



Georgia’s Annexation Dispute Resolution/Arbitration Process: ACCG Recommendations for the House Study Committee on Annexation

August 11, 2021

Issue I – The county’s 30-day shot clock to object is often too short, particularly if an annexation petition is flawed or changed.

Currently, when a city receives a petition for annexation from a property owner, the city notifies the county by forwarding that petition to them within five days, O.C.G.A. § 36-36-6. This notification commences the county’s 30-day shot clock on whether to object to the annexation. This is sometimes prior to the city reviewing the application for completeness or showing interest in approving the annexation. This then makes the county the first government entity to act on a proposed annexation, not knowing whether the city is even interested in considering, altering or approving the annexation.

For a county’s annexation objection to be proper, the decision must be made by a majority vote of the county commission in an open meeting and based on one of the stated grounds for objection. Furthermore, the county must show that the objection is grounded on a “material increase in the burden” upon the county directly related to a proposed change in land use or zoning, increase in density, or infrastructure demands related to the change in zoning or land use. The county must provide financial impact evidence in the objection. This process takes time and resources and may not be necessary, dependent upon the actions of the city in approving or altering the proposed annexation.

Closely related to the above, counties often get city annexation notices that do not comply with the city’s rezoning or annexation requirements or state law. This is usually the case of the applicant providing inaccurate information in their annexation petition to the city (e.g., not providing a legal description, having conflicting legal descriptions, conflicts in descriptions and surveys or plats, creation of an island, the annexation of a partial parcel, etc.) A county’s decision on whether to object should be based on an accurate petition, as deemed accurate and accepted by the city.

ACCG Recommendations:

- Require the city, either through a vote of the governing authority or the planning and zoning commission, to deem that the annexation petition is correct and is accepted, and then forward the application to the county.
 - The city can take however long it desires to accept and review the application, but the county’s 30-day shot clock should not commence until this city vote occurs and the county subsequently receives the annexation notice/petition.
 - This will provide the city an opportunity to address any deficiencies in the annexation petition, ensure that that its annexation standards and state law are being followed, consider whether it is interested in pursuing the annexation, and/or suggest any changes to the applicant.

- This could also provide the city and landowner(s) – and possibly the county – an opportunity to communicate and possibly negotiate changes before the county’s 30-day shot clock commences.
- The city vote is not the final action on approving or denying the annexation, so the vote to accept the annexation petition and notify the county is a process requirement and does not have any legal bearing on the city.
- Require the city to notify the county of any land use, zoning or other changes to the annexation petition during the time period by which the county must wage its objection. The county’s 30-day objection shot clock should start over if there are any changes to the annexation petition. If a proposed annexation changes, the county may elect not to object, thus saving the city, county, DCA, arbitration panelists and landowner(s) time and resources in avoiding an unnecessary arbitration process.
- The property owner petitioning for the annexation should be required to be current on paying their city and county property taxes.

Issue II – Authorize additional means of city and county notification.

State law requires cities to notify and submit annexation petitions to counties by certified mail or statutory overnight delivery within five days. If a county elects to object to an annexation, they must do so and provide supporting information to cities by certified mail or statutory overnight delivery within 30 days. Cities and counties should be able to mutually establish other means of notification delivery.

ACCG Recommendation:

- In addition to certified mail or statutory overnight delivery, authorize cities and counties to mutually agree to deliver/receive these notifications via e-mail, in person or by some other means.

Issue III – The arbitration panel should have a limited opportunity to extend its shot clock.

State law requires that the arbitration panel provide its final decision (findings and recommendations) no later than the 60th day after the panel is appointed. On some occasions it is difficult to appoint an arbitration panel and, once established, find an agreeable date to commence the arbitration due to the conflicting schedules of all the involved parties (DCA, panelists, city, county, attorneys, property owners and witnesses).

ACCG Recommendation:

- Authorize the chairperson of the arbitration panel to extend the panel’s 60-day shot clock once, for up to 10 additional days.

Issue IV – The city and county should have an opportunity to mutually stay the arbitration process.

Once a county has filed an objection and the arbitration process has commenced, there is no mechanism by which the city and county can stay or postpone the arbitration process to take additional time to discuss and possibly negotiate a proposed annexation.

ACCG Recommendation:

- The city and county should be authorized, by mutual agreement, to postpone or temporarily stay the arbitration process for negotiation/discussion purposes.

Issue V – The arbitration funding ratio should be changed.

Currently, the county automatically pays 75 percent of the cost for the arbitration process. The arbitration panel determines how to equitably divide the other 25 percent of the cost as the facts of the objection warrant. Arbitration panelists are to receive the same per diem, expenses and allowances as legislative study committees. The cost of the property owner’s participation in the process has the same formula as above, with the county responsible for paying at least 75 percent.

ACCG Recommendations:

- The cost of the arbitration process should be split evenly between the city and the county.
- Property owners petitioning for the annexation should pay their own arbitration costs.

Issue VI – The one-year period on an arbitration panel’s annexation conditions should be extended.

An arbitration panel does not have the authority to approve or deny a proposed annexation; however, it may decide to attach zoning, land use or density conditions to the property for one year. The panel may also decide not to place any conditions on the property or may propose any reasonable mitigating measures as to an objection involving infrastructure demands.

ACCG Recommendations:

- An arbitration panel should be authorized to attach zoning, land use or density conditions to the property for up to three years. The city and county could then mutually agree to alternative conditions and a period less than that.
- Once a city has notified the county of a proposed annexation and the area’s proposed land use and zoning, it should not be able to change the zoning or land use to a more intense density than that stated in the notice for two years following the effective date of the annexation - unless the change is agreed to by both the city and the county. Current law states that the zoning and land use cannot be changed for one year.

Issue VII - Should a court reporter (or other recorder) be appointed to record arbitration proceedings?

ACCG Recommendation:

- ACCG could agree to this if the cost of the reporter is split evenly between the city and county – or assumed by DCA.

Issue VIII - Should arbitration panels be provided legal counsel or an administrative hearing officer?

ACCG Recommendation:

- ACCG could agree to this if the cost of the legal counsel or hearing office is split evenly between the city and county – or assumed by DCA. Other details on whether legal counsel is consulted can be worked out if this issue is pursued by the General Assembly.

Issue IX – DCA should maintain a record of arbitration panel results.

ACCG Recommendation:

- Require DCA to produce, maintain and annually update a record of annexation arbitration cases, the parties involved, the issues raised, the outcome, and the arbitration panel’s findings and recommendations, if any.

Issue X - Should there be other grounds by which a county can validly object to an annexation?

ACCG Recommendation:

- Remove the term “material” in O.C.G.A. 36-36-113(a), so that counties may object to an annexation based on all the factors listed regardless of whether they result in a material increase in burden upon the county.