Annexation Under 62.07 Statutes

Clifford K. Meldman
ANNEXATION UNDER 62.07 STATUTES*

Wisconsin is the parent of all municipal government. Geographically, its legislature has divided the state into counties, counties are divided into towns, and towns may be divided into smaller towns. Other geographical divisions are villages and cities. They are not a further subdivision of a town, but rather a result of a rural town becoming urban in character. Politically, the state is divided into congressional, and legislative districts, the latter including senate and assembly districts, wards and precincts. Socially, for exercising specialized municipal functions, the state is divided into school, drainage, farm drainage, flood control, and sanitary districts, among others. After a cursory reading of the chapters relating to the establishing of the geographic, political, and social boundaries, it can be seen many provisions necessarily have been made for the changing of these demarcations.

The power to change boundaries is vested solely in the state. Under the statutes boundary changes are accomplished by annexation, incorporation, consolidation, detachment followed by annexation, among others. The statute most frequently used, and which is the subject of much present day public concern is Wis. Stats. (1955) §62.07. It is a long and rather complicated statute. In regard to this statute, the purpose of this article is threefold. First, to simplify and explain the workings of the statute. Second, to point out the complications that can and do arise, and which might be judicially or legislatively clarified. Third, to provide a digest of Wisconsin cases and decisions for easy handbook reference.

In Wisconsin, annexation is statutory. The procedural steps are

---

*By Clifford K. Meldman, LL.B., Marquette University, 1956.

3 Wis. Stats. (1955) Chap. 60. A county itself may be considered as one town if it is not divided. §60.02. A town includes cities, villages, wards or districts. Wis. Stats. (1955) §370.01(42).
4 Wis. Stats. (1955) §§60.05, 65.06.
5 Upon meeting certain statutory requirements a town may become a village; and a village a city. Wis. Stats. (1955) §§61.01, 61.189.
6 Wis. Stats. (1955) Chap. 3.
7 Wis. Stats. (1955) Chap. 4.
9 Wis. Stats. (1955) Chap. 89.
12 Wis. Stats. (1955) §60.301.
13 See footnotes 2 through 12.
14 Except the boundary of the state itself.
16 Organization, reorganization, dissolution; Wis. Stats. (1955) §§61.01, 62.06, 40.06-40.09.
17 For a history of the statute and its origin in Sec. 926-18 Stats. 1898 see Zweifel v. Milwaukee, 185 Wis. 625, 201 N.W. 385 (1923) and 188 Wis. 358, 206 N.W.
set down in Wis Stats. (1955) §62.07. The statute must be strictly followed, and all the steps specified must be taken in the order prescribed. Briefly, in outline form, there are five steps necessary for a valid annexation of an area in an unincorporated municipality to either an incorporated or another unincorporated municipality.

(1) A notice is posted in at least 8 public places in the town from which the land will be taken.

(2) A copy of this notice is published in a newspaper of general circulation.

(3) A petition is circulated for signatures, and, upon completion, the petition is presented to the council of the annexing municipality.

(4) The council drafts and publishes the annexing ordinance.

(5) The council adopts the ordinance.

I. Posting

Although the statute does not in its opening sentence state that posting is the first procedural step in effecting a valid annexation, the statute does state that no petition for annexation will be valid unless at least 10 days after and not more than 20 days before any petition

18 Although the statute is much longer, the following is the part of the statute which is the subject of most of the controversy:

62.07 Annexation and detachment of territory. (1) Annexation Procedure. Territory adjacent to any city may be annexed to such city in the manner following:

(a) A petition therefor shall be presented to the council 1. signed by a majority of the electors in such adjacent territory and by the owners of one-half of the real estate within the limits of the territory proposed to be annexed, or 2. if no electors reside in the said adjacent territory signed by the owners of one-half of taxable property therein according to the last tax roll, or 3. by a majority of the electors and the owners of one-half of the real estate in assessed value; provided, that no petition for annexation shall be valid unless at least 10 days and not more than 20 days before any such petition is caused to be circulated, a notice shall be posted in at least 8 public places in the municipality in which the adjacent territory is located, and a copy of such notice published in a newspaper of general circulation within the county in which said adjacent territory is located, at least 10 days prior to the time when such petition is caused to be circulated, such notice to set forth that an annexation petition is to be circulated, and including an accurate description of the territory involved.

(b) An ordinance annexing such territory to the ward or wards named therein shall be introduced at a regular or special meeting of the council after the filing of the petition, be published once each week for 4 successive weeks in the official paper and thereafter be adopted at a regular or special meeting by two-thirds of all the members of the council.


20 For an area in an incorporated village or city to be annexed, or for the annexing city to act, the incorporated area must first detach itself. Wauwatosa v. Milwaukee, 180 Wis. 310, 192 N.W. 982 (1923); Shawano v. Engel, 171 Wis. 299, 177 N.W. 33 (1920). See infra.
is caused to be circulated, a notice shall be posted in at least 8 public places in the territory to be annexed, and a copy of such posting notice has been published at least 10 days prior to the circulation of the annexation petition. So it would seem without posting there can be no valid petition, and without a valid petition there cannot be a valid annexation. Posting, then, is the first step in annexation.\(^{21}\)

As to posting, the statute does not state who is a competent person to post such a notice. It merely states that a notice shall be posted. Nor does it state that the posting must be on any one day. Possibly this means any interested or disinterested person, persons, corporation, agent, singly or in combination could do the posting, and could do the posting over a period of a few days. Whether the annexing city could post, or persons at its direction is not disclosed in the statute either. The question of agency, and whether parties may be called as adverse witnesses has been raised.\(^{22}\) The date from which the 10 day statutory figuring must be done then would necessarily be computed from the last date of posting or upon the completion of the posting. The difficulty of computing publication dates can be easily seen, however, where the posting is done over a period of a few days. The better practice would seem to be to post on one day only.

As to posting, the statute does state that the notice shall:

1. Be posted in 8 public places.
2. Set forth that an annexation petition is to be circulated.
3. Include an accurate description of the territory involved.

In conformity with the statute the City of Milwaukee annexation notice or posting notice reads as follows:\(^{23}\)

**ANNEXATION NOTICE**

To Whom It May Concern:

PLEASE TAKE NOTICE that after ten (10) days of posting and publication of this notice and before the expiration of twenty (20) days from the date of posting of this notice, the undersigned will cause to be circulated a petition for the annexation of lands hereinafter described to the City of Milwaukee, Milwaukee County, Wisconsin; that the territory for which an annexation petition will be so circulated is described as follows, to wit:

(DESCRIPTION)

Dated: Date posting notice was signed.
By: Name of person signing notice, address of same person.

In conjunction with the annexation notice there is a careful record

---

\(^{21}\) Greenfield v. Milwaukee, 259 Wis. 77, 47 N.W.2d 292 (1955).

\(^{22}\) Greenfield v. Milwaukee, 272 Wis. 388, 75 N.W.2d 434. Town resident circulators cannot be called as adverse witnesses under Sec. 325.14, in an action by the town against the city, since no agency exists.

\(^{23}\) Forms used by Milwaukee secured with the aid of Doris Lahl, secretary to J. R. Lamping, Supervisor of Department of Community Development.
kept of all the locations of the postings and the date on which they were posted. This is signed by the person or persons who did the posting. An original copy of this record is filed accompanying the petition with the council of the annexing municipality. If there is no record of compliance with the statute available as to posting or publication it may be grounds for invalidating an annexation.\(^\text{24}\) Evidence of the recording of places of posting, etc., needn't be filed with the petition, but it must be filed with the annexing city, its council or some representative so that it is readily available to the public for scrutiny.\(^\text{25}\)

The places of posting must be in the town from which the territory will be taken, and not limited only to the land to be annexed. Consent by the town from which the territory will be taken need not be obtained by the person posting.\(^\text{26}\) Territory annexed to a city need not be limited to a single township and can include an unincorporated village or parts of both.\(^\text{27}\) The town has not the right to determine the extent of the territory that may be taken from it in valid annexation proceedings.\(^\text{28}\) A town is subordinate to an enlarging city. However, Sec. 66.029 declaring that a town is an interested party in an annexation, and that the town board can test its validity, has been declared enforceable notwithstanding prior decisions holding that a town has no interest in alteration of its boundaries.\(^\text{29}\)

Whether the place posted is a public place is a question of fact and law. The nature and situation of the place is for the jury to determine. Whether the place of posting is a public place within the statute is purely a question of law.\(^\text{30}\) A public place as used in the statute means a place where people assemble in public, and should be used by the public, and open to observation. The place posted should be public in its common meaning. A front of a hotel, telephone poles, inside and outside walls of buildings, fences, barns, boards, trees, post offices, stores, and schools, depending on their location may be public places. In considering which places are public places, it must be considered what other places are available, and where people congregate. The statute does not require that the posting be in the most public places, or imply that the posting may not be at places less public than

\(^\text{24}\) In Re Town of Preble, 261 Wis. 459, 53 N.W.2d 187 (1952); Wauwatosa v. Milwaukee, 266 Wis. 59, 62 N.W.2d 718 (1954).

\(^\text{25}\) Wauwatosa v. Milwaukee, 266 Wis. 59, 62 N.W.2d 718 (1954).

\(^\text{26}\) Zweifel v. Milwaukee, 188 Wis. 358, 206 N.W. 215 (1925).

\(^\text{27}\) Ibid.

\(^\text{28}\) Madison v. Madison, 269 Wis. 609, 70 N.W.2d 249 (1955); Kronenwetter v. Knoedler, 175 Wis. 394, 185 N.W. 170 (1921).

\(^\text{29}\) Ibid.

The statute states only that a notice shall be posted in at least 8 places. There is no prohibition on the number of notices that can be put up. Therefore, it seems that a good practice is to post in more than 8 public places. In the event one or two of the places posted are held not to be a public place, the statute will still be complied with; in that, at least 8 notices which were valid were posted in public places. This would seemingly not be contrary, but rather in suggestive conformity with the statute. The words "at least" seem to connote that not only would it be all right to post in more than 8 places but it is suggested that this be done.

As was previously stated, the statute does state that the notice shall be posted in 8 public places, that an annexation petition is to be circulated, and, include an accurate description of the territory involved. If any of these three requirements are not met the posting would be invalid, e.g.: If the notice was posted in only 7 places or the notice didn't state that a petition would issue, or a wholly inaccurate description was posted causing persons to be misled. However, the first requirement is the only difficult one. It requires some research and judgment. As was suggested to avert an invalid posting as to this requisite, more than 8 notices should be posted. As to the second requirement, it is the drafter's duty to insert words in the notice to the effect that a petition will be caused to be circulated. The statute does not state that dates need be mentioned in the body of the notice. But it would seem to be the better practice to include the 10 and 20 day limitations to avoid possible invalidity. There should be included in the body of the notice words to the effect that after 10 days after posting and publication of the notice and before the expiration of 20 days from the date of posting a petition will be circulated. Also the posting notice should be dated. As to the third requirement, a competent surveyor should carefully check his description for accuracy. Where the posting description was accurate, but where the notice of circulation was published with a print error, the court held the land was identifiable and that since no one was misled the publication was valid. However, if the posting description would be inaccurate, due to the necessity of strict compliance to the statute, in certain circumstances, the posting would be invalid.32

Prior In Time Is Prior In Right. Posting initiates annexation. Hence, posting has been held to be the step which forecloses the initiating of any other similar proceedings. Prior posting excludes incorporation or another posting for annexation of part or all of the

32 It would be invalid if parties were misled or the court strictly construed the provision, the annexation being attacked within 90 days after passage of the ordinance.
same territory. That is to say, if a certain area, area X is posted on the first of the month, and another posting of area X, or any part thereof is done on the third of the month, or there is filed a petition for incorporation of area X, or any part thereof, on the third, the whole later action will be held invalid. This means that if any part of the area posted, no matter how small, has been posted, or is in the process of incorporation, any subsequent posting or incorporation is invalid. Prior in time is prior in right.

Some times it must be determined whether an incorporation proceeding or an annexation proceeding was initiated first. It is readily seen that the purpose of incorporation is opposed to the plan for annexation and there isn’t room for both. The posting date is the crucial determinative date in annexation, and the date of filing of the incorporation proceedings is the crucial determinative date in incorporation proceedings. Under the old Sec. 926-17 to 925-21 Stats. 1898, the date of filing of the annexation petition was determinative. In annexation, the posting date presupposes a valid petition will be filed.

In the case of In Re Town of Preble it was held that an application for incorporation will be denied if there is pending a proceeding for annexation valid on its face. In order to be valid on its face, the petition for annexation must comply with Sec. 62.07(1)(a). A further discussion of the validity of the petition will follow later. Let it be sufficient now to state that the posting date is determinative in deciding which proceeding is prior in time. If the first posting is invalid, the proceeding later in time would take precedence, in that the annexation would be void ab initio, disallowing the first posting, and the proceedings second in time, incorporation or annexation, could proceed as if there had been no posting. Posting is no bar to incorporation or another posting when the posting person, although he acted in good faith did not act within reason in the prosecution of the annexation. Also, a bad faith posting or incorporation would be no bar to later proceedings.

II. Publication After Posting

At least 10 days prior to the time when the petition is caused to be circulated, and at least 10 days, and not more than 20 days after the posting, a copy of the posting notice must be published in a newspaper of general circulation within the county in which the territory to be

33 Behling v. Milwaukee, 190 Wis. 643, 209 N.W. 762 (1926).
34 The question of whether this rule applied to consolidation has not been settled. The better rule would seem to be that it does. Milwaukee v. Sewerage Commission, 268 Wis. 342, 67 N.W.2d 624 (1954). But in Milwaukee Circuit Court, Case #259-917 it was held posting stops consolidation. This decision, if upheld, severely restricts growth of cities and calls for immediate legislation.
35 In Re Incorporation of Village of St. Francis, 208 Wis. 431, 243 N.W. 315 (1932); citing Schrieber v. Langlade, 66 Wis. 616, 29 N.W. 547 (1886).
36 In Re Town of Preble, 261 Wis. 459, 53 N.W.2d 187 (1952).
annexed is located. The statutes does not say the notice need be published more than once, but presumably it could be. The practice is to publish on one day only. The publication can be in any paper of general circulation. This has been interpreted as meaning that use of the official newspaper is not necessary. However, a publication in a foreign language newspaper of limited circulation does not comply with the statute.

In *Greenfield v. Milwaukee*, the Supreme Court affirmed the trial court's holding that the annexation was valid. Notice of circulation of a petition was published January 28, 1953. The same notice was published January 27, 1953 but with an error in the legal description. The trial court found the date of publication to be the 27th as no one was misled and the land was identifiable. In so holding, the court also stated Sec. 62.07(1)(a) only requires a copy to be published at least 10 days before the petition is to be circulated. There is no requirement that its publication be proven by affidavit. It is taken to be valid on its face. This means that when you file the petition there is no legal necessity to attach an affidavit to the publication of notice in the newspaper in order to give validity to the petition. It probably is a good practice to attach affidavits, but failure to prove publication by affidavit is not fatal.

III. The Petition

In order to annex there must be a valid petition. The petition itself must be: (1) signed by a majority of the electors in the territory to be annexed and by the owners of one-half of the real estate, or (2) if no electors reside there, then it must be signed by the owners of one-half of the taxable property therein according to the last tax roll, or, (3) by a majority of the electors and the owners of one-half of the real estate in assessed value.

Upon completion the petition is presented to the governing body of the annexing municipality. A valid petition in annexation proceedings gives the municipality jurisdiction. Errors in proceedings taken subsequent to the filing of the petition do not necessarily invalidate the annexation. By implication, it has been held any mistake prior to this time could invalidate an annexation.

"Caused to be circulated" has been interpreted to mean to begin or commence. The interpretation was given in 1945 when the time for the petition to be caused to be circulated was 45 days. It was erroneously contended that caused to be circulated meant that the peti-

37 Greenfield v. Milwaukee, 259 Wis. 77, 47 N.W.2d 292 (1955).
38 272 Wis. 388, 75 N.W. 434 (1956).
39 See In Re Incorporation of Village of St. Francis, 208 Wis. 431, 243 N.W. 315 (1932) as to concept of urbanization.
40 Wilson v. Sheboygan, 230 Wis. 483, 238 N.W. 312 (1939); State ex rel Thompson v. Eggen, 206 Wis. 651, 238 N.W. 404, 240 N.W. 839 (1932).
tion should have been completed within the 45 day limit.\textsuperscript{41} Now, of course, the petition must be caused to be circulated, or some signatures obtained after at least 10 days after posting and publication, and before 20 days after posting. The statute does not require the date of signing to appear on the face of the petition and this may be ascertained by oral testimony.\textsuperscript{42} In one case, to show that the statutory time had not been complied with, a handwriting expert was called in to show dates noted after the names on the petition were changed from February 6 to February 9, 1953. The later date was in conformity with the statutory deadline, the former was not. Testimony was given establishing the later date as the date of the signing.\textsuperscript{43}

A requirement, by judicial decision, is that, assuming the petition had been put into circulation within the prescribed time, the petition must be completed within a reasonable time. Again referring to the 45 day statute, but equally applicable to our present day statute, the court has said the reason for a time limit is to make it impossible for persons to post notices and then wait until the matter is forgotten and then complete the petitions with the signatures of uninformed people. Then too, if circulation were commenced in accordance with the statute and then delayed unreasonably so as to make it apparent that the circulators were trying to put one over on the court, the court would find non-compliance, and invalidate the annexation—not because of the time, but because of fraud.\textsuperscript{44}

In light of this rule of reasonableness a 9 month delay after the petition was filed before the ordinance was adopted was held not to be unreasonable. The court stated, it is not supposed that 2, 3 or 5 years is reasonable, but a delay of 9 months is not so long as to be unreasonable and render the council's action void.\textsuperscript{45} Note this relates to the time in which the council can act upon the petition once it is filed. It might well be that a year or two could be spent in circulating the petition and be deemed not to be an unreasonable delay. It can easily be seen this is an evil which should be rectified. Annexations, under this rule, could be held up for years. However, this evil has been somewhat limited. In a later case,\textsuperscript{45a} a trial court was held to be in error where it found by using the good faith test only, that an annexation petition which had been in circulation for some time, and where it would take about two years to wind up was still valid. The court cited the prior \textit{Walsh} case saying that annexation proceedings

\textsuperscript{41} State ex rel Madison v. Walsh, 247 Wis. 317, 19 N.W.2d 299 (1945).
\textsuperscript{42} Smith v. Sherry, 50 Wis. 210, 6 N.W. 561 (1880).
\textsuperscript{43} Greenfield v. Milwaukee, 272 Wis. 388 at pp. 392-3 (1956).
\textsuperscript{44} See footnotes 40-41.
\textsuperscript{45} See footnote 41.
\textsuperscript{45a} In Re Incorporation of the village of Brown Deer, 267 Wis. 481, 66 N.W.2d 333 (1954).
must be conducted with reasonable dispatch and completed within a reasonable time. Logically this refers to not only the time in which the petition must be completed, but also to the council's action on the petition. The exact time which would be reasonable is indeterminate and depends on many factors. Some of the considerations are: (1) The population of the area to be annexed. (2) The size of the territory to be annexed. (3) The number of petitions being circulated. (4) The number of signatures secured. (5) The number of people working on the annexation.

The word "signed" as used in the statute has been interpreted in the light of Sec. 370.01 and means that the signing must be the written signature of a person, by that person unless the party is unable to write. Each signer signs for himself. One cannot sign for another even in his presence with his consent.\(^4\) Once the petition is signed by an elector or property owner it has a face value and there is a presumption in favor of its genuineness. No authentication is needed.\(^4\) An immaterial name variance such as the signature of Mrs. John Smith for the property whose owner's name on the deed is Mary Smith, the names belonging to one and the same person, will not invalidate the signature. This is not to say, however, that a material or deceptive variance could not invalidate a signature. An invalid signature would just be dropped and would not effect the entire petition except under the circumstance where the signature would be necessary to obtain the fractional statutory majorities as set out in the statute.

"Electors" as used in the statute has been restricted to electors living in the territory constituting an entire class, and of the class a majority must sign the petition.\(^4\) No preference is made to whether this class includes some or all persons. It may include all competent persons over 21, including persons registered to vote in the territory, non-registered voters, voters registered in other territories, but residing in the affected area, persons on the poll lists or not. Presumably all are included if a liberal interpretation of the definition of elector of Sec. 6.01 is applied to the term as used in Sec. 62.07.

"Real estate" in subsection 1 has been held to mean real estate by area or size only and not value. This is the rule so that a large unit, such as a factory could not control an entire area. So too, the court states that it is clear the legislature did not use the words real estate as including tenements and hereditaments.\(^4\) The owners of one-half of the real estate includes the owners of exempt property such as a

---

\(^4\) DeBauche v. Green Bay, 227 Wis. 148, 227 N.W. 147 (1938).

\(^4\) Blooming Grove v. Madison, 253 Wis. 215, 32 N.W. 2d 312 (1948); citing De-Bauche case, footnote 46.

\(^4\) Ibid.

\(^4\) Ibid.
county. Where authorized officers of Milwaukee County signed a petition for annexation, it was held that though not taxable, the lands were the proper subject of annexation and the officers could sign in behalf of the county as owners. Under special circumstances, even though property is not subject to local taxation, or is not on the local tax roll as set out in the statute, it may be a proper subject for annexation where the assessment is available from other sources. Hence, a public utility whose assessment could be ascertained from the state tax roll, but was not on the local tax roll was held to be properly included in a petition for annexation.

Although no cases involving annexation have been decided which define the word "owner," it is generally accepted that owner includes the owner of the fee, a life tenant, and the remainderman. It may also include other persons such as a lessee under a term for years, or a vendee under a land contract or a buy-sell agreement.

The annexation petition for an area with electors used by the City of Milwaukee reads as follows:

To the Honorable, Common Council of the City of Milwaukee.

Gentlemen:

We, the undersigned, constituting a majority of the electors and either owners of one-half of the real estate in area or one-half of the real estate in assessed value within the limits of the territory proposed to be annexed, lying and being contiguous and adjacent to the City of Milwaukee, do herewith together present to and petition your Honorable Body to annex to the City of Milwaukee said territory herinafter described, a plat of which is hereto attached marked exhibit "A" and made a part of this petition, to wit: (DESCRIPTION).

Attached to the petition are the signatures of owners and electors giving their names, addresses, dates of signing, and a description of the land they own, if any. The description can be by key number, just so the land is readily identifiable. There is no requirement in Sec. 62.07 that the description be thus inserted, but a description would be important if it was impossible to determine assessed value without it. There must be a showing that assessed value could not otherwise be determined in order to attach any significance to the failure of the signers of the petition to describe the property for which they signed. Where key numbers are incorrect, neither the signatures nor the petition will be invalidated if they are not misleading and can be readily ascertained.

---

50 Mueller v. Milwaukee, 254 Wis. 625, 37 N.W.2d 464 (1949).
51 Ibid.
52 In Re Catfish River Drainage District, 176 Wis. 607, 187 N.W. 673 (1922).
53 Greenfield v. Milwaukee, 272 Wis. 388, 75 N.W.2d 434 (1956).
The law requires the circulation and filing of a valid petition to give the council jurisdiction in annexation proceedings. Towns are entitled at any time to attack proceedings by showing the original petition filed with the council was invalid. The petition used by the City of Milwaukee was contested on the ground of lack of certainty as the petition is in the alternative reciting signature by a majority of electors and either the owners of one-half of the real estate in area or one-half of the real estate in assessed value. It was contended that it can't be determined which of the statutory alternatives were followed. The trial court's finding that the statute was compiled with in respect to the signatures was not contested (and therefore stood), but the proceeding itself was attacked. In holding the annexation valid the Supreme Court stated it could only determine whether the statute was complied with, and here it was. The trial court found 110 out of 179 electors signed the petition, and 211 out of 314 acres were accounted for by the owners who also signed.

In order to be valid on its face and to comply with the statute, the petition either (1) must contain an allegation that it is signed by the required number of electors and property owners in the territory to be annexed, or else, (2) proof of such compliance with the statute must affirmatively appear in the record of proceedings of the council by (a) filed affidavits, or (b) a determination by a council committee that the petition did bear sufficient signatures. In the absence of this, the court will determine the sufficiency of the petition. Of course, the city is bound by its own determination. That is, if the city in its recommendation by the committee finds a lack of signatures, the court will abide by this finding.

It should be noted that an area in which no electors reside can still be annexed. In such an instance one-half of the owners of the taxable property according to the last tax roll must sign the petition. Again the value of the taxable property is of no import, (nor is the fact that the property is tax exempt). That is to say, if there are 9 owners of property in the area, only 5 need sign even though the value of the property of the non-signing 4 far exceeds the value of the property owned by the signing 5. Because of this, it can be seen some injustice might arise in that the owner of valuable fixtures on his land might have his taxes increased by persons owning less valuable land. It is said, however, that the advantages of city services, such as sewer and water, police and fire, far outweigh any disadvantages. In most instances this is true.
Withdrawals and Additions to the Petition. The mere introduction of an ordinance to the common council praying for annexation doesn’t necessarily mean it will be adopted. And no rights, save the right to exclude any other proceedings initiated later in time are acquired by anyone prior to the final adoption of the ordinance. It is for this reason that withdrawals from the petition prior to the adoption of the ordinance have been judicially sanctioned. Anyone can change his mind and withdraw from the petition even though it may leave the annexing unit without enough signatures to found a valid petition.

The statute does not mention additions or withdrawals to the petition. The question arises whether there can be additional names added to the petition or can a person withdraw his name? Then too, can there be a withdrawal from a withdrawal? And if so, until what time? Reasoning from the language of the *Blooming Grove* case, since no rights are acquired up to adoption, it would seem that additions and withdrawals would be sanctioned until final adoption. However, there is still the question whether additions and withdrawals would be consistent with the idea that the petition must be valid at the time of filing. There is the possibility with the circulation of numerous petitions that confusion might result.

In *Greenfield v. Milwaukee* it was stated the validity of the petition must be determined as of the date it was filed. Here, the court ruled the annexation was invalid because the petition was not signed by the electors. The petition was signed by owners of all taxable property. The electors intended to, and did move out of the area, but did so a month after the petition was filed. The annexing city contended that the petition needed only to satisfy the statutory requirements at the time the ordinance was passed, but the court concluded that the validity of the petition must be determined as of the date it was filed. Consistent with this ruling, it would follow that withdrawals, additions, withdrawals from the withdrawals, etc. would not be permitted. Yet, in a prior case withdrawals were permitted. Perhaps the latter overrules the former. In any event, these two cases should be distinguished on this point.

In a lower court decision, notwithstanding it is a common practice to add new names and that there were two lower court decisions upholding this practice, the Circuit Court for Waukesha County invalidated an ordinance where 6 new names were added after the 4 week

---

58 See footnote 47.
59 *Ibid*; LaLonde v. Board of Supervisors of Barron County, 80 Wis. 380, 49 N.W. 960 (1890); State ex rel Hawley v. Board of Supervisors of Polk County, 88 Wis. 355, 60 N.W. 266 (1894).
60 272 Wis. 610, —N.W.2d— (1956); Blooming Grove v. Madison, 253 Wis. 215, 32 N.W.2d 312 (1948) distinguished.
publication of the annexation ordinance to offset withdrawals so the petition would have the signatures of a majority of electors. The court said that the 6 new names must be considered as a new petition and cannot be filed as a part of the earlier petition in the absence of preliminary requirements being met as required under Sec. 62.07. The court also stated that a person who signs an annexation petition can withdraw and can still reinstate his signature (withdraw from a withdrawal), but new names cannot be added to replace those which were withdrawn.

IV. DRAFTING AND PUBLICATION OF THE ORDINANCE
After the petition is filed, and along with it, the necessary proofs that all the statutory steps have been complied with, the council drafts an ordinance. The general form of the ordinance used by the City of Milwaukee, subsequent to an annexation petition signed by owners and/or electors reads as follows:

AN ORDINANCE
For the annexation of (description) to the (annexing city).
WHEREAS, A petition has been presented to the Common Council stating that the persons therein undersigned, constitute a majority of the electors and either owners of one-half of the real estate in area or one-half of the real estate in assessed value within the limits of the territory proposed to be annexed, lying and being contiguous and adjacent to the (annexing city); and
WHEREAS, The said petition is signed by a majority of the electors in such adjacent territory and by owners of one-half of the real estate in assessed value (or area depending on the situation) within the limits of the said territory proposed to be annexed and in all respects satisfied the requirements of Section 62.07 of the Wisconsin Statutes; and,
WHEREAS, All requirements of the statutes have been therewith complied and satisfied; and,
WHEREAS, The subject territory hereinafter described in Section 1 of this Ordinance is adjacent and contiguous to the City of Milwaukee; and,
WHEREAS, The said petition requests that said territory hereinafter described be annexed to the (annexing city); now, therefore,
The Mayor and Common Council of the (annexing city) do ordain as follows:
Section 1. The territory described as follows, to wit: (description) be, and the same hereby is, annexed to the (annexing city).
Section 2. After the annexation provided herein, the territory described in Section 1 of this Ordinance shall be exempt from further taxation and assessment in said Town and henceforth be subject to taxation and assessment, if any, as a part of the (annexing city), for any and all purposes provided by law.
Section 3. All of said territory described in Section 1 of this Ordinance shall be and hereby is made a part of the —— Ward of the (annexing city) . . . and shall be subject to the laws, regulations and Ordinances governing said ward and said City, and said ward is hereby extended to include the territory herein annexed to it.

Section 4. This Ordinance shall take effect and be in force from and after ninety (90) days following its passage.

Section 5. That the committee on Judiciary-Legislation of the Common Council be, and hereby is, selected by the Common Council to act with the Town Board of the (town from which land was taken) after the effective date of this ordinance as the apportionment board for the adjustment of assets and liabilities which existed at the said time of annexation and as to said property and to make a report of such apportionment to the Common Council for its affirmance before the same shall be effective.

The proposed ordinance according to the statute shall be introduced at a regular or special meeting of the council after the filing of the petition, and be published once each week for 4 successive weeks in the official paper, and thereafter be adopted at a regular or special meeting by two-thirds of all the members of the council. Notice that an annexation ordinance would be acted on at the next regular meeting was held not to invalidate proceedings even though the ordinance was adopted at the first meeting subsequent to the first regular meeting. Since this notice is not required by the statute it was held to be mere surplusage.

V. ADOPTING THE ORDINANCE

As to the action of the common council in adopting or acting on the ordinance, their action must be in strict compliance with the word of the statute. A resolution adopting an ordinance must sufficiently describe the ordinance so it can be readily ascertained how one relates to the other. In Behling v. Milwaukee there was an attempted passage of the proposed ordinance one day before the 4 weeks publication, and 3 days prior to the 30 day period after the introduction of the proposed ordinance. After one month the same ordinance was repassed. In invalidating the later action, the court stated that under the facts, the ordinance once acted upon was beyond recall and further action must be taken by a new ordinance. However, to include in the ordinance territory that has already been annexed or is already within the city limits will not invalidate the ordinance. Where territory

61 Sec. 67.02(1)(b). If acted upon before 30 days council's action is null and void, even if attacked after 90 day period after adoption, as no jurisdiction acquired. Herman v. Oconto, 100 Wis. 391, 76 N.W. 364 (1898).
62 Roehrborn v. Ladysmith, 175 Wis. 394, 185 N.W. 170 (1921).
63 See footnote 33.
64 But dicta in Zweifel v. Milwaukee, 188 Wis. 358, 206 N.W. 215 (1925) indicates
already within the city boundaries was described in the petition, the
court held such addition merely surplusage, and said it could be dis-
regarded. Then too, the ordinance is not invalid for including land
owned by the town from which the territory will be taken, or if the
land included was owned by the town as a park. At common law title
passed to the annexing city. Today upon annexation title remains in
the town, subject to the city's laws. And yet, the town can exercise
police power over territory outside its limits. It has been stated that
without doubt the very existence of Sec. 62.07 indicates the legislature
contemplated land owned by one municipality may be annexed by an-
other.

As to the publication after the adoption, the annexation will not be
invalid if it is defective, or even if no publication has taken place.

Once the ordinance is passed it does not become final for 90 days.
During this period the validity of the proceedings shall not be col-
laterally attacked, nor in any manner called in question in any court
unless the proceedings therefor be commenced before the expiration
of the 90 day period. Notwithstanding the strong statutory language
—"nor in any manner called in question"—the courts have held that
the proceedings can be attacked after the 90 day period, and that this
strong language applies only to matters other than jurisdiction, which
if defective, are cured, or not subject to attack after the 90 day period.
But, the question of jurisdiction can always be raised. Hence a town
can attack and invalidate an annexation after the 90 day period by
showing the original petition to be invalid. It can be seen the possible
consequences of such an interpretation may be disastrous, not only
financially, but socially, and calls for legislative action.

VI. OTHER REQUISITES

In the controversial Slauson v. Racine, our court held lands
that lie within a legislative district outside of the incorporated munici-
pality, upon annexation, become a part of the legislative district within
the incorporated municipality to which they become attached. This
in effect causes reapportionment, but perhaps only when there is a
direct attempt for reorganization, or a substantial number of people

"an ordinance providing for annexation of 159 acres, 2 acres of which could not
validly be annexed would be void in its entirety.

63 Madison v. Madison, 269 Wis. 609, 70 N.W.2d 249 (1955). The town is still the
owner. Milwaukee v. Milwaukee, 12 Wis. 102 (1860).

64 City of Milwaukee v. Milwaukee, 12 Wis. 102 (1860).

65 See footnote 28.

66 See footnotes 40-41.

67 Ibid.

68 See footnote 28.

69 Milwaukee Journal, Wednesday, February 29, 1956. Column head reads "An-
nexation Suit Stalls $45,000,000 Housing."

70 Ibid.

71 See footnote 81.

72 Wauwatosa v. Milwaukee, 180 Wis. 310, 192 N.W. 982 (1923), citing Shawno v.
Engel, 171 Wis. 299, 177 N.W. 33 (1920). Boundary lines are fixed and any
and lands are affected. Our court has stated that it is nevertheless competent to change *incidentally* the boundaries of Assembly or Senate districts by annexation. However, in a later case, notwithstanding the suggestion in the *Slauson* case that legislative boundaries may by annexation be incidentally changed, the court invalidated an annexation where it would result in the elimination of the boundary line between Assembly districts. The court in placing this severe restriction cited *Wis. Constitution, Art. IV, §4*, stating a municipal boundary must be bounded by a county, precinct, town or ward line.\(^73\)

Almost any unincorporated territory can be annexed providing it is adjacent\(^74\) to the annexing municipality.\(^75\) There is no need to get the consent of the town from which land will be taken, by referendum, or otherwise, in order to post or carry on further annexation proceedings. It is only in the case of consolidation or detachment under special request that a referendum is necessary.\(^76\) There is no provision in the statute for a referendum in the case of annexation. Where territory is taken from an incorporated municipality it is necessary that detachment proceedings be consummated before annexation takes place.\(^77\) It would seem in detachment proceedings the city from which land is taken has no choice in the matter so long as the statute is complied with. If they should refuse to pass on the matter or delay unreasonably mandamus would probably be the best remedy.

All that is required is that the territory as a whole be adjacent.\(^78\) That means if City *A* annexes parcels *B* and *C*, *B* being adjacent to both *A* and *C*, but separating them, the statute is still complied with, in that the territory as a whole is adjacent.\(^79\) The word adjacent as used in Sec. 62.07 is synonymous with the word contiguous used in *Wis. Constitution, Art. IV, §§4-5*. In addition, after finding the territory is adjacent to the annexing municipality, the court goes no further than to see that the annexation proceedings complied with the statute. This probably does not mean, however, that a city can annex a territory adjacent to the city by a finger of land 1 foot wide, ten miles long running as a corridor to a square mile of land. There

---

\(^73\) *Wauwatosa v. Milwaukee*, 259 Wis. 56, 47 N.W.2d 442 (1951).

\(^74\) Adjacent is synonymous with contiguous. *Town of Lake v. Milwaukee*, 255 Wis. 419, 39 N.W.2d 376 (1949).

\(^75\) Except under Sec. 66.025 under which a city owned tract, although not adjacent can be annexed. This is done by ordinance only.

\(^76\) Where the legislature takes land from a town and annexes the same to another town or municipality without the former's consent, the town is still owner notwithstanding such separation. See footnote 66.

\(^77\) A city has no power to annex any part of another city without the city first detaching the land. *Wauwatosa v. Milwaukee*, 180 Wis. 310, 192 N.W. 982 (1923).

\(^78\) See footnote 41.

\(^79\) See footnote 31.
must be some sort of measurement. Yet, an annexation which left a
town split in half except for a strip of land 25 feet long and from
30 to 72 feet wide was held valid. Just how long or thin a corridor can
be remains to be seen. In the older decisions two other requirements
had to be met and probably still must be somewhat satisfied; namely,
(1) That the territory must be added to the city and become a homoge-
neous whole—have some symmetry, or be in as compact a form as is
practicable, and (2) Must be urban in character or immediate poten-
tial.\textsuperscript{80} The characteristic of homogeneity would appear to have been
largely done away with, but the other requirement still remains, and
rightly so. There would be no justice in annexing a farm wholly rural
in character without immediate urban potential just to gain revenue.\textsuperscript{81}

CONCLUSION

In the body of this article it has been pointed out where possible
conflicts lie in our present day annexation statute, and how they might
be alleviated. Among others one course of action might be to make
annexations not subject to attack in any manner, including jurisdiction
after 90 days. This would give our statute finality. The priority be-
tween annexation and consolidation might be clarified. This matter
is before our courts at the time of this writing. Another problem,
which is more a scholastic rather than a practical problem in annexa-
tions, is in regard to the factors of urban characteristics, homogeneity,
and contiguousness.

The question of whether urban characteristics exist is more preva-
lent in incorporation proceedings, where in their haste to block cities
from expanding, poor country townships incorporate their farm lands
which have no urban characteristics. On the other hand, annexations
are usually prompted by real estate interests, who upon annexation
and its subsequent city services, immediately build up and develop the
newly annexed area.

The constitutional limitation placed on annexations relating to
adjacentness and homogeneity has simply been disregarded. Cases
can be found where land connected by a ten foot strip of land a mile
and a half long has been held to be adjacent to the annexing munici-
pality. The modern test seems to be whether there is a unity of interest;
and whether, if annexed, the administration of municipal government
can readily be extended to the newly annexed area.

CLIFFORD K. MELDMAN

\textsuperscript{80} Zweifel v. Milwaukee, 185 Wis. 625, 201 N.W. 385 (1925). The territory
annexed needn't be limited to a single township and can include parts of un-
incorporated villages—and possibly counties.

\textsuperscript{81} See footnote 46. There can be no differing taxes and the new area cannot be
bribed into being annexed. Slausen v. Racine, 13 Wis. 444 (1861); Knowlton v.
Board of Supervisors of Rock County, 9 Wis. 410 (1859); State ex rel Attorney
General v. Winnebago Lake & Fox River Plankroad Co., 11 Wis. 35 (1860).