Annexation, enclaves

Number: INFORMAL

Date: October 09, 2006

Mr. Scott A. Gerken
Minneola City Attorney
4850 North Highway 19A
Mount Dora, Florida 32757

Dear Mr. Gerken:

On behalf of the Minneola City Council, you ask whether the definition of enclave in section 171.031(13), Florida Statutes, includes an unincorporated area enclosed within and bounded by a single municipality and a state road that bisects the city but is not incorporated into the city limits.

You have advised this office that there is a pocket of unincorporated land which is surrounded by the City of Minneola except on one side which is bounded by Highway 27, a state road which bisects the city but has not been incorporated into the city limits. Thus, it is possible for vehicular traffic to travel to the unincorporated area without actually traveling within the municipal limits. You state that the city is interested in utilizing the provisions of section 171.046, Florida Statutes, which provides for an expedited process of annexing enclaves, to bring this area into the municipality but is unsure whether the area constitutes an enclave. If it is determined that the property does not qualify as an "enclave" as statutorily defined, this does not prevent the city from annexing the property through normal annexation procedures such as section 171.0413 or section 171.044, Florida Statutes.

Section 171.031(13), Florida Statutes, defines "enclave" for purposes of Chapter 171, Florida Statutes, the Municipal Annexation or Contraction Act. It provides that "enclave" means:

"(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality."[1]

Thus, the Florida Legislature has effectively defined an enclave as unincorporated property that is surrounded totally by incorporated property or is totally surrounded by incorporated property and a natural or manmade obstacle that prevents the passage of vehicles to the property except through the municipality. Where a statute contains a definition of a phrase, that meaning must be ascribed to the phrase whenever repeated in the same statute, unless a contrary intent clearly appears.[2]

You describe the unincorporated property, however, as not totally bounded on all sides by the municipality; rather it is bounded on one side by unincorporated property through which it is

possible to travel by vehicular traffic to the parcel *without* having to go through the municipality. Thus, from your description of the property, it does not technically fall within the statutory definition of "enclave."

I would note that this office in Attorney General Opinion 072-282 stated that a tract of land that is separated from a municipality only by a county road that runs parallel to the city limits was contiguous. That opinion concluded that the existence of a highway or right-of-way did not prevent land from being contiguous.[3] In 1975, the Legislature redefined the term "contiguous" to provide:

"'Contiguous' means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. *The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically*. However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity; and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act."[4] (e.s.)

A similar argument could logically be made that the existence of a road on one side of unincorporated property which was otherwise bounded by municipal property would not preclude the unincorporated property from being considered an enclave. The property, but for the road, is entirely located within the municipal geographic boundaries. The Legislature, however, has specifically defined the term "enclave" and included within such definition situations where a natural or manmade barrier exists. Such a definition does not include situations where it is possible to travel to the unincorporated area by not traveling through the municipality which, according to your letter, is the case here.

In light of the above and the uncertainty of this issue, it would appear advisable to seek judicial or legislative clarification of the municipality's authority to use the special annexation procedures of section 171.046, Florida Statutes.

I hope that the above informal advisory comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

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[1] *See* s. 15, Ch. 93-206, Laws of Fla., adding the definition of "enclave."

[2] *See, e.g., Racetrac Petroleum, Inc. v. Delco Oil, Inc*., 721 So. 2d 376, 377 (Fla. 5th DCA 1998) (where legislature has used particular words to define a term, court does not have the authority to redefine it); *Richard Bertram & Co. v. Green*, 132 So. 2d 24 (Fla. 3d DCA 1961), *cert. denied,* 135 So. 2d 743 (Fla. 1961), *cert. dismissed,* 136 So. 2d 343 (Fla. 1961); *Vocelle v. Knight Brothers Paper Company*, 118 So. 2d 664 (Fla. 1st DCA 1960); Op. Att'y Gen. Fla. 85-98 (1985) (where a statute contains a definition of a phrase, that meaning must be ascribed to the phrase whenever repeated in the same statute, unless a contrary intent clearly appears).

[3] *And see* Op. Att'y Gen. Fla. 71-245 (1971).

[4] Section 171.031(11), Fla. Stat. *And see* Ch. 75-297, Laws of Fla.