

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-223
	:	
of	:	<u>April 25, 1980</u>
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GEORGE DEUKMEJIAN	::	
Attorney General	:	
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Rodney Lilyquist, Jr.	:	
Deputy Attorney General	:	

SUBJECT: STANDARDS FOR ANNEXATION PROPOSAL—A local agency formation commission may not find that a proposal submitted to it by a city meets the standards set forth in Government Code section 35150, subdivision (f), if the territory contained in the annexation proposal is less than 100 acres but constitutes a part of an unincorporated area which is more than 100 acres in area.

The Honorable Charles R. Imbrecht, Assemblyman, 36th District, has requested an opinion on the following question.

May a local agency formation commission find that a proposal submitted to it by a city meets the standards set forth in Government Code section 35150, subdivision (f), if the territory contained in the annexation proposal is less than 100 acres but constitutes a part of an unincorporated area which is more than 100 acres in area?

CONCLUSION

A local agency formation commission may not find that a proposal submitted to it by a city meets the standards set forth in Government Code section 35150, subdivision (f), if the territory contained in the annexation proposal is less than 100 acres but constitutes a part of an unincorporated area which is more than 100 acres in area.

ANALYSIS

Under the Knox-Nisber Act (Gov. Code §§ 54773-547995,¹ a local agency formation commission (hereinafter “LAFCO”) is established in each county to review and approve or disapprove proposals for the incorporation or disincorporation of cities, the consolidation of cities, the annexation to or detachment of territory from cities, and the formation of special districts. (§ 54790.)

Proposals submitted to a LAFCO for the annexation of territory by a city must comply with the provisions of the Municipal Organization Act of 1977 (§§ 35000–35500, hereinafter “MORGA”). (See §§ 35002, 35042.) The procedure is as follows: The proposal is filed with the executive director of LAFCO (§ 35141), LAFCO conducts preliminary proceedings (§§ 35150–35163), if LAFCO approves the proposal (§ 35161), the city² conducts the actual annexation proceedings. (§§ 35031, subd. (a), 35200–35239.)

Unless the annexation proposal is noncontroversial, an election is normally held (see §§ 35228, 35307), with a majority vote of the registered voters living in the affected territory necessary for approval of the proposal. (See §§ 35150, subd. (i), 35231, 35236.)

One major exception to the election requirement is where LAFCO exercises its authority under the provisions of subdivision (f) of section 35150, as follows:

“To approve the annexation after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election if the commission finds that the territory contained in an annexation proposal:

“(1) *Does not exceed 100 acres in area and such area constitutes the entire island;*

“(2) (A) Is surrounded or substantially surrounded by the city to which annexation is proposed or by such city and a county boundary or the Pacific Ocean; or (B) Is surrounded by a city and adjacent cities;

“(3) Is substantially developed or developing;

“(4) Is not prime agricultural land as defined in Section 35046; and

¹ All unidentified section references hereinafter are to the Government Code.

² In the peculiar circumstances under consideration herein, the county board of supervisors, rather than the city, would conduct the annexation proceedings. (§ 35031, subd. (c).)

“(5) Will benefit from such annexation or is receiving benefits from the annexing city. . . .” (Emphasis added.)

If LAFCO approves the annexation proposal under this statutory provision, the county board of supervisors may either order the annexation without an election or terminate the proceedings after conducting a hearing on the matter. (§§ 35013, 35224.5.)³

Whether an election is required for approval of an annexation proposal can be significant. Commonly, a proposal will fail unless the persons in the affected territory believe that the municipal services to be provided to them will offset the taxes to be paid by them to the city.⁴

The focus of the question presented is the first requirement under the subdivision: “Does not exceed 100 acres in area and such area constitutes the entire island. We are asked whether an annexation proposal may meet this requirement where the territory contained in the proposal is less than 100 acres but constitutes a part of an unincorporated area which is more than 100 acres in area. We conclude that such an area does not meet the requirement of being “the entire island.”

Several principles of statutory construction are applicable to our analysis. The cardinal rule in interpreting a statute is to ‘ascertain the intent of the Legislature so as to effectuate the purpose of the law.’ Select *Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 665.) Legislative intent is discerned by looking first to the language used, giving the words their ordinary and common meaning (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) The provisions of a statute should be construed in context and harmonized whenever possible, and rendering some words surplusage is to be avoided (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 844.) An exception to a general statutory provision is to be strictly interpreted. (*City of National City v. Fritz* (1949) 33 Cal. 2d 635, 636.)

Applying these principles, we believe that the phrase “and such area constitutes the entire island” in subdivision (f) of section 35150 must be given a narrow construction to effectuate the purpose of the statutory scheme.

It would be unreasonable to conclude that the statute’s 100 acre limitation is without significant meaning. If a proposed area of annexation could constitute a portion of a larger territory, the 100 acre limitation could be easily circumvented by separate annexation proceedings. We do not believe that the Legislature intended piecemeal annexation as a

³ In general, the authorization for this procedure expires on January 1, 1981. (§ 35014.)

⁴ With the addition of article XIII A to the Constitution, this concern is substantially reduced.

means to thwart citizen participation in the decision making process.

Requiring, therefore, that the proposed area of annexation constitute an “entire” island gives meaning to the 100 acre limitation, and each statutory provision supports the other. Simply put, by using the words “entire island,” the Legislature precluded the annexation of a part of an island under this statutory provision.

The reference to “substantially surrounded” by the city or city and county boundary or city, and Pacific Ocean in subdivision (f) does not alter our conclusion. The proposed territory can still be an “island” although only “substantially” surrounded by the annexing city and, for example, a county boundary, where another city is adjacent to the territory.⁵

We are aware that on several occasions, local governments have attempted to prevent public participation in annexation proceedings under the predecessor statutes to MORGA. In *Meyers v. Local Agency Formation Com.* (1973) 34 Cal. App. 3d 955, 963–964, the court noted several such examples that had been struck down previously by the courts, and found that the proceedings before it “were infected with subterfuge; evasion, and illegality.”

We believe that a court would also strike down an attempt to split an “entire island” of more than 100 acres into two areas so as to preclude an election under subdivision (f) of section 35150.

Our conclusion, therefore, is that a LAFCO may not find that a proposal submitted to it by a city meets the standards set forth in section 35150, subdivision (f), if the territory contained in the annexation proposal is less than 100 acres but constitutes a part of an unincorporated area which is more than 100 acres in area.

⁵ The definition of “substantially” is not before us, and we do not express an opinion thereon.