislative intent, see *In re Paving White Pole*, 193 Iowa 423, 187 N.W. 14 (1922).

25. See *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540, 545 (Alas.), *appeal dismissed*, 371 U.S. 5 (1962); *In re Sanitary Bd. of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368 (1910); *People ex rel. Downey v. Downey County Water Dist.*, 202 Cal. App. 2d 786, 21 Cal. Rptr. 370 (1962).

26. For a more complete discussion, see notes 42-48 *infra* and accompanying text.

The district's creditors may, however, suffer a disadvantage if no adequate provisions are made for discharging the district's indebtedness. This problem will be discussed in subdivision III *infra*.

27. See, e.g., *Pixley v. Saunders*, 168 Cal. 152, 141 P. 815 (1914); *State v. Independent School Dist. No. 6*, 46 Iowa 425 (1877); *State ex rel. Lowe v. Henderson*, 145 Mo. 329, 46 S.W. 1076 (1898); see notes 45-48 *infra* and accompanying text.

28. IDAHO CODE ANN. § 50-305 (Supp. 1965); KAN. GEN. STAT. ANN. § 19-2786d (1964); MICH. STAT. ANN. § 15.3183 (1959); MISS. CODE ANN. § 6411-06 (Supp. 1966); MO. REV. STAT. § 235.240 (1959); NEB. REV. STAT. § 31-763 (1960); N.Y. GEN. MUNIC. LAW §§ 709(1),(3) (McKinney 1965); N.D. CENT. CODE § 15-27-01 (Supp. 1967); OHIO REV. CODE ANN. § 3311.06 (Page 1960); ORE. REV. STAT. § 222.510 (1967); PA. STAT. ANN. tit. 24, § 2-229 (1962); S.D. CODE § 15.2020 (Supp. 1960); TEX. REV. CIV. STAT. art. 974e-8(1) (1963); WASH. REV. CODE ANN. §§ 35-13.220, -13.247, -61.020 (1965); WIS. STAT. ANN. § 66.023(1) (1965); see ARIZ. REV. STAT. ANN. § 9-1007.02A (Supp. 1966) (volunteer fire companies); WIS. STAT. ANN. § 60.31(1)(a) (1957) (town sanitary district).

29. See *Christi v. Harris County Fresh Water Supply Dist.*, 317 S.W.2d 219 (Tex. Civ. App. 1958).

ferred to the annexing municipality. Under the California and Wisconsin statutes,³⁰ the voters of the district are allowed to petition for a public hearing before the decision-making body at which the issue can be debated. Indiana gives property-owning residents of an annexed school district a role in the process. Its statutes³¹ provide that annexation will transfer a school district's authority and functions to the municipality unless the district or seventy-five per cent of its property-owning residents appeal to the court. The court decides on the basis of statutory criteria respecting the soundness of the annexation as a matter of policy. In other states, when school districts subject to the general supervision of a state education authority are involved, decision-making may be delegated to that authority, with³² or without³³ a provision for initiation of the decision-making process by filing a petition.³⁴

Under a third method, the matter is submitted to the voters of the district,³⁵ or to the voters or legislative body of the municipality.³⁶ The Nevada procedure³⁷ combines the features of these approaches. It allows property owners of the district to block the municipality's governing body from terminating district authority. A rare provision is that total annexation has no effect upon the district's functions or powers.³⁸

Some statutes are operative only if the municipality has a specified population,³⁹ or if it is providing the same services as those administered by the

30. CAL. GOV'T CODE §§ 56410—56421 (Deering Supp. 1966); WIS. STAT. ANN. §§ 88.83(1)—(3) (Supp. 1967).

31. IND. ANN. STAT. §§ 28-2346 (Supp. 1966), 48-702 (1963).

32. N.Y. GEN. MUNIC. LAW § 715(2) (McKinney 1965).

33. TEX. REV. CIV. STAT. art. 2804a (1965).

34. *But see* Barrett v. Haas, 62 Dauph. 118 (Pa. C.P. 1951), *aff'd*, 63 Dauph. 93 (Pa. C.P. 1953), concluding, as a matter of construction, that a similar statute was applicable only in cases of partial annexation of a district, *ipso facto* merger with the municipality being the result of a total annexation.

35. ALASKA STAT. § 42.35.370(a) (1962). *But see* Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alas.), *appeal dismissed*, 371 U.S. 5 (1962), holding that a statute which provided for a petition election method of dissolving the district and whose application was not restricted to cases of municipal annexation of the district was not exclusive; no election was necessary to effect dissolution by *ipso facto* merger of the district with the annexing city when the city annexed all of the district.

36. CAL. STS. & H'WAYS CODE §§ 5850—51 (Deering 1961); KAN. GEN. STAT. ANN. §§ 72-1725b,c (1964); TEX. REV. CIV. STAT. arts. 1182c-1(1),(2) (1955), 1182b (1963), 2804 (1965); WASH. REV. CODE ANN. § 35-13.243 (1965); WIS. STAT. ANN. § 88.83(4) (Supp. 1967).

37. NEV. REV. STAT. §§ 242A.310(1), 242A.250—290 (1965).

38. ILL. ANN. STAT. ch. 42, § 447.1 (Smith-Hurd Supp. 1967).

39. KAN. GEN. STAT. ANN. §§ 72-1725b,c (1964); N.Y. GEN. MUNIC. LAW § 715(1) (McKinney 1965); TEX. REV. CIV. STAT. arts. 974e-8(1), 1182b (1963), 2804a (1965).

district at the time of annexation.⁴⁰ Such requirements are designed to assure that the annexing municipality has the capacity to run the district.

B. *Annexation of Part of a District's Territory*

1. *Common Law Rule*

Although some statutes do not differentiate between total and partial annexation,⁴¹ different policy considerations arise in cases of partial annexation. When an entire district is brought within municipal boundaries, and the municipality can provide the services the district was providing, there is little reason, aside from protecting the district's creditors, for whom adequate provision can be made, for allowing the district to continue as a distinct governmental entity. It will usually be expedient to consolidate all services under the control of the municipal government. A similar argument has been made when only part of a district was annexed.⁴² However, countervailing considerations arise. The capacity of a district to solve area-wide problems may depend upon its retaining unified control over its entire territory.⁴³ If part of a district's assets or tax base is taken away, its fiscal position may be substantially weakened; there may be fixed overhead costs

40. IDAHO CODE ANN. § 50-305 (Supp. 1965). The requirement most frequently encountered is that, in cases where a school district is annexed, the municipality must have its own school district. IND. ANN. STAT. § 28-2346(a) (Supp. 1966); MISS. CODE ANN. § 6411-06 (Supp. 1966); N.Y. GEN. MUNIC. LAW § 715(2) (McKinney 1965); PA. STAT. ANN. tit. 24, § 2-229 (1962); TEX. REV. CIV. STAT. art. 2804 (1965); WIS. STAT. ANN. § 66.023(1) (1965).

41. IDAHO CODE ANN. § 50-305 (Supp. 1965); IND. ANN. STAT. § 28-2346(a) (Supp. 1966); KAN. GEN. STAT. ANN. §§ 72-1725b,c (1964); MISS. CODE ANN. § 6411-06 (Supp. 1966); N.D. CENT. CODE § 15-27-01 (Supp. 1967); PA. STAT. ANN. tit. 24, § 2-229 (1962); S.D. CODE § 15.2020 (Supp. 1960); TEX. REV. CIV. STAT. arts. 2804, 2804a (1965); WIS. STAT. ANN. § 66.023(1) (1965). A Washington Statute makes no differentiation if territory containing property which constitutes sixty per cent or more of the total assessed valuation of property in the district or sixty per cent of the district's total territory is included in the annexation. WASH. REV. CODE ANN. § 35.13.243 (1965).

42. See M. Pock, *supra* note 2, at 33-34. This argument recalls the common law rule that two municipal corporations cannot exercise authority over the same territory simultaneously. The rule is not generally applied when a district, which has only limited powers, overlaps a municipality possessing full governmental powers. 2 E. McQUILLIN, *supra* note 10, § 7.08; M. Pock, *supra*, at 32. But see *In re Sanitary Bd. of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368 (1910).

43. See *City of Sacramento v. Southgate Recreation and Park Dist.*, 230 Cal. App. 2d 916, 919-20, 41 Cal. Rptr. 452, 455 (1964); *Fort Wayne Community Schools v. State ex rel. New Haven Public Schools*, 240 Ind. 57, 159 N.E.2d 708 (1959); M. Pock, *supra* note 2, at 5, 79; note 5 *supra* and accompanying text; cf. *Henshaw v. Forster*, 176 Cal. 507, 169 P. 82 (1917); *La Mesa Homes Co. v. La Mesa Irr. Dist.*, 173 Cal. 121, 159 P. 593 (1916); M. Pock, *supra*, at 34-38. But see *Matot v. Inglewood School Dist.*, 71 Cal. App. 557, 235 P. 667 (1925).

that are not reduced by diminishing the area in which it must provide services.

Especially disastrous results can arise if the district operates a system of physical facilities, such as a sewer system.⁴⁴ *City of El Cajon v. Heath*⁴⁵ is a vivid example of the hardship which can result to the residents of the unannexed portion of such a district. In that case the defendant was a resident of a sanitary district that had installed the sewer line serving the defendant's house. The city annexed the land through which the line passed, but not the defendant's house. The city then sought to enjoin the defendant's use of the line. In denying an injunction, the court pointed out that, under the principle contended for by the city, if the main trunk line or the outlet of an entire sewer system were in the annexed territory, the value of the system to residents of the unannexed territory could be entirely destroyed.⁴⁶

While districts that do not operate integral systems of physical facilities—for example, school or fire districts—may be hurt less by partial detachments of territory, many cases decided in the absence of statutory guidance hold that such districts retain control over annexed parts of their territory.⁴⁷ The same result is reached in many of the cases involving districts that do have integral systems of physical facilities.⁴⁸ The courts' reasoning seems usually to be based less on practical considerations as to which body can more efficiently administer the service than on the belief that a clear indication of legislative intent is required before a district, specially created to provide services, can be ousted of part of its territory.

2. *Statutes of Tangential Relevance*

Consistent with this dependence upon legislative guidance, if there is no directly applicable statute, the courts often attempt to divine a legislative intent from statutes not directly in point, rather than relying on judicial

44. See *Pixley v. Saunders*, 168 Cal. 152, 141 P. 815 (1914).

45. 86 Cal. App. 2d 530, 196 P.2d 81 (1948).

46. *Id.* at 534, 196 P.2d at 83; *Pixley v. Saunders*, 168 Cal. 152, 157-60, 141 P. 815, 817-18 (1914); see F. SENGSTOCK, *supra* note 6, at 85.

47. *City of Sacramento v. Southgate Recreation and Park Dist.*, 230 Cal. App. 2d 916, 41 Cal. Rptr. 452 (1964); *State v. Independent School Dist. No. 6*, 46 Iowa 425 (1877); see *State ex rel. Lowe v. Henderson*, 145 Mo. 349, 46 S.W. 1076 (1898). *Contra*, *Blount v. MacDonald*, 18 Ariz. 1, 155 P. 736 (1916); cf. *Incorporated Village of Atlantic Beach v. Kimmel*, 25 App. Div. 2d 531, 267 N.Y.S.2d 534 (1966).

48. *Pixley v. Saunders*, 168 Cal. 152, 141 P. 815 (1914); *City of El Cajon v. Heath*, 86 Cal. App. 2d 530, 196 P.2d 81 (1948); *State ex rel. Collins v. Rooney*, 361 Mo. 389, 235 S.W.2d 260 (1950). *But see* *Garden Home Sanitation Dist. v. City and County of Denver*, 116 Colo. 1, 177 P.2d 546 (1947), where the district had not yet installed any sewerage facilities in the annexed territory.

precedents or policy considerations. For example, there may be a statute fixing the district's boundaries as of the date of its creation. Courts have held that such a statute absolutely establishes the territorial extent of the district's authority, so that annexation alone does not have the effect of detaching any territory from the district.⁴⁹ This result was reached despite general declarations in the annexation statutes that annexed territory becomes subject to municipal authority, which included power to provide the same services as the district. On the other hand, courts often hold that the municipality does displace district authority by emphasizing statutes which vest authority in the municipality to provide, within its boundaries, the same services as the district is providing.⁵⁰ The same result is reached by emphasizing annexation statutes which provide that annexed territory becomes, "for all intents and purposes," part of the municipality.⁵¹ There is

49. See *Capital City Oil Co. v. Day*, 147 La. 734, 85 So. 888 (1920); *St. Louis County Library Dist. v. Hopkins*, 375 S.W.2d 71 (Mo. 1964). In *Capital City Oil Co. v. Day*, *supra*, the statute creating the sanitary district defined the district's territory as all of the parish south of the City of Baton Rouge. When Baton Rouge extended its boundaries to the south, only the unannexed part of the district technically satisfied the statutory description. Nevertheless, the court held that the legislature intended to fix the district's boundary at the southern boundary of Baton Rouge as it existed at the time when the statute was enacted, and that, therefore, the annexation did not remove any territory from the district's jurisdiction.

50. See *Cox v. Otay Munic. Water Dist.*, 200 Cal. App. 2d 672, 19 Cal. Rptr. 595 (1962) (partial displacement of district authority); *Washington Heights Indep. School Dist. v. City of Fort Worth*, 251 S.W. 341 (Tex. Civ. App. 1923); cf. *Carson v. State*, 27 Ind. 465 (1867). But see *Harris County Drainage Dist. No. 12 v. City of Houston*, 35 S.W.2d 118 (Tex. 1931); cf. *Henshaw v. Foster*, 176 Cal. 507, 169 P. 82 (1917). But the opposite result was reached under a statute which provided that the municipality shall not compete with another body lawfully supplying services within the municipality. *City of Mesa v. Salt River Project Agric. Imp. and Power Dist.*, 92 Ariz. 91, 373 P.2d 722 (1962).

51. *Vernon School Dist. v. Board of Educ.*, 125 Cal. 593, 58 P. 175 (1899). Provisions of this tenor are found in the annexation statutes of several states. ARK. STAT. ANN. § 19-306 (1956) (annexed residents entitled to "all rights and privileges" of city residents; annexed land to be "part and parcel" of city); CAL. GOV'T CODE §§ 35146, 35210 (Deering 1963) ("a part of the city for all purposes"); KY. REV. STAT. ANN. §§ 81.100, .110, .195(3) (1963) (annexed land to "become a part" of annexing municipality); LA. REV. STAT. ANN. § 33:179 (1950) (annexed residents to have "all the rights, immunities, and privileges" of residents of annexing municipality); MONT. REV. CODES ANN. § 11-507 (1957) (annexed land "shall be, to all intents and purposes, a part of [the annexing] municipal corporation"); NEB. REV. STAT. § 17-405(3) (1962) (annexed land "shall be deemed and held a part of" the annexing municipality; annexed residents "shall thereafter enjoy the privileges and benefits of such annexation"); N.J. STAT. ANN. § 40:43-29 (1967) (annexed residents "shall have the same rights and be entitled to the same privileges" as residents of municipality); N.C. GEN. STAT. § 160.453.5(f) (1964) (annexed area "shall be entitled to the same privileges and benefits as other parts of such municipality"); TENN. CODE ANN. § 6-315 (Supp. 1967) (annexed residents "shall be entitled to the rights and privileges of citizenship, in ac-

an even stronger argument for this result if the annexation statute requires the municipality to furnish services in the annexed territory⁵² and these services happen to be the same ones provided by the district. Likewise, in the case of partially annexed school districts, the courts may arrive at the same conclusion by applying statutes declaring that the municipality shall constitute a single school district.⁵³ But if a statute provides that an independent state or county school authority shall adjust school district boundaries, action by such school authority may be held the exclusive method of detaching territory from a school district, so that annexation alone cannot accomplish this.⁵⁴

3. *Statutory Solutions*

There are few comprehensive statutory solutions to this problem. States having several kinds of districts and several classes of municipalities often have annexation provisions governing only one kind of district or one class of municipality. What follows is a brief outline of the ways in which present statutes resolve the problem of re-allocation of district authority following partial annexation. The effects of these provisions can be fully appreciated only within the context of the entire statutory scheme from which they have been taken. Many of the statutes are found in a complex of provisions creating and prescribing powers, duties, territorial extent and administrative

cordance with the provisions of the annexing municipality's charter"); TEX. REV. CIV. STAT. arts. 974e, 974e-1(1), 974e-2(1), 974e-3(1), 974e-4(1), 974e-5(1), 974e-6(1), 974e-7(1), 974-1 (1963) (annexed residents "shall be entitled to all the rights and privileges of other citizens of such city"); UTAH CODE ANN. § 10-3-1 (1962) (annexed residents "shall . . . enjoy the privileges of such annexation"); WYO. STAT. ANN. § 15.1-63 (1965) (annexed residents afforded "all the rights, privileges and franchise services afforded the inhabitants [of the city] including fire protection, sanitary facilities and utility service").

52. See GA. CODE ANN. § 69-909 (1967); IND. ANN. STAT. § 48-715(d) (1963); IOWA CODE ANN. § 362.26(6) (Supp. 1966); N.C. GEN. STAT. §§ 160-453.3, -453.15 (1964); WYO. STAT. ANN. § 15.1-63 (1962). Other statutes are permissive in allowing the municipality to determine what services shall be provided to the annexed area. ALASKA STAT. §§ 29.70.040, .170 (1962); MISS. CODE ANN. §§ 3374-10, -13 (1957) (municipality's plan for extending services subject to court review for "reasonableness").

53. See *Matot v. Inglewood School Dist.*, 71 Cal. App. 557, 235 P. 667 (1925); *City of Winona v. School Dist. No. 82*, 40 Minn. 13, 41 N.W. 539 (1889); *Common School Dist. No. 126 v. City of Fargo*, 78 N.D. 583, 51 N.W.2d 364 (1952); cf. *State ex rel. School Dist. No. 1 v. Schriener*, 151 Wis. 162, 138 N.W. 633 (1912).

54. See *Collins v. City of Detroit*, 195 Mich. 330, 161 N.W. 905 (1917); *State ex rel. Board of Educ. v. Raine*, 2 Ohio C. Dec. 426 (Hamilton County Ct. 1889); *In re Annexation of Borough of Irwin*, 165 Pa. Super. 134, 67 A.2d 765 (1949). But see *Spaulding School Dist. No. 58 v. Waukegan City School Dist.*, 18 Ill. 2d 351, 164 N.E.2d 63 (1960).

structure of a district; others are found among the provisions for municipal annexation.

Although the following is merely an outline of types of provisions abstracted from their statutory context, it is still useful to make a classification of the types of approaches so that their potential effectiveness in achieving a workable re-allocation of district authority can be evaluated. Again, a complete evaluation can be made only with respect to the particular situation in each state and locality. Because of the wide variety of functions, sizes, and organizations of districts and municipalities, broad generalization is of extremely limited value.

The statutory solutions to the problem are of six general types:

a. automatic transfer. The most common type of provision is that annexation of part of a district automatically withdraws the annexed territory from the jurisdiction of the district and brings it under the annexing municipality's authority.⁵⁵ In states having county boards of education with general statutory authority over all changes of school district boundaries, a question might arise as to whether such a provision for automatic extension of the municipal school jurisdiction over annexed territory is in conflict with the statute vesting authority in the board.⁵⁶

While the automatic transfer method has the advantages of simplicity and predictability, it would appear probable that it will work a hardship on unannexed constituents of the district in many instances. By substituting an inflexible rule of automatic transfer for a process of decision-making based on the facts of each particular annexation situation, these statutes rule out any possibility that features peculiar to any particular set of facts could be taken into account.

b. transfer in discretion of annexing municipality. The annexing municipality may be empowered to determine, by ordinance, resolution of its

55. ALASKA STAT. § 42.35.390 (1962); IDAHO CODE ANN. § 50-305 (Supp. 1965); ILL. ANN. STAT. ch. 121, § 356c (Smith-Hurd 1960); IND. ANN. STAT. § 28-2346(a) (Supp. 1966); KAN. GEN. STAT. ANN. § 72-5316 (1964); MICH. STAT. ANN. § 15.3183 (1959); MISS. STAT. ANN. § 6411-06 (Supp. 1966); MO. REV. STAT. §§ 321.320 (1959), 162.421 (Supp. 1967); N.Y. GEN. MUNIC. LAW §§ 709(2), 715(1) (McKinney 1965); N.D. CENT. CODE § 15-27-01 (Supp. 1967); S.D. CODE § 15.2020 (Supp. 1960); TEX. REV. CIV. STAT. art. 2804 (1965); WASH. REV. CODE ANN. § 35.61.020 (1965); WIS. STAT. ANN. § 66.023(1) (1965); *see* ARIZ. REV. STAT. ANN. § 9-1007.01A (Supp. 1967); Louisville and Jefferson County Met. Sewer Dist. v. Sanitation Dist. No. 1, 353 S.W.2d 196 (Ky. 1961); *In re* City of Gulfport, 253 Miss. 738, 179 So. 2d 3 (1965); *State ex rel. Green v. Brown*, 224 Mo. App. 1197, 31 S.W.2d 215 (1930); *cf.* TEX. REV. CIV. STAT. art. 1182c-5(1) (1963).

56. *See* City of Beaumont Indep. School Dist. v. Broadus, 182 S.W.2d 406 (Tex. Civ. App. 1944) (county board's authority does not extend to redrawing boundaries after annexation). This problem has been solved by express statutory provision in Indiana. *See* IND. ANN. STAT. § 28-2347 (Supp. 1966).

governing body, or vote of its citizens, whether to displace the authority of the district in the annexed portion of its territory.⁵⁷

While this method insures that the interests of the municipality are taken into consideration in each case, it appears unsatisfactory in allowing the municipality to disregard the interests of unannexed residents of the district.

c. transfer in discretion of district voters. The consent of the district's voters, given in a special election or at a public meeting, may be required to effect a transfer of authority over the annexed territory to the municipality. The vote may be restricted to residents of the annexed portion of the district's territory or may include all residents of the district.⁵⁸ Some of these statutes parallel statutes providing a procedure whereby residents of the district may petition for an election at which they can vote to be detached from the district in the absence of an annexation.⁵⁹

If the vote is restricted to residents of the annexed area, the interests of the unannexed residents may be disregarded. The same is true if the vote is to be taken in the entire district, and the majority required to approve a transfer of district authority resides in the annexed area. No matter how the vote is taken, the interests of the municipality in fully integrating the annexed territory into its system of providing services may be unrepresented.

d. court or administrative decision. Another alternative is to allow the residents of the annexed area to petition the district's governing body or a superior state executive authority, such as a state school superintendent,⁶⁰ or to allow the district or the municipality to petition the superior state executive authority or court⁶¹ for a decision of the issue. The former procedure is also frequently provided as a means for residents who wish to be

57. CAL. STS. & H'WAYS CODE §§ 5852—5853 (Deering 1965); KAN. GEN. STAT. ANN. §§ 72-1725b,c (1964); ORE. REV. STAT. § 222.524 (1967); TEX. REV. CIV. STAT. art. 2804 (1965); WASH. REV. CODE ANN. § 35.13.243 (1965); see S.C. CODE ANN. § 47-34 (1962) (applicable only to Greenville—municipal ordinance subject to amendment and ratification by elections in city and annexed territory).

58. KAN. GEN. STAT. ANN. § 72-5316j (1964); MO. REV. STAT. § 247.170 (1959); ORE. REV. STAT. §§ 266.030, 547.755 (1967); TEX. REV. CIV. STAT. arts. 7930-3 (1954), 1182a (1963), 2803 (Supp. 1967), *construed in* City of Van Alstyne v. State, 246 S.W.2d 671 (Tex. Civ. App. 1952). TEX. REV. CIV. STAT. art. 1182a (1963) requires separate majority votes in the annexing municipality and in the territory annexed to effect a detachment from the district.

59. *E.g.*, CAL. GOV'T CODE §§ 56310—56324 (Deering Supp. 1967); KY. REV. STAT. ANN. § 160.045 (1963); TEX. REV. CIV. STAT. art. 7880-76c (1954).

60. COLO. REV. STAT. ANN. § 89-6-22 (1963); ILL. ANN. STAT. ch. 122, § 7-2.1 (Smith-Hurd Supp. 1966), *construed in* Board of Educ. of School Dist. No. 122 v. Board of Educ. of School Dist. No. 205, 63 Ill. App. 2d 196, 211 N.E.2d 482 (1965); ORE. REV. STAT. § 371.540 (1965); see IDAHO CODE ANN. § 31-1429 (1963).

61. NEB. REV. STAT. § 31-766 (1960); N.Y. GEN. MUNIC. LAW § 715(2) (McKinney 1965).

excluded from a district to apply for exclusion of their land in the absence of any annexation.⁶²

Under other statutes, the decision-making function is simply delegated to an administrative body without any petitioning procedure.⁶³ In Virginia, all the terms upon which annexation is to be accomplished are prescribed by an annexation court; it would appear that the court is empowered to determine whether the district's authority in an annexed area is to be transferred to the municipality.⁶⁴

This method of decision-making is potentially the best. It allows the decision to be made by a body with the expertise and impartiality to arrive at a solution in the best interests of all the bodies and residents concerned.

e. agreement between district and municipality. A fifth kind of provision requires the municipal government and the district to agree on the reallocation of the district's authority over the annexed territory.⁶⁵ Some of these statutes provide that, if agreement is not reached, the district retains control over the territory.⁶⁶ Others provide that the municipality automatically assumes control,⁶⁷ or may, at its option, take control⁶⁸ in default of agreement. A Nebraska statute⁶⁹ provides for court determination of the issue in default of agreement.

Since the district will usually be interested in retaining control and the municipality in displacing the district's authority, it may be expected that this method will often produce compromise solutions or will result in a failure of the two bodies to reach an agreement. Compromise may often be unsatisfactory for all concerned, because it will be the result of bargaining, rather than of a dispassionate assessment of the long-range best interests of all bodies and residents concerned. The defects in the procedures men-

62. *E.g.*, COLO. REV. STAT. ANN. §§ 29-4-3, -4 (1960); IDAHO CODE ANN. § 31-1429 (1963); KY. REV. STAT. ANN. § 160.045 (1963).

63. NEV. REV. STAT. § 242A.310 (1965); OHIO REV. CODE ANN. § 3311.06 (Page 1960).

64. *See* VA. CODE ANN. § 15.1-1041(c) (1964).

65. IND. ANN. STAT. § 28-2346(c) (Supp. 1966); KAN. GEN. STAT. ANN. § 19-2786e (1964); MO. REV. STAT. § 247.160(3) (1959); NEB. REV. STAT. § 31-766 (1960); TENN. CODE ANN. § 6-318 (Supp. 1967); TEX. REV. CIV. STAT. arts. 974e-8(1), 1182c-1(2) (1963); WASH. REV. CODE ANN. § 35.13.250 (1965); *cf.* ALA. CODE tit. 52, § 83 (1952); ORE. REV. STAT. § 222.530(5) (1967).

66. KAN. GEN. STAT. ANN. § 19-2786e (1964); TENN. CODE ANN. § 6-318 (Supp. 1967); TEX. REV. CIV. STAT. arts. 974e-8(1), 1182c-1(2) (1963); *Jefferson County Water Control and Imp. Dist. No. 5 v. City of Port Arthur*, 327 S.W.2d 415 (Tex.), *rev'g* 320 S.W.2d 33 (Tex. Civ. App. 1959); *cf.* ALA. CODE tit. 52, § 83 (1952).

67. IND. ANN. STAT. § 28-2346(c) (Supp. 1966).

68. WASH. REV. CODE ANN. § 35.13.250 (1965).

69. NEB. REV. STAT. § 31-766 (1960).

tioned as alternatives in case of failure to reach agreement have been pointed out above.

f. no transfer. Finally, some statutes, usually applicable only when a specified small percentage of the district's territory is annexed, provide that a partial annexation has no effect, and that the district retains full authority over the annexed territory.⁷⁰

Many statutes combine two or more of the above kinds of provisions. For example, some provide that automatic transfer of authority occurs unless there is a contrary agreement.⁷¹ The fact that alternative methods are provided for a single kind of district indicates the absence of any necessary correlation between the kind of provision and the nature of the district involved. The problems suggested by the *El Cajon* case would lead one to expect that provisions declaring that no transfer of authority shall occur would be more likely in the case of districts with integral systems of physical facilities. Such is not the case, however. Provisions for automatic transfer of authority are at least as frequently applicable to this type of district as are provisions that no transfer shall occur.⁷² Sometimes several kinds of districts are lumped together and given the same statutory treatment.⁷³

This absence of correlation is explained, at least in part, by the fact that many of these statutes do not rely upon the provisions governing the reallocation of powers to provide the sole protection for the interests of residents of the unannexed parts of the district. Rather, they frequently contain provisions specifically designed to protect these interests. These provisions vary. Some require that the district's services be continued in the unannexed portion of the district.⁷⁴ Examples of other typical protective provisions include a requirement that annexing part of a fire protection district shall not result in an increase in insurance rates of unannexed residents,⁷⁵ and a provision that residents of the unannexed portion of a sewer

70. ILL. ANN. STAT. ch. 42, § 447.1, ch. 127½, § 316 (Smith-Hurd Supp. 1967), construed in *People ex rel. Kelley v. Lund*, 25 Ill. 2d 387, 185 N.E.2d 174 (1962); KAN. GEN. STAT. ANN. § 72-5316i (1964); TEX. REV. CIV. STAT. art. 2804a (1965); WASH. REV. CODE ANN. § 35.13.248 (1965).

71. IND. ANN. STAT. § 28-2346 (Supp. 1966); TEX. REV. CIV. STAT. art. 2804 (1965); WASH. REV. CODE ANN. §§ 35.13.243—250 (1965). See also notes 66-69 *supra* and accompanying text.

72. Compare authorities cited note 55 *supra*, with authorities cited note 70 *supra*.

73. See, e.g., COLO. REV. STAT. ANN. §§ 89-3-1, -3(1) (1963).

74. See ARIZ. REV. STAT. ANN. § 9-1007.01 (Supp. 1967); CAL. GOV'T CODE §§ 35156, 35325 (Deering 1963); N.Y. GEN. MUNIC. LAW § 709(4) (McKinney 1965); ORE. REV. STAT. §§ 222.550, .560 (1967); TENN. CODE ANN. § 6-318 (Supp. 1967); WASH. REV. CODE ANN. §§ 35.13.243(2), .246 (1965); WIS. STAT. ANN. § 40.19(1) (1966). See also MO. REV. STAT. § 162.421 (Supp. 1967).

75. ORE. REV. STAT. § 222.530(1) (1967).

district shall continue to have the use of the district's sewer lines after the municipality acquires control of them.⁷⁶ Under a Wisconsin statute,⁷⁷ if twenty per cent or more of a school district's territory is to be annexed, the residents of the unannexed portion have the right to compel the municipality to choose between annexing the entire district or none at all. Mississippi has a comparable provision, without percentage limitation.⁷⁸

Unsystematic alteration of the statutory scheme for dealing with the problem of re-allocation of functions may lead to problems of statutory construction. For example, a new, comprehensive scheme of special district government may have been created by statutes which postdate the provisions for transfer of control to an annexing municipality. The courts are likely to find that the legislature did not intend an unsystematic alteration of the comprehensively planned district by operation of the provisions for transfer of control.⁷⁹

III. ADJUSTMENT OF ASSETS, LIABILITIES, AND CONTRACTUAL OBLIGATIONS BETWEEN DISTRICT AND ANNEXING MUNICIPALITY

In case the total or partial annexation does result in the municipality's assuming control over performance of the district's functions, the district's property must be disposed of, and provision must be made for payment of its indebtedness and performance of its outstanding contracts. These requirements are imposed at common law and under statutes both to insure continuation of services to those dependent upon them and to comply with constitutional limitations.

A. *Constitutional Limitations*

State and federal constitutional prohibitions against laws impairing the obligation of contracts may compel state legislatures to make some provision for discharging a district's indebtedness and performing its outstanding contracts in case the district's authority, property, and tax base are taken over by an annexing municipality.⁸⁰ This constitutional stricture can often

76. KAN. GEN. STAT. ANN. § 80-2022 (1964).

77. WIS. STAT. ANN. § 62.071 (Supp. 1967).

78. MISS. CODE ANN. § 6411-06 (Supp. 1966).

79. See *Fort Wayne Community Schools v. State ex rel. New Haven Public Schools*, 240 Ind. 57, 159 N.E.2d 708 (1959); *Louisville & Jefferson County Met. Sewer Dist. v. Sanitation Dist. No. 1*, 353 S.W.2d 196 (Ky. 1961).

80. F. SENGSTOCK, *ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM* 79-80 (1960); see *City of Mesa v. Salt River Project Agric. Imp. and Power Dist.*, 92 Ariz. 91, 99, 373 P.2d 722, 728 (1962) (dictum); *Blount v. MacDonald*, 18 Ariz. 1, 155 P. 736 (1916) (dictum); *Michigan Trust Co. v. Otero Irr. Dist.*, 76 Colo. 441, 232 P. 919 (1925) (dictum); *Deneen v. Deneen*, 293 Ill. 454, 127 N.E. 700 (1920);

be avoided, however, by use of the fiction that existing statutes are incorporated into contracts, including any statute which allows absorption of all or part of a district without protections for those contracting with the district. This fiction permits the court to say that the statute's operation does not impair the obligations of such contracts.⁸¹ The "obligations of contracts" clause is also circumvented by holding that impairment of contracting parties' rights must be "substantial" before the statute or its application is unconstitutional.⁸²

Some statutes require the annexing municipality to assume the indebtedness of the district. However, a constitutional limit on municipal indebtedness may impair such a statute's operation or render it totally unconstitutional if assumption of these debts would cause the municipality to exceed this limit.⁸³ The danger of exceeding such municipal debt limits can be avoided if the indebtedness is not assumed by the municipality but is paid by the district instead. Under this plan, the district continues to levy and collect taxes in the annexed area, though it has no other authority there, and applies the proceeds to payment of the indebtedness. Since both the district and municipality tax the annexed area under this arrangement, it may run afoul of other state constitutional provisions. There may be a constitutional requirement that taxes be "uniform," or the constitution may prescribe maximum property tax rates. The objection that the plan violates the "uniformity" requirement is consistently held to be without merit on the grounds that this requirement is satisfied if tax rates are set uniformly throughout the district and throughout the municipality. The accumula-

Board of Educ. of City of Lincoln Park v. Board of Educ. of City of Detroit, 245 Mich. 411, 222 N.W. 763 (1929). *But see* People *ex rel.* Raymond Community High School Dist. No. 158 v. Bartlett, 304 Ill. 283, 136 N.E. 654 (1922) (by implication); 2 E. McQUILLIN, MUNICIPAL CORPORATIONS § 7.47 (3d rev. ed. 1966).

81. F. SENGSTOCK, *supra* note 80, at 80; *see* City of Inglewood v. Los Angeles County, 207 Cal. 697, 280 P. 360 (1929); Bossert v. Granary Creek Union Drainage Dist. No. 1, 307 Ill. 425, 138 N.E. 726 (1923); Scheve v. Glenn, 302 Ill. 462, 134 N.E. 809 (1922); Calcasieu Sanitation Serv. v. City of Lake Charles, 118 So. 2d 179 (La. Ct. App. 1960); *cf.* Hustead v. Village of Phillips, 131 Neb. 303, 267 N.W. 919 (1936).

82. *See* School Dist. No. 1 v. City of Lansing, 331 Mich. 523, 50 N.W.2d 150 (1951) (alternative holding); Sechrest v. Public Water Supply Dist. No. 2, 331 S.W.2d 679 (Mo. Ct. App. 1960) (by implication); 2 E. McQUILLIN, *supra* note 80, § 4.18; F. SENGSTOCK, *supra* note 80, at 80; *cf.* Brewis v. City of Duluth, 13 F. 334 (C.C.D. Minn. 1882); Jacksonville Port Auth. v. State, 161 So. 2d 825 (Fla. 1964); Metcalf v. State *ex rel.* City of Findlay, 49 Ohio St. 586, 31 N.E. 1076 (1892) (by implication).

83. *See* IND. ANN. STAT. § 28-3368 (Supp. 1966); Sanitation Dist. No. 1 v. City of Louisville, 308 Ky. 368, 213 S.W.2d 995 (1948) (dictum). *But see* Wheeler v. City of Brownsville, 148 Tex. 61, 220 S.W.2d 457 (1949); 15 E. McQUILLIN, *supra* note 80, §§ 40.05, 41.43; *cf.* People *ex rel.* Downey v. Downey County Water Dist., 202 Cal. App. 2d 786, 21 Cal. Rptr. 370 (1962).

tion of two tax levies in the annexed area is not a violation of "uniformity" so long as both the district and the municipality tax this area at the same rate as they tax the rest of their respective areas.⁸⁴ It has also been held that this does not constitute "double taxation" of the annexed area, in violation of some state constitutional provisions.⁸⁵ However, the objection that this plan violates constitutional property tax rate limits has been upheld. This means that the plan cannot be used if it would result in taxing property in the annexed area at a total rate which is in excess of such limit.⁸⁶

B. *Methods of Adjustment*

1. *Total Annexation*

No important problems arise when an entire district is annexed and the effect is simply to merge the district into the municipality. The rule is uniform at common law⁸⁷ and under the statutes:⁸⁸ the municipality as-

84. *St. Louis County Library Dist. v. Hopkins*, 375 S.W.2d 71 (Mo. 1964); *Kuhlmann v. Drainage Dist. No. 12*, 51 S.W.2d 784 (Tex. Civ. App. 1932); see 1 T. COOLEY, *TAXATION* § 311 (4th ed. 1924); M. POCK, *INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS* 78 (1962). *But cf.* *Kocsis v. Chicago Park Dist.*, 362 Ill. 24, 198 N.E. 847 (1935).

85. *Kuhlmann v. Drainage Dist.*, 51 S.W.2d 784 (Tex. Civ. App. 1932).

86. See *State ex rel. Board of Educ. of Columbus v. Dunn*, 82 Ohio L. Abs. 102, 165 N.E.2d 247 (C.P. Franklin County 1958); *City of Monessen v. Rostraver Township School Dist.*, 12 Pa. D. & C.2d 364, 39 West. L.J. 251 (Pa. C.P. 1957); M. Pock, *supra* note 84, at 73-75. In Michigan, where the voters can change the constitutional tax rate ceilings, the annexing municipality may condition the effectiveness of its annexation of school district territory for school purposes and the assumption of indebtedness of the district on the voters' approval of an increase in the rate ceiling sufficient to allow the municipality to levy taxes needed to pay the indebtedness assumed. See MICH. STAT. ANN. §§ 15.3433, .3437 (1959).

87. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alas.), *appeal dismissed*, 371 U.S. 5 (1962); *In re Sanitary Bd. of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368 (1910); *People ex rel. City of Downey v. Downey County Water Dist.*, 220 Cal. App. 2d 539, 33 Cal. Rptr. 842 (1963); *People ex rel. City of Downey v. Downey County Water Dist.*, 202 Cal. App. 2d 786, 21 Cal. Rptr. 370 (1962); *Thompson v. Abbott*, 61 Mo. 176 (1875); *City of Roanoke v. Fisher*, 193 Va. 651, 70 S.E.2d 274 (1952); F. SENGSTOCK, *supra* note 80, at 84-85; *cf.* *City of Escalon v. Escalon Sanitary Dist.*, 179 Cal. App. 2d 475, 3 Cal. Rptr. 889 (1960); *Bell v. City of New York*, 46 App. Div. 195, 61 N.Y.S. 709 (1899). The second (1963) *Downey* case and the *Escalon* case illustrate the court's exercise of alleged "inherent power" to supervise the adjustment of liabilities and disposition of assets. However, most courts appear not to recognize such "inherent power"; see note 102 *infra* and accompanying text.

88. *E.g.*, ILL. ANN. STAT. ch. 24, § 7-1-18 (Smith-Hurd 1962); ORE. REV. STAT. § 222.510 (1967); TEX. REV. CIV. STAT. art. 974e-8(1) (1963); UTAH CODE ANN. § 53-4-10 (1960); WIS. STAT. ANN. § 60.031(1)(a) (1957); WYO. STAT. ANN. § 35-155 (1959); *cf.* IDAHO CODE ANN. § 40-2011 (1961).

sumes all liabilities, including bonded indebtedness, of the district and is entitled to all its assets. The municipality may not, however, be able to exercise the district's power to levy special assessments to discharge the indebtedness assumed unless there is a statutory grant of such authority.⁸⁹

2. *Partial Annexation.*

In the absence of statute, the annexing municipality, of course, neither acquires title to any property of the district⁹⁰ nor assumes any share of its indebtedness⁹¹ if the municipality does not displace the district's authority. When the district's authority is displaced, the common law rules appear to be as follows:⁹² none of the district's indebtedness is assumed by the municipality,⁹³ nor does the district's personalty vest in the municipality,⁹⁴ there is a division of authority as to whether title to the district's realty that lies in the annexed area vests in the municipality.⁹⁵ The different result reached by some courts respecting personalty as opposed to realty may be based on

89. *See* *City of Roanoke v. Fisher*, 193 Va. 651, 70 S.E.2d 274 (1952). The court held that the municipality must raise revenue to retire the bonds through its general taxes. WIS. STAT. ANN. § 60.31(1)(c) (1957) expressly grants the annexing city power to continue to collect special assessments levied by an annexed sanitary district, requiring that the funds be used for the purpose for which the assessment was levied.

90. *See* *City of El Cajon v. Heath*, 86 Cal. App. 2d 530, 196 P.2d 81 (1948); *State ex rel. East Lenoir Sanitary Dist. v. City of Lenoir*, 249 N.C. 96, 105 S.E.2d 411 (1958).

91. *See* *Sanitation Dist. No. 1 v. Louisville & Jefferson County Met. Sewer Dist.*, 307 Ky. 422, 208 S.W.2d 751 (1948); *cf. Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961).

92. *See* F. SENGSTOCK, *supra* note 80, at 85-88.

93. *See* *Commissioners of Laramie County v. Commissioners of Albany County*, 92 U.S. 307 (1875) (dictum); *Blount v. MacDonald*, 18 Ariz. 1, 155 P. 736 (1916); *Board of School Comm'rs v. Center Township*, 143 Ind. 391, 42 N.E. 808 (1896); *City of Winona v. School Dist. No. 82*, 40 Minn. 13, 41 N.W. 539 (1889); 2 E. McQUILLIN, *supra* note 80, § 7.47; *cf. Brewis v. City of Duluth*, 13 F. 334 (C.C.D. Minn. 1882). *But see* *City of Pelly v. Harris County Water Control & Imp. Dist. No. 7*, 145 Tex. 443, 198 S.W.2d 450 (1946).

94. *See* *Board of Educ. of Fulton County v. Board of Educ. of College Park*, 146 Ga. 776, 95 S.E. 684 (1918) (dictum); *School Dist. of City of Saginaw v. School Dist. No. 6*, 231 Mich. 664, 204 N.W. 737 (1925).

95. *See* *Vernon School Dist. v. Board of Educ.*, 125 Cal. 593, 58 P. 175 (1899); *School Dist. of City of Saginaw v. School Dist. No. 6*, 231 Mich. 664, 204 N.W. 737 (1925) (dictum); *cf. Board of Educ. of Fulton County v. Board of Educ. of College Park*, 146 Ga. 776, 95 S.E. 684 (1918). *But see* *Reckert v. City of Peru*, 60 Ind. 473 (1878); *Heizer v. Yohn*, 37 Ind. 415 (1871); *Board of Educ. of City of Kansas City v. School Dist. No. 7*, 45 Kan. 560, 26 P. 13 (1891); *City of Winona v. School Dist. No. 82*, 40 Minn. 13, 41 N.W. 539 (1889); *cf. Pass School Dist. v. Hollywood City School Dist.*, 156 Cal. 416, 105 P. 122 (1909); *Board of Educ. v. Board of Educ.*, 41 Ohio St. 680 (1885).

the theory that personalty has no situs in the annexed area, while realty does.⁹⁶ If so, this exposes the inadequate, technical basis of such simplistic, mechanical rules. They do not take account of vital questions: Which body can most efficiently utilize the property to serve the most people? How will loss of the property affect the district's ability to serve its remaining territory? Should the body which controls the property also pay indebtedness allocable to it or should indebtedness be divided according to the proportion of the district's tax base taken over by the municipality? Many other questions may arise, and the answers must vary depending upon the size, powers, administrative and fiscal structures of the municipality and district involved, and upon local peculiarities in the distribution of population or terrain features (in the case of flood control, irrigation, sewer and other similar districts). These are factors which should be taken into account by legislatures in drafting statutory provisions to govern division of assets and adjustment of indebtedness. Unfortunately, however, few statutes deal adequately with these problems.⁹⁷ Most adopt simple formulae or delegate authority to the bodies concerned or to some superior tribunal to work out an adjustment, without detailed instructions.

a. adjustment prescribed by formula. Some statutes simply declare a definite formula for allocating assets and liabilities between the municipality and district. Thus, the municipality may be required to assume a part of the district's indebtedness which bears the same ratio to the district's total indebtedness as the assessed valuation of taxable property in the annexed part of the district bears to the total assessed valuation of all taxable property in the district.⁹⁸ A Wyoming statute declares simply that the municipality shall assume the obligations and acquire the property of the district, without specifying any ratio for apportionment.⁹⁹ This may mean that the municipality acquires all the district's property, or may be designed to allow the court to exercise discretion in making an equitable apportionment. A Missouri statute¹⁰⁰ assigns the district's assets to the body in whose territory they are physically located after annexation: the municipality is entitled to district property located in the annexed portion of the district.

96. *See* Board of Educ. of Fulton County v. Board of Educ. of College Park, 146 Ga. 776, 95 S.E. 684 (1918).

97. F. SENGSTOCK, *supra* note 80, at 89.

98. IND. ANN. STAT. § 28-3367 (Supp. 1966); MISS. CODE ANN. § 6411-07 (Supp. 1966); MO. REV. STAT. § 247.170.1(6) (1959); N.Y. GEN. MUNIC. LAW § 715(4) (McKinney 1965); ORE. REV. STAT. § 222.520(2)(b) (1967) (bonded indebtedness); TEX. REV. CIV. STAT. art. 2805 (1965) (bonded indebtedness); F. SENGSTOCK, *supra* note 80, at 104; *see* Board of Educ. v. Ellinger, 244 Mich. 28, 211 N.W. 296 (1928).

99. WYO. STAT. ANN. § 35-155 (1957).

100. MO. REV. STAT. § 247.170.1(7) (1959).

b. adjustment by arbitral tribunal. Some statutes expressly provide for court or administrative adjudication to make the division of assets and liabilities, usually without prescribing any ratio as a guide.¹⁰¹ The courts usually hold that they have no power to make such an adjudication in the absence of an express statutory grant.¹⁰²

c. adjustment by agreement. A frequently used provision requires that the district and municipality divide up the assets and liabilities of the district by agreement.¹⁰³ These statutes usually specify the basis of division as being the assessed valuation ratio mentioned above, and provide for court or administrative adjudication if agreement cannot be reached. Some statutes expressly provide that the division of assets may or shall take the form of a sale or lease by the district to the municipality, and require that the municipality, notwithstanding payment of the purchase price or rental, also assume a portion of the district's liabilities.¹⁰⁴

d. eminent domain. A relatively rare method of adjustment is to allow the annexing municipality to acquire by eminent domain any of the district's property located within the annexed area.¹⁰⁵ The condemnation award would, presumably, allow the district to pay any indebtedness outstanding on account of the property¹⁰⁶ and would serve as reimbursement to the district for loss of its investment.¹⁰⁷

101. ALASKA STAT. § 42.35.370(b) (1962); OHIO REV. CODE ANN. § 3311.06 (Page 1960); S.D. CODE § 15.2022 (Supp. 1960); UTAH CODE ANN. § 53-4-11 (Supp. 1967); VA. CODE ANN. § 15.1-1042(b) (1964). The express statutory provisions are made for court or administrative adjudication as an alternative to some other method of adjustment. See KAN. GEN. STAT. ANN. § 72-5316e (1964); NEB. REV. STAT. § 31-766(2) (1960).

102. F. SENSTOCK, *supra* note 80, at 88. *But see* Washington Heights Indep. School Dist. v. City of Fort Worth, 251 S.W. 341 (Tex. Civ. App. 1923).

103. ILL. ANN. STAT. ch. 24, §§ 7-1-31, -33 (Smith-Hurd 1962), 7-1-32 (Smith-Hurd Supp. 1967); KAN. GEN. STAT. ANN. §§ 72-1725(g), -5316(d) (1964); NEB. REV. STAT. § 31-766 (1960); ORE. REV. STAT. § 222.530(1) (1967); TENN. CODE ANN. § 6-318 (Supp. 1967); TEX. REV. CIV. STAT. arts. 1182c-1(2),-5 (1963), 2804 (1965); WIS. STAT. ANN. §§ 60.031(2)(b) (1957), 66.03(2)(a),(5) (1965); F. SENSTOCK, *supra* note 80, at 106-07.

Even if there is no express statutory provision, such agreements may be upheld. See Fuller v. Board of Educ. of City of Peoria, 83 Ill. App. 2d 147, 227 N.E.2d 553 (1967).

104. KAN. GEN. STAT. ANN. § 19-2786e(1) (1964); MO. REV. STAT. § 247.160 (1959); N.Y. GEN. MUNIC. LAW §§ 709(2), 715(4) (McKinney 1965); WIS. STAT. ANN. §§ 66.03(2)(a),(3)(b) (1965).

105. See S.D. CODE § 45.0201(108) (Supp. 1960); City of Mesa v. Salt River Project Agric. Imp. and Power Dist., 92 Ariz. 91, 373 P.2d 722 (1962); Harris County Drainage Dist. No. 12 v. City of Houston, 35 S.W.2d 118 (Tex. 1931) (dictum).

106. Louisville & Jefferson County Met. Sewer Dist. v. Sanitation Dist. No. 1, 353 S.W.2d 196 (Ky. 1961).

107. See also notes 117-119 *infra* and accompanying text.

e. critique on methods of dividing assets. This last method is clearly inadequate, as is that under which property is assigned to the district or municipality solely on the basis of its location inside or outside of the annexed territory. Less objectionable, because more flexible, are the agreement and adjudication methods. The inadequacy is that these statutes fail to consider the use of the property. Especially with respect to real estate, sewer lines, and similar permanent fixtures, ownership or control should be awarded to the body in whose jurisdiction most of the patrons who use such facilities reside,¹⁰⁸ and there should be adequate guarantees that those who had the use of these facilities before the annexation shall have the right to continue using them afterwards.¹⁰⁹ Alternatively, control should be given to the body which can administer the facilities most economically for the greatest benefit of the most people, with the same right of continued use by those who were using the facilities before annexation. A statute under which ownership and control is determined solely by physical location of the facilities can prevent the assignment of facilities according to most efficient use, and there is no guarantee that the assignment will be made on this basis under the other methods. Efficient use may not always be the most valid standard for making a division of assets. The wide variety of purposes, administrative structures, and activities of districts makes it impossible to state flatly that one single objective will always have primary importance. But the problem is that the existing statutes make only sporadic *ad hoc* attempts to take possible objectives into consideration.

The statutes, similarly, fail to deal with numerous other problems, many of which are, indeed, created by their own inexplicit drafting.¹¹⁰ For example, are assessed but uncollected taxes, or rights to receive state funds, subject to division between the district and municipality under these statutes?¹¹¹ Only a few statutes deal with the problem of whether district funds which are earmarked for a special purpose, such as construction of facilities, are subject to division between district and municipality.¹¹²

108. Wisconsin has such provisions. WIS. STAT. ANN. §§ 66.03(4) (1965), 60.031(2)(c) (1957).

109. See ORE. REV. STAT. § 222.550 (1965) (by implication). *Blanton v. City of Houston*, 350 S.W.2d 947 (Tex. Civ. App. 1961) applies the same principle to the use of proceeds of a district bond issue. MISS. CODE ANN. § 6411-06 (Supp. 1966) provides that if the annexing municipality takes over a school district's school buildings, it must annex the entire district upon petition of a majority of unannexed school district voters.

110. See generally F. SENGSTOCK, *supra* note 80, at 98-101.

111. See *School Dist. of City of Saginaw v. School Dist. No. 6*, 231 Mich. 664, 204 N.W. 737 (1925) (right to state funds not subject to statute).

112. See CAL. STS. & H'WAYS CODE § 5853 (Deering 1965); KAN. GEN. STAT. ANN.

f. *special provisions respecting adjustment of indebtedness.* It appears that legislatures have taken more care to anticipate the fiscal problems arising out of the adjustment of liabilities between district and municipality. A few of the special provisions made to solve these problems will be reviewed here.

Under the first three methods for adjusting assets and liabilities, special provisions are often made to govern the manner in which indebtedness of the district is to be retired. In addition, there are often special provisions prescribing how money is to be raised to make payments which are required as part of the division of assets. The municipality is usually required to assume a portion of the district's bonded indebtedness.¹¹³ An alternative arrangement for discharging such indebtedness is to allow the district to continue collecting taxes or assessments from residents of the annexed area until that area's proportionate share of the indebtedness has been paid.¹¹⁴ The statute may, however, provide that the *municipality* shall collect these taxes or assessments and apply them directly to discharging the debt.¹¹⁵ Some statutes prescribe how the municipality is to make payments to retire bonded indebtedness that it has assumed.¹¹⁶ Several provide for making a special assessment to discharge the district's liabilities or to make the payments required as part of the adjustment of assets.¹¹⁷ Others impose a lien for payment of indebtedness assumed by the municipality on

§ 72-5316(b) (1964). These provisions can avoid problems such as that raised in *Board of Educ. of City of Grand Rapids v. Ellinger*, 244 Mich. 28, 221 N.W. 296 (1928). There the annexing municipality claimed a portion of the district's bond issue funds, although these were earmarked for paying the cost of constructing a new school for which the contract had already been let. *See also* *People ex rel. Welch v. Dunn*, 168 App. Div. 678, 154 N.Y.S. 346, *aff'd*, 21 N.Y. 688, 112 N.E. 1071 (1916).

113. MISS. CODE ANN. § 6411-07 (Supp. 1966); ORE. REV. STAT. § 222.520(2) (b) (1967); TEX. REV. CIV. STAT. art. 2805 (1965).

114. *See* COLO. REV. STAT. ANN. § 89-6-23 (1963); ILL. ANN. STAT. ch. 121, § 356(c) (Smith-Hurd 1960); KAN. GEN. STAT. ANN. §§ 19-2715(c), 80-2022 (1964); MICH. STAT. ANN. § 15.3461 (Supp. 1968); ORE. REV. STAT. § 222.520(2) (1967); TEX. REV. CIV. STAT. art. 7930-3(10) (1954); WASH. REV. CODE ANN. § 35.13.243(2)(c) (1965). *But see* TEX. REV. CIV. STAT. art. 2803 (1965); *People ex rel. Raymond Community High School Dist. No. 158 v. Bartlett*, 304 Ill. 283, 136 N.E. 654 (1922).

Constitutional problems raised by this method have been discussed above. *See* notes 84-86 *supra* and accompanying text.

115. IND. ANN. STAT. § 28-3366 (Supp. 1966); TEX. REV. CIV. STAT. arts. 1182a(3), 1182c-1(3), -5(3) (1963).

116. *See* MISS. CODE ANN. § 6411-07 (Supp. 1966); N.Y. GEN. MUNIC. LAW § 709(2) (McKinney 1965); ORE. REV. STAT. § 222.520 (1967), all requiring the municipality to make yearly payments of installments.

117. S.D. CODE ANN. § 15.2022 (Supp. 1960); UTAH CODE ANN. § 53-4-11 (Supp. 1967).

the facilities acquired from the district,¹¹⁸ or require special reimbursement for such facilities to be paid to the district.¹¹⁹

CONCLUSION

Considering the variety and complexity of statutory arrangements, the need for legislation that comprehensively and systematically works out the consequences of municipal annexations of special district territory becomes evident. The present statutes are characteristically scattered throughout statute books under titles governing municipal annexation or the formation, functioning and alteration of districts. This indicates that many were enacted *ad hoc* in an attempt to solve particular local problems as they arose.¹²⁰ Moreover, states which have special districts and also have provisions for municipal annexations often have no statutes at all particularly dealing with annexation of district territory. Others have statutes applicable to a few, but not all, of the several kinds of districts which exist in the state.

118. See WASH. REV. CODE ANN. § 35.13.249 (1965).

119. See WASH. REV. CODE ANN. § 35.13.243(b) (1965); authorities cited note 104 *supra*. In the absence of such provision, the courts are likely to hold that no compensation need be paid. See *State v. Schriener*, 151 Wis. 162, 138 N.W. 633 (1912); authorities cited note 102 *supra*.

Professor Sengstock maintains that the annexing municipality should be required to pay only a proportion of the value of such facilities equal to the proportion of the district's unannexed territory, population, or property tax base. This is based upon the right of the inhabitants of the annexed territory to have their investment in the facilities (the portion of their worth not paid for by the municipality) inure to the benefit of the municipality, which will use them for the benefit of these inhabitants. F. SENGSTOCK, *supra* note 80, at 94-95; *cf.* *School Bd. of Alleghany County v. School Bd. of City of Covington*, 197 Va. 845, 91 S.E.2d 654 (1956).

120. California, Nebraska, Oregon and Washington, however, have combined and introduced considerable uniformity and system into the district annexation statutes applicable to several kinds of districts. See CAL. GOV'T CODE §§ 56402, 56410-21 (Deering Supp. 1967); NEB. REV. STAT. §§ 31-763 to -765 (1960); ORE. REV. STAT. §§ 222.510—530 (1967); WASH. REV. CODE ANN. §§ 35.13.220—250 (1965).

An Idaho statute illustrates a rather simple, yet comprehensive plan which solves many of the problems discussed in this note:

When the annexed area, or any part thereof, is situated in any district organized under the laws of this state and supported in whole or part by taxes levied upon the annexed territory or any part thereof, and said district provides the same or similar services as that provided by the annexing city to its residents, the annexed area, shall upon the filing of the certified copy of [the annexation] ordinance be relieved of all liability for levies, taxes and assessments made by said district after the calendar year in which said annexation occurred.

The filing of the certified copy of said ordinance shall constitute a withdrawal of said annexed territory from the district offering the same or similar services to the annexed territory as the annexing city. . . . IDAHO CODE § 50-305 (Supp. 1965).

Many of the statutes are quite new, a fact which indicates that the need for legislative solution of the problems of district annexation is becoming more urgent as municipal boundaries are adjusted to meet the needs of rapidly developing urban areas.