

**ANNEXATION REFORM BILL**

No doubt, most of you have heard that Senate Bill 5, the Annexation Reform bill, was recently signed by the Governor, and will become effective on October 26, 2001. We expect that the Bill will work in a positive way by fostering cooperation between municipalities and townships. In fact, the Bill's provisions for Annexation Agreements, when combined with the existing Cooperative Economic Development Agreements (CEDA's) and Joint Economic Development Districts (JEDD's), will certainly provide an array of tools for forging cooperative relationships between municipalities and townships. However, approximately one hundred municipalities in fifty counties are trying to place a referendum on the ballot to nullify Senate Bill 5. The municipalities are now attempting to gather 201,000 signatures of Ohio voters by October 26<sup>th</sup>. If they are successful, that action would prevent the Bill from taking effect until after a referendum vote in November 2002. While the referendum attempt may or may not be successful, we are planning to work with political subdivisions to help them understand the Bill's eventual changes. Here are several of the Bill's highlights:

- ◆ 3 special expedited annexation procedures when all property owners sign an annexation petition.
- ◆ Requires an annexing municipality to adopt a statement specifying which services will be provided to the territory it annexes, and the approximate starting date.
- ◆ Permits a board of township trustees to appropriate funds for any expense it considers necessary related to any potential or pending annexation.
- ◆ Permits participation of a board of township trustees in all annexation proceedings as a necessary party.
- ◆ Permits a board of township trustees, the agent for the petitioners, an owner of real estate in the territory proposed for annexation, and the legislative authority of the municipal corporation to which annexation is proposed or their representatives to present evidence, examine witnesses, and/or comment on all evidence, including affidavits presented to a board of county commissioners, at an annexation hearing.
- ◆ County commissioners may charge fees and issue subpoenas.
- ◆ Requires a board of county commissioners to issue findings as to whether specified conditions have or have not been met with respect to a proposed annexation.
- ◆ Permits county commissioners to use discretion in making findings, as long as they are based upon "a preponderance of the substantial, reliable, and probative evidence on the whole record" of an annexation hearing.
- ◆ Shortened procedures when a municipality petitions to annex certain gov't land.
- ◆ Changes the process for appealing the decisions of county commissioners.
- ◆ Annexation agreements between townships and municipal corporations.
- ◆ Changes payments for the loss of tax revenue made by a municipal corporation to a township from which territory is annexed following annexation, and provides that those payments must be made only if the municipal corporation excludes the annexed territory from the township.
- ◆ Enacts special provisions for the division of inside millage between an annexing municipal corporation and a township whose territory is annexed during the time when the annexed territory is not excluded from the township.
- ◆ "General good" within a  $\frac{1}{2}$  mile radius considered when making decision.

# Recent Court Decision

## SUPREME COURT INTERPRETS EXECUTIVE SESSION

In The STATE ex rel. LONG v. COUNCIL OF THE VILLAGE OF CARDINGTON, the Ohio Supreme Court examined the public meeting minutes requirements for public bodies. The Court stated generally that full and accurate minutes of meetings must contain sufficient facts and information to permit the public to **understand and appreciate the rationale** behind the relevant decision of the public body. The Court also ruled that when the majority of members of a **committee of a public body** meet for a prearranged meeting, full and accurate minutes are also required.

The Court also held that if a public body decides to conduct an executive session (closed to the public), the public body must specify, in its motion to hold an executive session, those matters it will discuss in executive session. One of those permissible matters is “to consider the **appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public official**”. If a public body holds an executive session, the motion and vote to hold that executive session shall state which one or more of the approved purposes are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting. **The Court ruled that simply using general terms like “personnel” and “personnel and finances” instead of one or more of the specified statutory purposes listed, violates the Sunshine Law.**

Speaking & Legislative Updates

## REVISED HOME RULE HANDBOOK READY SOON

As the authors of the *Home Rule Handbook*, we have been working to incorporate changes to the law related to limited self government into a *Second Edition* of the *Handbook*. The *Handbook* is a comprehensive tool, which includes an analysis of the pros and cons of Home Rule, procedural checklists, rules, forms, etc. for those townships implementing or contemplating the implementation of limited self government (Home Rule). While an exact completion date is unknown, we expect it will be ready in the next couple of months. If you are interested in ordering a copy of the *Handbook*, or learning more about its contents, please call us and speak to either John Albers or Eric Luckage.

## ANNEXATION SEMINARS, CONFLICTS SEMINAR

John was asked to speak on Senate Bill 5 at three *Annexation Reform Seminars* throughout Ohio. The seminars are designed to help local governments understand the nuances of the new annexation reform bill. The three seminars were: September 21, Miamisburg; September 28, New Albany; October 5, New Russia Twp. John also spoke on “Conflicts Between Service Providers” at a seminar of officials of USDA Rural Development on Sept. 25, 2001.

## ARE COUNTY PROTECTIONS UNCONSTITUTIONAL?

House Bill 549, making several changes to the County water/sewer system laws in Chapter 6103 and 6117 of the Ohio Revised Code, became effective earlier this year. While the provisions of House Bill 549 offer significant protection to County systems, it is unclear whether House Bill 549’s provisions would withstand a court challenge based on the Ohio Constitution and the Ohio Supreme Court case, City of Northwood v. Wood County Regional Water and Sewer District.

In Northwood, the Court ruled that a Municipality may exercise eminent domain power over public facilities owned by a regional water and sewer district as long as the water and sewer district is not thereby destroyed (including economic destruction). The Court based its reasoning on the Ohio Constitution Section 4, Article XVIII, which, the Court reasoned, is intended to confer the power of eminent domain on Municipalities for the purpose of acquiring existing public utilities.

House Bill 549 provides protection to County systems by permitting them to continue to exercise their jurisdiction in portions of their territory that are annexed by a Municipal corporation. Because the Municipal power under Northwood to acquire existing utilities is based on the Ohio Constitution, a challenge could nullify those portions of House Bill 549 that are inconsistent with the Ohio Constitution and Northwood. However, we must emphasize that until a court challenge is initiated and the provisions in House Bill 549 declared unconstitutional, we must assume their validity.