ATTACHMENT E

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C.R.S. 31-12-104

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Colorado Revised Statutes Annotated Title 31. Government - Municipal (§§ 31-1-101 — 31-35-712) Annexation - Consolidation - Disconnection (Art. 12) Article 12. Annexation- Consolidation - Disconnection (Pts. 1 — 7) Part 1. Municipal Annexation Act of 1965 (§§ 31-12-101 — 31-12-123)

31-12-104. Eligibility for annexation

(1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

(a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1)(e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

(b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and

that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

(I) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.
(II) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.
(III) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.
(2)
(a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.
(b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1)(e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.
(c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

History

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. **L. 87:** (1)(a) amended, p. 1218, § 1, effective May 28. **L. 91:** (2) added, p. 763, § 1, effective May 15. **L. 2010:** IP(1) amended, (HB 10-1259), ch. 211, p. 914, § 3, effective August 11.

Annotations

State Notes

Notes

Editor's note:

This section is similar to former § 31-8-104 as it existed prior to 1975.

Cross references: For annexation of unincorporated areas, see § 30 of article II of the state constitution.

ANNOTATION

Annotator's note. Since § 31-12-104 is similar to former § 31-8-104 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The annexation statutes are more than mere formalities. Johnston v. City Council, 189 Colo. 345, 540 P.2d 1081.

Contiguity required. Territory is eligible for annexation if a percentage of its boundaries are contiguous with those of a city. City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).

Specific findings required for proposed area for annexation. In a unilateral annexation pursuant to § 31-12-106 (2), the legislative body with annexing authority must make specific findings at a hearing that the proposed area to be annexed has had the requisite boundary contiguity for the requisite period of time before such an area is eligible for annexation by the governing body. Cesario v. City of Colo. Springs, 200 Colo. 459, 616 P.2d 113 (1980).

A resolution of the absolute factual existence of the one-sixth contiguity requirement is mandatory. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

The size and shape of a parcel to be annexed is immaterialand is conclusively a legislative problem. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395,

548 P.2d 922 (1976).

But courts will not read into the annexation statutes limitations relating to unusual or irregular shapesor patterns of territory annexed. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

City's division of property into multiple one-foot strips of land to satisfy the one-sixth contiguity requirement is not prohibited. Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill., 30 P.3d 846 (Colo. App. 2001).

Where the property annexed includes public streets, the court may include the perimeter of the streetsin calculating whether one-sixth of the perimeter of the annexed property is contiguous to the annexing municipality. The one-sixth requirement is in no way altered by § 31-12-105 (1)(e). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

It is not permissible to include and use a county street as the "pole" in order to meet the subsection (1) contiguity requirement,but to ignore the county ownership of the street for purposes of meeting the § 31-8-106(3) sole ownership requirement in a city annexation ordinance. Bd. of County Comm'rs v. City County of Denver, 190 Colo. 8, 543 P.2d 521 (1975).

But a public way or a portion of a public way can be utilized as a noncontiguous boundaryof the annexed territory, since the statute contains no such restriction. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliancewith the requirements of this section. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Effect of ditch. The statutory requirement of contiguity is satisfied where part of the area to be annexed is bounded by a ditch, the east side of which is contiguous to the city. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Contiguity basis for finding of community of interest. With respect to the matters of community of interest, that the territory is urban or will be urbanized in the near future, and that the territory is integrated or capable of being integrated into the city, subsection (1)(a) provides that the fact that the territory has the contiguity with the annexing municipality required by this article shall be a basis for a finding of compliance, and where there was a requisite continuity, the court erred in its criticism of the findings of the city council. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Once the one-sixth contiguity requirement is satisfied, the community of interest requirement is also satisfied. Arapahoe County Bd. of County Comm'rs v. City of Greenwood Vill., 30 P.3d 846 (Colo. App. 2001).

Contiguity requirement not met where federal land intervenedbetween town and the proposed annexation and consent was not obtained from federal agency to divide that tract from the rest of the federal lands. Caroselli v. Town of Vail, 706 P.2d 1 (Colo. App. 1985).

Subsection (1)(a) is not ambiguous;therefore the court will not consider the legislative history of the section to aid in construction. Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

Municipality lacked standing to contest annexation because it did not have a plan in place for the area annexed. Town of Berthoud v. Town of Johnstown, 983 P.2d 174 (Colo. 1999).

While the county is authorized to own, dispose of, and designate the uses of real property, it has no authority to define terms employed by the general assembly in state statutes. Rather, interpretation of subsection (1) is a question of law for the courts to decide, and judicial review is therefore de novo. Accordingly, in determining whether the roadways at issue are open space for purposes of subsection (1)(a), the county's designation is not binding. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Property at issue designated by the county has been improved through grading and surfacing and serves as public roadways. A parcel consisting entirely of roadway is not "essentially unimproved" and, therefore, is not open space within the meaning of subsection (1)(a). Because the county roads here are not open space, they do not affect contiguity under the terms of this section. Hence, the court erred in voiding the annexation of the two parcels for failure to satisfy the contiguity requirement. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Municipal annexation of property does not automatically remove property from all other political subdivisions. Municipal annexation of property detaches the property from the unincorporated portion of a county but does not automatically remove the property from other political subdivisions, particularly where other statutory provisions govern such removal. Municipal annexation of property within the boundaries of a regional transportation authority therefore does not remove the property from the authority and the authority may continue to levy its sales tax on taxable transactions conducted on the property. Wal-Mart Stores v. Pikes Peak Rural Transp., 2018 COA 73, 434 P.3d 725.

Colorado Revised Statutes Annotated
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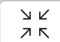

C.R.S. 31-12-105

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31-12-105. Limitations

(1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:

(a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

(b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

(c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for

an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

(d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12-106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

(e)

(I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1)(a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.

(II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

(A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

(B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12-107; and

31-12-107; and

(C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

(e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12-108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

(e.3) In connection with any annexation in which the contiguity required by section 31-12-104 (1)(a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12-108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

(f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

(h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

History

Source: L. 75: Entire title R&RE, p. 1078, § 1, effective July 1. **L. 87:** (1)(e) to (1)(g) added, p. 1218, § 2, effective May 28. **L. 96:** (1)(h) added, p. 1770, § 69, effective July 1. **L. 97:** (1)(c) and (1)(d) amended, p. 994, § 1, effective May 27. **L. 2001, 2nd Ex. Sess.:** (1)(e)

amended and (1)(e.1) and (1)(e.3) added, p. 32, § 2, effective November 6.

Annotations

State Notes

Notes

Editor's note:

This section is similar to former § 31-8-105 as it existed prior to 1975.

ANNOTATION

I. GENERAL CONSIDERATION.
II. LAND NOT TO BE DIVIDED.
III. LAND COMPRISING 20 ACRES OR MORE.
IV. ANNEXATION OF SCHOOL DISTRICT'S LAND.

I. GENERAL CONSIDERATION.

Law reviews.

For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 . For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-105 is similar to former § 31-8-105 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

A statute is presumed to be constitutional,and to be declared unconstitutional it must be shown clearly to be so. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Courts will not read into annexation statutes limitations relating to unusual or irregular shapesor patterns of territory annexed. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Streets, etc., annexed in order to include territory. There is no legislative intent that a municipality may annex streets, roads, or highways only when it is necessary to do so to include territory otherwise eligible for annexation but separated from the annexing municipality by a public right-of-way. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

A public way or a portion of a public way can be utilized as a noncontiguous boundaryof the annexed territory, since the statute contains no such restriction. Bd. of

boundary of the annexed territory, since the statute contains no such restriction. Bd. of County Comm'rs v. City County of Denver, 37 Colo. App. 395, 548 P.2d 922 (1976).

Legal description held to be in substantial compliance with the requirements of this section. Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Subsection (1)(e) is not ambiguous; therefore the court will not consider the legislative history in construing the statute. Bd. of County Comm'rs v. City of Lakewood,

813 P.2d 793 (Colo. App. 1991).

Subsection (1)(e) in no way alters the contiguity requirements of § 31-12-104 (1)(a); it merely provides that contact between a street or an alley and an existing boundary of the annexing municipality may be used to achieve the contiguity requirements of § 31-12-104 (1)(a). Bd. of County Comm'rs v. City of Lakewood, 813 P.2d 793 (Colo. App. 1991).

Deficiency in the notice required by subsection (1)(e.3) was inadvertent where defendant town provided notice 25 days before the hearing, the town mayor and clerk believed timely notice was given in compliance with the statute, and no one appeared at the annexation hearing to testify or object to lack of sufficient notice. Town of Erie v. Town of Frederick, 251 P.3d 500 (Colo. App. 2010).

II. LAND NOT TO BE DIVIDED.

Written consent prerequisite to annexation of divided parcel. This section makes it very clear that no territory owned by the same owner shall be divided into separate parts or parcels without the written consent of the owner thereof. City County of Denver v. Bd. of County Comm'rs, 151 Colo. 230, 376 P.2d 981 (1962).

Division of tract from rest of federal land requires consent of the United States as owner. Caroselli v. Town of Vail, 706 P.2d 1 (Colo. App. 1985).

Annexation did not effect a separation. Where the owners of a tract own all of a half-section, a railroad track passed diagonally through the northeast corner of this half-section, it was apparent that the triangular piece of land lying north and east of the track was physically separated from the larger parcel, and this piece was not included in the area proposed to be annexed, assuming that this was a right-of-way grant to a railroad by the congress and therefore it was not a mere easement but a limited fee with right of exclusive use and possession, as a result, the triangular tract was effectively separated by the congressional grant and the annexation did not "separate" the half-section within the meaning of subsection (1)(a). Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

III. LAND COMPRISING 20 ACRES OR MORE.

The policy of this enactment is to encourage natural and well-ordered development of municipalities, not to discourage it by providing for last minute maneuvers designed only to defeat annexation. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

Written consent required. Land held in identical ownership in excess of 20 acres which, together with improvements thereon, has an assessed value in excess of $200,000 for the year next preceding the annexation shall not be included in a unilateral

annexation without the written consent of the owner or owners. Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972).

This exemption as to 20 acres, etc., does not apply to enclaves. Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969).

Termination of proceedings when tract affects boundaries. Only if there is such a tract as would affect the establishment of the boundaries, i.e., the outer perimeters of the area to be annexed, does this statute cause the annexation proceedings to terminate; if the boundaries of the annexed area are not affected, the excluded tracts of 20 acres or more are not to be included in the annexed territory, but the annexation continues. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

As no reference to tract "within area ...". If the general assembly meant to refer to such tracts "within the area or territory to be annexed" (rather than referring to "establishing the boundaries"), it would have said so as it did in other sections dealing with problems within the territory to be affected. Adams v. City of Colo. Springs, 178 Colo. 241, 496 P.2d 1005 (1972).

IV. ANNEXATION OF SCHOOL DISTRICT'S LAND.

Legislative intent. In enacting subsection (1)(d) of this section, the general assembly intended to empower school boards to protect themselves against having involuntarily to undertake responsibility for providing educational services in newly annexed areas. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Formal written consent required. This section explicitly requires, in annexation involving school property, "the written consent of the board of education" of the school district involved, and faced with the clear mandate of the statute, we are not at liberty to hold that, in some cases, the giving of the required consent is but a ministerial act, not requiring formal action by the board. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Ordinance invalid due to lack of consent. Where on the date of final passage of the annexation ordinance here, the effective date thereof, no valid written consent of the board of education had been obtained, the ordinance was invalid when passed, and no action or resolution purporting to ratify the superintendent's consent taken by the board of education thereafter could, in and of itself, breathe life into this dead ordinance. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Later ratification invalid. The school board's resolution consenting to the annexation of its property and ratifying the action of the superintendent in signing the annexation petition does not satisfy the express requirement that the written consent of the school board be obtained before any territory which includes school property can be annexed. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

Superintendent's signature insufficient. The act of the superintendent of schools in signing the annexation petition without prior formal authorization by the school board was not an act of the board, and could not satisfy the requirement that the "written consent of the board of education" be obtained. Gavend v. City of Thornton, 165 Colo. 182, 437 P.2d 778 (1968).

School board consented to the first stage of an annexation by having

consented to the entire two-stage transaction. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

A school board's resolution was not ineffective on the theory that approval was conditional upon obtaining a particular zoning classificationwhere the resolution's "whereas" clauses, rather than expressing conditions, recited the factual circumstances as presented to the board and the "resolved" clauses contained the board's unqualified

approval of the annexation. City County of Denver v. Bd. of County Comm'rs, 191 Colo. 104, 550 P.2d 862 (1976).

Substantial compliance with requirements that documents accompany petition. Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

While the resolution of a city's school board was not attached to the petition for annexation pursuant to subsection (1)(d), this defect was of no moment since the resolution was filed with the city clerk and the council could take notice of such information when it was contained within the city's files. Bd. of County Comm'rs v. City County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff'd, 194 Colo. 252, 571 P.2d 1094 (1977).

Colorado Revised Statutes Annotated
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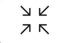

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Statutes current through Chapter 110 of the 2021 Regular Session. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated Title 31. Government - Municipal (§§ 31-1-101 — 31-35-712) Annexation - Consolidation - Disconnection (Art. 12) Article 12. Annexation- Consolidation - Disconnection (Pts. 1 — 7) Part 1. Municipal Annexation Act of 1965 (§§ 31-12-101 — 31-12-123)

31-12-107. Petitions for annexation and for annexation elections

(1) Petition for annexation in accordance with section 30 (1)(b) of article II of the state constitution:

(a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.

(b) The petition shall be filed with the clerk.

(c) The petition shall contain the following:

(I) An allegation that it is desirable and necessary that such area be annexed to the municipality;

(II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;

(III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;

(IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;

to be annexed;
(V) The signatures of such landowners;
(VI) The mailing address of each such signer;
(VII) The legal description of the land owned by such signer;
(VIII) The date of signing of each signature; and
(IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.
(d) Accompanying the petition shall be four copies of an annexation map containing the following information:
(I) A written legal description of the boundaries of the area proposed to be annexed;
(II) A map showing the boundary of the area proposed to be annexed;
(III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;
(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.
(e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.
(f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).
(g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.
(2) Petition for annexation election in accordance with section 30 (1)(a) of article II of the state constitution:
(a) The registered electors may petition the governing body of any municipality to commence proceedings for the holding of an annexation election in the area proposed to be annexed. This petition shall meet the standards described in paragraphs (c) and (d) of this subsection (2) and either:
(I) Shall be signed by at least seventy-five registered electors or ten percent of said electors, whichever is less, if such area is located in a county of more than twenty-five thousand inhabitants; or
(II) Shall be signed by at least forty registered electors or ten percent of said electors, whichever is less, if such area is located in a county of twenty-five thousand inhabitants or less.
(b) The petition shall be filed with the clerk.
(c) The petition for annexation election shall comply with the provisions of paragraph (c) of subsection (1) of this section; except that:
(I) Rather than an allegation of any certain percentage of land owned, it shall contain an allegation that the signers of the petition are qualified electors resident in and landowners of the area proposed to be annexed; and
(II) The petition shall request the annexing municipality to commence proceedings for the holding of an annexation election in accordance with section 30 (1)(a) of article II of the state

holding of an annexation election in accordance with section 30 (1)(a) of article II of the state constitution.
(d) The requirements and procedures provided for in paragraphs (e) and (f) of subsection (1) of this section shall be met and followed in a proceeding under this subsection (2).
(e) If the petition is found to be in substantial compliance with this subsection (2), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed, subject thereafter to an annexation election to be held in accordance with section 31-12-112. If the petition for an annexation election is not found to be in substantial compliance, no further action shall be taken; except that the governing body shall make such determination by resolution.
(3) Procedures alternative: The procedures set forth in subsections (1) and (2) of this section are alternative to each other and to any procedure set forth in section 31-12-106; except that a petition for annexation election filed pursuant to subsection (2) of this section shall take precedence over an annexation petition involving the same territory and filed pursuant to subsection (1) of this section if such petition for annexation election is filed at least ten days prior to the hearing date set for the annexation petition filed pursuant to subsection (1) of this section.
(4) Additional terms and conditions on the annexation: Additional terms and conditions may be imposed by the governing body in accordance with section 31-12-112.
(5) If a petition is filed pursuant to subsection (1) or (2) of this section and the territory sought to be annexed meets the specifications of section 31-12-106 (1), the governing body of the municipality with which the petition is filed shall thereupon initiate annexation proceedings pursuant to the appropriate provisions of section 31-12-106 (1). In the event that any governing body fails to initiate such annexation proceedings within a period of one year from the time that such petition is filed, annexation may be effected by an action in the nature of mandamus to the district court of the county where the land to be annexed is located, and the petitioner's court costs and attorney fees incident to such action shall be borne by the municipality.
(6) No proceedings for annexation to a municipality may be initiated in any area which is the same or substantially the same area in which an election for annexation to the same municipality has been held within the preceding twelve months.
(7) For the purpose of determining the compliance with the petition requirements in this section, a signature by any landowner shall be sufficient so long as any other owner in fee of an undivided interest in the same area of land does not object in writing to the governing body of the annexing municipality within fourteen days after the filing of the petition for annexation or annexation election. The entire area of the land signed for shall be computed as petitioning for annexation if such signing landowner has become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes. One who is purchasing land under a written contract duly recorded shall be deemed the owner of the land which is subject to the contract if he has paid the taxes thereon for the next preceding tax year. The signers for an area owned by a corporation, whether profit or nonprofit, shall be the same persons as those authorized to convey land for such corporation.
(8) No power of attorney providing the consent of a landowner to be annexed by a municipality pursuant to this section shall be valid for a term of more than five years, and no such power of attorney executed before May 27, 1997, shall be valid for a term of more than five years after May 27, 1997.

History

Source: L. 75: Entire title R&RE, p. 1080, § 1, effective July 1; (1)(d)(IV) amended, p. 1452, § 12, effective July 1. **L. 87:** (1)(e) and (1)(g) amended, p. 1219, § 3, effective May 28. **L. 97:** (5) amended and (8) added, p. 995, § 3, effective May 27. **L. 2010:** IP(1), (1)(a), (1)(c)(III), (1)(g), IP(2), (2)(a), (2)(c)(II), and (2)(e) amended, (HB 10-1259), ch. 211, p. 914, § 5, effective August 11.

▼ Annotations

State Notes

Notes

Editor's note:

This section is similar to former §§ 31-8-103 and 31-8-107 as they existed prior to 1975.

ANNOTATION

I. GENERAL CONSIDERATION.
II. PETITION FOR ANNEXATION.
III. PETITION FOR ANNEXATION ELECTION.
I. GENERAL CONSIDERATION.

Law reviews.

For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 . For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-107 is similar to former § 31-8-107 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The 1965 annexation act provided for alternate methods of annexing land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Procedures detailed. This section detailed procedures relating to petitions by those owners residing within or only owning land within the area to be annexed. Tanner v. City of Boulder, 151 Colo. 283, 377 P.2d 945 (1962).

Differentiation of petitioner qualifications. Except for differences regarding the qualifications of the petitioners, the procedures under this section are substantially the

same. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The article contains no express prohibition against any person becoming the circulator of a petition. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

This section requires an affidavitthat each signature thereon is the signature of the person whose name it purports to be. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The streets and public ways in the area are not to be included in calculating the area to be annexed. City County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Applied in

Bd. of County Comm'rs v. City County of Denver, 190 Colo. 8, 543 P.2d 521 (1975); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

II. PETITION FOR ANNEXATION.

Legislative intent in subsection (1)(g). The general assembly clearly intended to distinguish between petitions for annexation signed by 100 percent of the owners of the land proposed for annexation and petitions signed by a lesser number by enacting this section. Bd. of County Comm'rs v. City County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

The legislative limitation applies to the entire part,and not merely to this section. Bd. of County Comm'rs v. City County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Initiation of proceedings by petition. This section provides that annexation proceedings of eligible territory shall be initiated by written petition presented to the legislative body of the city, city and county, or incorporated town to which it is proposed to annex such territory. People ex rel. City County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958); City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Land ownership and tax liability proponent and opponent prerequisites. The requirements of ownership in fee and the liability for taxes were both prerequisites for participation as a proponent of the annexation, and the same requirements confronted an opponent of the annexation. City County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Owners of land in joint tenancy are entitled to signand to be counted with the resident landowners, because each joint tenant owns an interest and is in his own right a landowner. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Petition signed by executor. The petition for annexation was signed by the "owner" of 100 percent of the territory annexed where it was signed by an executor to whom was given full power to manage and sell estate property as well as authority to do any act or carry out any agreement respecting the property even though title was not in him. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Where an annexation petition was signed by a tenant-in-common holding an

undivided interestin the land annexed, the requirements of subsection (1)(g) were met and no notice, hearing, or election was necessary. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where signers of the annexation petition owned well over 50percnt; of the land proposed to be annexed,but at the same time five of the nine resident signers were favorable to the annexation, the fact that these resident owners represented a

percentage of property less than 50percnt; is inconsequential since much more than 50percnt; of the area was represented by resident and nonresident owners. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Notice and hearing are not required when 100percnt; of the landowners signthe annexation petition. Bd. of County Comm'rs v. City County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Streets and roadways are excludedwhen considering whether all of the landowners in an area proposed to be annexed have signed an annexation petition, and, if all other owners are signatories, there are no notice, hearing, or election requirements. Bd. of County Comm'rs v. City County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

Immaterial who obtains consent. With regard to petitions for annexation, so long as the requisite number of landowners freely consent to the annexation it is wholly immaterial who obtains that consent. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Such as city officials. Nowhere does this article prohibit, either expressly or by necessary implication, the annexing city's officials from participating in the circulation of annexation petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The fact that city councilmen must "find" that the form of the petition meets the statutory requirements when it is presented to the annexing city's council does not disqualify the councilmen from acting as circulators of the petitions. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

"Finding" is administrative conclusion. The "finding" of compliance with the section, as a preliminary step in annexation proceedings, is no more than an administrative or ministerial conclusion of fact upon which the legislative power to act is dependent, and this "finding" would necessarily be made by the legislative body whether this section required it or not. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

An obvious typographical error in the signature pageof an annexation petition considered in context was insubstantial and did not invalidate the petition. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

An annexation petition was sufficient even though the signature pages failed to set out the date of each signature,where the dates on the verifications accompanying the signatures showed that signing took place prior to filing the documents, and there was no allegation that prejudice resulted or that any of the signatures were stale. Bd. of County Comm'rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

There is substantial compliance with the requirement of subsection (1)(d)that

copies of the annexation map accompany the petition where the map is available to the city council whether or not it is physically attached to the petition. Bd. of County Comm’rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council’s inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. Bd. of County Comm’rs v. City County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

When no substantial compliance with subsection (1)(g). The standard of substantial compliance under subsection (1)(g) is not met where the ownership of the land to be annexed does not clearly appear. Bd. of County Comm’rs v. City County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

The standard of substantial compliance under subsection (1)(g) is not met where the description of the area to be annexed is so confused and contradictory that the area to be annexed cannot be determined from the petition and its attachments. Bd. of County Comm’rs v. City County of Denver, 193 Colo. 321, 566 P.2d 340 (1977).

Where city owned 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under subsection (1)(g) where owners of 100percnt; of the land to be annexed had signed the petition, no purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. Bd. of County Comm’rs v. City County of Denver, 38 Colo. App. 171, 556 P.2d 486 (1976), aff’d, 194 Colo. 252, 571 P.2d 1094 (1977).

III. PETITION FOR ANNEXATION ELECTION.

This section provides for the electorate to have a veto powerover annexation when it commands that an election petition take precedence over any petition filed with city council by petitioners who own more than 50percnt; of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Compliance with subsection (1)(c)(III) not required. When a petition for annexation election if filed pursuant to subsection (2), the signers, if they comprise the requisite number or percentage and are qualified electors and resident landowners in the territory, need not also comply with subsection (1)(c)(II). Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

The general assembly intended that subsection (1)(c)(III) of this section requiring signatures of more than 50percnt; of the landowners be excepted, i.e., “taken out” and excluded from consideration when the requisite number of petitioners sought annexation by the election alternative. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

If the provision of subsection (2) that either 75 electors or 10percnt;, whichever is the lesser, can petition for an election in which the majority vote will control, it simply does not make sense to add the additional requirement that these same petitioners be owners of more than 50percnt; of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Corporate or nonresident owners have no voice in election. Subsection (2), if it is to be given life and meaning, was intended to provide for a voice in the annexation process to be given to people living in the area as opposed to corporate or nonresident owners of larger segments of the land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Except corporate owner may petition. By giving full force and effect to the subsection (2) alternative, one corporate owner, or two, or half a dozen owners of more than 50percnt; of the land cannot impose their annexation whims on other resident-electors who own the balance or less than 50percnt; of the territory, but the latter may nevertheless petition for an election if 75 electors or 10percnt; wish to put the matter to a vote. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Suspension of actions on annexation petition. The provision that a petition for annexation election shall take precedence over an annexation petition does not require that, when the election petition was filed, all actions under the annexation petition should have been abandoned, and a new procedure should have been initiated under subsection (2). City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

Findings as to qualifications of signers proper. Where there was testimony that the signers of the petition were registered voters, that each signer stated under oath that he was a landowner, and that an examination of the county records disclosed them all to be landowners, and the petition recited that the signers were qualified electors, residents in and landowners of the area proposed to be annexed, and there is nothing in the record to indicate that less than 75 of the signers were not qualified to sign, the finding of the city council as to the qualifications of the signers is proper. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Colorado Revised Statutes Annotated
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Statutes current through Chapter 210 of the 2021 Regular Session and effective as of June 7, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated Title 31. Government - Municipal (§§ 31-1-101 — 31-35-712) Annexation - Consolidation - Disconnection (Art. 12) Article 12. Annexation- Consolidation - Disconnection (Pts. 1 — 7) Part 1. Municipal Annexation Act of 1965 (§§ 31-12-101 — 31-12-123)

31-12-108.5. Annexation impact report - requirements

(1) The municipality shall prepare an impact report concerning the proposed annexation at least twenty-five days before the date of the hearing established pursuant to section 31-12-108 and shall file one copy with the board of county commissioners governing the area proposed to be annexed within five days thereafter. Such report shall not be required for annexations of ten acres or less in total area or when the municipality and the board of county commissioners governing the area proposed to be annexed agree that the report may be waived. Such report shall include, as a minimum:

(a) A map or maps of the municipality and adjacent territory to show the following information:

(I) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;

(II) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches, and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and

(III) The existing and proposed land use pattern in the areas to be annexed;

(b) A copy of any draft or final preannexation agreement, if available;

(c) A statement setting forth the plans of the municipality for extending to or otherwise providing for, within the area to be annexed, municipal services performed by or on behalf of the municipality at the time of annexation;
(d) A statement setting forth the method under which the municipality plans to finance the extension of the municipal services into the area to be annexed;
(e) A statement identifying existing districts within the area to be annexed; and

(f) A statement on the effect of annexation upon local-public school district systems, including the estimated number of students generated and the capital construction required to educate such students.

History

Source: L. 87: Entire section added, p. 1220, § 5, effective May 28.

Annotations

State Notes

ANNOTATION

Law reviews.

For article, "Annexation: Today's Gamble for Tomorrow's Gain — Parts I and II", see 17 Colo. Law. 603 and 809.

Act contemplates annexation agreements as a routine step in the annexation process. Although annexation agreement is not required for a valid annexation, where parties had contemplated execution of an annexation agreement throughout the process, adoption of annexation resolution without having an agreement in place was an abuse of discretion. Midcities Co. v. Town of Superior, 916 P.2d 595 (Colo. App. 1995), aff'd, 933 P.2d 596 (Colo. 1997).

An immaterial variation from the requirements of this section is not fatal, and annexation may not be voided when there has been substantial compliance. Here, city was in substantial compliance with impact report requirement by providing maps showing the streets and utility lines near the area to be annexed. Accordingly, district court erred in determining that city failed to comply with impact report requirement. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).