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Honorable Jay M. Ross
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Municipalities – Annexation – Roads, Highways and Bridges – Mobile County

A city or town may not use "long lasso" annexation or public rights-of-way alone to create contiguity for purposes of annexation under section 11-42-21 of the Code of Alabama. Under the facts presented, the City of Daphne owns the roadway and is not merely using the public right-of-way to create contiguity.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Daphne.

QUESTION

May the City of Daphne annex a parcel of real property that is adjacent and contiguous to a road that is owned by the city?

FACTS AND ANALYSIS

Your request states that Milton Jones Road, the road in question, is a public road owned by the City of Daphne. The road was accepted as a public road by the City of Daphne on February 2, 2009, by quit claim deed from the Baldwin County Commission. The city recently received a request for annexation by a landowner who owns a parcel of real estate that is adjacent to Milton Jones Road. The only contiguity between the proposed parcel and the City of Daphne is Milton Jones Road. The city is concerned that the proposed annexation might be challenged and declared invalid under the "long lasso" theory of annexation

and, thus, seeks this opinion to clarify that the use of the road in this circumstance is not a "long lasso" annexation.

A city or town may annex property by legislative act, by an election in accordance with section 11-42-2 of the Code, and by petition in accordance with section 11-42-21. ALA. Code § 11-42-2, 11-42-21 (1989). Another method of annexation is applicable only to cities with a population of 25,000 or more. ALA. CODE § 11-42-40 (1989). The "long lasso" method of annexation has been used in conjunction with section 11-42-21. This section states, in pertinent part, as follows:

> Whenever all of the owners of property located and contained within an area ***contiguous to the corporate limits of any incorporated municipality*** located in the state of Alabama and such property does not lie within the corporate limits or police jurisdiction of any other municipality, shall sign and file a written petition with the city clerk of such municipality requesting that such property or territory be annexed to the said municipality, and the governing body of such municipality adopts an ordinance assenting to the annexation of said property to such municipality, the corporate limits of said municipality shall be extended and rearranged so as to embrace and include such property and such property or territory shall become a part of the corporate area of such municipality upon the date of publication of said ordinance.

ALA. CODE § 11-42-21 (2008) (emphasis added).

The "long lasso" method of annexation involves the annexation of property using public road rights-of-way to create contiguity and, in effect, avoid the requirement of a touching at some point. *City of Fultondale v. City of Birmingham*, 507 So. 2d 489 (Ala. 1987). The Alabama Supreme Court held, in the *City of Fultondale,* that the use of public road rights-of-way to create contiguity is unreasonable and invalid as a matter of law. *Id.* at 491. The Alabama Supreme Court has upheld other "corridor" annexations where public road rights-of-way were not used. *City of Dothan v. Dale County Comm'n*, 295 Ala. 131, 324 So. 2d 772 (1975). In the *Dothan* case, the corridor was a 350-foot strip of privately owned land that the landowner agreed to annex into the city to create contiguity to property that otherwise would not be contiguous to the City of Dothan.

In another case where public road rights-of-way were used, the corridor was substantially larger than the roadway, and the roadway was on only a part

of the corridor. *City of Prattville v. City of Millbrook*, 621 So. 2d 267 (Ala. 1993). The corridor in the *Millbrook* case was a county-owned railroad bed that also had a public roadway on part of the land, and the county agreed to the annexation of the county property to the City of Millbrook. *City of Prattville*, 621 So. 2d at 273. In the *Millbrook* case, the Court noted that a "significant part of the corridor, approximately three quarters of a mile, has no roadway on it at all." *Id.*

Based upon the case law, this Office has previously stated that a city or town may not use "long lasso" annexation or public rights-of-way to create contiguity for purposes of annexation. Opinion to Honorable Jack Hodges, Mayor, Town of Grant, dated June 24, 1998, A.G. No. 98-00170. The public right-of-way alone is not sufficient to create contiguity. *Id.* In the facts presented herein, the City of Daphne owns the roadway, and it is not merely using the public right-of way to create contiguity. Thus, it is the opinion of this Office that the proposed annexation does not involve the use of "long lasso" annexation.

CONCLUSION

A city or town may not use "long lasso" annexation or public rights-of-way alone to create contiguity for purposes of annexation under section 11-42-21 of the Code of Alabama. Under the facts presented, the City of Daphne owns the roadway and is not merely using the public right-of-way to create contiguity.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:

Brenda F. Smith

BRENDA F. SMITH
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