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this intention of the General Assembly, I would suggest that any amendments to penal provisions which may be offered to the 1967 General Assembly be proposed to the Offenses Against Property Act rather than to the Welfare Act of 1936.

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OFFICIAL OPINION NO. 42

December 23, 1966

**CITIES AND TOWNS—Annexation of Property by Town  
Having No Daily Newspaper—How Proposed  
Annexation Should be Publicized.**

Opinion Requested by Hon. Robert H. Bales, State Representative.

I am in receipt of your recent letter concerning the procedure for annexation to be followed by a town when there is no daily newspaper published in that town, or in the entire county in which the town is located.

Your letter, when paraphrased, presents four questions:

1. If all the property owners in the territory sought to be annexed and the town involved is in favor of annexation, can such annexation be accomplished by agreement?
2. If annexation cannot be accomplished through agreement, are towns in which no daily newspaper is published proscribed from annexing territory?
3. If such towns are not proscribed from annexing territory, what procedure should be followed in publishing notice of such proposed annexation?
4. Under the publication procedure given in answer to question No. 3, how is the period of time in which

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remonstrators may file an appeal against the annexation determined?

As you mention in your letter, your questions arise from Acts 1905, ch. 129, § 242, as amended by Acts 1955, ch. 269, § 1, the same being Burns IND. STAT. ANN., § 48-701. That statute first grants the power to annex territory by ordinance and then provides:

“. . . Immediately after the passage of every such ordinance as provided for in this section, the same shall be published for at least two (2) consecutive weeks in a daily newspaper of general circulation published in such city.”

Your questions are all concerned with the power and authority of a town having no such newspaper to annex territory and they will be answered in order.

1. A town cannot annex adjacent territory through agreement with the affected property owners.

A town, or any other municipal corporation, is created by an organic act and can only exercise those powers which are expressly granted, or which are inherent in the powers expressly granted, or those indispensable to the declared objects and purposes of the corporation. *Scott v. City of LaPorte*, 162 Ind. 34, 68 N.E. 278 (1903).

Towns are specifically given the power to annex territory by Acts 1959, ch. 240, § 13, the same being Burns IND. STAT. ANN., § 48-713, which provides, in part:

“Annexation of contiguous territory shall be made by the enactment of a town ordinance pursuant to the general procedure provided for the enactment of either separate or special annexation ordinances by cities and shall include a description of the territorial limits of such area. Owners of real estate situated outside, but adjacent to the corporate boundaries of any town may petition the town board to have real estate annexed in the same manner and to the same effect that the owners of real estate may petition the common councils of cities to annex territory. . . .”

Towns are thus given the specific power to annex territory through the enactment of an ordinance, and no other method is either incident to that authority nor necessary to fulfill the purposes of the corporation. While the procedure is simpler when both the town and the property owners agree that the territory should be annexed since such concert of opinion would mean that no remonstrances would be filed, no amount of agreement can eliminate the need to enact an ordinance.

2. There can be little doubt that a town in which no daily newspaper is published is not proscribed from annexing territory.

In *Marks v. State*, 220 Ind. 9, 18, 40 N.E. 2d 108, 111 (1942), the Indiana Supreme Court said:

“It is presumed that the Legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction; and “absurdity” meaning anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.’”

To make a town's power to annex contiguous territory dependent on the location of a newspaper would indeed be an absurdity. Furthermore, as will be developed below, the statutes regulating annexation can readily be construed so as to provide a different method of giving notice to the affected landowners.

However, if the town follows one of the alternative methods of giving notice it should also simultaneously publish the ordinance in a newspaper of general circulation in the area, preferably one published in the county. The policy expressed in the statute is that a newspaper is ordinarily the best avenue of public communication. This policy should be followed to as great an extent as possible.

3. The procedure to be followed by a town in the annexation of contiguous territory is the same as that to be followed by a city. Acts 1959, ch. 240, § 13, the same being Burns IND.

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STAT. ANN., § 48-713, which grants towns the power to annex by ordinance and which was partially set out above in answer to your first question, also provides :

“ . . . These procedures, including the right of appeal, as set forth in the Acts of 1905, chapter 129, as amended or supplemented, are incorporated in this act by reference: . . . ”

Acts 1905, ch. 129, referred to in the above provision, is entitled “AN ACT concerning municipal corporations,” and sets out many of the powers and duties of municipal corporations, including those associated with the annexation of adjacent territory. Section 242a of that Act, as added by Acts 1949, ch. 216, § 1, and amended by Acts 1955, ch. 269, § 2, the same being Burns IND. STAT. ANN., § 48-701a, provides that fifty-one per cent of the landowners in the adjacent territory may request the adoption of an ordinance incorporating that territory. Section 242 of the Act, as amended by Acts 1955, ch. 269, § 1, the same being Burns IND. STAT. ANN., § 48-701, describes the procedure to be followed by the common council in adopting an annexation ordinance, whether on their own initiative or at the request of the property owners in the adjacent territory. It is this section that contains the publication provision that appears to require newspaper publication of notice as a prerequisite to a valid annexation.

It must be noted, however, that the adoption provision quoted above adopts all of the 1905 Act. There are other sections of that Act which provide an alternative form of notice.

Section 236 of the Act, the same being Burns IND. STAT. ANN., § 48-7901 provides :

“All notices required by law to be given by the common council of any city or the board of trustees of any town, or by any officer, board or committee of such city or town, unless otherwise expressly provided, and also in case the method provided cannot be followed by reason of some unavoidable necessity, may be given by written or printed notices, posted up at one [1] or more public places in each ward of such town or city.”

There is no reason to assume that this provision would not also be applicable to an annexation ordinance. The notice through newspaper publication provided by the annexation statutes cannot be followed if there is no newspaper. Therefore, publication of such notice by posting, provided notice is posted in one or more public places in the territory sought to be annexed, as well as in the wards of the town, would be a valid publication.

The applicability of the posting statute to annexation ordinances is inescapable when the language of Section 270 of the 1905 Act is considered. That section, the same being Burns IND. STAT. ANN., § 48-501, provides:

“Wherever there is a grant of authority or power conferred by any section or sections of this act upon any officer or board of any city or town, and no method is provided herein for the exercise of such authority or power, and a method for the exercise of such authority or power is necessary to be provided by law to make such grant of authority or power effectual, and a method for the exercise of such or similar authority or power is provided by any other section or sections of this act, or by any other law of this state applicable to the exercise of the authority so granted, then such other section or sections, or other law, so far as the same provide a method for the exercise of such authority or power herein conferred, may be followed as fully as if incorporated in and made a part of the provisions of this act granting such authority or power. And wherever there is a grant of authority or power conferred by this act, and no method is provided by this act or by any other general law, as herein referred to, for the exercise of such authority or power, the common council of any city or the board of trustees of any town may, by ordinance, provide such method.”

The above section clearly implies that if any power, such as the power to annex territory, is granted to a town that is unable to exercise that power in the specified method the town may employ an alternative method set out in other provisions of the Act. The above section also clearly states that if an

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alternative method is not provided anywhere in the Act, or in any other Act, then the town board may by ordinance adopt a method of exercising the power. In other words, even if the posting provision were not applicable, the town would be able to annex territory if it adopted some reasonable procedure of giving all affected landowners notice of the proposed annexation. (If the number of property owners is small, then notifying each by certified mail would be reasonable, especially if combined with posting.)

4. The time in which remonstrators may file an appeal is carefully specified in those instances where publication of notice is by newspaper. Acts 1905, ch. 129, § 243, as last amended by Acts 1955, ch. 269, § 3, the same being Burns IND. STAT. ANN., § 48-702, provides, in part:

“ . . . [A]n appeal may be taken from such annexation by either a majority of the owners of land in the territory or by the owners of more than seventy-five (75%) per cent in assessed valuation of the real estate in the territory, if they deem themselves aggrieved or injuriously affected, by filing their remonstrances in writing against such annexation, together with a copy of such ordinance, in the circuit or superior courts of the county where such territory is situated or with the judge thereof in vacation, within thirty (30) days after the last publication provided for in Section 242; . . . ”  
(Section 242 contains the provision for newspaper publication.)

When publication by newspaper is possible, the ordinance must be published for two consecutive weeks in a daily newspaper, and the remonstrators have thirty days from the last day of such publication in which to file an appeal. (Phrased differently, remonstrators have forty-four days after the first newspaper publication in which to file their appeal.) Therefore, it would seem reasonable to conclude that when publication is by posting remonstrators have forty-four days from the time the ordinance is first posted in which to file an appeal. The posted ordinance itself should probably specify both the original day of posting and the last day on which an appeal may be taken.

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The answers to your questions may be summarized as follows:

1. Annexation may be properly accomplished only through an ordinance adopted by the town board, but the board and the affected property owners may informally agree that the board adopt such an ordinance.

2. All towns have the power to annex adjacent territory whether or not a daily newspaper is published in that town.

3. A town wherein no daily newspaper is published should give notice of a proposed annexation by posting the annexation ordinance in public places in each ward of the town and in the territory to be annexed.

4. When publication of an annexation ordinance is by posting remonstrators have forty-four days after the day on which the ordinance is posted to file an appeal against the annexation.

Although the preceding discussion answers your specific questions I feel I should bring another statute to your attention. Acts 1959, ch. 240, § 14, as amended by Acts 1961, ch. 346, § 1, the same being Burns IND. STAT. ANN., § 48-714, provides:

“If any part of the area sought to be annexed by a town lies within four (4) miles of any point on the perimeter of a city of the first class, or within three (3) miles of any point on the perimeter of a city of the second or third class, the consent of the common councils of such cities shall be obtained before annexation as a condition of validity; Provided, however, That in counties where a metropolitan plan commission is in existence, the consent of the metropolitan plan commission in lieu of the consent of the common councils of such cities shall be obtained.”

I mention this statute merely to inform you that the passage of an annexation ordinance by the town board might not be sufficient to effectuate a valid annexation.