

ANNEXATION GUIDELINES FOR THE
KANSAS MUNICIPALITY

by

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B.A., Fort Hays Kansas State College, 1970

A NON-THESIS REPORT

submitted in partial fulfillment of the
requirements for the degree

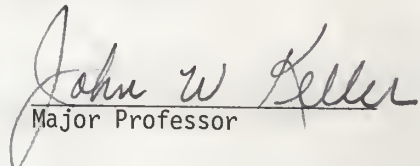
MASTER OF REGIONAL AND COMMUNITY PLANNING

Department of Regional and Community Planning

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1974

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CHAPTER 1

INTRODUCTION

County government was conceived to provide state-directed administrative functions to rural, lightly populated areas, and its form has basically remained unchanged. County government was certainly not designed to deal with urban type problems. One result, among many others, is that existing municipalities have been faced with the task of providing public services to developing areas adjacent to their corporate boundaries. Municipalities have resorted to annexation in order to gain the requisite jurisdiction over fringe areas. Annexation is "a process, legally defined in state statutes or city charters, by which a city extends its corporate limits."¹ The Florida Planning and Zoning Association has viewed annexation in the following manner:

annexation is a means for fitting the city line to the area that has become the city or is becoming the city, or that somebody thinks should or might become the city, or that needs to be controlled in order to protect the city.²

Annexation is only one method of achieving proper development, but it is among the most important. Annexation must not be viewed as an isolated problem, but from the standpoint of area-wide development. As a planning implementation tool, it is important that annexation be used rationally, and that the primary motive for annexation be the orderly development of the urban area. This tool should not be used for "land-grabbing" actions.

The growth of fringe areas often presents serious problems to a municipality. The most common problems associated with fringe development, and which affect the entire area are:

the over-subdivision of land; scattering of subdivision developments, which complicate and often makes prohibitive the extension of utilities; the misuse of land, such as pre-empting for residential purposes land best suited for industrial or agricultural uses, and the development of land which should be left in its natural state.³

Part of the urban fringe problem may be attributed to the municipality itself. "Too many cities see their own corporate boundaries as the limit of their interests . . ."⁴ The responsibility rests with the municipality to provide the requisite administrative control over urban development.

If a municipality desires to establish high standards in areas such as planning, public health, and construction requirements, what is transpiring in the immediate enclaves surrounding the community will affect and sometimes be determinative of the success of the municipality's goals. Lack of coordination may hamper planning policies. Improper sewage disposal in the fringe area may contaminate a municipality's water supply. Lack of proper construction ordinances may lead to sub-standard building. These problems will only multiply with the passage of time.

If any one conclusion can be put down, certainly it is this: the longer a fringe area is permitted to exist, the more difficult it is to handle.⁵

A Virginia court noted in Henrico County v. City of Richmond, 177 Va 754, 15 SE2d 309:

Moreover, it is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county

resident may be willing to take a chance on police, fire and health protection, and even tolerate the inadequacy of sewage, water and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that he needs the city government, as it is that the area in which he lives needs it.⁶

It is in this context, then, that annexation must be considered.

Arguments for and Against Annexation

The arguments for and against annexation must be looked at from the standpoint of both the municipality and the fringe area. The municipal corporation may view annexation as a means by which planning can be realistically achieved. By means of annexation,

a city's zoning and building ordinances can be extended to the adjacent area in a logical manner, thus helping to ensure orderly future growth. When the interrelationships between the city and the neighboring community are close, there is need for unified planning and zoning. Coordinated action is much easier to achieve if the fringe community becomes a part of the city.⁷

Furthermore, it has been stated:

if the outlying areas receive nothing more than proper planning, the inhabitants would get more than their money's worth.⁸

Upon annexation, the newly added territory may receive increased police and fire protection. Other benefits related to the provision of services may also be realized.

After annexation the new territory will obtain its necessary services from city departments which are 'going concerns.' There will be no need to organize a new city government or to maintain separate district agencies. The annexing city can simply extend its services to the new area. Costly duplication of facilities can thus be avoided.⁹

The city is the logical provider of municipal services.

The county government is often ill-prepared by structure and legal authority to provide such services. While the services

may be provided through other means, there is no doubt that they may be provided at lower costs by the city than in any other way.¹⁰

An urban area must develop as a unit. Its parts are socially, economically, and politically interrelated. Annexation is a tool for building integrated and unified governments, and,

. . . if used effectively it can help prevent the dispersion of local governmental authority . . .¹¹

Many actions of the municipality will in one way or another, affect the fringe dweller. Annexation gives the fringe dweller a voice in city government.

Annexation also provides a method by which a municipality's legal authority may be extended in accordance with the physical development of the area.

Several of the arguments against annexation are economically oriented. A municipality may not desire to expand corporate boundaries because servicing the added territory may cause a drain on the city treasury. The following arguments are often presented:

City services may be in demand while the ability to pay for them may not be sufficient to obviate the new financial burden for the city.

In order to develop new territory, the core city may be neglected if available financial resources are not adequate to provide a high level of services for the core city while building up the fringe.

The tax advantage that the fringe may be temporarily enjoying is the most cogent inducement to remaining outside corporate limits.¹²

Annexation may be deemed unnecessary if the needs of the fringe area are limited. Annexation may be unwise if the territory sought to be annexed is not physically, socially or economically related to the annexing municipality.

All Kansas municipalities may annex land under the provisions of K.S.A. 1973 Supp. 12-519 et seq, as amended by House Bill No. 1623 (Chapter 56, Session Laws of 1974), which became effective March 28, 1974. This act repealed all other annexation laws.

Briefly, House Bill No. 1623 provides three basic methods of annexation: (1) unilateral; (2) city petition to the board of county commissioners; and (3) land owner petition or consent. Unilateral annexation by a city is allowed if the territory to be annexed meets any one of the conditions (a) through (f) in Supp. 12-520. The city must adopt an annexation resolution, have it published in the official newspaper, provide for a public hearing, and prepare a service extension plan.

If the land cannot be annexed under 12-520, the city may petition the board of county commissioners which conducts a public hearing on the matter. If the board finds that annexation will not cause manifest injury to any of the affected property owners, it may approve the city petition.

A land owner may petition the city for annexation if: (1) the land adjoins the city; or (2) the land is noncontiguous but within the same county.

A copy of House Bill No. 1623 may be found in Appendix A. The mechanics of annexation will not be discussed in this report. For a more complete discussion of the present annexation methods, consult the League of Kansas Municipalities publication, Annexation: A Manual for City Officials in Kansas, May, 1974.

There has been a considerable amount of annexation activity in Kansas. During a ten year period from 1963-1972, approximately 200,000

acres of land were annexed by Kansas municipalities.¹³ A complete summary of annexation activity by Kansas municipalities may be found in Appendix B.

The purpose of this report is to aid municipalities in annexation decisions. Annexation decisions should not be based on emotion. A municipality should have a programmed annexation procedure. This report will discuss the legal basis of annexation, the zoning of newly annexed land, and municipal responsibility. Several cases will be presented as illustrations of problems and suggestions of possible guidelines. Finally, policy statements on annexation will be presented. The suggested policies are general in nature and should be reviewed and adapted to fit the factual situation which characterizes a particular municipality. The policies are directed toward municipalities of less than 50,000 population.

CHAPTER 2

THE LEGAL BASIS OF ANNEXATION

The legal basis of annexation should be understood before an extension of corporate boundaries is undertaken. The origin of the power of annexation is important as well as the right of a municipality to exercise it. The way in which courts view annexation should be considered, as well as remedies available to challenge this act. A municipal corporation may be defined as

a legal institution formed by charter from sovereign power, erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose, and with the authority, of subordinate self-government and improvement and local administration of affairs of state.¹

Special note should be made of this definition because, as will later be shown, courts view the extension of corporate boundaries as the incorporation of a new municipality.

Legislative Authority

Initially, a basic legal principle should be set forth: "municipal corporations are merely creatures of the legislature which has the exclusive power to create, modify or abolish such municipal corporations."² Former Attorney General of Kansas, Robert C. Londerholm, stated that the power to annex territory to municipal corporations

is exclusively a legislative power existing in the legislature as an incident to the power to create and abolish municipal

corporations at will. It is a power that neither the judicial nor the executive branches of government can exert.³

Traditionally, annexation has been viewed as "purely a political matter,"⁴ and as such, is a legislative function. It was determined in Callen v. Junction City that

the power to create and regulate municipal corporations, define, extend or limit their boundaries, and commit to them certain subjects for local regulation, is the exercise of a purely legislative authority.⁵

Furthermore, the court ruled in State ex rel. Fatzer v. Kansas City that

the creation of municipal corporations and the fixing or modification of their boundaries are legislative functions to be performed by the legislative branch of government.⁶

It has been determined that the legislature may change the boundaries of a municipal corporation at any time. However, the general practice is for the legislature to prescribe by statute the manner in which boundaries may be altered. The enactment of such statutes is regarded as "a discretionary legislative prerogative."⁷

Delegation of Legislative Power

Inseparable from a discussion of the legislative authority of annexation is the delegation of this power. Legislative power may be delegated in certain instances. The legislature may submit the determination of annexation to various local tribunals. In Kansas, the legislature has vested the authority to change municipal boundaries in the city governing body and the county commissioners. Statutes delegating such power have been upheld, basically because such laws merely define the conditions upon which annexation may take place. However,

discretionary power to determine whether or not territory should be annexed to a municipal corporation cannot be vested in the courts; the same power cannot be either legislative or

judicial . . . If the boundaries of municipal corporations can be altered and changed by the legislature, in its discretion, and the authorities are all that way, then it is impossible that the courts can be vested with such power. Courts may determine what are the corporate limits already established; they may determine whether what is claimed by the municipal authority to be the corporate limits is so or not, and they may inquire whether the legislative authority has exceeded the powers with which it is invested; but all this implies an existing law, applicable to the particular subject, and the inquiry is, what is the law, and has it been violated or complied with?⁸

Perhaps a review of Kansas law pertaining to annexation by municipalities of the second class will lend insight into the matter of the delegation of legislative authority. Up until 1885, the city council and mayor had the discretion to expand city boundaries and the power to review grievances of affected property owners.

Evidently deeming this to be unfair to property owners in some instances (to have the entire matter determined by the mayor and city council), the legislature, in 1885, attempted to give some of the power pertaining to annexation to the judge of the district court. The 1885 law provided that the city council present a petition for annexation to the district judge, and that the judge, if satisfied of the existence of certain conditions, made an order declaring such change. Almost immediately, the validity of this statute was questioned because of its attempt to confer legislative power upon the district judge. In 1886, this law was amended. The amended law required the judge to make findings as to the conditions, and left it to the city council to declare annexation, if the findings were favorable.

This law was directly challenged in Callen v. Junction City, 43 Kan 627, as being unconstitutional in attempting to delegate legislative power to the judiciary. However, the court held:

A general law is passed authorizing cities of the second class to extend their boundaries so as to include adjacent territory, on certain conditions, or depending on certain facts. The existence of these conditions, or of these facts, is made the subject of judicial inquiry and determination, and this is done to protect the property interests of the land-owners, and not to commit the whole control to a city council whose interests in the city might induce arbitrary action against the land-owner. In other words, the judge says in each case whether or not the conditions authorizing the absorption by the city exists as to this particular piece of land. The legislature can confer on the city council power to make a local regulation, and this necessarily involves discretion as to what it shall be; but the question as to whether that discretion has been exercised within the limitations of the power delegated is a judicial question pure and simple, and nothing else.⁹

This case was followed and held controlling in Huling v. City of Topeka, 44 Kan 577; Hurla v. Kansas City, 46 Kan 738; City of Winfield v. Lynn, 60 Kan 859; and Eskridge v. Emporia, 63 Kan 368.

The part of the opinion holding that court review of the discretion vested in the city as to the advisability of annexation is a judicial question, has been the subject of much criticism.

In City of Emporia v. Randolph, the dissenting opinion delivered by Mr. Justice Allen said:

I cannot conceive of an act more clearly and distinctively legislative in its character than that of determining what the political status of a district shall be.¹⁰

The decision reached in Callen v. Junction City was overturned in Hutchinson v. Leimbach. That case involved the validity of a statute for excluding territory from a city. It was held that

the expediency of a proposed change in the corporate limits of a municipal corporation was a legislative question and not a judicial one.¹¹

In 1904, the legislature changed the questionable statute, making the board of county commissioners, instead of the district judge, the

body to pass upon the advisability of extending the corporate limits of a city.

In Nash v. Glen Elder, 74 Kan 756, the validity of the county commissioners exercising this function was challenged, as well as the right for an aggrieved land owner to appeal to the district court. The court determined that the commissioners "do exercise a legislative power in determining that a change of corporate boundaries shall be made."¹² This was deemed a legitimate delegation of legislative power. Concerning the right of appeal to the district court, the court stated:

The county board in the exercise of its original jurisdiction has at least two questions to determine when a proper petition is presented: (1) Whether the proposed change can be made without manifest injury to the persons owning real estate in the territory sought to be added; (2) if so, whether the annexation shall be ordered. The first determination is judicial; the second legislative. The first may be made reviewable by a court, although the second cannot.¹³

In 1923, annexation statutes very similar to those of 1885 were passed by the legislature. The court's decision in Ruland v. Augusta, 120 Kan 42, reaffirmed the view that courts may not be delegated legislative authority. The court held:

The general question of the advisability of enlarging the territorial limits of a municipal corporation is a legislative question which under our constitution, cannot be delegated to the courts. R.S. 12-501, 12-502, in so far as they attempt to confer upon the district court, or judge thereof, authority to entertain a petition to increase the corporate limits of a city by adding unplatted territory thereto, to determine the advisability of the proposed territorial increase, and to make orders in relation thereto, are void, as an attempt to confer legislative functions upon the judiciary.¹⁴

The court summed up the ruling legal principles in the following manner:

(1) The power to create municipal corporations, including the power to designate their boundaries and to increase or to decrease their corporate limits is purely legislative -- it is not a part of either the executive or judicial branch of

the government . . . (2) Under a constitution such as ours that legislative power must be exercised by a general law. (3) In so far as such general law requires the exercise of the discretion of some one in order to affect the creation of a municipal corporation, or the increase or decrease of its territorial limits, such general law must vest such discretion in some board or tribunal having legislative functions -- such as the board of county commissioners. (Const., art. 2, 21) (4) But, in so far as such general law makes the organization of municipal corporations, or the change of their territorial limits, to depend upon specific questions of fact -- such as the number of inhabitants, the amount of taxable property, the consent of a specific portion of the inhabitants, or electors, or taxpayers of the area affected - the trial of the questions whether such required facts exist, and the making of findings as to whether they do or do not exist, and rendering judgment thereon, is a judicial function properly referred to and determined by the courts.¹⁵

Thus, the courts role in relation to annexation, is one of fact finding.

Power of City to Alter Boundaries

The power of annexation is vested in the legislature and must be conferred upon a municipality. In other words, municipalities do not possess the inherent right to annex territory. In State v. Topeka, the court ruled that the

City of Topeka, being a municipal corporation, is a creature of the legislature and as such has no inherent power or authority to annex territory except such authority as is expressly granted by the state.¹⁶

The power of annexation must be exercised under the circumstances and in the manner prescribed. In State v. Kansas City, the court held that

a city must find statutory authority for extending its boundaries and including additional territory within its corporate limits.¹⁷

Furthermore, in Sabatini v. Jayhawk Construction Co., the court ruled that

the conditions for annexation provided in K.S.A. 1973 Supp. 12-520 (g) must be substantially complied with.¹⁸

Reasonableness of Annexation

In Kansas, the general reasonableness of annexation is not judicially reviewed. The case of Town of Olsburg v. Pottawatomie County, 113 Kan 501, well illustrates this. That case involved the proceedings before the board of county commissioners for organizing a city. Before the city could be organized, the board of county commissioners was required to find four things: (1) The number of inhabitants in the territory proposed to be incorporated; (2) that the petition for incorporation was signed by a majority of the electors; (3) and by a majority of the taxpayers; and (4) that the prayer of the petitioners is reasonable. The first three of these were held to be questions upon which a court could take evidence and determine the facts, and hence be judicial questions. But the question whether the prayer of the petition is reasonable was held to be a legislative question. The court stated:

Such a question is really one of statecraft and involves in a broad way all the political questions of general welfare incident to legislative action. ¹⁹

The court ruled in State ex rel. v. City of Overland Park, that the wisdom, necessity or advisability of annexing territory to cities is not a matter for consideration by the courts. The basic function and duty of the courts is to determine whether a city has statutory authority and whether it has acted thereunder in passing an annexation ordinance.²⁰

In a Topeka case, the appellants contended that they had the right to contest the reasonableness of the platting and annexation of a parcel of land under authority granted in K.S.A. 12-712. The Statute provides:

That any ordinance or regulation provided for or authorized by this act shall be reasonable, and any taxpayer or any other person having an interest in property affected, may have the

reasonableness of any ordinance or regulation determined by bringing an action, in the district court of the county in which such city is situated, against the governing body of said city.²¹

However, the review of administrative procedures provided for in this statute relates to zoning ordinances, and "does not apply to the annexation and platting of land."²² The court concluded in Sabatini v. Jayhawk Construction Co., that

It is not a proper judicial function for a court to inquire into the reasonableness, wisdom, necessity or advisability of annexing and platting land. In this area of legislative function the judicial duty of the courts is limited to the determination of whether the city was granted the necessary statutory authority to act and, if so, whether it acted within that authority.²³

Several courts have limited themselves in this area, as have Kansas courts. In Barbe v. Lake Charles, 216 La 871, 45 So2d 62, the court held that the determination of the reasonableness of annexation by a legislative body "ought not to be questioned except upon abundant evidence clearly showing that it is unreasonable."²⁴ It has been held that the reasonableness of a legislative action or finding upon annexation of territory is presumed. The court ruled in Hughes v. Carlsbad, 53 NM 150, 203 P2d 995,

Since power to annex is a legislative function, in exercising that power great latitude must necessarily be accorded legislative discretion, and every reasonable presumption in favor of validity must be indulged.²⁵

However, some courts have reserved to themselves an area of review with respect to the reasonableness of annexation. Since in Kansas this is considered to be within the realm of legislative authority, it is suggested that city governing bodies and boards of county commissioners pay particular attention to criteria courts have used in deciding the reasonableness of annexation.

In determining what is reasonable, Vestal v. Little Rock, 54 Ark 321, 15 SW 891, has been cited as the leading authority. The court stated several guides:

1. That city limits may reasonably and properly be extended so as to take in contiguous lands, (1) when they are platted and held for sale or use as town lots, (2) whether platted or not, if they are held to be brought on the market and sold as town property when they reach a value corresponding with the views of the owner, (3) when they furnish the abode for a densely-settled community, or represent the actual growth of the town beyond its legal boundary, (4) when they are needed for any proper town purpose, as . . . for the extension of needed police regulation, and (5) when they are valuable by reason of their adaptability for prospective town uses; but the mere fact that their value is enhanced by reason of their nearness to the corporation would not give ground for their annexation, if it did not appear that such value was enhanced on account of their adaptability to town use.

2. We conclude further that city limits should not be so extended to take in contiguous lands, (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use, (2) when they are vacant and do not derive special value from their adaptability for city users.²⁶

The capacity of a municipality to extend essential services to annexed territory has been regarded as an important consideration on the issue of the reasonableness of a proposed annexation. In Town of Crystal-River v. Springs 0' Paradise, Inc., 154 So2d 727, a proposed annexation was held to be unreasonable and therefore unjustified because the town was not equipped to furnish municipal services to the area. Additionally, it was said in Town of Magnolia Park v. Homan, 118 So2d 585, that

a city which is unable to extend municipal services, such as water and sewerage, paved streets and sidewalks, and recreational facilities, to a newly annexed area, or which itself is undeveloped in these respects, may not annex territory.²⁷

A Mississippi court, in Parker Gin Corp. v. Town of Drew, 214 Miss 147, 58 So2d 372, held that a period of two years constituted a reasonable time for the furnishing of services, such as streets, water and sewer lines.

In determining the reasonableness of annexation, courts have considered the character of the annexed territory. The extension of corporate boundaries is not unreasonable if the territory annexed is "necessary for present or future municipal purposes, or is substantially improved, or adopted to municipal uses and purposes."²⁸ In Mauzy v. Pagedale, 260 SW2d 860, annexation was reasonable

where land was so situated as to be adaptable to urban purposes, and as to be necessary and convenient to a proper exercise of the city government.²⁹

And in Arnholt v. Columbus, 128 Ind App 253, 145 NE2d 660, the court ruled that

the extension of city limits is reasonable where it is necessary for the protection of health that such territory be included.³⁰

Annexation was held reasonable in Collins v. Crittenden, 24 Ky L. Rep 899, 70 SW 183, where failure to annex a parcel of land would have retarded the prosperity of the municipality and of the area to be annexed. In McCoy v. Clovedale, 31 Ind App 331, 67 NE 1007, it was determined that annexation was reasonable where the people residing in such area were enjoying the advantages of the municipal government and institutions, including fire and police protection, and school privileges. Furthermore, in Bowman-Hicks Lumber Co. v. Town of Oakdale, 144 La 849, 81 So 367, the reasonableness of an annexation was justified by the proposition that "a metropolitan area deserves a common government."³¹

There must be a real municipal purpose involved in the annexation of territory. It was determined in Incorporated Town of North-Judson v. Chicago and E. Ry., 72 Ind App 550, 126 NE 323, that annexation

is not reasonable where land has been annexed for revenue purposes only. Finally, the court ruled in Chesapeake and Ohio Ry v. City of Silver-Grove, 249 SW2d 520, that

because annexed territory is subject to municipal controls and taxes, annexation without justification is a denial of due process.³²

Who May Attack Validity of Annexation

Remedies available for attacking an extension of corporate boundaries are very limited. Quo warranto is generally recognized as the proper method for attacking the validity of annexation. Quo warranto is a state action. It is a direct attack, to be distinguished from a collateral attack. Quo warranto attacks are justified because:

municipal corporations obtain their existence from the state, it is logical that the state should be competent to question the validity of their acts.³³

In the case State ex rel., v. City of Hutchinson, 102 Kan 325, the court concluded:

an action by the state against a city to determine by what right it exercises corporate powers over a specified territory is a proper proceeding by which to determine the true boundary line, whether the alleged fault of the defendant lies in extending its territorial jurisdiction too far, or in confining it within too narrow limits.³⁴

The individual is at a disadvantage under quo warranto. A private party must first convince the attorney general that there is justification in maintaining the proceeding.

A collateral attack is an indirect attack, brought by an individual. Courts have strenuously denied such challenges. It is a well established rule in Kansas that:

a statute authorizing municipal corporations to enlarge their corporate areas by the annexation of territory is, to that extent, one for the organization of such corporations.³⁵

In other words, annexation is viewed as if it were the incorporation of a new municipality. Kansas courts have taken the position that an attack on the extension of corporate boundaries of a municipality is an attack on the corporate life of such municipality. If collateral attacks were allowed, a multiplicity of questions would arise as to the municipal corporation's legal status. Generally, the fact of municipal existence is accepted. In order to prohibit the uncertainty that may arise from collateral attacks

Public policy demands that only the state should be permitted to directly attack the municipal existence by a quo warranto proceeding since it is the traditional proceeding used to question public existence.³⁶

The courts have thus held that annexation may not be collaterally attacked.

In the case of Topeka v. Dwyer, the court syllabus reads:

Completed proceedings for the enlargement of the corporate area of the city, authorized by an act of the legislature, are not open to collateral attack in a prosecution for the enforcement of an ordinance of the city within the annexed territory so far as mere defects, informalities and irregularities, questions of good faith and good judgment, the finding of necessary facts, the determination of disputes of fact and like matters are concerned.³⁷

In the opinion, the court stated:

To maintain this suit, and to defeat the tax complained of, the plaintiff must establish, and the court must determine, that the organization of the district is illegal. This cannot be done in the present action. The legality of the organization cannot be questioned in a collateral proceeding, nor at the suit of a private party. The organization cannot be attacked, nor any action taken affecting the existence of the corporation, except in a direct proceeding, prosecuted at the instance of the state by the proper public officer . . . It would be dangerous and wrong to permit the existence of municipalities to depend upon the result of private litigation.³⁸

In Chaves v. Atchison, the decision reached in Topeka v. Dwyer was followed. The court held:

The validity of the corporate existence of the city, as originally organized or as reorganized by the extension of its boundaries, cannot be questioned by private parties. It has been held that the extension of corporate limits to include new territory, under statutory authority, is, in effect, a reorganization of the city; that the act of annexation involves the corporate integrity of the city and is not open to collateral attack, and that its validity cannot be questioned by any party other than the state any more than can the validity of the original organization of the city.³⁹

See also Mason v. Kansas City, 103 Kan 275; Fletcher v. Weigel, 152 Kan 104; Smith v. City of Emporia, 168 Kan 187; Fairfax Drainage District v. City of Kansas City, 190 Kan 308; and State ex rel. v. City of Overland Park, 192 Kan 654, wherein it was firmly established that the validity of annexation may be challenged only by the state acting through one of its proper officers, such as the county attorney or the attorney general.

The general rule followed in Kansas is that a private individual does not have the right to challenge corporate expansion. Frank Sengstock, a legislative analyst at the University of Michigan Law School, sees this as a severe problem:

There is a genuine need for legislation governing the right of a private party to seek relief in a court of law from illegal acts of annexation.⁴⁰

House Bill Number 1623 has made a step in this direction. The bill provides:

Any owner of land annexed by a city under the authority of this section may within thirty (30) days next following the publication of the ordinance annexing such land maintain an action in the district court of the county in which such land is located challenging the authority of the city to annex such lands and the regularity of the proceedings had in connection therewith.⁴¹

However, it remains to be seen how the courts will view this provision. If the opinion in Smith v. Emporia, 168 Kan 187, is reviewed, perhaps

the provision will be looked upon favorably by the courts. In Smith v. Emporia, the court, in denying an individual the right to attack the validity of an annexation stated:

If the consequences resulting from its application are as dire as he would have us believe, it is indeed strange that the legislature of this state, which has unquestioned power to authorize individuals to maintain actions of such character, has not seen fit at repeated sessions to grant them that privilege.⁴²

Now, the legislature has seen fit to authorize this privilege.

Summary

In summary, several facts should be reiterated: (1) annexation is a legislative power; (2) cities do not possess the inherent right to annex territory, this power must be conferred upon them by the legislature; (3) the courts will not pass upon the question of "reasonableness" of annexation. Their inquiry is confined as to whether a city has statutory authority and whether it acted correctly thereunder; (4) only the state, acting through one of its officers, may challenge the validity of annexation by way of a quo warranto proceeding. House Bill Number 1623 has attempted to change this.

CHAPTER 3

THE ZONING CONTROVERSY

The zoning of newly annexed land has been the subject of much litigation throughout the United States. Kansas statutes are moot on this subject. Therefore, several questions arise as to the process by which a municipality may apply zoning regulations to newly annexed territory. May a municipality require zoning as a condition of annexation? May zoning hearings be held on land which is to be annexed, but which is presently under county jurisdiction? Does a municipality have to wait until land is annexed before it can commence the process of zoning? If so, how is the land controlled in the interim period from the time of annexation to the adoption of the zoning ordinance? These questions are of utmost importance and should be resolved before a municipality annexes territory.

In order to examine this subject, cases will be presented which deal with two situations: (1) pre-existing zoning regulations pertaining to the annexed property; and, (2) the application of municipal zoning regulations to the newly annexed territory. In Kansas, the Attorney General's Office has rendered important opinions concerning this issue. The opinions will be discussed later.

Perhaps one key to this controversy may be found in the concept that

the annexation of property to a municipal corporation is an act of the state, and such property stands thereafter subject to the same burdens and entitled to the same benefits as any other property within the corporation, all contracts and ordinances being extended to the newly added property, in the absence of contrary provision.¹

Generally, cases concerned with this controversy indicate that once territory has been annexed to a municipality the authorities have control of the regulation of zoning in such territory, and that conversely, the regulations in effect in the area to which the annexed territory formerly belonged are no longer effective in any degree over the territory, unless made so by municipal ordinance.²

Basically, the zoning status of newly annexed territory depends upon what the city ordinances provide.

To some extent, zoning problems which stem from annexation may be curbed if the municipal corporation has exercised extraterritorial zoning. When this is the case, annexation does not disturb land use controls, and there is no interim period in which uncontrolled or unplanned development may take place. In Kansas, municipalities do have the power of extraterritorial zoning. K.S.A. 1969 Supp. 12-715b states:

Any city shall be authorized to adopt zoning regulations affecting land located outside the city but within three (3) miles thereof under the following conditions, except that nothing in this act shall be construed as authorizing any city to adopt regulations applying to or affecting any land in excess of three (3) acres under one ownership which is used only for agricultural purposes:

(a) The city has established a planning commission under the provisions of K.S.A. 1968 Supp. 12-702, which provides for the appointment of two (2) commission members who reside outside the city but within three (3) miles thereof, or the city has established a joint, metropolitan or regional planning commission in cooperation with the county in which such city is located pursuant to the provisions of K.S.A. 1968 Supp. 12-718.

(b) The land outside the city but within three (3) miles thereof has been included within a comprehensive plan recommended by either of said planning commissions and has been approved by the city governing body or the board of county commissioners.

(c) The county or township does not have in effect zoning regulations for such area outside the city but within three (3) miles thereof adopted in conformity with the statutes prescribing procedure for the adoption of county zoning regulations.

(d) The city has notified the board of county commissioners in writing sixty (60) days before initiating zoning regulations by ordinance for such area of its intention to adopt such regulations by ordinance.³

Few municipalities in Kansas use extraterritorial zoning. Therefore, much of the land that is annexed in Kansas may be subject to litigation because of improper zoning practices. A few states have dealt with this problem. In Ohio,

the enabling acts provide for the temporary continuance and final demise of the zoning regulations of the municipality from which the annexed territory is taken. These provisions afford to the annexing municipality an opportunity to zone the annexed land in a manner consistent with its plans, and maintain the status quo while the new zoning regulations are being prepared and enacted.⁴

Zoning regulations and their operation upon territory affected by a change in the boundaries of a municipal corporation have been considered in many cases.

When a municipality annexes land that has been subject to county zoning regulations, the regulations of the county no longer apply (absent a statutory provision which dictates otherwise). In Louisville and Jefferson County Planning and Zoning Commission v. Fortner, 243 SW2d 492 (1951), the court concluded that "the annexed land is received as unzoned property."⁵ In Grayson v. Birmingham, 277 Ala 522, 172 So2d 67 (1963), where a landowner obtained from the county a commercial classification of twenty lots, it was determined that "he had no vested right to the commercial use of his land after it was annexed by a city and rezoned for residential use."⁶ In California, a defendant had been

granted a permit by the county to build a single family dwelling on a lot, which was classified as single family residential under the county ordinances. The land was subsequently annexed by a neighboring municipality. The defendant had constructed multiple-family dwellings. The city sought to stop this under terms of the county zoning ordinance. The court noted in South San Francisco v. Berry, 120 Cal App2d 252, 260 P2d 1045 (1953),

that under the state constitution the city and county respectively could exercise the police power only "within its limits." The court went on to say that when the property in suit was annexed by the city it left the territorial jurisdiction of the county, by ceasing to be "within its limits."⁷

The court in Highland Park v. Calder, 269, 111 App 255 (1932), wherein the defendants had acquired property a few days after its annexation, and were using such property contrary to the zoning ordinance, enjoined the defendants from using the property in violation of the city zoning ordinance. The Illinois court stated:

By becoming a part of the municipality, it is ipso facto brought under and made subject to all the laws by which the municipality itself is governed. Those laws extend over and apply to it ex proprio vigore, and do not require express legislative action to give them such application.⁸

It was determined by Messerole v. Board of Adjustment, 172 SW2d 528 (1943), that

under the powers granted to the city by the legislature, newly annexed territory came into the city on the basis as that originally part of the municipality.⁹

Several cases have dealt with use and occupancy permits. In Williams v. Deer Park, 78 Ohio App 231, 69 NE2d 536 (1946), the plaintiff had purchased a parcel of land prior to its annexation by Deer Park. Prior to such annexation, plaintiff had received a commercial building

permit. When the annexation became effective, the village enacted a "stopgap" zoning ordinance, which ordered the plaintiffs to cease construction of such building. It was determined in the trial that the permit had been issued to the plaintiffs the day before annexation.

The court upheld Deer Park's actions, ruling that

the plaintiffs acquired no vested right under the county permit; that their property became amenable to the "stopgap" zoning ordinance at the time of annexation; and that, it appeared that they would suffer no financial loss or any great injury, and that they had, under statutory requirements, received due notice of the imminence of the annexation, the permit of the county constituted no bar to enforcing the village ordinance.¹⁰

Basically, courts have ruled that nonconforming uses established prior to annexation "are protected in the same manner and to the same extent as is true of nonconforming uses established in the annexing municipality."¹¹ The court ruled in Long Island University v. Tappan, 202 Misc 956, 113 NYS2d 795, affd without op 281 App Div 771, 118 NYS2d 767, affd without op 305 NY 893, 114 NE2d 432, reh den 306 NY 570, 115 NE2d 680 (1952), that

an occupancy permit properly issued prior to annexation of the property to which it applies is not rendered invalid by annexation to a municipality which proscribes the use for which the permit was granted.¹²

However, the court stated in Messerole v. Board of Adjustment, 172 SW2d 528 (1943), that "issuance of an occupancy permit cannot be compelled if the use has not commenced prior to annexation."¹³ Furthermore, in Boise City v. Better Homes, Inc., 72 Idaho 441, 243 P2d 303 (1952), the court held that a city's zoning ordinance became effective upon the date of annexation. The defendants property became subject to "A Residence" and "D Commercial" zone restrictions, which did not permit a lumberyard.

The ruling question as to whether the defendant would be permitted to operate his lumberyard in such area depended upon

whether the use was one existing prior to the effective date of the zoning restrictions, and the case was remanded to allow evidence as to this fact be considered.¹⁴

Municipalities have used a variety of methods in order to limit the time a piece of annexed land may remain unzoned. Perhaps the most common method has been the use of a municipal ordinance, adopted in coordination with the annexation proceeding, which designates the zoning classification for such territory. Such ordinances have been upheld, if they were properly adopted. In Beshore v. Bel Air, 237 Md 398, 206 A2d 678 (1965), a Maryland court stated:

We see no logical reason to hold that zoning is not a proper condition and circumstance of annexation . . . A municipality having an authorized planning and zoning authority has exclusive jurisdiction to zone annexed property . . . To require such a municipality to annex and then later to zone, in separate proceedings, would appear to be illogical and wasteful when the requirements of (the statute) . . . can be satisfied in one proceeding.¹⁵

The same result was reached in Westwood Development Co. v. Abilene, 273 SW2d 652 (1954), error ref n r e., wherein a municipality adopted an annexation and zoning ordinance to preserve the status quo. The court ruled in Hawkins v. Louisville and Jefferson County Planning and Zoning Commission, 266 SW2d 314, 41 ALR2d 1459 (1954), that "the zoning status of the annexed property depended upon the provisions of the city ordinances."¹⁶ The ordinance in question provided that

upon annexation of any property into the city it retained the zoning classification it had under the regulations of the Louisville and Jefferson County Zoning and Planning Commission, until rezoned by the city's board of Aldermen.¹⁷

Stetter v. Erlanger, 475 SW2d 629, also reaffirmed this decision, as

the court concluded that

a city ordinance may legally provide that annexed territory shall come into the city with the same zoning classification that it possessed under regulations of the county planning and zoning commission.¹⁸

However, in Cameron v. Board of Adjustment of Greensburg, 3 Pa Cmwlth 209, 281 A2d 271, the court held that

an ordinance of providing for automatic zoning of newly annexed land was invalid because governing statutes authorized zoning only after a public hearing.¹⁹

In Papanek v. Rayniak, 23 Ill App2d 183, 161 NE2d 694, the court ruled that the "zoning ordinance could provide that all new lands upon annexation to the city be zoned for single-family residence use until amendment of zoning ordinance to reclassify them."²⁰ However, this decision may be subject to questioning. Haar relates that

an ordinance which anticipates annexations and seeks to pre-classify annexed land without specific consideration of separate tracts, may be vulnerable to attack on the ground that such an ordinance is not in accordance with a comprehensive plan.²¹

Or, as it was determined in Wormleysburg v. Brinton, 14 Pa D&C2d 83, 8 Cumberland LJ 119, 50 Munic LR 122 (1958), a zoning ordinance attempting to preclassify land may be vulnerable to attack because "it was passed without appropriate notice to the owners of the land in the annexed tract."²¹

In summary, a few facts should be reiterated: (1) a municipality receives newly annexed territory as unzoned land, unless a municipal ordinance provides otherwise; (2) a municipality may zone annexed land in a manner consistent with its own zoning scheme, and thereby is not bound by prior zoning judgments of a municipality from which the territory was annexed; (3) it has been upheld that a municipality may,

by ordinance, designate the zoning classification of land in conjunction with the annexation proceeding.

In Kansas, the crux of the annexation-zoning problem lies in the hearing requirements necessary for the adoption of a zoning ordinance, versus the interim period in which newly annexed land, absent any zoning provisions, may be subjected to unplanned and improper development. Former Attorney General Harold R. Fatzer and Attorney General Vern Miller have both rendered opinions pertaining to this conflict.

The city of Newton, Kansas established a planning commission and duly passed a zoning ordinance. Over a period of time, the regulations were changed and revised in accordance with G.S. 1949, 12-708. During this period the city planning commission recommended and the city commission approved several new plats of land adjacent to the city limits. This new platted land, upon petition by the owners, was annexed to the city by ordinance under G.S. 1949, 12-502. Realizing that the proposed plat was to be annexed, the planning commission at the time of making recommendations regarding the plat, also made ordinances regarding the zoning of the land included in the plat. In the ordinance in which the new plat was annexed, the city commission also zoned the area in accordance with the recommendation of the planning commission.

Thus, the city of Newton posed the following question to Attorney General Fatzer:

Is it permissible under 12-708 to establish the zone of platted area in the same ordinance in which the area is annexed, or must you annex and then refer the matter to the planning commission for recommendation as to the zone and have the planning commission give the 30-day notice, etc.?²²

In a letter to J. Sidney Nye (City Attorney of Newton), dated October 28, 1955, Attorney General Fatzer replied:

. . . it would be our view as well as our opinion that it would be the better practice, as well as the proper procedure for the city to first annex the proposed territory before having the same zoned. We feel the law provides that the planning commission should not act on any question with reference to the zoning of a territory until said territory has first been annexed by the proper legal procedure.²³

Fatzer relied upon two statutory requirements in reaching this opinion.

G.S. 1949, 12-708 required that a notice of not less than thirty days before such proposed change be published in the official newspaper of such municipality, and that a hearing be granted to any person interested. Second, the cardinal rule is that an ordinance must have but one subject. This was upheld in Stone v. City of Wichita, 145 Kan 377.

G.S. 1949, 13-1421, states in part:

. . . and provided further, that no ordinance shall contain more than one subject, which shall be clearly expressed in its title . . .²⁴

In 1972, a very similar situation arose in Manhattan, Kansas. Manhattan's Ordinance #2789 provides for the simultaneous annexation and zoning of the annexed land. Where single family zoning is desired for the annexed land, no hearing procedure is required. For land for which another zoning classification is desired, hearing procedures before the city planning commission are required. This obviously involves a hearing procedure on land that lies outside of the city. The ordinance annexing the land also designates the zoning classification of such, and the hearing precedes in time the annexing zoning ordinance. Manhattan does not exercise extraterritorial zoning as the county has zoning regulations for such area. The key question is whether the city planning commission may lawfully discharge its duties under K.S.A. 12-708 as to land which is outside of the corporate boundaries of the city, and which

is subject to county zoning regulations. The City of Manhattan is seeking an opinion as to: (1) whether Ordinance #2789 is valid; (2) whether land should be annexed and zoned by two simultaneous and parallel ordinances; or (3) whether annexation must precede zoning.

Ordinance #2789 states in part:

#3-407. Annexed land. All land which may be hereafter annexed to the City of Manhattan shall, from and after effective date of such annexation, be subject to the zoning regulations for the district as designated by the annexing ordinance.

Before the annexing ordinance may designate that the land to be annexed shall be placed in district R-2, R-3, R-4, R-5, U, C-1, C-2, C-3, C-4, C-5, C-6, I-1, I-2, I-3, I-4, or PDD full compliance with Kansas Statutes Annotated 12-708 and Article XI of Ordinance #2650 shall be had. It is the purpose of this provision to require that the hearing procedures before the planning commission of said city be exhausted and that full compliance otherwise be had with the aforesaid statute and ordinance before the City Commission may adopt the annexing ordinance containing a designation of applicable zoning regulations as contained herein.

The annexing ordinance may designate that the zoning regulations of RS, R, or R-1, shall apply to the land to be annexed, without the necessity of complying with Kansas Statutes Annotated 12-708 or Article XI or Ordinance #2650

In those instances where compliance with Kansas Statutes Annotated 12-708 and Article XI of Ordinance #2650 is required, full compliance herewith shall be concluded before the annexing ordinance shall be adopted.²⁵

Before a conclusion as to the validity of Ordinance #2789 may be reached, pertinent statutes should be reviewed. One is referred to page twenty-two of the report wherein K.S.A. 12-715b (extraterritorial zoning) is quoted.

K.S.A. 12-707 provides that:

The governing body of any city is hereby authorized by ordinance to divide such city into zones or districts, and regulate and restrict the location and use of buildings and the uses of the land within each district or zone. Such zones or districts may be created for the purpose of restricting the

use of buildings and land located within the same for dwellings, business, industry, conservation, floodplain or for other purposes deemed necessary . . .

Any floodplain zone or district shall include the floodplain area within any incorporated area of the city and may include any unincorporated territory lying outside of but within three (3) miles of the nearest point on the city limits.²⁶

K.S.A. 12-708 states in part that:

Before any city shall create any zone or district or regulate or restrict the use of buildings or land therein, the governing body shall require the planning commission to recommend the nature and number of zones or districts which it deems necessary and the boundaries of the same and appropriate regulation or restrictions be enforced therein . . . Upon the development of tentative recommendations, the planning commission shall hold a public hearing thereon . . . The governing body may either approve such recommendations by the adoption of the same by ordinance or return the same to the planning commission for further consideration . . . The planning commission, after reconsidering the same, may resubmit its original recommendations giving the reasons therefore or submit new and amended recommendations. Upon receipt of such recommendations, the governing body may adopt or revise or amend and adopt such recommendations by ordinance . . .²⁷

The recommendations of the city planning commission are advisory, and not legislative in character. Attorney General Vern Miller states:

Nothing in K.S.A. 12-708 requires that as a jurisdictional prerequisite to the conduct of hearings and the furnishing of recommendations to the governing body, that the land which is the subject of such hearings be at that time within the corporate limits of the city.²⁸

Under K.S.A. 12-704, the advisory capacities of the planning commission are not so restricted. This statute provides thus:

The planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of such city and any unincorporated territory lying outside of the city but within the county in which such city is located, which in the opinion of the commission forms the total community of which the city is a part.²⁹

See also K.S.A. 12-704a in which the planning commission may regulate construction of public improvements in accordance with a comprehensive

plan; and, K.S.A. 12-705 in which the planning commission may regulate subdivisions in unincorporated territory lying outside but within three (3) miles of the city limits.

Attorney General Vern Miller concludes:

In our view, the city planning commission may likewise exercise its powers under K.S.A. 12-708 as to areas outside the city at the time of the commission's actions with respect thereto.³⁰

As stated earlier, the zoning status of annexed land depends on the provisions of municipal ordinances, and that absent such provisions, a municipality receives annexed territory as unzoned land. Upon annexation, the newly annexed land becomes subject to the zoning power of the city. Applying this general rule, Miller infers:

Insofar as the ordinance authorizes all steps precedent to adoption of a zoning classification by the governing body to be accomplished prior to annexation, we believe that it constitutes a valid exercise of the police power of the city.³¹

The second question which arises is the propriety of incorporating in an annexing ordinance the zoning classification for the annexed land. Attorney General Miller relied upon several court cases to reach a decision concerning this aspect of the situation. In Beshore v. Town of Bel Air, 237 Md. 398, 206 A2d 678 (1965), an ordinance similar to Ordinance #2789 provided that:

In all cases where territory has not been specifically included within a district, such territory shall automatically be classified as R-1 District until otherwise classified, but in cases of annexation of territory where the annexation proceeding provides a zoning classification for the territory to be annexed, such territory shall be so classified upon incorporation into the town of Bel Air.³²

The ordinance was considered in the context of a statute which stated:

The annexing resolution shall describe . . . the exact area proposed to be included in the change, and shall contain complete

and detailed provisions as to the conditions and circumstances applicable to the change in boundaries and to the residents and property within the area to be annexed.³³

Attorney General Miller relates that the court regarded zoning as a "condition applicable to property," and properly incorporated into an annexing ordinance. As to the charge that the resolution in question violated the state constitution on the grounds that it embraced more than one subject, annexation and zoning, and that the title omitted mention of zoning, the court regarded the resolution as falling within the principle that

if several sections of the law refer to and are germane to the same subject matter, which is described in its title, it is considered as embracing a single subject, and as satisfying the requirements of the Constitution in this respect.³⁴

Kansas lacks the broad Maryland statute which allows the incorporation in an annexing ordinance of the provisions applicable to conditions and circumstances of the annexation. As stated earlier, Kansas statutes provide that no ordinance shall contain more than one subject.

Kansas courts have dealt with this subject. In State ex rel. Ramsey v. City of Hutchinson, 102 Kan 325 (1918), a city ordinance was described in its title as one extending the city limits. As the new boundary was described, certain portions of tracts were omitted. The court stated:

The plaintiff contends, and the contention is clearly well founded, that inasmuch as the title of an ordinance is required to express its subject . . . any part of this one which undertakes to reduce the territory of the city is rendered void by the fact that the title refers only to an extension and not to a restriction of the limits.³⁵

The court ruled in Babcock v. City of Kansas City, 197 Kan 610, 419 P2d 882 (1966), thus:

it has been uniformly held that the extension of corporate limits to include new territory . . . is, in effect a reorganization of the city . . . ³⁶

Attorney General Miller states that "corporate reorganization is, broadly, a different subject than exercise of the police power to regulate and restrict the location and uses of buildings and the uses of land in such annexed area."³⁷ He therefore concurs with the opinion of Attorney General Fatzer that it would not be proper for a city to include in one ordinance the designation of a zone for platted territory, and also provide for the annexation of such territory.

However, Attorney General Miller goes on to state that

land to be annexed may be annexed and zoned at the same time by merely using two separate parallel ordinances, the first to provide for annexation and the other to designate the zoning classification for the land.³⁷

Thus, Kansas Attorney General opinions have determined that:

(1) a municipality may exercise its powers under K.S.A. 12-708 as to areas outside of the city; (2) an ordinance may contain but one subject; (3) two separate parallel ordinances may be used when dealing with the annexation and zoning of territory.

Attorney General Miller's opinion differs with that of Fatzer's. Fatzer said it would be the better practice to first annex and then zone. Miller concedes that a municipality should be afforded the right of zoning as a condition of annexation.

Some legal questions remain unanswered. For example, if an ordinance declares that upon annexation of said territory, hearing requirements shall be waived if an R-1 zone is desired, this perhaps could be construed as a denial of equal protection under the law. A fixed zoning pattern such as this could amount to exclusionary zoning;

or the ordinance could be held invalid because it does not give consideration to the existing character of the land.

Although municipalities do have the right to include unincorporated land, which lies adjacent to the city, in a comprehensive plan, it would seem that this does not include the development of specific zoning patterns.

To avoid problems such as these, Kansas should adopt specific statutory measures pertaining to the zoning-annexation controversy. It would seem that such a provision should give municipalities the right to impose zoning as a condition of annexation, and that annexation and zoning of such territory should be accomplished simultaneously. Municipalities should also strive to exercise extraterritorial zoning.

CHAPTER 4

MUNICIPAL RESPONSIBILITY

Municipal responsibility, with respect to annexation, lies in two areas: (1) the duty of the municipality to provide for the prosperity of the urban area, which may require an extension of corporate boundaries; (2) the duty to upgrade the newly added territory after such extension.

It may be stated that:

Urban areas by their nature are communities and communities to survive must have a 'controlled' environment; 'controlled' environment is a function of municipal government.¹

In essence, the role of the municipality is one of manager of the urban environment.

Municipalities must seriously ponder their role as managers of the urban environment. Generally, substandard development common to most fringe areas has a detrimental effect on the entire urban area. Annexation is one method by which municipalities may extend their legal authority, and thereby the right to "clean" up areas which may endanger the health, safety, and welfare of the urban area inhabitants,

The extension of corporate limits like the organization of municipal corporations, is ancillary to the government in sustaining the peace, the convenience, and the good order of these communities which are formed by dense collections of citizens in particular localities.²

Although the fringe area's need for municipal services is often cited

as a major reason for annexation, other factors may also be coercive. For example, health and zoning problems may exist in a fringe area and the municipality may be the only unit properly equipped to solve such problems. In Arnholt v. Columbus, 128 Ind. App. 253, 145 NE2d 660, the court stated that annexation is proper

where it is necessary for the protection of health that such territory be included.³

The same court also made reference to a ruling of the Supreme Court of Kentucky in which it was held that:

the inability to make improvements and enforce local ordinances in contiguous urban areas because they are not part of the city retards its prosperity.⁴

The responsibility rests upon the municipality to take the initiative to rectify arrant conditions in the fringe area.

Not only is the managerial role important, but the quality of treatment a newly annexed area receives is also vital. Municipal responsibility does not end with the consummation of annexation. When territory has been annexed, the new area "becomes, ipso facto, a part of the municipality."⁵ This newly annexed territory becomes subject to municipal jurisdiction. The inhabitants of the area become obligated to pay municipal taxes. Citizens who are subject to municipal taxes are entitled to the city's services and benefits. It is essential that newly annexed territory receive equal status with the other parts of the municipality, because if it does not, the purposes for annexation are defeated. The municipality's role as service provider must be attained. Since the city is usually the social and economic center of an area, it is logical that it be the service center. Since extending municipal services is often cited as a primary reason for annexation, it

should be a standard for annexation. Annexation may be a solution to some of the service problems of fringe areas, however,

these problems can deteriorate into worse conditions and be increased in number when a municipality annexes territory when incapable of extending reasonable municipal services to this territory within a reasonably foreseeable time.⁶

House Bill Number 1623 requires that a municipality prepare a plan for the extension and financing of services which the newly added territory may require. This act provides:

The governing body of any city proposing to annex land under the provisions of section 4 of this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in section 2 of this act, prepare a report setting forth such plans. The report shall include:

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

- (1) The present and proposed boundaries of the city affected by such proposed annexation;
- (2) The present streets, water mains, sewers, and other city utility lines, and the proposed extension thereof;
- (3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth the plans of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such statement shall also include a timetable of the plans for extending each major municipal service to the area annexed.⁷

This provision is a welcome addition to the annexation statutes. It requires that a municipality at least think about municipal responsibility. However, the statute does not demand that a city extend municipal services. The statute does not require that services be extended within a "reasonable" amount of time. Nor does it demand that certain services be extended to the annexed area immediately upon annexation.

What is required is that municipalities have the duty to improve annexed territory. Certain services, such as police and fire protection, road maintenance, refuse collection, planning and zoning, and the general services of city officers should be extended immediately upon annexation. Orderly and timely installation of capital improvements should follow. Kansas annexation laws should prescribe the quality of treatment that a municipality must render to annexed territory.

In some states, annexation statutes insure that newly annexed territory will be furnished municipal services. For example, in Virginia, the court requires that a city make such

capital improvements which in its judgement are essential to meet the needs of the annexed area and to bring the same up to a standard equal to that of the remainder of the city.⁸

Before annexation may be accomplished in Mississippi and Indiana, the court has to determine that:

the city is capable of rendering reasonable services in the annexed territory within reasonable time.⁹

Statutes such as these will require that a municipality make rational annexation decisions. To aid in this, annexation studies should be undertaken and alternatives to annexation should be considered.

Annexation Studies

When a municipality is faced with a particular annexation decision, an annexation study should be undertaken. The following questions should be resolved: What will annexation mean to the municipality and the fringe area in terms of costs and or savings? What additional services and benefits will the fringe area obtain? The American Society of Planning Officials Report #114 presents an excellent discussion of

annexation studies. An annexation study should include:

1. Designation of study areas. The boundaries may be determined on the basis of population density, geographic location, topography, street system, existence of municipal services. The following types of data are required:

- A. Land Area
- B. Population
- C. Buildings
- D. Streets and Roads
- E. Land Use

2. Determination of feasibility of annexation. This requires an estimate of the public services needed in the area to be annexed and their costs.

A. Inventory the extent and quality of the services and facilities already existing in the study area.

The following activities should be reviewed:

- Fire Protection
- Police Protection
- Sewage Disposal
- Water Supply
- Storm Drainage
- Refuse Collection
- Health Protection
- Street Paving and Maintenance
- Schools
- Street Lights
- Parks and Recreation
- Traffic Control
- Planning, Zoning, and Building Regulations

- B. Quantity to be supplied after annexation
- C. Cost of furnishing needed services
- D. Potential revenue from study area
- E. Cost balance¹⁰

Alternatives to Annexation

An annexation study should force municipal officials to look at alternatives to annexation. The most common alternatives include:

(1) extraterritorial planning and zoning; (2) special districts; (3) incorporation; (4) consolidation.

Extraterritorial planning and zoning should not be viewed as an end in itself, but rather as a means to insure that fringe areas develop in a manner consistent with municipal standards. Thus, when annexation

does take place, the city will not be faced with major capital expenditures to "clean" the area up. At least three methods are available for planning in unincorporated fringe areas. These are: (1) regional planning; (2) joint city-county planning; (3) city planning in the three mile limit. The third alternative offers the more desirable procedure, where counties have not exercised their authority to control unincorporated areas. However, in solving a municipal fringe problem, the cooperation of all governmental units is required. Kansas cities do have the opportunity to constructively guide the growth of fringe areas. Pertinent statutes provide:

K.S.A. 12-704. The planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of such city and any unincorporated territory lying outside of the city but within the county in which such city is located, which in the opinion of the commission forms the total community of which the city is a part.

K.S.A. 12-704a. Whenever the planning commission shall have adopted and certified the comprehensive plan of the community or of one or more major sections or districts thereof, then and henceforth no public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof shall be constructed without first being submitted to and being approved by the planning commission as being in conformity with the plan.

K.S.A. 12-705. The city planning commission of any city which has adopted a comprehensive plan may adopt and may amend regulations governing the subdivision of land located within an area which shall be designated by resolution of the governing body of the city for this purpose. Such area shall include the unincorporated area of the city and may include any unincorporated territory lying outside but within three (3) miles of the nearest point on the city limits . . .

K.S.A. 12-705c. Whenever any city has as a part of its comprehensive plan adopted a plan for its major street or highway system, after consultation with the urban highways department of the state highway commission and the county engineer and any county or metropolitan planning commission of the county or counties within such system shall lie, the governing body

of the city is hereby authorized and empowered, by ordinance, to establish building or setback lines on such existing and proposed major streets or highways, and to prohibit any new building being located within such building or setback lines within the plat approval jurisdiction of the city.

K.S.A. 12-707. The governing body of any city is hereby authorized by ordinance to divide such city into zones or districts, and regulate and restrict the location and use of buildings and the uses of the land within each district or zone. Such zones or districts may be created for the purpose of restricting the use of buildings and land located within the same for dwellings, business, industry, conservation, floodplain or for other purposes deemed necessary.

Any floodplain zone or district shall include the floodplain area within any incorporated area of the city and may include any unincorporated territory lying outside of but within three (3) miles of the nearest point on the city limits, when the unincorporated territory has not been designated a floodplain zone or district by any other governmental unit or subdivision.¹¹

K.S.A. 12-715b. Extraterritorial Zoning.

The municipality should recognize that for orderly urban growth and expansion, portions of the developing fringe should be periodically annexed. This transition can occur without excessive cost to the residents of the city and of the fringe area only if the development in the fringe has been guided by the city, and such development meets municipal service standards and policies. Municipalities should endeavor to utilize the aforementioned extraterritorial powers.

If a fringe community desires the addition of one or two public services, it may decide to form one or more special districts. Districts are ordinarily established by local initiative under one of the numerous state enabling acts. When a number of services are needed, however, and a district is set up to provide each service, the result is governmental fragmentation and complexity. Furthermore,

In the absence of a single overseeing group it is difficult to coordinate the various public expenditure programs and insure a balanced distribution of available revenues.¹²

A major disadvantage of special districts is their lack of the police power.

Because special districts do not have the broad regulatory police powers of a municipality, they are of little or no value if a community wishes to plan and zone for its future growth, provide minimum building specifications for new structures, enact local health regulations, or prevent various kinds of public nuisances.¹³

Another alternative open to the fringe area is incorporation.

Incorporation may be defined as:

the creation of a body politic by the organization of inhabitants of a prescribed territory, endowed with all the powers of a private corporation for the purposes of local government of that territory.¹⁴

K.S.A. 15-116, et seq. provides for the incorporation of cities. In part, the statute provides:

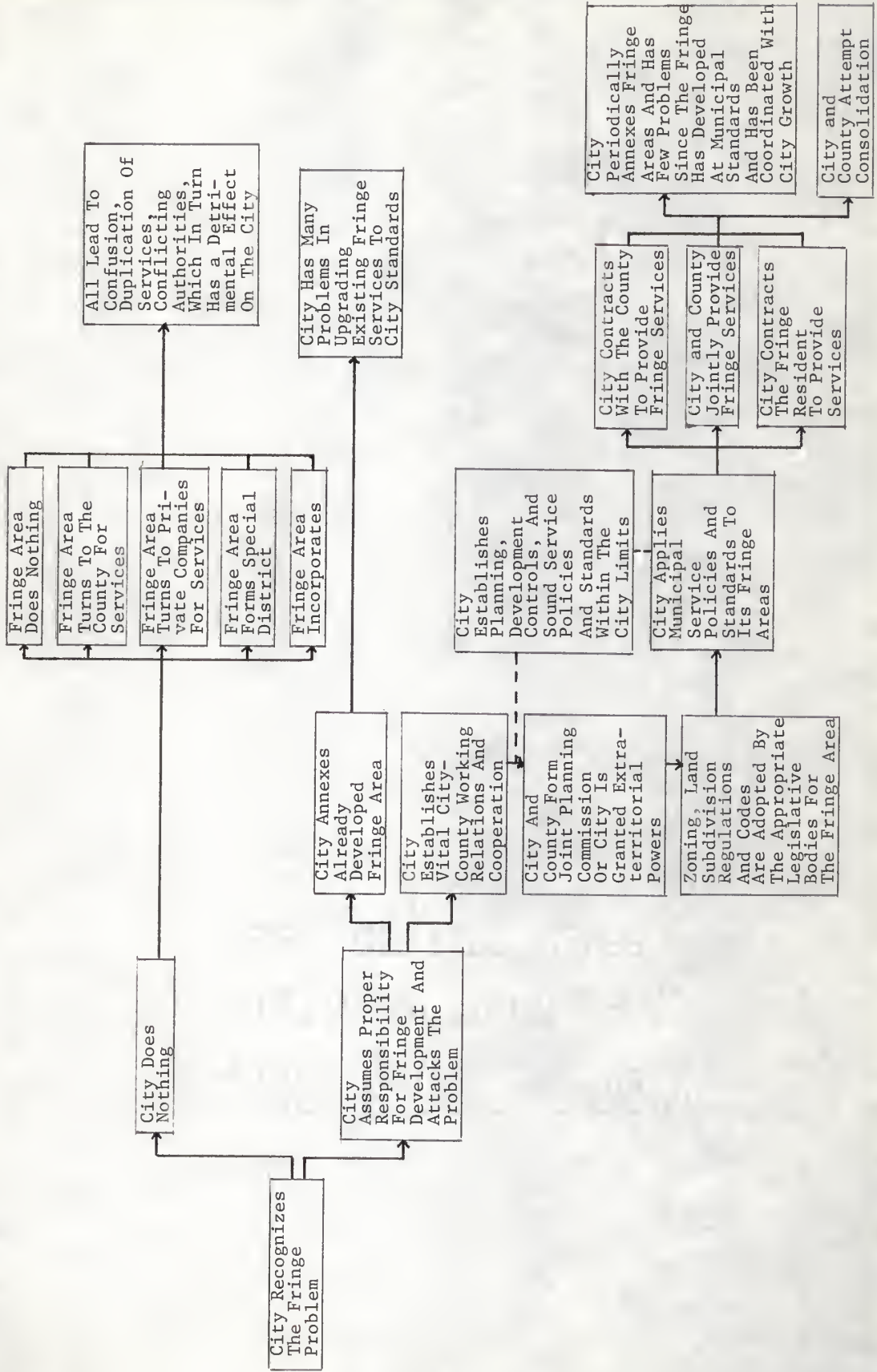
No territory shall be incorporated as a city unless it has three hundred (300) or more inhabitants or has three hundred (300) or more platted lots each of which is served by water and sewer lines owned by a nonprofit corporation.¹⁵

If municipalities ignore fringe areas, the creation of special districts and incorporations may multiply. This could lead to an unhealthy state of development.

One alternative that has been tried in some states is city-county consolidation, however, Kansas law does not provide for this. Consolidation is the "combining of two or more municipal corporations into one."¹⁶

David H. Blau, a planning consultant with Keck Wood, Inc. of Atlanta, Georgia, schematically presented the alternative courses of action (with respect to annexation) in the following manner:¹⁷

FRINGE DEVELOPMENT — ALTERNATIVE COURSES OF ACTION



City's must assume the responsibility for and proceed to guide fringe development. It is essential that municipalities implement extraterritorial planning and zoning -- the importance of this cannot be stressed enough. Only in this manner will an urban area develop within acceptable standards. Annexation should be looked upon as a proper tool of planning, and as such, become an integral part of a city's development process.

CHAPTER 5

POLICY CONSIDERATIONS AND RECOMMENDATIONS

It is necessary that municipalities engage in advance annexation planning and policy formulation. Criteria should be developed by which annexation may be evaluated, and annexation policies should incorporate these criteria. Every city should have a definite annexation policy, extending its corporate limits only after a comprehensive study has been made of the desirability of the extension.

Community planning should take place on an area-wide basis, regardless of corporate boundaries. In other words, annexation planning should become an integral part of the comprehensive plan. Annexation planning will aid the urban area in several ways. One of the most important considerations, from the standpoint of many Kansas communities,

is the present controlling of development densities on the urban fringe so that development will occur at a density sufficiently high to allow the provision of municipal services on a basis that is financially feasible.¹

Annexation planning will insure that an appropriate mixture of land uses will develop in the fringe. It may also insure, for example, that prime industrial land will not be pre-empted by residential use.

Of most importance, however, is that the annexation plan should prescribe a guide for action regarding the readiness of an area for annexation. Ideally,

a city should annex urban land when it is able to do so financially and when, at the same time, it can regulate development advantageously. When that time arrives can be determined only if the city planning agency has kept track of development, and if a course of action has been decided on.²

To help establish the proper time for annexation, the American Society of Planning Officials Report #114 suggests the following criteria:

1. The area must be contiguous to the city.
2. It must have 'a unity of interests with the municipality' and be 'really a part of it.'
3. It must have enough people at a density sufficient to warrant the extension of services.
4. The deficit of income against expense to the city must not be unreasonable.
5. The advantages both to the city and to the area must outweigh the disadvantages.
6. The city must be willing and able to provide services to the newly annexed area within a reasonable time.³

This criteria should be used in the development of annexation policy.

The formulation of policies for annexation is the first step in approaching annexation from a rational standpoint. Policies must be general, but, anticipate as many situations as possible.

Kansas annexation law embraces little policy content. Annexation is permitted when any one of the following conditions is met:

- (a) The land is platted, and some part of such land adjoins the city.
- (b) The land is owned or held in trust for the city or any agency thereof.
- (c) The land adjoins the city and is owned by or held in trust for any other governmental unit other than another city.
- (d) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than fifty percent (50%).
- (e) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of twenty (20) acres shall be annexed for this purpose.
- (f) The tract is so situated that two-thirds ($2/3$) of any boundary line adjoins the city, except no tract in excess of twenty (20) acres shall be annexed under this condition.

(g) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.⁴

The law does not force the municipal corporation to think about its relationship with the urban area. Kansas municipalities are not forced to view annexation logically.

Some states have adopted annexation statutes that have a high degree of policy content. For example, in Indiana, annexation is allowed if:

(a) It is in the best interests of the town and of the territory sought to be annexed.

(b) The area sought to be annexed is urban in character and is an economic and social part of the annexing town.

(c) The town is financially able to provide municipal services to the annexed area within the reasonably near future.

(d) The area sought to be annexed, if undeveloped, is needed for development of the town in the reasonably near future.⁵

Missouri law requires that annexation be "reasonable and necessary to the proper development of said city."⁶

Minnesota statutes provide that annexation may be approved if:

. . .municipal government of the area is required to protect public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter and if it finds that the annexation would be to the best interest of the village or city and of the territory affected. As a guide in arriving at a determination, the commission shall make findings as to the following factors: (1) The relative population of the annexing area to the annexed territory. (2) The relative area of the two territories. (3) The relative assessed valuation. (4) The past and future probable expansion of the annexing area with respect to population increase and construction. (5) The availability of space to accommodate that expansion. (6) Whether the taxes can be reasonably expected to increase in the annexed territory, and whether the expected increase will be proportional to the expected benefit inuring to the annexed territory as a result of the annexation. (7) The presence of an existing or reasonably anticipated need for governmental services in the annexed territory such as water system, sewage disposal, zoning, street

planning, police and fire protection. (8) The feasibility and practicability of the annexing territory to provide these governmental services presently or when they become necessary.⁷

Municipal officials should review the aforementioned statutory provisions, as the responsibility falls on them to develop annexation policies. The development of annexation policies will aid the municipality in annexation decision-making. Policies will set a standard and a basis by which the municipality will operate, and give credence to annexation programs. Policies also inform the fringe area inhabitants as to the developmental schemes of the municipality.

Several elements deserve attention when developing annexation policy statements. The more important components are: (1) territorial requisites; (2) municipal needs; (3) provision of regulatory powers; (4) quality of treatment; (5) costs. The following policies are suggested. They are subject to review and revision as municipal requirements may determine.

Territorial Requisites

Generally, contiguous lands may be annexed. However, annexation is not justified by geographical location alone.

The size of an area to be annexed is important. The annexation of an area so large in extent as to be out of proportion to the present and/or prospective needs of the municipality should not be undertaken.

The annexation of sparsely settled territory, where the area would receive no substantial benefit from the municipal government, or where it is not generally adaptable to municipal purposes, would be inappropriate.

The annexation of farm lands is a salient issue. Generally, land within the municipal corporation is divided into lots and blocks, and the residents do not depend upon farming activities for their livelihood. It should not be the policy of the municipality to annex large tracts of farm land, unless public necessity so requires. For example the land may be needed for city lots.

Farm lands which are not needed for municipal purposes should not be annexed. If the land derives its value from prospective urban uses, annexation may be deemed appropriate.

Municipal Needs

There should be a real municipal purpose involved in the annexation of territory, and the basic motive for annexation should be the provision for orderly growth and development of the entire urban area. Annexation is appropriate where the territory is needed, useful, or suitable for municipal purposes. Municipal needs may be prospective as well as present. Various state supreme courts have ruled that annexation is appropriate for:

the extension of streets or sewers, drainage, electric, gas or water systems, or to supply places for the abode or business of residents, or for the extension of needed police regulation.⁸

Conversely, annexation of territory which is not adaptable to municipal uses, would be improper.

Provision of Regulatory Powers

Substandard fringe area development may have a detrimental effect on the municipality. Annexation may be proper where the municipal government is required to protect the health, safety and welfare of the urban area inhabitants.

Municipalities should endeavor to implement extraterritorial planning and zoning. It is in the best interests of the municipality to guide fringe development until such time arises that annexation is feasible.

Quality of Treatment

The annexing municipality must be willing and financially able to provide governmental services to annexed territory, within a reasonable amount of time. Capital improvement needs for the newly annexed territory should be placed in proper perspective with developmental schemes of the municipality.

The municipality may elect to contract for the provision of municipal services to the unincorporated fringe area. If this be the case, residents of the fringe area should be aware that annexation will be a by-product of this process.

Costs

Costs resulting from annexation should not place a substantial hardship on the residents of the annexed area. Nor should present city residents subsidize annexed territory for any substantial period of time.

Furthermore, the economic, social, and political advantages resulting from annexation should outweigh the disadvantages, over a period of time.

Conclusion

In conclusion, several points should be stressed: (1) A municipality should not annex territory without first giving serious

consideration to the consequences; (2) an inquiry into a particular annexation decision must answer questions of the necessity and desirability of the proposed boundary extension; (3) the basic issue to be resolved is whether the area proposed to be annexed can best function under city or county government; (4) a major problem in annexation is that cities have not formulated consistent policies with respect to corporate expansion. Policies should be formulated which give consideration to total community needs; (5) the role of annexation must be realistically evaluated.

FOOTNOTES

CHAPTER 1

1 One Wichita Growth Program for the 1960's, Wichita-Sedgwick County Metropolitan Area Planning Department, p. 2.

2 American Society of Planning Officials, "Annexation Studies," Planning Advisory Service Report #114, September 1958, p. 1.

3 Joe B. Whitlow, Jr., "Annexation Made Easier," Tennessee Planner, April, 1955, Vol. 15, #5, p. 132.

4 David H. Blau, "Solving The Urban Fringe Problem," Kansas Government Journal, April, 1970, p. 164.

5 Frank S. Sengstock, Annexation: A Solution to the Metropolitan Area Problem, The University of Michigan, 1960, p. 3.

6 Daniel R. Mandelker, Managing Our Urban Environment, The Bobbs-Merrill Company, Inc. p. 314.

7 Stanley Scott, Annexation? Incorporation? A Guide For Community Action, California University, 1954, p. 23.

8 Sengstock, p. 6.

9 Scott, p. 22.

10 Leland Edmonds, Implementation of Planning, The Legal Basis For Development, Center for Community and Regional Planning, Kansas State University, June, 1969, p. 8.

11 Scott, p. 23.

12 Sengstock, pp. 4-5.

13 Urban Information Report #32, "Annexation Practices 1963-1969," Kansas League of Municipalities, July 1970; Urban Information Report #63, "Annexation Trends 1969-1972," Kansas League of Municipalities, May, 1973.

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1 Francis J. Ludes, Corpus Juris Secundum, Volume LXII, The American Law Book Co., Brooklyn, N.Y., 1949, p. 61.

2 State ex rel. v. City of Kansas City, 186 Kan 190; State ex rel. v. City of Overland Park, 192 Kan 654.

3 Robert C. Londerholm to Honorable Calvin A. Strowig, Chairman, House Committee on Public Utilities, 6 February 1967.

4 Eugene McQuillin, The Law of Municipal Corporations, Third Edition, Volume 2, Callaghon and Company, Mundelein, Illinois, 1966, p. 309.

5 Callen v. Junction City, 43 Kan 627.

6 State ex rel. Fatzer v. Kansas City, 169 Kan 702.

7 McQuillin, p. 312.

8 Ibid., pp. 321-323.

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10 City of Emporia v. Randolph, 56 Kan 117.

11 Hutchinson v. Leimbach, 68 Kan 37.

12 Nash v. Glen Elder, 74 Kan 756.

13 Ibid.

14 Ruiland v. Augusta, 120 Kan 42.

15 Ibid.

16 State v. Topeka, 173 Kan 387.

17 State v. Kansas City, 169 Kan 702.

18 Sabatini v. Jayhawk Construction Co., 214 Kan 408.

19 Town of Olsburg v. Pottawatomie County, 113 Kan 501.

- 20 State ex rel. v. City of Overland Park, 192 Kan 654.
- 21 Sabatini v. Jayhawk Construction Co., 214 Kan 408.
- 22 Ibid.
- 23 Ibid.
- 24 McQuillin, p. 388.
- 25 Ibid.
- 26 Frank S. Sengstock, Annexation: A Solution To The Metropolitan Area Problem, The University of Michigan, 1960, p. 70.
- 27 McQuillin, p. 343.
- 28 Ibid., p. 394.
- 29 Ibid., p. 395.
- 30 Ibid., p. 396.
- 31 Sengstock, p. 71.
- 32 John E. Iverson, "Annexation By Municipal Corporations," Washington Law Review, Volume 37, 1962, School of Law, University of Washington, p. 410.
- 33 Ibid., p. 414.
- 34 State ex rel., v. City of Hutchinson, 102 Kan 325.
- 35 Topeka v. Dwyer, 70 Kan 244.
- 36 Iverson, p. 417.
- 37 Topeka v. Dwyer, 70 Kan 244.
- 38 Ibid.
- 39 Chaves v. Atchison, 77 Kan 176.
- 40 Sengstock, p. 68.
- 41 House Bill Number 1623, Chapter 56, Session Laws of 1974.
- 42 Smith v. Emporia, 168 Kan 187.

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1 E. LeFevre, "What Zoning Regulations Are Applicable To Territory Annexed To A Municipality," American Law Reports Annotated, Volume 41 ALR2d 1463, editor in Chief George S. Gulich, The Lawyers Cooperative Publishing Company, Rochester, N.Y., 1955, p. 1463.

2 Ibid.

3 1970 Kansas Planning Laws, Prepared by League of Kansas Municipalities, Revised May, 1970, p. 48-49.

4 Robert M. Anderson, American Law of Zoning, Volume 1, The Lawyers Co-operative Publishing Company, Rochester, New York, 1968, p. 294.

5 Anderson, p. 294.

6 Ibid., p. 295

7 LeFevre, p. 1464.

8 Anderson, p. 295.

9 LeFevre, p. 1465.

10 Ibid.

11 Anderson, p. 296

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21 Anderson, p. 297.

22 Attorney General Harold R. Fatzer to J. Sydney Nye, 28 October 1955.

23 Ibid.

24 Ibid.

25 Edward F. Horne to Attorney General Vern Miller, 26 October 1972.

26 1970 Kansas Planning Laws, p. 44.

27 Ibid.

28 Attorney General Vern Miller to Edward F. Horne, 21 November 1972.

29 1970 Kansas Planning Laws, p. 39.

30 Miller to Horne.

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 Ibid.

37 Ibid.

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1 One Wichita Growth Program for the 1960's, Wichita-Sedgwick County Metropolitan Area Planning Department, p. 12.

2 Eugene McQuillin, The Law of Municipal Corporations, Third Edition, Volume 2, Callaghan and Company, Mundelein, Illinois, 1966, p. 310.

3 Ibid, p. 396.

4 Daniel R. Mandelker, Managing Our Urban Environment, The Bobbs-Merrill Company, Inc., p. 313

5 McQuillin, p. 517.

6 Frank S. Sengstock, Annexation: A Solution to the Metropolitan Area Problem, The University of Michigan, 1960, p. 49.

7 House Bill Number 1623, Chapter 56, Session Laws of 1974.

8 Sengstock, p. 115, citing Virginia Code, 15-152.12 (f), (1956).

9 Ibid., p. 50, citing Mississippi Code Annotated, 3374-13, (1957).

10 American Society of Planning Officials, "Annexation Studies," Planning Advisory Service Report #114, September 1958.

11 1970 Kansas Planning Laws: Procedural Guide Outline, Joint City-County, Kansas League of Municipalities, May 1970, pp. 39-48.

12 Stanley Scott, Annexation? Incorporation? A Guide For Community Action, California University, 1954, p. 7.

13 Ibid., p. 8.

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15 Kansas Statutes Annotated, 15-116 et seq., 1973 Supplement.

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17 David H. Blau, "Solving the Urban Fringe Problem," Kansas Government Journal, April 1970, p. 165.

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1 Daniel R. Mandelker, Managing Our Urban Environment, The Bobbs-Merrill Company, Inc., p. 302.

2 American Society of Planning Officials, "Annexation Studies," Planning Advisory Service Report #114, September 1958, p. 13.

3 Ibid., p. 14.

4 House Bill Number 1623, Chapter 56, Session Laws of 1974.

5 Mandelker, p. 309.

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APPENDIX A

AN ACT relating to the annexation of territory by cities; amending K. S. A. 1973 Supp. 12-519, 12-520 and 12-521 and repealing the existing sections and also repealing K. S. A. 12-501, 12-502, 12-502a, 12-502b, 12-502c, 13-202, 13-1602a, 14-447, 15-11a01, 15-11a02 and 15-11a03 and K. S. A. 1973 Supp. 12-525.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1973 Supp. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract" means a single unit of real property under one ownership, outside the corporate limits of a city, platted and/or unplatted, title to which is publicly or privately held by an owner as defined by subsection (c) herein.

(b) "Land" means a part of a tract or one or more tracts.

(c) "Owner" means the one who has record title to a tract. In the event two (2) or more have record title to a tract, "owner" shall be defined as follows:

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of ten (10) years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

(d) "Adjoins" means to lie upon or touch (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

(f) "Agricultural purposes" as applied to the use of land means the planting, cultivation and harvesting of crops and/or raising and feeding of livestock for profit.

New Sec. 2. (a) The governing body of any city desiring to annex land under the authority of section 4 of this act shall first adopt a resolution stating that the city is considering the annexation of such land. Such resolution shall:

(1) Give notice that a public hearing will be held to consider the annexation of such land and fix the date, hour and place of such public hearing;

(2) Describe the boundaries of the land proposed to be annexed; and

(3) State that the plan of the city for the extension of services to the area proposed to be annexed, which is required under the provisions of section 3 of this act, is available for inspection during regular office hours in the office of the city clerk.

(b) The date fixed for such public hearing shall be not less than sixty (60) nor more than seventy (70) days following the date of the adoption of the resolution fixing the date of such hearing.

(c) A copy of the resolution providing for the public hearing shall be mailed by certified mail to each owner of land proposed to be annexed not more than ten (10) days following the date of the adoption of such resolution. Such resolution shall be published in the official newspaper of such city not less than one week and not more than two weeks preceding the date fixed for such public hearing. A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such resolution and a copy thereof mailed to the owner of the property with such resolution.

(d) At the public hearing, a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed. Following such explanation, all interested persons shall be given an opportunity to be heard. The governing body may for good cause shown recess such hearing to a time and date certain, which shall be fixed in the presence of persons in attendance at the hearing.

(e) No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of land owned by or held in trust for the city or

any agency thereof or land all of the owners of which petition for or consent thereto in writing.

New Sec. 3. The governing body of any city proposing to annex land under the provisions of section 4 of this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in section 2 of this act, prepare a report setting forth such plans. The report shall include:

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereof;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth the plans of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such statement shall also include a timetable of the plans for extending each major municipal service to the area annexed.

The preparation of a plan for the extension of services as hereinbefore required shall not be required for or as a prerequisite to the annexation of land all of the owners of which petition for or consent to such annexation in writing.

Sec. 4. K. S. A. 1973 Supp. 12-520 is hereby amended to read as follows: 12-520. *Except as otherwise hereinafter provided*, the governing body of any city may by ordinance annex land to such city if any one or more of the following conditions exist:

(a) The land is platted, and some part of such land adjoins the city.

(b) The land is owned by or held in trust for the city or any agency thereof.

(c) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city.

~~(d) The land has a common perimeter with the city boundary line of more than fifty percent (50%).~~

(d) *The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than fifty percent (50%).*

(e) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of twenty (20) acres shall be annexed for this purpose.

(f) The tract is so situated that two-thirds ($\frac{2}{3}$) of any boundary line adjoins the city, except no tract in excess of twenty (20) acres shall be annexed under this condition.

(g) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

No unplatted tract of land of fifty-five (55) acres or more which is used only for agricultural purposes shall be annexed by any city under the authority of this section without the written consent of the owner thereof.

Whenever any city shall annex any land under the authority of subsection (b) of this section which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until such adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

No city shall be authorized to annex the right-of-way of any highway under the authority of this section unless at the time of such annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

The governing body of any city may by one ordinance annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts of lands which are annexed by such ordinance and which conform to any one or more of the foregoing conditions.

Any owner of land annexed by a city under the authority of this section may within thirty (30) days next following the publication of the ordinance annexing such land maintain an action in the district court of the county in which such land is located challenging the authority of the city to annex such lands and the regularity of the proceedings had in connection therewith.

New Sec. 5. (a) The governing body of any city may by ordinance annex land not adjoining the city if the following conditions exist:

(1) The land is located within the same county as such city;
 (2) The owner or owners of the land petition for or consent in writing to the annexation of such land; and

(3) The board of county commissioners of the county find and determine that the annexation of such land will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

(b) No land adjoining any land annexed by any city under the provisions of this section shall be deemed to be adjoining the city for the purpose of annexation under any other act or section of this act until such adjoining land or the land annexed under this section shall adjoin the remainder of the city by reason of the annexation of the intervening territory.

(c) Whenever the governing body of any city deems it advisable to annex land under the provisions of this section such governing body shall by resolution request the board of county commissioners of the county to make a finding as required under subsection (a) (3) of this section. The city clerk shall file a certified copy of such resolution with the board of county commissioners who shall, within thirty (30) days following the receipt thereof, make findings and notify the governing body of the city thereof. Such findings shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread such findings upon the journal shall not invalidate the same.

Any owner or city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K. S. A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein.

*Sec. 6. K. S. A. 1973 Supp. 12-521 is hereby amended to read as follows: 12-521. Whenever the governing body of any city deems it advisable to annex land which does not conform to any of the conditions specified in section 2 such city is not permitted to annex under the authority of K. S. A. 1973 Supp. 12-520 and amendments thereto, the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located: *Provided, No unplatted tract of over twenty (20) acres shall be annexed under this section if the owner thereof files a written protest thereto with both the clerks of such city and county at least five (5) clear days before the hearing date published as hereinafter provided in this section.* The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. *The governing body of such city shall make plans for the extension of services to land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:**

(a) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth the plans of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area.

The date fixed for such public hearing shall be not less than sixty (60) nor more than seventy (70) days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of said hearing, together with a legal description of the

land sought to be annexed and the names of the owners thereof, shall be published ~~once a week for three~~ (2) consecutive weeks in some newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of land proposed to be annexed not more than ten (10) days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board may for good cause shown continue said hearing beyond the time specified in the notice without further publication.

On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

If said board shall be satisfied that such annexation or the annexation of a lesser amount of such land will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of said board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

The Any owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of such board to the district court of the same county in the manner and method set forth in K. S. A. 19-223. Any city so appealing shall not be required to execute the bond prescribed therein.

Sec. 7. K. S. A. 12-501, 12-502, 12-502a, 12-502b, 12-502c, 13-202, 13-1602a, 14-447, 15-11a01, 15-11a02 and 15-11a03 and K. S. A. 1973 Supp. 12-519, 12-520, 12-521 and 12-525 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the official state paper.

APPENDIX B

No. 32
July, 1970

ANNEXATION PRACTICES
1963 - 1969

The information in this report is based on (1) questionnaire reports from city clerks and managers, (2) boundary ordinances filed with the state highway department, and (3) annexation ordinances on file with the League office. While reports were not sent to or received from many small cities, particularly those under 500 population, the information is believed to cover nearly all annexations which have occurred in the last seven years.

- A - indicates an annexation ordinance was adopted; the size of the area annexed is unknown.
B - indicates a boundary ordinance was adopted but the League has no official information that an annexation was involved. For the information below, it is assumed that an annexation did occur.

SUMMARY. The number of cities annexing territory and the total area annexed by cities steadily increased from 1963 to 1968. The number of cities annexing doubled from 1963 to 1968, from 52 to 104. The greatest increase was in cities under 5,000 population. In 1963 only 30 cities under 5,000 population annexed territory. In 1968 this number had more than doubled, to 69 cities. The number of cities annexing territory declined in 1969, from 104 to 94.

Total acres annexed by all cities increased in a similar manner between 1963 and 1968, from 3,306.4 acres to 62,436.1 acres. In 1969 the amount declined sharply to 22,885.1 acres. It should be noted that although in 1968, cities under 5,000 population accounted for over 60 percent of all cities annexing territory, they accounted for only 2.3 percent of the total area annexed by all cities.

The table below summarizes information on the number of cities annexing territory from 1963 to 1969. The table is followed by a full listing of municipal annexation activity during the past seven years.

	1969	1968	1967	1966	1965	1964	1963
<u>Cities Over 5,000 Population</u>							
No. Cities Over 5,000	49	49	48	48	48	48	48
No. Cities Which Annexed	28	35	34	31	23	28	22
<u>Cities Under 5,000 Population</u>							
No. Cities Under 5,000	575	575	576	575	575	574	573
No. Cities Which Annexed	66	69	63	48	38	39	30
<u>All Kansas Cities</u>							
No. Cities	624	624	624	623	623	622	621
No. Cities Which Annexed	94	104	97	79	61	67	52

All Cities Over 5,000 Population

City	1969 Population	Acres Annexed During						
		1969	1968	1967	1966	1965	1964	1963
Abilene	7,746	5.6	4.5	301.	2.4	53.	0.	0.
Arkansas City	14,061	54.7	261.9	158.6	41.5	0.	6.	1.
Atchison	12,645	0.	0.	5.3	0.	0.	0.	0.
Augusto	6,823	74.3	19.3	800.	0.	0.	0.	0.
Chanute	10,627	50.2	3.	65.4	185.3	0.	0.	0.
Cloy Center	5,005	25.	0.	8	0.	19.6	9.3	8
Coffeyville	17,826	153.1	983.9	34.9	7.3	35.	22.4	0.
Concordio	7,621	0.	1.	20.	A	25.9	0.	8.3
Derby	7,841	37.7	10.5	0.	25.9	8.8	40.	0.
Dodge City	15,144	30.	41.	18.	46.	75.	9.	40.
El Dorado	12,995	35.9	6.	36.7	165.9	23.8	113.7	0.
Emporia	17,781	57.	288.4	134.	30.5	86.0	24.	177.
Fairway	5,433	0.	0.	0.	0.	0.	0.	0.
Fort Scott	9,615	147.	0.	0.	0.	0.	0.	0.
Garden City	15,744	0.	0.	127.6	17.6	6.5	35.	20.8
Goodland	5,703	0.	498.8	60.	9.5	0.	A	8
Great Bend	18,285	0.	320.	38.8	0.	0.	110.3	0.
Hoys	14,154	0.	40.	32.1	192.8	98.6	25.9	.9
Hoysville	6,540			0.	8	0.	0.	50.
Hutchinson	41,119	3.	80.	15.	317.8	173.	703.	20.
Independence	11,881	1.	347.8	0.	0.	0.	0.	0.
Iola	6,928	21.	0.	133.4	36.4	0.	20.9	0.
Junction City	19,836	39.	6.6	4.	42.2	132.	68.5	59.3
Kansas City	169,978	0.	0.	0.	8,893.	11,200.	0.	0.
Lawrence	32,832	29.6	174.4	1,649.	3,021.	287.4	68.7	34.5
Leavenworth	28,213	0.	18.9	107.	0.	0.	1.9	0.
Leowood	11,478	0.	2,005.	1,500.	30.	2,410.	0.	0.
Lenexa	5,124	0.	0.	56.3	80.	A	A	A
Liberol	13,937	160.7	16.2	0.	41.3	0.	15.0	15.8
Monkhotton	24,796	587.1	488.6	43.	604.	46.7	45.3	49.5
McPherson	10,809	135.8	19.4	4.3	33.7	0.	39.0	49.4
Merriam	10,964	0.	0.	490.	40.	0.	89.	0.
Mission	8,345	0.	0.	0.	0.	0.	0.	0.
Newton	16,031	0.	6.5	165.9	1.8	228.4	81.9	6.
Olathe	17,104	3,840.*	16,935.0	477.5	476.5	852.	120.	44.5
Ottowo	11,715	0.	0.	0.	0.	0.	0.	0.
Overland Park	75,028	0.	13,481.2	8	0.	0.	0.	0.
Porsons	12,863	0.	9.2	161.1	0.	0.	.3	0.
Pittsburg	20,945	6,190.	5,890.	1,055.	297.	40.	43.	843.
Proirie Village	29,911	0.	0.	0.	0.	0.	0.	0.
Prott	7,043	1,867.7	1,707.1	0.	0.	0.	4.	53.
Roeland Park	10,152	0.	0.	0.	0.	0.	0.	0.
Russell	5,998	10.	5.	A	0.	0.	0.	0.
Salino	39,013	10,167.2	10,104.4	870.6	3,094.	0.	267.4	61.8
Shownee	20,320	8.	5,000.	250.	250.	960.	0.	A
Topeko	136,407	92.1	364.4	832.	0.	1,776.	0.	57.6
Wellington	8,398	10.	470.	11.1	A	0.	0.	0.
Wichita	282,989	1,440.4	431.7	256.	894.9	8.9	14.5	1,472.0
Winfield	10,496	75.5	944.6	5.5	8.7	43.4	0.	0.

Total Acres An-
nexed by Cities
over 5,000 pop.

21,508.6 60,984.3 9,862.8 18,807. 18,570.4 1,968.7 3,064.4

*Deannexed

Under 5,000 Population -- Cities Which Annexed

City	1969 Population	Acres Annexed During						
		1969	1968	1967	1966	1965	1964	1963
Almena	564	0.0	40.	0.0	0.0	0.0	0.0	0.0
Altamont	877	0.0	0.0	0.0	5.0	10.0	0.0	0.0
Altoona	623	12.	0.0	0.0	0.0	0.0	0.0	0.0
Andale	521	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Andover	1,925	92.1	364.4	A	A	A	0.0	0.0
Anthony	2,801	0.0	0.0	0.0	0.0	80.0	7.3	0.0
Assaria	309	0.0	0.0	0.0	0.0	0.0	A	0.0
Atwood	1,867	0.0	5.0	0.0	0.0	0.0	0.0	0.0
Baldwin City	1,826	A	A	16.0	A	35.0	0.0	0.0
Barnes	259	0.0	0.0	0.0	0.0	0.0	A	0.0
Basehor	808	5.	0.0	0.0	0.0	0.0	0.0	0.0
Baxter Springs	4,941	5.	0.0	A	0.0	0.0	0.0	0.0
Belle Plaine	1,686	0.0	B	0.0	2.1	0.0	0.0	0.0
Belleville	3,209	0.0	B	1.5	9.7	27.3	9.5	0.0
Beloit	4,342	0.0	0.0	15.0	0.0	0.0	0.0	0.0
Bentley	213	0.0	A	0.0	0.0	0.0	0.0	0.0
Benton	492	0.0	A	0.0	0.0	0.0	0.0	0.0
Bern	228	A	0.0	0.0	0.0	0.0	0.0	0.0
Bonner Springs	3,643	230.0	A	0.0	A	0.0	8.0	0.0
Buffalo	426	0.0	0.0	0.0	0.0	0.0	A	0.0
Buhler	1,046	0.0	0.0	10.0	0.0	0.0	0.0	0.0
Burrton	805	0.0	A	0.0	0.0	0.0	0.0	0.0
Bushton	469	A	0.0	0.0	0.0	0.0	0.0	0.0
Canton	898	0.0	0.0	0.0	0.0	10.0	20.0	0.0
Chapman	1,493	20.0	0.0	0.0	0.0	0.0	0.0	0.0
Cheney	1,183	10.0	0.0	0.0	0.0	0.0	0.0	0.0
Chetopa	1,730	1.0	4.0	35.0	0.0	0.5	0.0	0.0
Cimarron	1,366	0.0	0.0	15.0	0.0	0.0	0.0	0.0
Claflin	946	0.0	0.0	0.0	0.0	0.0	7.0	0.0
Clearwater	1,413	8.0	0.0	9.0	40.0	0.0	0.0	0.0
Clifton	757	7.0	3.0	A	0.0	0.0	0.0	0.0
Clyde	979	0.0	0.0	0.0	0.0	0.0	0.0	B
Colby	4,838	0.0	0.0	1.7	141.9	65.4	1.3	0.0
Columbus	3,414	10.0	0.0	12.0	25.0	0.0	0.0	0.0
Colwich	879	A	0.0	0.0	A	0.0	0.0	0.0
Council Grove	2,648	1.0	A	0.0	1.5	1.5	0.0	0.0
Courtland	427	0.0	0.0	0.0	0.0	0.0	0.0	A
Cuba	309	0.0	A	0.0	0.0	0.0	0.0	A
DeSoto	1,620	0.0	5.7	28.0	5.5	B	B	A
Dexter	295	0.0	0.0	0.0	0.0	0.0	2.0	19.0
Douglass	1,163	0.0	5.8	A	0.0	0.0	0.0	0.0
Downs	1,322	0.0	0.0	0.0	30.0	A	0.0	0.0
Dwight	326	0.0	A	0.0	0.0	0.0	0.0	0.0
Edgerton	435	A	0.0	0.0	A	0.0	0.0	0.0
Edna	474	0.0	A	0.0	0.0	0.0	0.0	0.0
Edwardsville	586	120.0	160.0	240.0	136.0	0.0	A	0.0
Elbing	115	A	0.0	0.0	0.0	0.0	0.0	0.0
Elkhart	2,227	0.0	B	27.5	0.0	0.0	0.0	0.0
Ellis	2,331	0.0	40.0	0.0	A	2.0	11.0	0.0
Ellsworth	2,272	29.2	0.0	0.0	0.0	0.0	0.0	0.0
Elwood	1,458	10.0	40.0	6.0	A	0.0	0.0	0.0
Ensign	248	0.0	A	0.0	0.0	0.0	0.0	0.0
Erie	1,566	25.0	0.0	0.0	0.0	0.0	10.0	0.0
Eskridge	540	15.0	0.0	0.0	0.0	0.0	0.0	0.0
Eudora	2,358	65.0	0.0	0.0	0.0	0.0	0.0	0.0
Florence	868	A	0.0	0.0	0.0	0.0	0.0	0.0
Fredonia	3,902	65.0	0.0	0.0	0.0	0.0	0.0	5.0
Frontenac	2,271	180.0	270.0	300.0	0.0	0.0	0.0	0.0

		Acres Annexed During . . .						
Galva	504	0.0	0.0	0.0	0.0	0.0	12.0	0.0
Garden Plaine	707	0.0	0.0	A	0.0	0.0	0.0	0.0
Gardner	1,771	6.0	7.0	4 1	3.0	0.0	A	0.0
Garnett	3,133	8.0	80.0	2.0	0.0	0.0	0.0	0.0
Girard	2,597	0.0	0.0	0.0	0.0	25.0	0.0	0.0
Glen Elder	485	0.0	0.0	14.0	0.0	0.0	0.0	0.0
Goodland	5,703	15.0	13.0	0.0	0.0	0.0	0.0	0.0
Greeley	452	0.0	0.0	0.0	A	A	0.0	0.0
Green	184	0.0	A	0.0	0.0	0.0	0.0	0.0
Gridley	336	0.0	0.0	A	0.0	0.0	0.0	0.0
Halstead	1,747	6.0	0.0	0.0	0.0	0.0	2.0	0.0
Hanover	863	0.0	A	0.0	0.0	0.0	0.0	0.0
Honstan	299	0.0	0.0	0.0	0.0	0.0	0.0	B
Harper	1,758	0.0	0.0	15.0	0.0	0.0	13.0	0.0
Haven	1,236	0.0	0.0	3.0	3.5	2.7	0.0	3.5
Hovensville	157	A	0.0	0.0	0.0	0.0	0.0	0.0
Hoviland	603	0.0	13.2	0.0	0.0	0.0	0.0	0.0
Herington	3,759	A	A	A	0.0	0.0	0.0	0.0
Hesstan	1,539	31.0	15.0	105.0	9.0	B	0.0	0.0
Hiawatho	4,082	0.0	34.0	0.0	0.6	0.0	0.0	0.0
Highland	758	A	2.0	0.0	0.0	0.0	0.0	0.0
Hill City	2,282	0.0	A	5.0	A	0.0	0.0	0.0
Hillsbara	2,734	0.0	0.0	1.0	15.0	10.6	0.0	0.0
Hoisington	4,402	0.0	0.0	0.0	0.0	0.0	21.0	0.0
Halcamb	326	0.0	A	0.0	0.0	0.0	0.0	0.0
Halton	3,176	57.4	19.0	0.0	0.0	0.0	0.0	0.0
Hartan	2,683	6.0	25.0	36.0	7.0	0.0	10.0	A
Hayt	438	0.0	0.0	A	0.0	0.0	0.0	0.0
Hugaton	2,932	0.0	A	10.0	0.0	0.0	0.0	0.0
Humboldt	2,407	0.0	0.0	0.0	B	2.0	0.0	0.0
Inman	801	0.0	A	20.0	0.0	0.0	0.0	0.0
Jewell	646	0.0	0.0	8.0	0.0	0.0	0.0	0.0
Kechi	224	0.0	A	0.0	0.0	0.0	0.0	0.0
Kingman	4,006	0.0	0.0	0.0	0.0	0.0	50.0	15.0
Kinsley	2,274	0.0	0.0	0.0	0.0	30.0	0.0	0.0
Lakin	1,579	0.0	0.0	0.0	5.6	27.0	5.5	0.0
Lorned	4,935	23.0	0.0	0.0	0.0	0.0	0.0	0.0
Leanordville	492	0.0	0.0	A	0.0	0.0	0.0	0.0
Leoti	1,979	0.0	1.2	1.2	46.7	0.0	0.0	0.0
Lincoln Center	1,872	0.0	0.0	A	0.0	0.0	0.0	0.0
Linn	487	0.0	A	3.0	1.0	0.0	A	0.0
Langford	126	0.0	0.0	0.0	0.0	0.0	A	0.0
Louisburg	1,096	0.0	42.0	5.0	3.0	A	0.0	0.0
Lucos	568	A	0.0	0.0	0.0	0.0	0.0	0.0
Lyndan	1,071	19.3	0.0	0.0	0.0	0.0	0.0	4.6
Madison	1,141	A	0.0	6.0	0.0	0.0	0.0	0.0
Mankoto	1,380	0.0	0.0	50.0	60.0	61.0	0.0	0.0
Maple Hill	338	A	0.0	0.0	0.0	0.0	0.0	0.0
Marion	2,202	5.0	0.0	0.0	0.0	0.0	0.0	0.0
Morysville	4,185	6.6	0.0	0.0	0.0	0.0	0.0	0.0
McLouth	628	0.0	0.0	A	0.0	A	0.0	0.0
Meode	1,972	65.0	10.0	0.0	0.0	0.0	0.0	0.0
Medicine Lodge	2,716	0.0	4.5	0.0	0.0	0.0	0.0	0.0
Melvorn	428	0.0	A	0.0	0.0	0.0	0.0	0.0
Milford	239	A	0.0	0.0	0.0	0.0	0.0	0.0
Morrowville	209	0.0	0.0	0.0	0.0	10.0	0.0	0.0
Mound Valley	509	B	0.0	0.0	0.0	0.0	0.0	0.0
Moundridge	1,291	A	0.0	0.0	A	0.0	0.0	0.0
Mulvone	3,300	0.0	0.0	0.0	8.4	29.8	2.0	28.0
Neodesha	4,308	0.0	80.0	0.0	9.0	0.0	0.0	0.0
Neosho Rapids	253	0.0	0.0	A	0.0	0.0	0.0	0.0

Acres Annexed During . . .

Ness City	1,881	0.0	0.0	0.0	2.5	0.0	0.0	0.0
North Newton	693	3.1	13.1	27.0	0.0	0.0	1.5	0.0
Norton	3,833	0.0	0.0	0.0	0.0	0.0	0.0	70.0
Oakley	2,482	0.0	30.0	0.0	0.0	0.0	0.0	0.0
Oberlin	2,494	18.0	0.0	160.0	0.0	0.0	0.0	0.0
Olpe	440	0.0	0.0	0.0	0.0	0.0	1.0	0.0
Onaga	827	0.0	A	0.0	0.0	0.0	0.0	0.0
Osage City	2,667	0.0	0.0	0.0	0.0	0.0	12.0	A
Osawatomie	4,410	0.0	0.0	0.0	15.0	0.0	63.0	0.0
Osborne	2,068	1.0	0.0	0.0	0.0	15.0	0.0	0.0
Oswego	2,434	0.0	0.0	A	0.0	0.0	0.0	A
Overbrook	719	A	0.0	0.0	0.0	A	0.0	A
Paola	4,946	70.0	85.0	8.0	27.0	5.0	4.0	0.0
Plainville	2,932	A	2.0	A	0.0	0.0	A	A
Pleasanton	1,345	0.0	0.0	0.0	2.6	0.0	0.0	0.0
Pretty Prairie	585	0.0	0.0	0.0	2.0	0.0	0.0	A
Princeton	192	0.0	0.0	A	0.0	0.0	0.0	0.0
Riley	702	A	0.0	0.0	0.0	0.0	0.0	0.0
Rose Hill	520	0.0	0.0	A	0.0	0.0	0.0	0.0
Rossville	1,030	0.0	7.0	0.0	0.0	0.0	0.0	0.0
St. Marys	1,576	0.0	0.0	0.0	0.0	3.0	0.0	0.0
Sabetha	2,556	0.0	A	0.0	0.0	0.0	0.0	0.0
Satanta	1,205	A	0.0	0.0	A	0.0	0.0	0.0
Scandia	587	0.0	A	1.3	A	0.3	5.0	1.6
Schoenchen	183	0.0	A	0.0	0.0	0.0	0.0	0.0
Scott City	4,316	23.0	7.5	0.0	0.0	7.0	0.0	14.0
Sedan	1,762	0.0	6.5	7.5	0.0	0.0	0.0	0.0
Seneca	2,327	0.0	2.7	3.2	0.3	0.0	150.0	0.0
Sharon Springs	1,131	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Silver Lake	777	12.0	0.0	A	0.0	36.0	0.0	0.0
Smith Center	2,649	A	A	0.8	0.0	1.5	0.0	0.0
South Hutchinson	2,100	0.0	0.0	11.0	0.0	0.0	0.0	0.0
Sublette	1,357	0.0	0.0	32.0	0.0	0.0	0.0	0.0
Tonganoxie	1,764	0.0	0.2	12.0	20.2	0.0	0.0	0.0
Towanda	1,242	2.8	0.0	12.6	2.5	0.0	0.0	0.0
Tribune	1,235	0.0	B	0.0	130.0	A	0.0	0.0
Troy	1,227	0.0	0.0	0.0	15.0	0.0	0.0	A
Ulysses	4,092	60.0	0.0	0.0	0.0	0.0	0.0	0.0
Uniontown	315	0.0	0.0	0.0	0.0	0.0	A	0.0
Valley Center	2,745	0.0	A	39.0	0.0	0.0	5.0	0.0
Valley Falls	1,172	0.0	0.0	24.0	0.0	0.0	0.0	0.0
Victoria	1,306	0.0	A	0.0	0.0	2.5	17.0	0.0
Wakefield	571	0.0	0.0	0.0	0.0	0.0	0.0	45.0
Wamego	2,543	5.0	13.0	A	13.0	0.0	0.0	18.0
Washington	1,845	2.8	1.0	1.0	13.0	0.0	27.3	8.1
Wathena	1,105	A	A	A	0.0	0.0	0.0	0.0
Wellsford	14	0.0	0.0	0.0	0.0	0.0	0.0	A
Wellsville	1,309	20.0	0.0	0.0	0.0	0.0	0.0	0.0
Wilson	885	.2	0.0	0.0	0.0	0.0	0.0	0.0
Winchester	584	0.0	0.0	A	0.0	0.0	0.0	0.0
Woodston	249	0.0	0.0	A	0.0	0.0	0.0	0.0
Yates Center	2,112	0.0	0.0	0.0	0.0	23.0	0.0	0.0

Total Acres Annexed by
Cities under 5,000 pop.

1,376.5 1,451.8 1,228.7 1,051.6 487.3 586.7 242.0

Information

No. 63

May, 1973

Report

ANNEXATION TRENDS 1968 - 1972

The information in this report has been gathered from a 1970 annexation report for the years 1968-1969 and a 1973 questionnaire survey which developed similar data for 1970-1972. The 1973 questionnaire survey produced an 86 percent return for all cities over 500 population. "A" indicates an annexation has occurred, however the exact size of the area was not reported at this time.

SUMMARY

A 1970 report on annexation practices between 1963 - 1969 stated that there had been a steady increase in the number of cities annexing territory and the total acres annexed. In contrast to this seven-year period (1963-1969), annexation trends in the last five years (1968-1972) have been inconsistent but basically on the decline.

Annexation Trends 1968-1972

Kansas Cities Over 500 Pop.	1968	1969	1970	1971	1972
Number of Cities	293	297	282	291	301
Number of Cities Annexing	95	94	67	71	91
% of total No. of Cities	36%	32%	24%	24%	30%
Total Acres Annexed	62,422.1	22,662.9	9,069.46	18,468.60	31,294.22

As illustrated in the preceding summary, annexation activities peaked the first year of the five-year period with 95 cities annexing a total of 62,422.1 acres. From this point, the number of acres annexed dropped to 9,069.46 acres in 1970 and involved only 67 cities. Annexations were on the rise once more during 1971 - 1972, but in 1972 the 31,294.22 acres annexed was just about half of the 1968 total of 62,422.1 acres.

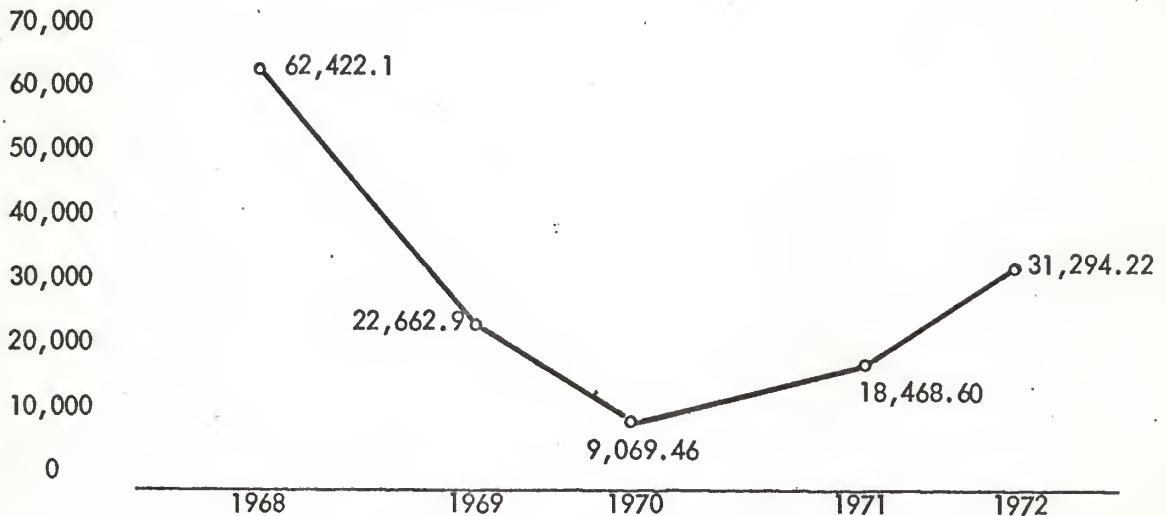
The most dominant population group in terms of annexations are cities over 10,000 population. Even though this population group constitutes only 25 percent of the total number of cities annexing territory in any one year, this one group accounts for at least 83.9 percent of the total amount of acres annexed for any one year between 1968-1972.

The first chart on the following page illustrates statewide annexation trends during 1968-1972. The next chart separates statewide annexation activities into appropriate population groupings. A detailed listing of reported annexations for the years 1968-1972 are listed in the remainder of this report.

The preparation of this report was financed in part through a comprehensive planning grant from the Department of Housing and Urban Development. This program is administered in Kansas by the Planning Division of the Kansas Department of Economic Development.

Total Acres Annexed 1968 - 1972

Acres



Annexation by Population Group
1968 - 1972

Cities Over 10,000 Population

	1968	1969	1970	1971	1972
No. of Cities	34	34	33	33	33
No. of cities annexing	27	19	21	24	22
Total acres annexed	58,268.1	19,310.3	7,615.16	16,263.14	28,182.03
% total acres annexed	93.3%	85.2%	83.9%	88.3%	90.1%

Cities 5,000 - 10,000 Pop.

	1968	1969	1970	1971	1972
No. of Cities	15	15	15	17	18
No. of cities annexing	10	11	9	7	9
Total acres Annexed	2,801.2	2,268.3	257.91	254.33	889.14
% total acres annexed	4.4%	10%	2.9%	1.3%	2.8%

Cities 1,000 - 5,000 Pop.

	1968	1969	1970	1971	1972
No. of Cities	136	140	136	140	138
No. of cities annexing	38	43	27	30	48
Total acres Annexed	1,274.5	1,030.0	1,088.31	1,569.3	1,288.14
% total acres annexed	2%	4.5%	12%	8.4%	4.2%

Cities 500 - 1,000 Pop.

	1968	1969	1970	1971	1972
No. of cities	108	108	98	101	112
No. of cities annexing	20	21	10	10	12
Total acres Annexed	78.3	54.3	108.08	381.83	934.91
% total acres annexed	3%	3%	1.2%	2%	2.9%

ANNEXATION PRACTICES OF KANSAS CITIES

1968 - 1972

I Cities Over 10,000 Population

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Wichita	263,801	431.7	1,440.4	1,723.2	839.94	295.23
Kansas City	168,779	-----	-----	-----	8,500.0	24,190.0
Topeka	138,964	364.4	92.1	-----	-----	-----
Overland Park	81,364	13,481.2	-----	-----	225.0	-----
Lawrence	42,130	174.4	29.6	876.7	59.41	21.6
Hutchinson	41,823	80.0	3.0	1,968.0	636.0	95.0
Salina	36,609	10,104.4	10,167.2	A	A	A
Leavenworth	30,006	18.9	-----	33.27	710.21	196.87
Manhattan	27,049	488.6	587.1	76.78	153.74	120.4
Shawnee	22,893	5,000.0	8.0	-----	3.68	320.0
Emporia	20,982	288.4	57.0	187.0	235.0	238.0
Pittsburg	20,373	5,890.0	6,190.0	46.0	51.0	9.6
Junction City	20,176	6.6	39.0	22.84	35.96	102.08
Olathe	19,306	16,935.0	-----	147.0	85.78	313.55
Great Bend	18,497	320.0	-----	-----	-----	-----
Coffeyville	17,374	983.9	153.1	-----	-----	-----
Dodge City	16,722	41.0	30.0	402.4	3,527.0	-----
Garden City	16,305	-----	-----	7.283	374.587	151.447
Newton	15,446	6.5	-----	146.33	19.45	283.45
Hays	15,270	40.0	-----	46.71	13.2	22.85
Liberal	14,260	16.2	160.7	6.0	-----	555.0
Arkansas City	13,508	261.9	54.7	59.515	310.723	20.68
Parsons	12,031	9.2	-----	14.9	91.07	215.96
Atchison	11,963	-----	-----	-----	9.4	-----
El Dorado	11,781	6.0	35.9	-----	-----	-----
Leawood	11,748	2,005.0	-----	1,124.76	293.6	-----
Independence	11,594	347.8	1.0	-----	-----	65.0
McPherson	10,578	19.4	135.8	17.695	21.25	245.81
Ottawa	10,554	-----	-----	407.0	20.0	52.0
Chanute	10,182	3.0	50.2	301.77	-----	667.5
Winfield	10,174	944.6	75.5	-----	17.15	-----

Total acres
annexed by cities
of over 10,000
population

58,268.1 19,310.3 7,615.16 16,263.14 28,182.03

II Cities of 5,000 - 10,000 Population

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Fort Scott	8,767	-----	147.0	-----	-----	-----
Abilene	7,943	4.5	5.6	56.2	40.0	19.48
Wellington	7,757	470.0	10.0	2.24	-----	-----
Derby	7,719	10.5	37.7	52.89	17.78	-----
Concordia	7,519	1.0	-----	A	A	3.0
Lenexa	6,838	-----	-----	-----	20.0	180.0
Pratt	6,717	1,707.1	1,867.7	-----	-----	-----
Iola	6,658	-----	21.0	65.3	-----	68.705
Haysville	6,294	A	A	39.28	-----	-----
Augusta	5,996	19.3	74.3	41.0	74.5	36.6
Goodland	5,748	498.8	-----	-----	-----	497.3
Russell	5,516	5.0	10.0	-----	-----	28.0
Clay Center	5,114	-----	25.0	-----	.05	48.05
Osawatomie	5,071	-----	-----	A	-----	-----
Paola	5,021	85.0	70.0	1.0	102.0	8.0

Total acres annexed by cities of 5,000-10,000 population	2,801.2	2,268.3	257.91	254.33	889.14
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III Cities of 1,000 - 5,000 Population

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Larned	4,830	-----	23.0	-----	76.6	21.5
Colby	4,810	-----	-----	47.0	-----	17.8
Baxter Springs	4,797	-----	5.0	-----	-----	-----
Scott City	4,322	7.5	23.0	1.0	-----	1.0
Ulysses	4,294	-----	60.0	-----	350.6	-----
Bonner Springs	4,129	A	23.0	93.0	-----	A
Kingman	4,099	-----	-----	-----	-----	.3
Hiawatha	3,841	34.0	-----	26.61	127.3	9.53
Herington	3,802	A	A	-----	-----	-----
Marysville	3,776	-----	6.6	20.6	-----	18.92
Neodesha	3,657	80.0	-----	3.0	.6	.5
Fredonia	3,574	-----	65.0	-----	-----	-----
Phillipsburg	3,553	-----	-----	-----	4.0	2.5
Columbus	3,531	-----	10.0	-----	-----	-----
Holton	3,430	19.0	57.4	19.1	30.3	-----

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Garnett	3,149	80.0	8.0	43.7	-----	4.58
Mulvane	3,110	-----	-----	-----	-----	1.8
Belleville	3,103	-----	-----	-----	8.0	-----
Hugoton	2,951	A	-----	-----	-----	-----
Cherryvale	2,907	-----	-----	-----	-----	28.0
Ellinwood	2,826	-----	-----	-----	10.03	2.48
Girard	2,791	-----	-----	-----	10.0	-----
Wamego	2,659	13.0	5.0	-----	6.65	-----
Plainville	2,639	2.0	A	-----	-----	-----
Valley Center	2,634	A	-----	-----	11.5	-----
Medicine Lodge	2,606	4.5	-----	-----	-----	-----
Council Grove	2,570	A	1.0	-----	10.55	12.0
Sabetha	2,562	A	-----	-----	-----	17.65
WaKeeney	2,527	-----	-----	-----	185.0	-----
Hillsboro	2,515	-----	-----	160.0	-----	-----
Oberlin	2,496	-----	18.0	-----	-----	-----
Smith Center	2,493	A	A	-----	45.0	1.5
Ellsworth	2,442	-----	29.0	-----	50.77	40.54
Seneca	2,426	2.7	-----	12.0	-----	35.0
Frontenac	2,412	270.0	180.0	185.0	107.0	76.0
Eudora	2,393	-----	65.0	-----	133.0	28.0
South Hutchinson	2,391	-----	-----	-----	-----	30.0
Horton	2,378	25.0	6.0	30.0	-----	-----
Oakley	2,367	30.0	-----	-----	22.0	-----
Marion	2,317	-----	5.0	-----	-----	-----
Humboldt	2,308	-----	-----	-----	-----	70.0
Leoti	2,242	1.2	-----	1.32	-----	A
Baldwin City	2,241	A	A	9.0	-----	79.75
Ellis	2,201	40.0	-----	3.25	-----	-----
Yates Center	2,096	-----	-----	-----	-----	83.0
Osborne	2,064	-----	1.0	-----	-----	37.0
Tonganoxie	2,020	.2	-----	-----	298.0	110.0
Meade	1,972	10.0	65.0	-----	-----	-----
DeSoto	1,944	5.7	-----	252.0	-----	-----
Halstead	1,835	-----	6.0	-----	-----	-----
Elwood	1,789	40.0	10.0	-----	-----	-----
Lakin	1,789	-----	-----	-----	-----	2.0
Hesston	1,788	15.0	31.0	-----	-----	-----
Andover	1,787	364.4	92.1	-----	12.6	124.7
Lincoln Center	1,775	-----	-----	-----	-----	17.0
Washington	1,766	-----	2.8	-----	-----	-----
Atwood	1,732	5.0	-----	-----	-----	-----
Gardner	1,715	7.0	6.0	50.0	-----	149.0
Sedan	1,612	6.5	-----	-----	-----	-----
Kiowa	1,552	-----	-----	-----	-----	50.0
St. Marys	1,537	-----	-----	9.0	-----	2.0
Chetopa	1,534	4.0	1.0	10.0	12.6	30.0
Hoxie	1,497	-----	-----	13.0	10.5	.5
Chapman	1,484	-----	20.0	-----	12.0	12.0
Clearwater	1,477	-----	8.0	-----	25.0	37.8

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Erie	1,469	-----	25.0	6.75	-----	6.12
Arma	1,467	-----	-----	-----	-----	1.0
Edwardsville	1,415	160.0	120.0	-----	-----	-----
Cimarron	1,403	-----	-----	-----	4.0	20.0
Moundridge	1,322	-----	A	-----	15.0	5.0
Victoria	1,303	A	-----	-----	-----	-----
Wellsville	1,288	-----	20.0	20.0	-----	25.0
Satanta	1,263	-----	A	-----	10.0	-----
Wathena	1,260	A	A	-----	-----	-----
Towanda	1,234	-----	2.8	2.71	39.0	37.03
Troy	1,233	-----	-----	-----	-----	.94
Douglass	1,167	5.8	-----	-----	-----	A
Cheney	1,151	-----	10.0	A	A	A
Lyndon	1,148	-----	19.3	5.27	-----	-----
Sharon Springs	1,102	-----	-----	15.0	-----	-----
Sedgwick	1,102	A	A	-----	19.7	38.7
Louisburg	1,089	42.0	-----	50.0	-----	A

Total acres annexed by cities of 1,000-5,000 population		1,274.5	1,030.0	1,088.31	1,569.3	1,288.14
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IV Cities of 500 - 1,000 Population

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Basehor	987	-----	5.0	6.0	350.0	720.0
Grandview Plaza	982	A	A	-----	-----	18.0
Silver Lake	947	-----	12.0	40.0	-----	40.0
Wilson	947	-----	.2	17.0	-----	-----
Rossville	945	7.0	-----	-----	4.0	-----
Florence	925	-----	A	-----	-----	-----
Altamont	923	-----	-----	-----	-----	60.0
Colwich	861	-----	A	A	A	A
Hanover	860	A	-----	-----	-----	-----
Burrton	839	A	-----	-----	-----	-----
Inman	818	A	-----	-----	4.0	-----
Onaga	788	A	-----	12.0	-----	-----
Highland	780	2.0	A	1.5	-----	-----
Clifton	716	3.0	7.0	6.0	5.0	-----
Riley	711	-----	A	-----	-----	-----

<u>CITY</u>	<u>Population</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Maize	710	A	A	-----	.5	15.0
Protection	706	A	A	-----	7.5	25.0
North Newton	674	13.1	3.1	21.73	-----	13.8
Kensington	636	A	A	-----	-----	2.0
Eskridge	635	-----	15.0	-----	-----	-----
Altoona	629	-----	12.0	-----	4.0	-----
Americus	609	A	A	-----	-----	20.0
Mount Hope	609	A	A	2.6	2.83	-----
Moran	603	A	A	-----	4.0	20.83
Haviland	592	13.2	-----	-----	-----	-----
Scandia	565	A	-----	-----	-----	-----
Lucas	548	-----	A	-----	-----	-----
Almena	543	40.0	-----	-----	-----	-----
Leon	528	A	A	1.25	-----	-----
Milford	521	-----	A	-----	-----	-----
Whitewater	517	-----	-----	-----	-----	A
Benton	510	A	-----	-----	-----	-----
Total acres annexed by cities of 500 - 1,000 population		78.8	54.3	108.08	381.83	934.91