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Honorable Bradley E. Byrne
Member, Alabama State Senate
22489 Sea Cliff Drive
Fairhope, Alabama 36532

Alabama Improvement District Act -
Municipalities - Annexation -
Improvement Districts - Baldwin
County

An improvement district formed by a municipality may annex property across a bay from the city if the property is directly across from the city, has a minimum of 200 feet of water frontage, and all property owners consent to the formation of the district.

Dear Senator Byrne:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the City of Orange Beach annex property in the Josephine community across Wolf Bay using an improvement district?

FACTS AND ANALYSIS

The Alabama Improvement District Act is codified at section 11-99A-1, *et seq.*, of the Code of Alabama. Section 11-99A-10 provides that, upon the formation of an improvement district by a municipality that includes land outside its corporate limits, the land is automatically annexed to the city. ALA. CODE § 11-99A-10 (Supp. 2004). The consent of all property owners is required to form a district. Section 11-99A-4

states that owners of land “wishing” to form a district may petition the municipality. ALA. CODE § 11-99A-4 (Supp. 2004). The city may approve the district and appoint its board of directors. ALA. CODE § 11-99A-4(f) (Supp. 2004).

The land must be “*contiguous* with land presently within the city or town limits.” ALA. CODE § 11-99A-4(a)(3) (Supp. 2004) (emphasis added). The act defines “contiguous” as “[t]wo tracts of land if touching for a continuous distance of not less than 200 feet. The term includes tracts of land *divided by bodies of water*, streets, railroad or utility rights-of-way, or by land owned by any public person.” ALA. CODE § 11-99A-2(3) (Supp. 2004) (emphasis added). Thus, land having water frontage of at least 200 feet is sufficient as long as it is properly “divided” by a body of water from the city. The term “divided,” however, is not defined by the act.

The definition of “contiguous” in the context of the ordinary statutory methods of annexation is instructive. ALA. CODE §§ 11-42-2, 11-42-21, 11-42-42(3) (1989). Those statutes do not define the term, but it is defined by case law. In *City of Spanish Fort v. City of Daphne*, 774 So. 2d 567 (Ala. 2000), the Supreme Court of Alabama reaffirmed the seminal Alabama case governing annexation across a body of water, *Johnson v. Rice*, 551 So. 2d 940 (Ala. 1989). In *Johnson*, the Court approved an annexation by the City of Guntersville across Lake Guntersville. The Court set forth several factors necessary to establish contiguity. Two of the factors bear on the proximity of the tracts of land divided by the water:

“a) *But for the intervention of a public waterway* (Guntersville Lake, owned and operated by the Tennessee Valley Authority, a public governmental entity) and the appurtenant lake-shore property rights owned by TVA (such as flooding rights), *the [property sought to be annexed] would actually touch* the existing city limits of Guntersville.

“b) The [property sought to be annexed] *lies directly across* the public waterway from the existing city limits of Guntersville, and not diagonally across the waterway.”

Johnson, 551 So. 2d at 945 (emphasis added).

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CONCLUSION

An improvement district formed by a municipality may annex property across a bay from the city if the property is directly across from the city, has a minimum of 200 feet of water frontage, and all property owners consent to the formation of the district.

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

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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