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DEANNEXATION: A PROPOSED STATUTE

I. INTRODUCTION

Villages, towns and cities¹ use powers such as annexation, deannexation, and consolidation to expand, contract, alter, and adjust their boundaries as necessary to facilitate their growth and changing needs. These powers are granted by the state legislatures. Legislatures also permit landowners and others to initiate change in municipal boundaries, thus giving individuals an opportunity to participate directly in the land use options and management schemes of their greater community.

Through deannexation, municipal territory is reduced and boundaries contract. The severed territory rejoins the county in which it lays or merges with another municipality. Either municipalities or individuals may seek to detach territory from a municipality. Municipalities deannex lands to which they owe an obligation of services which they cannot provide within a reasonable time. Additionally, removing land to give more symmetry to boundaries increases the efficiency and cost effectiveness of delivering services. Municipalities may also disconnect territory of an agricultural nature for which they must provide services but from which they receive inadequate compensation through taxes. Individuals may attempt to remove their lands from a municipality if they believe they receive inadequate services for the taxes they pay. Additionally, landowners may wish to escape the land use regulations imposed by a municipal government. Residents may also want to join another governmental entity to which they feel more historically and politically connected.

New Mexico has adopted several boundary adjustment mechanisms such as consolidation and annexation. The legislature, however, has not yet created a deannexation statute. Thus, the state lacks a useful land use planning and management tool. Through a review of case law and statutes from Arizona, Utah and Colorado, this comment lays the foundation for a proposed deannexation statute. That proposed statute follows as an Appendix.

II. DEFINITION AND PURPOSES

Deannexation occurs when territory is removed from a municipality and its geographical boundaries shrink.² Arizona statutes refer to this process as deannexation³ while Colorado⁴ and Utah⁵ statutes use the term

1. These will be referred to collectively as "municipalities."

2. DEPARTMENT OF URBAN STUDIES, NAT'L LEAGUE OF CITIES, ADJUSTING MUNICIPAL BOUNDARIES—LAW AND PRACTICE 60 (1966) (hereinafter NATIONAL LEAGUE OF CITIES).

3. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986). This statute was declared unconstitutional in *Petitioners for Deannexation v. City of Goodyear*, 160 Ariz. 467, 773 P.2d 1026 (1989). The city of Goodyear challenged the constitutionality of the deannexation law and the trial court upheld the statute under an equal protection/rational basis analysis. *Id.* at 469, 773 P.2d at 1028. Reversing the trial court, the court of appeals

disconnection. Deannexation permits municipal boundary changes to promote the "orderly and natural development of urban areas,"⁶ to meet requirements of "public convenience and necessity,"⁷ or to effect a change which better serves the interests of those involved.⁸

In New Mexico, large cities such as Albuquerque have annexed outlying areas for reasons which include providing services or gaining control over land use practices. Some of these areas, including, for example, sections of the south valley now a part of the city, may wish to separate from the city and create a new municipality. Advantages to the city include smoothing out its boundaries, decreasing the irregular areas to which it provides service and increasing the efficiency of its service area.

III. ANALOGY TO ANNEXATION

New Mexico already has adopted annexation statutes. Deannexation power is analogous to and of the same class as annexation power.⁹ Reduction of one local entity's territorial boundaries and jurisdiction generally effects a change or increase in another's.¹⁰ Factors relevant in one type of proceeding are relevant in the other.¹¹ The two powers can be treated similarly.¹² Consequently, policies and processes applied to

held that the statute violated the Arizona state constitution's provision forbidding certain local or special laws. The state constitutional provision reads: "No local or special laws shall be enacted . . . [w]hen a general law can be made applicable." ARIZ. CONST. art. IV, part 2, § 19. Local or special laws discriminate in favor of a select group. Legislation may permissibly limit the class to which it applies but must leave open the possibility that others could qualify, in time, for membership in the class. *Goodyear*, 160 Ariz. at 472, 773 P.2d at 1031.

The statute violated the local or special law provision of the state constitution in three ways. First, it applied to a limited geographical area, Maricopa County, since the statute was restricted to those counties "having a population in excess of one million two hundred thousand persons." ARIZ. REV. STAT. ANN. § 9-471. Second, it limited qualified municipalities to those within the county "having a population of less than eleven thousand," thereby excluding larger cities and protecting them from the actions of unhappy residents. Third, it required qualified municipalities to petition for deannexation by Sept. 1, 1987. This requirement permitted a "window of opportunity" of thirteen months in which to initiate deannexation. The combination of limited applicability and time restrictions rendered it unlikely that similarly situated municipalities could meet population requirements. *Goodyear*, 160 Ariz. at 473, 773 P.2d at 1032. A deannexation law with similar restrictions would also violate N.M. CONST. art. IV, § 24, which provides that "where a general law can be made applicable, no special law shall be enacted." See *infra* notes 41-46 and accompanying text for a discussion of special laws. However, a statute which permits a broader range of municipal participation without time restrictions ceases to define a special group and should survive constitutional attack. The proposed statute presented here, while relying in part on the Arizona statute, avoids that statute's constitutional defects.

4. COLO. REV. STAT. §§ 31-12-501 to -707 (Repl. Vol. 1986).

5. UTAH CODE ANN. §§ 10-2-501 to -509 (Repl. Vol. 1986).

6. *Mutz v. Municipal Boundary Comm'n*, 101 N.M. 694, 698, 688 P.2d 12, 16 (1984).

7. *Comm'rs of Laramie County v. Comm'rs of Albany County*, 92 U.S. 307, 313 (1875).

8. NATIONAL LEAGUE OF CITIES, *supra* note 2, at 61.

9. *Town of Greenwood Village v. Heckendorf*, 126 Colo. 180, 247 P.2d 678, 682 (1952) (en banc); *Reichelt v. Town of Julesburg*, 90 Colo. 258, 8 P.2d 708, 712 (1932).

10. C. SANDS & M. LIBONATI, *LOCAL GOVERNMENT LAW* § 8.31, 8-158 (Cum. Supp. 1985).

11. *Id.*

12. See *City of Littleton v. Wagenblast*, 139 Colo. 346, 338 P.2d 1025 (1959) (en banc). With this in mind, the general New Mexico Annexation statute, N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamp. 1987), will be used as a model for designing a Deannexation statute.

annexation issues are also applied to those of deannexation. This parallel permits greater understanding, especially where no deannexation statute exists¹³ or where one has only recently reached the books.¹⁴ New Mexico's annexation statute provides the structure for the proposed deannexation statute. New Mexico case law serves to clarify annexation issues and may shed light on how to solve deannexation problems.

IV. LEGISLATIVE POWER

The state legislature holds the power to alter territorial boundaries of local government entities.¹⁵ This legislative power is plenary,¹⁶ except as curtailed by the state constitution.¹⁷ As a legislative function, the discretionary exercise of deannexation power must be afforded great latitude,¹⁸ because the greater population speaks through the legislature.

A state's constitution places limits on the exercise of legislative powers.¹⁹ Those restrictions relevant for purposes of designing a New Mexico deannexation statute include prohibitions against improper delegation of legislative powers,²⁰ statutes which cover more than one subject,²¹ special laws,²² and statutes which authorize the release of debts owed to municipal corporations other than by payment or a proper court proceeding.²³

The New Mexico legislature can not improperly delegate its power to another branch of government without violating separation of powers principles.²⁴ It cannot delegate its power to make laws.²⁵ It cannot confer

13. N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamp. 1987); N.M. STAT. ANN. §§ 3-57-1 to -9 (Repl. Pamp. 1984).

14. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, Section 4, as amended by Chapter 414, Section 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3).

15. In New Mexico, the legislature has created statutes affecting municipal boundaries under N.M. STAT. ANN. §§ 3-2-1 to -9 (Repl. Pamp. 1987) (Incorporation of Municipality); N.M. STAT. ANN. §§ 3-3-1 to -4 (Repl. Pamp. 1987) (Incorporation of Municipality Under Special Act); N.M. STAT. ANN. §§ 3-4-1 to -9 (Repl. Pamp. 1987) (Disincorporation of Municipality); N.M. STAT. ANN. § 3-5-1 (Repl. Pamp. 1987) (Consolidation of Municipalities); N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamp. 1987) (Annexation of Territory); and N.M. STAT. ANN. § 3-57-1 to -9 (Repl. Pamp. 1987) (Metropolitan Boundaries for Class A Counties).

16. *Town of Scottsdale v. State*, 98 Ariz. 382, 385, 405 P.2d 871, 873 (1965) (en banc); *Skinner v. City of Phoenix*, 54 Ariz. 316, 317, 95 P.2d 424, 425 (1939).

17. *Comm'r's of Laramie County v. Comm'r's of Albany County*, 92 U.S. 307, 308 (1875); *City of Tucson v. Garrett*, 77 Ariz. 73, 75, 267 P.2d 717, 719 (1954); *Skinner*, 54 Ariz. at 318, 95 P.2d at 426; *Torres v. Village of Capitan*, 92 N.M. 64, 69, 582 P.2d 1277, 1282 (1978); *Hughes v. City of Carlsbad*, 53 N.M. 150, 155, 203 P.2d 995, 998 (1949); *In re Peterson*, 92 Utah 212, 215, 66 P.2d 1195, 1198 (1937); see *In re Fullmer*, 33 Utah 43, 92 P. 768 (1907).

18. *Hughes*, 53 N.M. at 155, 203 P.2d at 998.

19. J. WINTERS, *STATE CONSTITUTIONAL LIMITATIONS ON SOLUTIONS OF METROPOLITAN AREA PROBLEMS* 128 (1961).

20. N.M. CONST. art. III, § 1.

21. N.M. CONST. art. IV, § 16.

22. N.M. CONST. art. IV, § 24.

23. N.M. CONST. art. IV, § 32.

24. N.M. CONST. art. III, § 1.

25. *State v. Spears*, 57 N.M. 400, 407, 259 P.2d 356, 361 (1953).

uncontrolled power to another body to carry out legislative functions.²⁶ An unconstitutional delegation involves deciding what the law should be and "the exercise of primary and independent discretion."²⁷ In making a constitutional delegation, the legislature must outline a "governmental scheme, policy or purpose,"²⁸ must provide reasonable standards for the exercise of discretionary powers,²⁹ and must confer authority to make the rules, regulations or factual determinations required to carry out the legislative purpose upon officials charged with the responsibility of administering the law. These rules and regulations allow other government bodies to make determinations with defined limits that are subject to review.³⁰

Within these confines, the New Mexico legislature may detach territory itself or delegate that power to another body.³¹ It may authorize others to do things it cannot do conveniently or advantageously for itself.³² Legislatures delegate this power to courts,³³ to administrative agencies and boards,³⁴ or to municipalities.³⁵ This delegated authority does not exist unless and only to the extent that it is expressly spelled out in a statute.³⁶ The legislature may condition the grant of power in any fashion it wishes.³⁷ Consent of affected corporate authorities or individuals need not be obtained unless required by statute.³⁸

The prohibition against multi-subject statutes is intended to prevent fraud or surprise perpetrated by concealing provisions in a statute.³⁹ The statute's title must reveal all topics found within it.⁴⁰

26. *Cox v. City of Albuquerque*, 53 N.M. 334, 339, 207 P.2d 1017, 1020 (1949).

27. *Spears*, 57 N.M. at 406, 259 P.2d at 360.

28. *Id.*

29. *State ex rel. State Park and Recreation Comm'n v. New Mexico State Auth.*, 76 N.M. 1, 12, 411 P.2d 984, 993 (1966) (citing *State ex rel. Holmes v. State Bd. of Fin.*, 69 N.M. 430, 367 P.2d 925 (1961)).

30. *Spears*, 57 N.M. at 406, 259 P.2d at 360.

31. *City of Tuscon v. Garrett*, 77 Ariz. 73, 75, 267 P.2d 717, 719 (1954); see *Spears*, 57 N.M. 400, 259 P.2d 356; *Bradshaw v. Beaver City*, 27 Utah 2d 135, 493 P.2d 643 (1972); *Plutus Mining Co. v. Orme*, 76 Utah 386, 289 P. 132 (1930).

32. *Spears*, 57 N.M. at 405-06, 259 P.2d at 360.

33. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3); COLO. REV. STAT. § 31-12-601 to -707 (Repl. Vol. 1986); UTAH CODE ANN. §§ 10-2-501 to -509 (Repl. Vol. 1986).

34. N.M. STAT. ANN. §§ 3-7-5 to -16 (Repl. Pamp. 1987).

35. COLO. REV. STAT. §§ 31-12-501 to -503 (Repl. Vol. 1986); N.M. STAT. ANN. § 3-7-17 (Repl. Pamp. 1987).

36. Note, *Annexation of Unincorporated Territory in New Mexico*, 6 NAT. RESOURCES J. 83, 86 (1966).

37. *Garrett*, 77 Ariz. at 75, 267 P.2d at 719.

38. C. ANTIEAU, MUNICIPAL CORPORATION LAW § 1B.01 (1987).

39. *City of Raton v. Sproule*, 78 N.M. 138, 149, 429 P.2d 336, 347 (1967) (quoting *Ballew v. Denison*, 63 N.M. 370, 320 P.2d 382 (1958)).

40. *Id.* To avoid this evil, the New Mexico legislature could add § 3-7a-1 entitled "Methods of Deannexation" to Chapter 3 of the Code.

Usually, deannexation is accomplished under general rather than special laws.⁴¹ A general law applies to and affects everyone in the state or everyone in a class.⁴² A special law applies to individual cases,⁴³ relates to enumerated subjects,⁴⁴ or covers "named individuals or determinative situations."⁴⁵ The inherent evil of a special law lies in granting privileges and immunities to a person or arbitrary class, to the exclusion or detriment of all others who could assert a justifiable claim.⁴⁶

The prohibition against improper release of debts owed to a municipal corporation requires that a deannexation statute address the dispersal of liabilities and obligations of a detaching territory. This type of constitutional provision is intended "to discourage collusion between public officials and private citizens" and to prevent the unjust release of debts duly owed to a municipality.⁴⁷ Unless the statute specifically provides for settlement of obligations, no repayment is necessary.⁴⁸ Therefore, where constitutionally mandated, a statute must include such settlement provisions to pass judicial scrutiny.

The proposed New Mexico deannexation statute includes three methods of severing territory from a municipality and returning it to the county in which the land lays.⁴⁹ These methods are based on the three methods described in New Mexico's annexation statutes.⁵⁰ A method of detaching land from a first municipality and annexing it into an second municipality is also described.⁵¹ This method is modelled after a similar Arizona provision.⁵²

The proposed statutes delegate power to conduct the deannexation proceedings to either a board of arbitration, the municipal boundary commission, or a municipality. The power delegated is limited to fact finding and allows very little discretion to the factfinding body. Each section of the act covers one topic that is divided into subtopics as reflected in the section title. The proposed statutes are general, not special in nature, directed at no particular municipality or circumstance. Pro-

41. C. ANTIEAU, *supra* note 38, § 1B.02, at 1B-4; *but see* ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986).

42. *Keiderling v. Sanchez*, 91 N.M. 198, 199, 572 P.2d 545, 546 (1977); *State v. Atchison T. & S.F. Ry.*, 20 N.M. 562, 567, 151 P. 305, 306-07 (1915).

43. *Atchison T. & S.F. Ry.*, 20 N.M. at 567, 151 P. at 306-07.

44. *Hutcheson v. Atherton*, 44 N.M. 144, 148, 99 P.2d 462, 468 (1940).

45. *Battaglini v. Town of Red River*, 100 N.M. 287, 290, 669 P.2d 1082, 1085 (1983).

46. *Keiderling*, 91 N.M. at 199-200, 572 P.2d at 546-47. To meet this requirement, a New Mexico deannexation statute would have to apply to all municipalities in the state. It could apply to a class of municipalities, such as those found in Class A Counties, if the classification is based on substantial distinctions, is not arbitrary, and applies to every member of the class under like circumstances. *See Atchison T. & S.F. Ry.*, 20 N.M. at 567, 151 P. at 306-07.

47. 70-88 N.M. Op. Att'y Gen. 151 (1970); 70-4 N.M. Op. Att'y Gen. 7 (1970); 69-69 N.M. Op. Att'y Gen. 104 (1969).

48. *Laramie County*, 92 U.S. at 315.

49. *See* Appendix, Proposed New Mexico Statute for Deannexation of Territory, §§ 3-7a-6 to -18.

50. N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamph. 1987).

51. Appendix, §§ 3-7a-19 to -26.

52. ARIZ. REV. STAT. ANN. § 9-471.02 (1956).

visions for the evaluation and determination of debts, liabilities, and reimbursement of capital improvements are included.

V. LEGISLATIVE GRANTS OF AUTHORITY

A. Judicial Authority

Since municipal boundary alteration is strictly a legislative function, the legislature must provide for any court role.⁵³ The courts hold no independent power to order boundary changes,⁵⁴ nor will they normally interfere with such legislative acts.⁵⁵ Where the legislature repeals a statute permitting court involvement, the court can no longer engage in the repealed activity.⁵⁶

Many state legislatures delegate power to the courts, allowing them to participate in the deannexation process.⁵⁷ The extent of that participation varies from state to state.⁵⁸ Any participation must be carefully defined⁵⁹ and the courts can be granted very little discretion.⁶⁰ The more precisely the legislature defines standards for the courts, the less likely it is that constitutional problems will arise.⁶¹

These courts determine the existence of factual conditions prescribed by the statute.⁶² The standard for sufficiency is one of substantial compliance,⁶³ and a presumption exists in favor of the validity of the pro-

53. See *Plutus Mining Co.*, 76 Utah 286, 289 P. 132.

54. C. ANTIEAU, *supra* note 38, § 1B.00, at 1B-3; *City of Littleton v. Wagenblast*, 139 Colo. 346, 348, 338 P.2d 1025, 1028 (1959) (en banc); see *Plutus Mining Co.*, 76 Utah 286, 289 P. 132.

55. *Swift v. City of Phoenix*, 90 Ariz. 331, 333-34, 367 P.2d 791, 793-94 (1961); *Sandy City v. City of South Jordan*, 652 P.2d 1316, 1319 (Utah 1982).

56. *Rice v. Colorado Smelting Co.*, 28 Colo. 519, 520, 66 P. 894, 895 (1901).

57. The Arizona statute requires a petition to the court to initiate the deannexation proceeding. The court collects and evaluates all the required data. It may also make a determination about how much and when money must be repaid to the municipality and the county. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3).

The Colorado statutes permit deannexation without involving the court. COLO. REV. STAT. §§ 31-12-501 to -503 (Repl. Vol. 1986). However, for larger tracts the court must control the process. *Id.* §§ 31-12-601 to -707.

In New Mexico, the legislature has limited the court's role to making decisions about who will serve on the arbitration board or the municipal boundary commission if the members of either cannot reach an agreement and to hearing appeals from annexation decisions. N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamp. 1987).

The Utah deannexation process takes place entirely under the courts' supervision. UTAH CODE ANN. §§ 10-2-501 to -509 (Repl. Vol. 1986).

58. See *supra* note 57.

59. C. ANTIEAU, *supra* note 38, § 1B.02, at 1B-8.

60. See *supra* notes 19-38 and accompanying text.

61. J. WINTERS, *supra* note 19, at 130 (1961). In Utah, the courts consider whether justice and equity require severance. UTAH CODE ANN. § 10-2-502 (Repl. Vol. 1986). This determination is made on the facts of each particular case. In re *Highland City*, 668 P.2d 544, 546 (Utah 1983); In re *Layton City*, 27 Utah 2d 241, 243, 494 P.2d 948, 950 (1972). This requirement places a great deal of discretion in the hands of the court. In re *Fullmer*, 33 Utah 43, —, 92 P. 768, 769 (1907).

62. See *Swift*, 90 Ariz. at 333, 367 P.2d at 793; *Master Kraft Builders Corp. v. City of Lakewood*, 44 Colo. App. 90, 615 P.2d 47 (1980).

63. *Sandy City*, 652 P.2d at 1319.

ceedings.⁶⁴ Where the statutory requirements have been met, the courts must end their inquiry and grant the boundary change.⁶⁵

Many statutes provide for appeal to the courts following a boundary change decision.⁶⁶ The courts do not consider the wisdom, policy, or justness of acts adjusting municipal boundaries.⁶⁷ Courts will review statutes for potential constitutional violations.⁶⁸ The courts will not read anything into the statute beyond the legislature's manifest intent.⁶⁹ Judicial duty includes ascertaining and declaring the legislature's intent⁷⁰ as well as determining whether the statutory procedure has been met.⁷¹ Administrative decisions must be reasonable, free of taint from fraudulent, arbitrary or capricious action, supported by substantial evidence, and within the scope of the granted authority.⁷²

The proposed New Mexico deannexation statutes⁷³ follow the lead of the state's annexation statutes⁷⁴ regarding the role of the court. Under one of the statutory methods for annexation, the board of arbitration method, the court's role is limited to appointing board members when they cannot otherwise be selected.⁷⁵ Interestingly, the arbitration method of annexation does not provide for court review of the board's decision.⁷⁶ Similarly, the proposed statutory provision for deannexation by arbitration also does not provide for court review.⁷⁷ Under the municipal boundary commission⁷⁸ and petition⁷⁹ annexation methods, a landowner may obtain a review of the commission's order. The same is true in the corresponding deannexation methods.⁸⁰ Under the deannexation procedure for transfer-

64. *Hughes v. City of Carlsbad*, 53 N.M. 150, 155, 203 P.2d 995, 998 (1949).

65. *Swift*, 90 Ariz. at 334, 367 P.2d at 794; *Town of Sheridan v. Nesbitt*, 123 Colo. 92, 94, 227 P.2d 1000, 1002 (1950) (en banc).

66. Under N.M. STAT. ANN. § 3-7-17 (Repl. Pamp. 1987), a resident landowner may appeal a municipality's acceptance of an annexation petition within 30 days of the decision. Under N.M. STAT. ANN. § 3-7-16 (Repl. Pamp. 1987), an owner of land within the proposed annexed area may obtain a review of the Municipal Boundary Commission's order within 30 days of the order's filing.

ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, Paragraph J, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3) permits review of the superior court's decision.

COLO. REV. STAT. § 31-12-501 to -707 (Repl. Vol. 1986), do not provide for judicial review. The Colorado court held that the court of appeals had no jurisdiction to review decisions from special statutory proceedings such as disconnection proceedings. See *Town of Fletcher v. Smith*, 18 Colo. App. 201, 70 P. 697 (1902).

67. *Raton Pub. Serv. Co. v. Hobbs*, 76 N.M. 535, 417 P.2d 32 (1966).

68. See J. WINTERS, *supra* note 19, at 127-31.

69. *Town of Scottsdale v. State*, 98 Ariz. 382, 384, 405 P.2d 871, 873 (1965) (en banc).

70. *Hobbs*, 76 N.M. at 543, 417 P.2d at 37.

71. See *supra* notes 62-65 and accompanying text.

72. *Mutz v. Municipal Boundary Comm'n*, 101 N.M. 694, 702, 688 P.2d 12, 20 (1984) (quoting *Llano, Inc. v. Southern Union Gas Co.*, 75 N.M. 7, 11-12, 399 P.2d 646, 650 (1964)).

73. Appendix, §§ 3-7a-6 to -11.

74. N.M. STAT. ANN. §§ 3-7-1 to -18 (Repl. Pamp. 1987).

75. *Id.* §§ 3-7-7, -9.

76. *Id.* §§ 3-7-5 to -10.

77. Appendix, §§ 3-7a-6 to -11.

78. N.M. STAT. ANN. §§ 3-7-11 to -16 (Repl. Pamp. 1987).

79. *Id.* §§ 3-7-7 to -17.

80. Appendix, §§ 3-7a-16, -18.

ring land from one territory to another, landowners may also appeal to the court for review of the commission's order.⁸¹

B. Administrative Agency or Board Authority

In some states, the legislature delegates the power to make boundary alteration decisions to an administrative agency or board.⁸² A grant of uncontrolled power would be unconstitutional.⁸³ A board may only exercise the power and authority granted to it by a statute.⁸⁴ A grant permitting the board to evaluate facts and make a determination passes constitutional muster.⁸⁵ Adequate standards insure that the board stays within the legislature's policies.⁸⁶ When a board reviews facts and makes a deannexation decision, it does not usurp judicial power.⁸⁷ Instead, when engaging in acts authorized by a statute, it is performing a legislative function.⁸⁸

The proposed New Mexico deannexation statutes permit the board of arbitration⁸⁹ and the municipal boundary commission⁹⁰ to make a determination of predefined facts regarding debts and liabilities, municipal reimbursement for capital improvements,⁹¹ boundaries,⁹² and streets.⁹³ The board's discretion is limited to whether these facts exist as defined by the appropriate statutes.

C. Municipal Authority

A municipality may not contract its borders without sanction from the state.⁹⁴ Once the grant of power is made, municipality actions are limited to the specific provisions in the statute.⁹⁵ The legislature may condition the grant in any way it chooses.⁹⁶ Where a municipality acts within the delegated authority, a court cannot interfere.⁹⁷ Boundary alteration remains a legislative function, to be performed by the governmental body of the city.⁹⁸ Courts liberally construe empowering statutes in favor of

81. Appendix, § 3-7a-26.

82. *Skinner v. City of Phoenix*, 54 Ariz. 316, 318, 95 P.2d 424, 426 (1939); N.M. STAT. ANN. §§ 3-7-5 to -16 (Repl. Pamp. 1987); UTAH CODE ANN. §§ 10-2-502, -504 (Repl. Vol. 1986).

83. *Cox v. City of Albuquerque*, 53 N.M. 334, 339, 207 P.2d 1017, 1020 (1949).

84. *Mutz v. Municipal Boundary Comm'n*, 101 N.M. 694, 701, 688 P.2d 12, 19 (1984).

85. Note, *supra* note 36, at 86.

86. See J. WINTERS, *supra* note 19, at 128-29.

87. *Skinner*, 54 Ariz. at 318, 95 P.2d at 426.

88. *Id.*

89. Appendix, § 3-7a-11.

90. Appendix, §§ 3-7a-16, -23.

91. Appendix, § 3-7a-3.

92. Appendix, § 3-7a-4.

93. Appendix, § 3-7a-5.

94. *C. ANTIEAU*, *supra* note 38, § 1B.00, at 1B-3; *Comm'rs of Laramie County v. Comm'rs of Albany County*, 92 U.S. 307, 313 (1875); see *Young v. Salt Lake City*, 24 Utah 321, 67 P. 1066 (1902).

95. *Sandy City v. City of South Jordan*, 652 P.2d 1316, 1319 (Utah 1982).

96. *Adams v. City of Colo. Springs*, 178 Colo. App. 241, 243, 496 P.2d 1005, 1007 (1972).

97. *Swift v. City of Phoenix*, 90 Ariz. 331, 334, 367 P.2d 791, 793-94 (1961).

98. *Bradshaw v. Beaver City*, 27 Utah 2d 135, 137, 493 P.2d 643, 645 (1972); see *State v. Spears*, 57 N.M. 400, 259 P.2d 356 (1953).

the municipality⁹⁹ and find the municipality's actions presumptively valid.¹⁰⁰

The proposed New Mexico statutes permit the governing body of a municipality to initiate a request for the arbitration method of deannexation by passing a resolution.¹⁰¹ A municipality may also elect to petition to the municipal boundary commission for the severance of land.¹⁰² As with annexation, the decision concerning which method to use seems to be a political choice. The statutes also give the municipalities the option of initiating the detachment of certain territory and transferring it to other municipalities.¹⁰³

The municipality only initiates the deannexation proceeding under these statutes. Under the proposed statutes¹⁰⁴ the legislature would delegate authority to the municipality to conduct the proceeding without any other governmental entity. However, only the owners of a majority of the acres involved can initiate this process.¹⁰⁵ This arrangement prevents the municipality from acting unilaterally, in an unconstitutional, law-making capacity.

D. Individuals' Authority

The legislature cannot grant the power to deannex to individuals.¹⁰⁶ It can, however, permit individuals to participate by allowing them to initiate deannexation proceedings¹⁰⁷ and to elect administrative board members.¹⁰⁸ In the proposed deannexation statute, landowners may petition the municipal boundary commission¹⁰⁹ or the municipality¹¹⁰ for a deannexation proceeding.

VI. DEANNEXATION REQUIREMENT

Before territory can be detached from a municipality, all statutory requirements must be met.¹¹¹ Anyone proposing deannexation must substantially, but not absolutely, comply with the requirements.¹¹² The words and policies of the statutes guide the decisionmakers.¹¹³ Detachment re-

99. *Mutz*, 101 N.M. at 700, 688 P.2d at 18.

100. *Leavell v. Town of Texico*, 63 N.M. 233, 235, 316 P.2d 247, 248 (1957); *Hughes v. City of Carlsbad*, 53 N.M. 150, 155, 203 P.2d 995, 998 (1949).

101. Appendix, § 3-7a-6.

102. Appendix, § 3-7a-12.

103. Appendix, § 3-7a-20, -21.

104. Appendix, § 3-7a-18.

105. *Id.*

106. See C. SANDS & M. LIBONATI, *supra* note 10, § 8.31.

107. *Cf.* N.M. STAT. ANN. § 3-7-17 (Repl. Pamph. 1987).

108. *Cf. id.* § 3-7-7.

109. Appendix, § 3-7a-12.

110. Appendix, § 3-7a-18.

111. C. ANTIEAU, *supra* note 38, § 1B.02, at 1B-8; *City of Tucson v. Garrett*, 77 Ariz. 73, 75, 267 P.2d 717, 719 (1954).

112. *Cf. Mutz v. Municipal Boundary Comm'n*, 101 N.M. 694, 701, 688 P.2d 12, 19 (1984); *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305, 307 (Ariz. App. 1981); *Town of Scottsdale v. State*, 98 Ariz. 382, 384, 405 P.2d 871, 873 (1965) (en banc).

113. C. SANDS & M. LIBONATI, *supra* note 10, § 8.31, at 8-159.

quires a proper consideration of the facts and circumstances of the case.¹¹⁴ Where a decision-making body determines that the statutory elements have been met, it must grant the deannexation petition.¹¹⁵

A. Statutory Elements

The statutes include elements which the decisionmakers must consider when evaluating a request for deannexation.¹¹⁶ These involve criteria such as whether the proposed detachment is contiguous to the outer boundary of the municipality,¹¹⁷ whether it includes a specified number of acres¹¹⁸ or population,¹¹⁹ whether it has received municipal benefits,¹²⁰ has been platted,¹²¹ and whether it will divide, isolate parts of or adversely affect the municipality's symmetry.¹²² Where the statutes do not contain a particular element, the absence of the element cannot be used as a defense against deannexation.¹²³

Lands proposed for detachment almost always must be contiguous to an outer boundary of the municipality.¹²⁴ This rule prevents the severance of territory which would be completely surrounded by the municipality, the creation of an unincorporated island. Unincorporated islands in municipalities may impede the delivery and management of municipal services and may disrupt growth prospects and zoning plans.¹²⁵

The owners of the land involved must not only allege that it is contiguous with the municipality's external boundary, but they also must

114. *Master Kraft Builders Corp. v. City of Lakewood*, 44 Colo. App. 90, 92, 615 P.2d 47, 49 (1980); *In re Chief Consol. Mining Co.*, 71 Utah 430, 266 P. 1044 (1928).

115. *Reichelt v. Town of Julesburg*, 90 Colo. 258, 262, 8 P.2d 708, 712 (1932); *Hendricks v. Town of Julesburg*, 55 Colo. 59, 61, 132 P. 61, 63 (1913).

116. *C. SANDS & M. LIBONATI*, *supra* note 10, § 8.31, at 8-158; e.g., N.M. STAT. ANN. §§ 3-7-13 (Repl. Pamp. 1987); UTAH CODE ANN. §§ 10-2-503 (Repl. Vol. 1986).

117. ARIZ. REV. STAT. ANN. § 9-471.02 (1956); COLO. REV. STAT. §§ 31-12-601, -702 (Repl. Vol. 1986); N.M. STAT. ANN. § 3-7-17 (Repl. Pamp. 1987); UTAH CODE ANN. § 10-2-501 (Repl. Vol. 1986).

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118. COLO. REV. STAT. §§ 31-12-601, -702 (Repl. Vol. 1986); N.M. STAT. ANN. § 3-7-17 (Repl. Pamp. 1987).

119. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3); N.M. STAT. ANN. §§ 3-7-14, -17 (Repl. Pamp. 1987); UTAH CODE ANN. § 10-2-501 (Repl. Vol. 1986).

120. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3); COLO. REV. STAT. §§ 31-12-502, -503, -602, -703 (Repl. Vol. 1986); UTAH CODE ANN. § 10-2-503 (Repl. Vol. 1986).

121. COLO. REV. STAT. §§ 31-12-602, -703 (Repl. Vol. 1986).

122. ARIZ. REV. STAT. ANN. § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; see *supra* note 3); UTAH CODE ANN. § 10-2-503 (Repl. Vol. 1986).

123. *In re Peterson*, 92 Utah 212, 214, 66 P.2d 1195, 1197 (1937). The court would not entertain an argument by the town that its symmetry would be damaged, when that element was not contained in the statutes.

124. ARIZ. REV. STAT. ANN. § 9-471.02 (1956); COLO. REV. STAT. §§ 31-12-601, -702 (Repl. Vol. 1986); N.M. STAT. ANN. § 3-7-17 (Repl. Pamp. 1987); UTAH CODE ANN. § 10-2-501 (Repl. Vol. 1986).

125. *C. ANTIEAU*, *supra* note 38, § 1B.04, at 1B-11.

prove it.¹²⁶ However, the term contiguity is relative and does not "equate to precise geometric symmetry."¹²⁷ The presence of a highway or road separating the land from the boundary does not generally make land noncontiguous.¹²⁸ Where more than one tract of land is involved, the tracts must be contiguous with each other, and one must be contiguous with the municipality.¹²⁹

The deannexation's effect on the shape of the municipality is a related question.¹³⁰ The homogeneity and unity of the municipality are at issue in both instances.¹³¹ Where a statute mentions only contiguity, effects on symmetry will not defeat a deannexation effort.¹³² Courts avoid permitting deannexations which divide the town,¹³³ but where the detached lands were never used and access to city land historically occurred through other property, a court has granted a petition to deannex.¹³⁴

If the municipality made improvements to the land or the land in some other way benefited from the municipality, the decisionmaker is less likely to allow the severance of the land.¹³⁵ The town must make a showing of improvements to prevail.¹³⁶ Improvements near the land in question, but not adjoining it as required by the statute, will not be considered.¹³⁷ The court must often decide whether the municipality made enough improvements to warrant denying the application.¹³⁸ If the municipality cannot make a showing of benefits, and all other elements are met, the court will allow the detachment.¹³⁹

If the subject lands are platted, the disconnection request may be barred.¹⁴⁰ Municipalities plat territories when they divide them into lots

126. *Town of Sheridan v. Fox Metal Products*, 123 Colo. 44, 46, 227 P.2d 1003, 1005 (1950) (en banc).

127. *Ditolla v. Guipre*, 157 Colo. 403, 405, 402 P.2d 938, 940 (1965).

128. *Fox Metal Products*, 123 Colo. at 46, 227 P.2d at 1005.

129. *Reichelt*, 90 Colo. at 260, 8 P.2d at 710; *Town of Gypsum v. Lundgren*, 61 Colo. 332, 157 P. 195 (1916); *Mutz*, 101 N.M. at 698, 688 P.2d at 16.

130. *C. ANTIEAU*, supra note 38, § 1B.01, at 1B-5.

131. *Mutz*, 101 N.M. at 700, 688 P.2d at 18. New Mexico annexation statutes have no requirements regarding the character of the land. Hence, the proposed deannexation statutes also do not have any.

132. *Town of Greenwood Village v. Savage*, 172 Colo. 217, 219, 471 P.2d 606, 608 (1970) (en banc); *Reichelt*, 90 Colo. at 260, 8 P.2d at 710; *In re West Jordan, Inc.*, 13 Utah 2d 127, 129, 369 P.2d 286, 288 (1962).

133. *Town of Greenwood Village v. Heckendorf*, 126 Colo. 180, 182, 247 P.2d 678, 681 (1952) (en banc); *Anaconda Mining Co. v. Town of Anaconda*, 33 Colo. 70, 73, 80 P. 144, 147 (1905).

134. *Master Kraft*, 44 Colo. App. at 93, 615 P.2d at 50.

135. See *Town of Englewood v. Jones*, 71 Colo. 181, 204 P. 607 (1922); *Town of Kersey v. Ewing*, 59 Colo. 239, 149 P. 619 (1915); *In re Chief Consol. Mining Co.*, 71 Utah at 432, 266 P. at 1046.

136. *Counce v. Town of Julesburg*, 108 Colo. 317, 318, 116 P.2d 917, 918 (1941).

137. See *Reichelt*, 90 Colo. at 260, 8 P.2d at 710-11 (general upkeep of roads is not enough to bar deannexation); *Jones*, 71 Colo. at 181, 204 P. at 607 (city maintenance of a road and street lights as well as the building of a bridge were enough benefits reaped upon the land to warrant barring deannexation); *Morrison v. Town of Lafayette*, 67 Colo. 220, 221, 184 P. 301, 302 (1919) (a fire hydrant and its supply line were not enough to meet the statutory element of municipal benefits).

138. *Ewing*, 59 Colo. 239, 149 P. 619.

139. *Hendricks*, 55 Colo. at 60, 132 P. at 63; *Counce*, 108 Colo. at 318, 116 P.2d at 918.

140. *Weaver v. Town of Littleton*, 95 Colo. 577, 578, 38 P.2d 774, 775 (1934) (platting defeats

and blocks.¹⁴¹ Blocks are formed when tracts of land are enclosed and intersected by streets.¹⁴² Blocks are then subdivided into lots.¹⁴³ A plat is a visual demonstration of a survey.¹⁴⁴

The proposed New Mexico statutes include some, but not all, of these elements. The territory proposed for deannexation must be contiguous to the external boundary of the municipality.¹⁴⁵ The deannexation must not create any isolated or separate pockets in the municipality nor divide it.¹⁴⁶ The factfinder must also investigate the benefits, debts and liabilities which the landowners must pay back to the municipality.¹⁴⁷ The existence of these will only bar the deannexation if no proper pay-back arrangements can be made.¹⁴⁸ The satisfactory existence of these elements is determined by the factfinder in each deannexation method.

B. Statutory Procedure

The procedures defined in the proposed deannexation statutes should be mandatory.¹⁴⁹ Procedural questions are directed to whether those seeking severance adequately meet the jurisdictional and formal statutory requisites.¹⁵⁰ These requirements generally include a petition describing the territory, signed by specific individuals, and some kind of notice provision. Often they will also provide for an election or hearing, the passage of an ordinance by the municipality, and an evaluation of repayment obligations.

Many statutes require those seeking detachment to submit a petition to a particular governmental authority.¹⁵¹ The petition must meet the statutory requirements or be rejected by the court.¹⁵² Where the petition is sufficient, the court cannot interfere.¹⁵³ The petition need not recite

a petition for disconnection even though the platting took place before the town was incorporated); *but see* *Town of Cherry Hills Village v. Shafroth*, 141 Colo. 572, 574, 349 P.2d 368, 370 (1960) (disconnection petition not barred where the platting took place long before the town incorporated and the land had not been divided into tracts, surrounded by or intersected by streets); *Town of Fruita v. Williams*, 33 Colo. 157, 158, 80 P. 132, 133 (1905).

141. *Town of Fruita*, 33 Colo. at 158, 80 P. at 133.

142. *Weaver*, 95 Colo. at 578, 38 P.2d at 775.

143. *Town of Fruita*, 33 Colo. at 158, 80 P. at 133.

144. *Hughes v. City of Carlsbad*, 53 N.M. 150, 158, 203 P.2d 995, 1000 (1949).

145. Appendix, § 3-7a-4.

146. *Id.*

147. Appendix, § 3-7a-3.

148. *Id.*

149. *See, e.g., Master Kraft*, 44 Colo. App. at 92, 615 P.2d at 49.

150. *C. SANDS & M. LIBONATI, supra* note 10, § 8.32, at 8-166.

151. *E.g., ARIZ. REV. STAT. ANN.* § 9-471, as amended by Chapter 45, § 4, as amended by Chapter 414, § 1 (1986) (held to violate state constitutional provision against local or special laws; *see supra* note 3); *COLO. REV. STAT.* §§ 31-12-601, (Repl. Vol. 1986); *N.M. STAT. ANN.* §§ 3-7-11 (Repl. Pamp. 1987); *UTAH CODE ANN.* § 10-2-501 (Repl. Vol. 1986).

152. *C. SANDS & M. LIBONATI, supra* note 10, § 8.32, at 8-166; *City of Phoenix v. Lockwood*, 76 Ariz. 46, 258 P.2d 431 (1953) (failure to publish an ordinance as required by statute is fatal to the deannexation effort); *Moorehead v. Arnold*, 130 Ariz. 503, 637 P.2d 305 (Ariz. App. 1981) (a petition must comply with the statutes); *Town of Fletcher v. Smith*, 18 Colo. App. 201, 70 P. 697 (1902); *Torres v. Village of Capitan*, 92 N.M. 64, 589 P.2d 1277 (1978); *In re Peterson*, 92 Utah 212, 66 P.2d 1195 (1937).

153. *Swift v. City of Phoenix*, 90 Ariz. 331, 332, 367 P.2d 791, 794 (1961).

the reasons for the deannexation, unless the statutes require it.¹⁵⁴ Petitions are subject to public inspection, open discussion and debate, unless the custodian of the petition can show why interested parties should not have access to it.¹⁵⁵

The petition must describe the territory involved in a manner which conforms to the statutory requirements, although a court may overlook trivial error.¹⁵⁶ Courts waive immaterial errors in the description if an accurate map accompanies the petition.¹⁵⁷ Likewise, slight error is not fatal where a description is substantially correct and sufficient to give notice to parties interested in the boundary change.¹⁵⁸ Maps or plats must often accompany the petition.¹⁵⁹

A petition must be signed by those authorized by the statute.¹⁶⁰ The petition must allege that the signers possess the necessary qualifications.¹⁶¹ Where the statute requires signature by landowners of a certain percentage of the value of the property involved, the most recent property assessment may be used. It is not necessary to perform an independent survey.¹⁶² The word "owners" is intended to take its usual and customary meaning.¹⁶³ Thus, property owners are those who own property at the time they signed the petition.¹⁶⁴

A signer may withdraw his signature of support anytime before affirmative legislative action has taken place.¹⁶⁵ Such action includes filing according to the statutory requirements.¹⁶⁶ Thereafter, withdrawal of signatures would constitute an impermissible divestiture of the government's legislative authority.¹⁶⁷

The statutes may require citizen participation in the deannexation process.¹⁶⁸ If an election is required, the legislature determines whether the consent of all the municipality's citizens is necessary, or only those

154. *Town of Fletcher*, 18 Colo. App. at 202, 70 P. at 698 (1902).

155. *Moorehead*, 130 Ariz. at 505, 637 P.2d at 307.

156. C. SANDS & M. LIBONATI, *supra* note 10, § 8.32, at 8-168.

157. *City of Douglas v. City of Sierra Vista*, 21 Ariz. 71, 72-73, 515 P.2d 896, 897-98 (Ariz. App. 1973).

158. *Mutz*, 101 N.M. at 701, 688 P.2d at 19.

159. *E.g.*, N.M. STAT. ANN. § 3-7-13 (Repl. Pamp. 1987); UTAH CODE ANN. § 10-2-501 (Repl. Vol. 1986).

160. C. SANDS & M. LIBONATI, *supra* note 10, § 8.32, at 8-168; *e.g.*, COLO. REV. STAT. §§ 31-12-602 (Repl. Vol. 1986); N.M. STAT. ANN. §§ 3-7-13 (Repl. Pamp. 1987); UTAH CODE ANN. § 10-2-501 (Repl. Vol. 1986).

161. *Ditolla*, 157 Colo. at 405, 402 P.2d at 940; *Howard v. Town of North Salt Lake*, 3 Utah 2d 189, 281 P.2d 216 (1955).

162. *Glick v. Town of Gilbert*, 123 Ariz. 395, 398, 599 P.2d 848, 851 (1979).

163. *Heckendorf*, 126 Colo. at 182, 247 P.2d at 680; *Town of Sheridan v. Nesbitt*, 123 Colo. 121, —, 227 P.2d 1000, 1002 (1950); *Gorman v. City of Phoenix*, 76 Ariz. 35, 258 P.2d 424 (1953).

164. *De Concini v. City of Phoenix*, 74 Ariz. 46, 49, 243 P.2d 766, 769 (1952).

165. *Moorehead*, 130 Ariz. at 505, 637 P.2d at 307 (citing *State v. City of Phoenix*, 74 Ariz. 46, 243 P.2d 766 (1952)).

166. *De Concini*, 74 Ariz. at 48, 243 P.2d at 768.

167. *Id.*

168. *Pomponio v. City of Westminster*, 178 Colo. 80, 496 P.2d 999 (1972); *Braternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971); *Hiwan Ranch v. City of Lakewood*, 31 Colo. App. 471, 505 P.2d 16 (1972).

proposing to sever their lands.¹⁶⁹ The statutes define the conditions and nature of the election.¹⁷⁰ Ordinary rules governing civil actions¹⁷¹ and evidence apply unless the legislature has made other arrangements.¹⁷² The statutes may also encourage citizen participation through a public hearing.¹⁷³

Sometimes the legislature provides that a governing body of the municipality may effect a territorial boundary change by passing an ordinance or resolution.¹⁷⁴ An ordinance must pass the test of sufficiency, particularly with regard to the description. The consideration of an ordinance may¹⁷⁵ or may not¹⁷⁶ be triggered by the receipt of a petition by the municipality's governing body.

Notice of a deannexation must be given as prescribed in the statutes.¹⁷⁷ The statutes need not necessarily include a notice provision.¹⁷⁸ This omission is within the legislature's power.¹⁷⁹ Often, however, the statutes will require notice of the ordinance, resolution, petition, or hearing.¹⁸⁰ Notice is sufficient when it comports with the requirements of the statutes.¹⁸¹

Many statutes¹⁸² and state constitutions¹⁸³ require repayment of obligations and liabilities. However, absent such a requirement, no repayment is necessary.¹⁸⁴ The legislature may apportion the common burdens in any way it sees fit.¹⁸⁵ The severed territory may be held liable for any outstanding indebtedness incurred during the time it was a part of the municipality.¹⁸⁶ The repayment decision may be a matter of discretion for the court.¹⁸⁷ In addition, the decisionmaking body may also evaluate the cost of the detachment to the county into which the deannexed territory passes and make a decision about who should absorb that cost.

The proposed New Mexico statute offers a variety of methods by which to accomplish deannexation.¹⁸⁸ The intent is to provide the same kinds of options as are available in the annexation setting—to provide flexible

169. See C. SANDS & M. LIBONATI, *supra* note 10, § 8.32, at 8-166.

170. *Id.*

171. See Reichelt, 90 Colo. at 260, 8 P.2d at 710; *Town of Sheridan*, 123 Colo. at 92, 227 P.2d at 1001; *Fox Metal Products*, 123 Colo. 45, 227 P.2d 1004.

172. *Pomponio*, 178 Colo. at 81-82, 496 P.2d at 1000-01.

173. ARIZ. REV. STAT. ANN. § 9-471.02 (1956); COLO. REV. STAT. §§ 31-12-603 (Repl. Vol. 1986).

174. *E.g.*, ARIZ. REV. STAT. ANN. § 9-471.02 (1956); COLO. REV. STAT. §§ 31-12-501 (Repl. Vol. 1986); N.M. STAT. ANN. § 3-17-17 (Repl. Pamp. 1987).

175. *E.g.*, N.M. STAT. ANN. § 3-17-17 (Repl. Pamp. 1987).

176. *E.g.*, ARIZ. REV. STAT. ANN. § 9-471.02 (1956).

177. See *Freeman v. Centerville City*, 600 P.2d 1003 (Utah 1979).

178. *Skinner v. City of Phoenix*, 54 Ariz. 316, 318, 95 P.2d 424, 425 (1939). Parties challenging an incorporation are not entitled to notice or a hearing on the petition, except perhaps as a matter of grace. *Territory v. Town of Jerome*, 7 Ariz. 320, 64 P. 417 (1899).

179. *Lockwood*, 76 Ariz. 46, 258 P.2d 431.

180. *Swift*, 90 Ariz. at 331, 367 P.2d at 793.

181. See *Freeman*, 600 P.2d 1003.

182. *E.g.* ARIZ. REV. STAT. ANN. § 9-471.02 (1956).

183. *E.g.* N.M. CONST. art. IV, § 32.

184. *Commissioners of Laramie County v. Commissioners of Albany County*, 92 U.S. 307, 315 (1875).

185. *Id.* at 312-13.

186. *City and County of Denver v. Board of Dir. of the Castlewood Fire Protection Dist.*, 37 Colo. 496, 549 P.2d 1090 (Colo. App. 1976).

187. *In re Peterson*, 92 Utah at 215, 66 P.2d at 1198.

188. Appendix, § 3-7a-1.

choices for the population. By way of example, proposed section 3-7a-18 allows deannexation through a petition method. Petitioners submit their request to the governing body of the municipality from which the land is to be deannexed. The petition must describe the proposed detachment through an attached map. The owners of a majority of the numbers of acres in the contiguous territory must sign the petition. If the governing body of the municipality accepts the petition, it will issue an ordinance, expressing the municipality's consent.

Notice is not required by this method of deannexation because most of those involved are participating in the process. Notice is required in proposed section 3-7a-23, which allows the transfer of lands from one municipality to another. This process is likely to be instituted by the municipalities involved and the notice requirement insures that all affected landowners learn of the transfer.

VII. A PROPOSED NEW MEXICO STATUTE

The New Mexico legislature has not passed a deannexation statute. Whether this situation exists by design or lack of necessity is not known since no legislative history for the state exists. A deannexation statute may be useful to municipalities throughout New Mexico to provide more flexibility in allowing people to choose the political communities that govern their lives.

DARCY S. BUSHNELL

APPENDIX

PROPOSED NEW MEXICO STATUTE FOR
DEANNEXATION OF TERRITORY

3-7a-1 METHODS OF DEANNEXATION

A. There shall be four methods of deannexing territory from a municipality: (1) the arbitration method as provided in Sections 3-7a-6 through 3-7a-11; (2) the boundary commission method as provided in Sections 3-7a-12 through 3-7a-17; (3) the petition method as provided in Section 3-7a-18; and the municipality to municipality method as provided in Sections 3-7a-19 through 3-7a-26.

B. As used in this article, "municipality" means any village, town, or city in the state of New Mexico.

C. Territory may be deannexed from a municipality by any one of the four methods of deannexation provided for in Sections 3-7a-6 through 3-7a-26, and the provisions of Sections 3-7a-1 through 3-7a-5 apply to all deannexations of territory within municipalities, except as otherwise specifically provided by law.

3-7a-2 DEANNEXATION; TERRITORY OWNED BY THE UNITED STATES, STATE OF NEW MEXICO OR A POLITICAL SUBDIVISION; INTERPOSITION NOT TO PROHIBIT DEANNEXATION.

A. Territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico, may be deannexed from a municipality upon the consent of the authorized agent of the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.

B. Territory may be deannexed from a municipality which would otherwise be eligible for deannexation except for the interposition of territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.

3-7a-3 DEANNEXATION; GENERAL REQUIREMENTS; REIMBURSEMENT OF IMPROVEMENTS, DEBTS AND LIABILITIES.

The board of arbitration in Sections 3-7a-6 through 3-7a-11, the municipal boundary commission in Sections 3-7a-12 through 3-7a-17, and the court in Section 3-7a-18 shall determine that the following requirements have been met before issuing any order for deannexation.

A. Regarding the deannexing municipality:

1. Whether the municipality has incurred substantial costs to provide municipal services directly benefiting the property to be deannexed; and

2. If the municipality has expended monies for improvements to the property to be deannexed, one or more of those requesting deannexation shall agree to pay such costs in an amount and in a reasonable time as determined by the board of arbitration, the municipal boundary commission, or the court as appropriate to the deannexation method employed. If none of those requesting deannexation agree to pay such costs, the territory shall not be deannexed from the municipality.

B. Regarding the county to whose jurisdiction the property would be returned:

1. Whether extraordinary expenses for providing normal governmental services to the property to be deannexed will be incurred; and

2. If the deannexation causes the county to incur extraordinary expenses for providing normal governmental services to the property to be deannexed, one or more of those requesting deannexation shall agree to pay such costs in an amount and in a reasonable time as determined by the board of arbitration, the municipal boundary commission, or the court as appropriate to the deannexation method employed. If none of those requesting deannexation agree to pay such costs, the territory shall not be deannexed from the municipality.

C. The administrative body or court conducting the investigation may require the deannexing municipality or county to furnish it with any records pertaining to the investigation.

D. Those requesting the deannexation shall pay for the cost of such investigation.

E. Regarding the territory proposed to be deannexed:

1. Such territory shall not be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any debts or liabilities lawfully contracted by the corporate authorities of the deannexing municipality while such land was within the limits thereof and which remains unpaid, and for the payment of which such land could be lawfully taxed.

2. Whenever the governing body of the municipality which has deannexed territory shall levy a tax upon the property within such municipality for the purpose of paying debts or liabilities incurred before such deannexation, or any part thereof, and interest thereon, such governing body shall have the authority to levy a tax at the same rate and for the same purpose on the land so deannexed. In case the owner of any land so deannexed shall pay off and discharge a portion of such debts or liabilities equal in amount to the same proportion of the debts or liabilities which the assessed value of his land bears to the entire assessed value of all the property subject to taxation for the payment of such debts or liabilities calculated according to the last assessment previous to such payment, then such land shall be exempted from further taxation to pay such debts and liabilities. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of such debts and liabilities shall be deposited with the clerk of such municipality, and a certificate shall be given him stating that such payment has been made.

3. A copy of the order of the municipal boundary commission ordering the deannexation and annexation of any land described in any municipality, certified by the clerk of the court, shall be filed for record in the recorder's office of the county in which such land is situated. Such record, or a copy of such order or decree, certified by the court clerk, shall be proof of the deannexation and annexation of such land.

3-7a-4 DEANNEXATION; GENERAL REQUIREMENTS; BOUNDARIES.

A. The territory proposed to be deannexed shall be contiguous to an external boundary of the deannexing municipality.

B. Deannexation of such territory shall not result in any territory of the municipality becoming isolated or separated from the municipality nor result in the deannexed territory becoming completely surrounded by the deannexing municipality nor result in the division of the deannexing municipality.

3-7a-5 DEANNEXATION; GENERAL REQUIREMENTS; STREETS.

Any municipality deannexing any territory shall include in the deannexation any streets located along the boundary of the territory being deannexed. As used in this section, "street" means any thoroughfare that is open to the public and has been accepted by the municipality and the board of county commissioners as a public right-of-way.

3-7a-6 DEANNEXATION; ARBITRATION; RESOLUTION OF INTENT.

If the governing body of a municipality desires to deannex contiguous territory, the governing body may, by resolution, declare that it desires to sever such territory, using the arbitration method. A copy of the resolution along with a copy of a plat of the territory proposed to be deannexed shall be filed with the county clerk.

3-7a-7 DEANNEXATION; ARBITRATION; CREATION OF BOARD.

After the adoption and filing of a plat as required in Section 3-7a-6, a board of arbitration shall be created in accordance with the procedures put forth in Section 3-7-6 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-8 DEANNEXATION; ARBITRATION; ELECTION OF THREE MEMBERS FROM TERRITORY PROPOSED TO BE DEANNEXED; NOTICE; POLLING PLACES; ELECTION OFFICIALS BALLOTS; CANVASS OF VOTES.

After the creation of the board, as required in Section 3-7a-7, the election of three members from the territory proposed to be deannexed shall be held in accordance with the procedures put forth in Section 3-

7-7 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-9 DEANNEXATION; ARBITRATION; APPOINTMENT OF THREE MEMBERS BY MUNICIPALITY.

After the election of board members from the territory proposed to be deannexed as required in Section 3-7a-8, three board members shall be appointed by the municipality in accordance with the procedures put forth in Section 3-7-8 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-10 DEANNEXATION; ARBITRATION; SELECTION OF SEVENTH MEMBER; PROCEDURE; QUALIFICATIONS.

After the appointment of three board members by the municipality as required in Section 3-7a-9, a seventh member shall be selected in accordance with the procedures put forth in Section 3-7-9 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-11 DEANNEXATION; ARBITRATION; CHAIRMAN; MEETINGS; POWER OF BOARD; MUNICIPALITY REIMBURSEMENT DETERMINATION; FINAL DETERMINATION.

A. After the seven members of the board of arbitration have been selected, they shall elect a chairman and hold meetings upon call of the chairman. The board of arbitration shall determine whether the territory subject to the proposed deannexation meets the general requirements of Sections 3-7a-1 through 3-7a-5.

B. Determination by a majority of the seven members of the board of arbitration shall be final. If a majority of the members of the board of arbitration determine that the territory should not be deannexed, the governing body of the municipality shall not proceed further nor shall it pass any other resolution seeking to deannex the territory for a period of two years. If a majority of the members of the board of arbitration determines that the territory or a part thereof should be deannexed from the municipality, it shall certify over the signatures of the members of the board of arbitration who have made the determination to the clerk of the municipality, the clerk of the county, the secretary of finance and administration, and the secretary of taxation and revenue.

C. Thereafter, the deannexation shall be deemed complete as to the territory certified as proper to be deannexed. The municipality from which the deannexation is made shall pass an ordinance, not inconsistent with law, which will effectuate the terms of the deannexation.

D. The territory so deannexed shall be governed as a part of the county in which it is located, and the governing body of the county shall promptly

proceed to make the benefits of the government of the county available to the territory so deannexed within a reasonable time.

E. The final determination of the board of arbitration shall be certified not more than sixty days after the selection of the seventh member.

3-7a-12 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; PURPOSE.

The purpose of Sections 3-7a-12 through 3-7a-17 is to establish an independent commission, known as the municipal boundary commission, to determine the deannexation of territory to a municipality whenever:

A. the municipality petitions the municipal boundary commission to deannex territory to the municipality; or

B. a majority of the landowners of the territory proposed to be deannexed petition the municipal boundary commission to deannex the territory to the municipality.

3-7a-13 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; APPOINTMENT; QUALIFICATIONS OF MEMBERS; PAYMENT OF MEMBERS; SECRETARY OF FINANCE AND ADMINISTRATION TO PROVIDE STAFF.

The municipal boundary commission shall be set up in accordance with the procedures put forth in Section 3-7-12 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-14 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; CONTENTS OF PETITION; SUBMISSION TO DEPARTMENT OF FINANCE AND ADMINISTRATION.

The petition shall meet the requirements of Section 3-7-13 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-15 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; MEETINGS; ELECTION OF A CHAIRMAN; MEETING LOCALITY; PUBLIC NOTICE OF MEETING.

The municipal boundary commission shall meet, elect a chairman, and serve notice in accordance with the procedures put forth in Section 3-7-14 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-16 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; DUTIES OF THE COMMISSION; AUTHORITY OF COMMISSION TO DEANNEX; ORDER IS FINAL; REVIEW BY CERTIORARI.

A. At the public hearing held for the purpose of determining if the territory proposed to be deannexed from the municipality shall be deannexed from the municipality, the municipal boundary commission shall determine if the territory proposed to be deannexed meets the requirements set out in Sections 3-7a-1 through 3-7a-5.

B. If the municipal boundary commission determines that the conditions set forth in this section are met, the commission shall order deannexed from the municipality the territory petitioned to be deannexed from the municipality.

C. If the municipal boundary commission determines that only a portion of the territory petitioned to be deannexed meets the conditions set forth in this section, the commission may order deannexed from the municipality that portion of the territory which meets the conditions set forth in this section.

D. If the municipal boundary commission determines that the conditions set forth in this section are not met, the commission shall not order the deannexation from the municipality of the territory to be petitioned to be deannexed.

E. Any order of the municipal boundary commission shall be final unless any owner of land within the territory proposed to be deannexed, within thirty days after the filing of the final order in the office of the county clerk and the office of the municipal clerk, obtains review of the order by the district court.

3-7a-17 DEANNEXATION; MUNICIPAL BOUNDARY COMMISSION; FILING THE ORDER; DEANNEXATION COMPLETE.

The filing of the municipal boundary commission's order and completion of the deannexation shall be done in accordance with the procedures put forth in Section 3-7-16 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-18 DEANNEXATION; PETITION BY OWNERS OF CONTIGUOUS TERRITORY; DUTY OF GOVERNING BODY; ORDINANCE; APPEAL.

Deannexation by petition by owners of contiguous property, definition of the governing body's duties, procedure regarding the ordinance and regarding the appeal of the proceedings shall be done in accordance with the procedures put forth in Section 3-7-17 NMSA 1978. The words "annex," "annexed," "annexed to," and "annexation" shall be replaced with the words "deannex," "deannexed," "deannexed from," and "deannexation," respectively.

3-7a-19 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY.

Territory may be deannexed and severed from one municipality and annexed to another municipality in accordance with the provisions of Sections 3-7a-19 through 3-7a-26.

3-7a-20 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; DEANNEXING MUNICIPALITY.

A. The governing body of a municipality which intends to deannex the territory shall by ordinance set forth:

1. the legal description of the territory proposed to be deannexed;
2. the external boundary of the territory proposed to be deannexed;
3. any federal, state or county highways in the territory proposed to be deannexed; and
4. the relationship of the territory proposed to be deannexed to the boundary of the deannexing municipality.

B. A plat of the territory proposed to be deannexed shall be attached to the ordinance.

3-7a-21 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; ANNEXING MUNICIPALITY.

A. The governing body of the municipality which intends to annex the territory shall by ordinance set forth:

1. the legal description of the territory proposed to be deannexed;
2. the external boundary of the territory proposed to be deannexed;
3. any federal, state or county highways in the territory proposed to be deannexed; and
4. the relationship of the territory proposed to be deannexed to the boundary of the annexing municipality.

B. A plat of the territory proposed to be annexed shall be attached to the ordinance.

3-7a-22 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; FILING OF ORDINANCE; SCHEDULING OF HEARING.

The ordinance passed by each governing body shall be filed with the municipal boundary commission which shall set a hearing date of not less than thirty and not more than sixty days from the date of the filing of the ordinances and shall notify the governing body of each municipality of the hearing date at least thirty days prior to the date.

3-7a-23 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; NOTIFICATION OF PROPERTY OWNERS; PROTEST; DENIAL OF DEANNEXATION; RESUBMITTAL OF DEANNEXATION.

A. The governing body of the municipality desiring to deannex territory shall notify by letter the owner of any real property in the territory to

be deannexed at least twenty days before the hearing by the municipal boundary commission.

B. Such notification shall specify that the area is to be deannexed and annexed to another municipality and that such property shall continue to be subject to any tax lawfully assessed against it for the purpose of paying any debts or liabilities lawfully contracted by the governing body of the municipality while the property was within the corporate limits. The letter shall state that the property owner may protest the action by letter to the municipal boundary commission prior to the hearing or in person at the hearing.

C. If property owners of fifty-one percent or more of the land area of the territory to be deannexed protest the action, then the municipal boundary commission shall deny the deannexation of the territory.

D. Any such action so denied shall not be resubmitted to the municipal boundary commission for a period of two years.

3-7a-24 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; PASSAGE OF DEANNEXATION.

If the municipal boundary commission determines that the requirements of Sections 3-7a-1 through 3-7a-5 and 3-7a-20 through 3-7a-23 have been met, the municipal boundary commission shall order that the territory be deannexed from one municipality and that the same territory be annexed to another municipality as specified in the ordinances authorized by Sections 3-7a-20 and 3-7a-21.

3-7a-25 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; REPAYMENT OF DEBTS AND LIABILITIES.

A. The territory deannexed and annexed shall not thereby be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any debts or liabilities lawfully contracted by the corporate authorities of such municipality while such land was within the limits thereof and which remains unpaid, and for the payment of which such land could be lawfully taxed. The territory deannexed and annexed shall be liable for the reimbursement of any capital expenditures made by the municipality from which the territory is to be deannexed.

B. Whenever the governing body of the municipality which has deannexed territory shall levy a tax upon the property within such municipality for the purpose of paying debts or liabilities incurred before such deannexation, or any part thereof, and interest thereon, such governing body shall have the authority to levy a tax at the same rate and for the same purpose on the land so deannexed. In case the owner of any land so deannexed shall pay off and discharge a portion of such debts or liabilities equal in amount to the same proportion of the debts or liabilities which the assessed value of his land bears to the entire assessed value of all the property subject to taxation for the payment of such debts or liabilities calculated according to the last assessment previous to such payment,

then such land shall be exempted from further taxation to pay such debts and liabilities. Upon such payment being made, the canceled bonds or other evidences of payment of such portion of such debts and liabilities shall be deposited with the clerk of such municipality and a certificate shall be given him stating that such payment has been made.

3-7a-26 DEANNEXATION; TRANSFER OF TERRITORY FROM ONE MUNICIPALITY TO ANOTHER MUNICIPALITY; RECORDING; APPEAL.

A. A copy of the order of the municipal boundary commission ordering the deannexation and annexation of any land shall be filed in the office of the county clerk. After the filing, the transfer is complete. The clerk of each municipality shall also file copies of the ordinance transferring the territory and of the plat of the territory in the office of the county clerk. The clerk of each municipality shall also send copies of the ordinance transferring the territory and of the plat of the territory to the secretary of finance and administration and to the secretary of taxation and revenue.

B. Within thirty days after the filing of the order, the ordinances, and the plats in the office of the county clerk, any person owning land within the transferred territory may appeal to the district court questioning the validity of the transfer proceedings. If no appeal to the district court is filed within thirty days after the filing of the order, ordinances, and plats in the office of the county clerk, or if the court renders judgment in favor of the municipal boundary commission, the transfer shall be deemed complete.