


MEMORANDUM

TO: Ad Hoc Committee on the City of Clemson's Proposal for Annexation of the University
Holley Ulbrich
Donna London
Bob Becker
Ada Lou Steirer
Jim Hite
Chris Sieverdes
Dave Woodard
Verne House
Stassen Thompson

FROM: Janis K. Cheezem 

DATE: September 2, 1992

In association with the study of the ad hoc committee on the City of Clemson's proposal for annexation of the University, I have reviewed certain relevant documents and laws, and spoken with a number of persons with expertise on the subject, all as further discussed in this Memorandum. I have not made an exhaustive examination of the legal issues in a manner designed to give a legal opinion on the subject, nor is this Memorandum intended to be construed as legal advice. Instead, I have attempted to generally address the legal issues presented by the annexation question to assist the Committee in making a reasoned judgement about the policy implications, and complications, of the annexation proposal.

1. Do the Will and Codicil of Thomas Greene Clemson, or the Deed to Clemson University of the original 814 acres constituting Fort Hill Place, contain any restrictions or covenants that would preclude the University from submitting to the proposed annexation?

The will, codicil and deed do not directly address the issue of municipal status, and thereby contain no binding direction to the University. While Mr. Clemson directs the trustees "to have full authority and power to regulate all matters pertaining to said institution - to fix the course of studies, to make rules for the government of the same, and to change them, as in their judgement may prove necessary", the matters irrevocably assigned to the trustees appear to be

matters of university and not municipal governance. Nonetheless, the grant of municipal powers to the University immediately subsequent to the State's acceptance of the Fort Hill Property supports an argument to the contrary - namely that Mr. Clemson irrevocably bestowed upon the Trustee's the responsibility for the municipal governance of the University. This issue would need to be subject to final judicial determination prior to any agreement by the University to be annexed or merged.

2. What is the present "municipal status" of Clemson University? What effect does the University's failure to have selected one of the four alternative forms of government contained in "Home Rule Act" have upon C.U.'s "municipal" status?

Section 59-119-60 of the South Carolina laws establishes the Board of Trustees as a "body politic and corporate. Section 59-119-310 (first passed in 1894) establishes a municipal corporation known as Clemson University, within the boundaries of a five mile circle with Tillman Hall as the center. The South Carolina Code gives "perpetual control" to the Board of Trustees. The Code further establishes the position of a "recorder" with duties like those of a magistrate. ¹ The Code also authorizes the Trustees to appoint of constables with the authority of municipal police.² The governing authority of the Trustees does not extend to "the right to

¹ The recorder "may carry out and enforce all ordinances of the board of trustees of Clemson University and punish violations thereof by fine or imprisonment within the jurisdiction hereinabove defined. Said board of trustees shall make such rules for the maintenance of order and will provide such punishments, within the jurisdiction above defined, by fine or imprisonment, as will keep the territory within their jurisdiction free from nuisances and enforce the police regulations of the State." S.C. Code Ann. s. 59-119-320(first passed in 1894).

² S.C. Code Ann. s.59-119-340. The section provides, "The board may appoint one or more special constables who shall exercise all the power of a State constable or of a municipal policeman to enforce obedience to the ordinances of the board and to the laws of the State."

levy or collect any tax."³

These statutory provisions, establishing powers generally associated with a municipality, have been exercised on a continuing basis by the University, even though the University did not select one of the three municipal forms of government mandated by the "Home Rule Act".⁴ The Home Rule Act did not contain any provisions for continued municipal status in the event no election was made by the stated deadline.

Several theories as to Clemson University's current municipal status are arguable. CU may now be a lapsed municipality. If this is the case, the University's quasi-municipal functions have remain unchallenged for nearly a twenty year period. This is arguably legislative recognition of C.U.'s special status as a state university with statutory authorization for quasi-municipal functions. Under this theory, C.U.'s status as a lapsed municipality would have little practical import.

Some may argue that C.U. was "grandfathered" as a municipality under the terms of the Home Rule Act. While the text of the Home Rule Act does not support this theory, it is possible that it could be supported by reference to the legislative record of the Act.

A party aggrieved by CU's exercise of quasi-municipal jurisdiction would arguably be able to make an argument that any adversary powers exercised by the University against them were without authority. While such a position could only be tested by litigation, it is unlikely that this bears directly or indirectly on the annexation issue.

³ S.C. Code Ann. s.59-119-350.

⁴ The Act mandated that municipalities choose either the mayor-council form, the council form, or the council-manager form, with the election to be made not later than December 31, 1975.

The greatest practical import of this issue may be upon the form that any proposed "annexation" would take; if C.U. has existing municipal status, then it would merge with the City; if C.U. is a lapsed municipality, it would be annexed.

3. Can the City of Clemson enter into binding agreements with the University concerning the terms and conditions of any proposed annexation or merger?

The South Carolina Code provides that when a city or town proposes to extend its limits by annexing an incorporated municipality, then the two municipalities "may stipulate and agree upon terms of consolidation, and such stipulations shall become a binding contract upon the city or town when enlarged... ." ⁵ The section requires that any stipulations be readily accessible in a publication, or on the ballot, to all voters in the election held to determine the outcome of the annexation petition.

Since the law will generally enforce the terms of a contract not in violation of public policy, and since the stipulations of an annexation agreement would appear to be beneficial to the stated public policy of promoting annexation, ⁶ then the primary purpose of the statutory provision allowing enforceable annexation agreements may be to require voter consent to the stipulations.

The terms of any proposed merger/ annexation of the City of Clemson and C.U. would be subject to a dual ratification process. The voters of the City of Clemson, under the terms of section 5-3-140, would need to approve the stipulations of the annexation in order for the City to be bound by them. The University's consent would be governed by separate statutory

⁵ S.C. Code Ann. s.5-3-40 (1962).

⁶ S.C. Code Ann. s.47-11 - 13.

authority.

4. Under what mechanism would state property, like Clemson University, be annexed?

The annexation would be initiated by a petition of the State Budget and Control Board. "Upon agreement of the city or town council to accept the petition and the passage of an ordinance to that effect, the annexation shall be complete... ." ⁷ Under the statutory scheme, therefore, an annexation procedure would be formally initiated by the Budget and Control Board (after a presumptive process of review, assent, and request by the University).

Conclusions:

1. A base line determination of the University's municipal status would be required. Any decision to merge or annex the University would require a base line analysis of the existing quasi-municipal powers exercised by the University. It appears to be an assumption of the University that it would be able to continue to exercise these powers in perpetuity under the terms of a binding agreement with the City of Clemson. Such powers would need to be enumerated and preserved in an agreement, and their legal basis would need to be confirmed as a prerequisite to the initiation of the annexation process. That is, the question of the survival of the municipal powers of the University after the passage of the Home Rule Act should be subjected to final determination. A mere assertion that such powers have been "grandfathered" would not be sufficient in light of the presumptive scrutiny initiated by the annexation process. Such a process of confirmation would entail certain risks and costs on the part of the University, which in turn should be considered in the decision as to whether the University should pursue the annexation

⁷ S.C. Code Ann. s. 5-3-140(1971).

proposal.

2. The City's draft annexation agreement is premature, and does not adequately address the issues. This Memorandum has focused on formative issues. A great variety of complex legal and factual issues would need to be addressed in any annexation agreement. Many of these are being separately addressed by the Committee. The City's draft agreement is insufficiently detailed, does not address many issues with any level of specificity, and is not an adequate basis for any merger or annexation to proceed. In addition, no purportedly binding agreement should be assumed to be such without a final determination that such an agreement could be enforced against the City in the event that any dispute arises. (See section 3 above.)