

William and Mary Review of Virginia Law

Volume 1 (1948)
Issue 1

Article 4

December 1948

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Repository Citation

Donald H. Sandie, *Annexation - The Requirement that it Must be "Necessary and Expedient" (Norfolk v. Portsmouth, 1947)*, 01 Wm. & Mary Rev. Va. L. 30 (1948), <https://scholarship.law.wm.edu/wmrval/vol01/iss1/4>

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ANNEXATION -
THE REQUIREMENT THAT IT MUST BE "NECESSARY AND EXPEDIENT"

Two areas of Norfolk County were ordered by the Circuit Court of Norfolk County to be annexed to the City of Portsmouth. (1) One of these areas was residential, the other industrial. The main question raised by the assignments of error was whether the Circuit Court erred in its conclusion that the proposed annexation was necessary and expedient.

The Constitution of Virginia makes it mandatory upon the General Assembly to provide by general laws for extension and contraction of the corporate limits of cities and towns. (2) Thus, section 2958 of the 1942 Code provides that, before it can enter an order for such annexation, the majority of the court must be satisfied of its necessity and expediency.

What constitutes "necessity and expediency?" It has, heretofore, been held that the policy of annexation of territory by a city, as a public necessity, was determined by the legislature when it enacted the above-mentioned statute. (3) Furthermore, it has been held that in determining the necessity and expediency of annexation the following things should be considered: the community of interests between the residents of the city and the residents of the territory proposed to be annexed; (4) the fact that their commercial, civil, and social interests are identical is of importance; (5) the health of the community, its size, its crowded condition, its past growth, and the need in the reasonably near future for development and expansion; (6) lack of desirable residential sites in the city; better city equipment for furnishing pure water, sewage facilities, facilities for garbage disposal, and road and street lights; better police and fire protection, and better city park and recreational facilities; (7) and that the persons residing in the territory to be annexed have the advantage of a city government, and should therefore bear a portion of the city expenses. (8)

In the instant case, the court states that annexation is necessary to prevent the complete obstruction of growth of Portsmouth. It is said that to hold otherwise would be to go against the policy of the state, viz. "the policy of placing urban areas under city government and keeping rural areas under county government."

Is that a proper test of "necessity" within the meaning of the statute? The truth of that contention can be refuted by pointing to such cities as New York and Chicago, where the cities occupy the whole of counties, but the counties remain as governmental units. Such divided governments do exist and apparently in a very workable manner. The policy which the court attributes to the State seems only to serve warning to counties that they should stifle any shift of population into their territory adjacent to cities unless it is strictly for agrarain purposes. If they allow such areas to become thickly populated they are forwarned that the inevitable consequence is immediate annexation to the city if these areas have become "urban" in the eyes of the court.

As to whether the annexation was "expedient" within the meaning of the statute, the court said the test was whether "it is advantegeous and in furtherance of the afóresaid policy of the State." That test was said to be fulfilled when the court found the city financially able to under-

take the proposed annexation. The county pointed out that Craddock, a residential suburb also adjacent to the city, was not included in the cities request for annexation. It found that the city was not financially able to undertake the annexation of this suburb, and therefore its annexation would not have been expedient. If it is the policy of the State that urban areas should be under urban government and rural areas under county government, it would seem that such residential areas should be annexed, regardless of whether the city is financially able to undertake it or not. Such, however, does not seem to be the interpretation put upon that policy of the State. A city can apparently, therefore, wait until a residential area is built up adjacent to its boundary, and upon feeling financially able to undertake annexation merely request the court so to do, and the "expediency" requirement would be fulfilled.

It is interesting to note that the constitutionality of Virginia annexation laws is no longer questioned. In the absence of any constitutional limitations, it appears well settled that when the annexation proceedings are turned over to the courts there has been constitutional delegation of powers. (9) Nor is the consent of the inhabitants of the territory sought to be annexed a necessary condition precedent to annexation. In fact, annexation may result even in the face of the express protest of the inhabitants of the territory annexed. (10)

This decision was in direct conflict with the wishes of the residents and property owners of the areas annexed. Virginia annexation laws, the court states, are unique in that the people of the annexed areas have no voice in the proceeding and although opposition is not surprising, it has never been a ground for denying annexation if the requisite conditions exist. This indifference on the part of the court seems unjust. Any early holding by a Circuit Court that "in annexation proceedings by a city to annex adjoining territory the wishes of the territory sought to be annexed should be largely considered and given due weight" is certainly fairer to all parties concerned. (11)

The opinion of Associate Justice Abram P. Staples in this case climaxed the post-war annexation controversy in Virginia, and strengthened and expanded the ability of Virginia cities to annex adjacent county property. It resulted in an unsuccessful attempt by the recent General Assembly to pass an annexation law to restrict the ease with which the cities, heretofore, have annexed county property. Counties contend that they suffer great loss in annexation through reduction of their area and taxable values, a contention certainly not without merit. Even if it is admitted that the State policy is to favor annexation, a liberal interpretation of the annexation statutes in favor of the cities has swept away most arguments of the counties in opposition thereto. The present trend would seem to give the counties scarcely more voice in the annexation proceedings than that possessed by the peoples of the areas sought to be annexed.

- (1) Norfolk v. Portsmouth, 45 S.E. 2d 136 (Va. 1947)
- (2) Va. Const. Art. III, #126.
- (3) Henrico v. Richmond, 106 Va. 282, 299, 55 S.E. 683, 117 Am St. Rep. 1001 (1906)

- (4) Henrico v. Richmond, 177 Va. 754, 783, 15 S. E. 2d 309 (1941)
- (5) Ibid
- (6) Alexandria v. Alexandria, 117 Va. 230, 236, 84 S.E. 63, 1 Va.L. Reg. (N.S.) 198 (1915)
- (7) Henrico v. Richmond, 177 Va. 754, 784, 15 S.E. 2d 309 (1941)
- (8) Norfolk v. Portsmouth, 124 Va. 639, 653, 98 S.E. 755 (1919)
- (9) Henrico v. Richmond, 106 Va. 282, 55 S.E. 683, 117 Am St. Rep. 1001 (1906).
- (10) Strasburg v. Chandler, 124 Va. 91, 101, 92 S.E. 313 (1918)
- (11) Richmond v. Henrico and Chesterfield, 20 Va. Law Reg. 268 (Circuit Court of Henrico County 1914).