

## Chapter 222

### City Boundary Changes; Mergers and Consolidations

#### Chapter 222

LAW REVIEW CITATIONS: 22 OLR 268.

#### 222.111 to 222.190

##### NOTES OF DECISIONS

The city which first initiates proceedings acquires exclusive jurisdiction of the subject area. *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624.

Once a municipality exercises dominion over annexed territory in a de facto capacity, the validity of the annexation cannot be attacked by a party other than the state; quo warranto is the proper remedy. *Griffin v. City of Roseburg*, (1970) 255 Or 103, 464 P2d 691.

Judgment in a former action contesting municipal annexation is a bar to subsequent action contesting the same annexation. *Id.*

The proceedings were initiated by the council resolution. *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624.

#### 222.111

##### NOTES OF DECISIONS

###### 1. Under a former similar statute

Before the 1953 amendment of ORS 222.120, there could be no annexation without the approval of the legal voters of the territory proposed to be annexed. *State ex rel. Anderson v. Port of Tillamook*, (1912) 62 Or 332, 124 P 637; *Landess v. City of Cottage Grove*, (1913) 64 Or 155, 129 P 537; *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

The right of the inhabitants of the territory proposed to be annexed to vote on the issue of annexation was a constitutional one that cannot be taken away. *Thurber v. City of McMinnville*, (1912) 63 Or 410, 128 P 43.

Land belonging to the state could be annexed in a proper case. *Day v. Salem*, (1913) 65 Or 114, 131 P 1028, Ann Cas 1915A, 1011.

The mere fact that a person was an employe of state institution located in the area proposed to be annexed did not, of itself, warrant the conclusion that he was not entitled to vote in the election. *Id.*

Annexation of territory was not a local matter within the meaning of Ore. Const. Art IV, §1a, and Art. XI, §2. *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

Enlargement of the territory of a municipal corporation was in effect, an amendment of the corporate charter. *Cooke v. Portland*, (1914) 69 Or 572, 139 P 1095.

A subsequent special Act of incorporation did not repeal the former statute governing annexations. *Id.*

The statute did not violate Ore. Const. Art. IV, §1a, reserving initiative and referendum powers to municipal voters, or Ore. Const. Art. XI, §2, denying to the legislature power to amend or repeal municipal charters, as annexation was an extramural act, permission for which had to be granted by the legislature. *Spence v. Watson*, (1947) 182 Or 233, 186 P2d 785.

In statutes empowering cities to legislate annexation

proceedings, it was implied that the cities must legislate reasonably. *Portland General Electric Co. v. City of Estacada*, (1952) 194 Or 145, 241 P2d 1129.

The Declaratory Judgment Act could be employed to test the validity of annexation proceedings. *Id.*

Challenged electors, who were not registered at the time provided by law, were not qualified to vote. *Ivie v. City of Oceanlake*, (1956) 208 Or 417, 302 P2d 221.

The requirement that voters be registered 30 days prior to the election was not unconstitutional as contrary to Ore. Const. Art. II, §2. *Id.*

FURTHER CITATIONS: *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624.

ATTY. GEN. OPINIONS: Confining special municipal election to the single question of annexation of territory, 1944-46, p 71; necessity for approval by voters of portion of water district not annexed, 1946-48, p 542, 1948-50, p 4; jurisdiction over portion of water district annexed and liability of portion annexed for bonded and interest indebtedness contracted prior to and after annexation, 1948-50, p 4; effect of existence of a school district on annexation, 1948-50, pp 37, 87; effect of annexation on school children in annexed area, 1948-50, p 391; municipal tax differentials, 1956-58, p 104; defining "contiguous territory," 1960-62, p 372; constitutionality of section, 1960-62, p 396; constitutionality of different levies by one taxing unit to meet proposed tax limit, 1964-66, p 429.

LAW REVIEW CITATIONS: 37 OLR 14, 74; 46 OLR 458-471.

#### 222.120

##### NOTES OF DECISIONS

Before the 1953 amendment, there could be no annexation without the approval of the legal voters of the territory proposed to be annexed. *State ex rel. Anderson v. Port of Tillamook*, (1912) 62 Or 332, 124 P 637; *Landess v. City of Cottage Grove*, (1913) 64 Or 155, 129 P 537; *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

The right of the inhabitants of the territory proposed to be annexed to vote on the issue of annexation is a constitutional one that cannot be taken away. *Thurber v. City of McMinnville*, (1912) 63 Or 410, 128 P 43.

The mere fact that a person is an employe of a state institution located in the area proposed to be annexed does not, of itself, warrant the conclusion that he is not entitled to vote in the election. *Day v. Salem*, (1913) 65 Or 114, 131 P 1028, Ann Cas 1915A, 1011.

FURTHER CITATIONS: *Skourtes v. City of Tigard*, (1968) 250 Or 537, 444 P2d 22.

LAW REVIEW CITATIONS: 46 OLR 458-471.

## 222.130

## NOTES OF DECISIONS

Under a former similar statute, a notice that did not describe the land proposed to be annexed nor indicate where the description could be found was insufficient. *Thurter v. City of McMinnville*, (1912) 63 Or 410, 128 P 43; *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

An annexation election held without notice does not square with the law. *Cooke v. Portland*, (1914) 69 Or 572, 139 P 1095.

The contestant has the burden of proving by a preponderance of the evidence that it is reasonable to believe that the result of the election might have been changed had there been strict compliance with the notice provision. *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624.

Where one of four notices of election was posted across the street from an area to be annexed, the election was not void. *Witham v. McNutt*, (1949) 186 Or 668, 208 P2d 459.

The election was not invalidated by the error in the election notice. *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624.

ATTY. GEN. OPINIONS: In re notice to be followed, 1944-46, p 71.

## 222.140

ATTY. GEN. OPINIONS: In re judges and clerks to be appointed, 1944-46, p 71.

## 222.150

## NOTES OF DECISIONS

Before the 1953 amendment of ORS 222.120, there could be no annexation without the approval of the legal voters of the territory proposed to be annexed. *State v. Port of Tillamook*, (1912) 62 Or 332, 124 P 637; *Landess v. City of Cottage Grove*, (1913) 64 Or 155, 129 P 537; *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

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The mere fact a person is an employe of a state institution located in the area proposed to be annexed does not, of itself, warrant the conclusion that he is not entitled to vote in the election. *Day v. Salem*, (1913) 65 Or 114, 131 P 1028, Ann Cas 1915A, 1011.

## 222.160

## NOTES OF DECISIONS

Before the 1953 amendment of ORS 222.120, there could be no annexation without the approval of the legal voters of the territory proposed to be annexed. *State v. Port of Tillamook*, (1912) 62 Or 332, 124 P 637; *Landess v. City of Cottage Grove*, (1913) 64 Or 155, 129 P 537; *Couch v. Marvin*, (1913) 67 Or 341, 136 P 6.

The right of the inhabitants of the territory proposed to be annexed to vote on the issue of annexation is a constitutional one that cannot be taken away. *Thurber v. City of McMinnville*, (1912) 63 Or 410, 128 P 43.

Where in election the question of annexation was not separately submitted to the voters within the city and those outside, but their votes were mixed so that it could not be determined whether the voters without the city approved or not, it was invalid. *Landess v. City of Cottage Grove*, (1913) 64 Or 155, 129 P 537.

## 222.170

## NOTES OF DECISIONS

Where two authoritative bodies are granted concurrent powers to establish municipal authorities over an area, the authorized body which first institutes proceedings acquires exclusive jurisdiction of the subject area and may proceed to final conclusion unfettered by subsequent proceedings of another authorized body. *Landis v. City of Roseburg*, (1966) 243 Or 44, 411 P2d 282.

The first authorized body to obtain jurisdiction of the subject matter may have the other enjoined or ousted via quo warranto proceeding while the proceedings of the first are pending. *Id.*

This section requires the consent of owners to be in accordance with a previously determined proposal marking the boundaries of the area to be annexed. *Skourtes v. City of Tigard*, (1968) 250 Or 537, 444 P2d 22.

Prior to the 1971 amendment to ORS 222.120, where there was multiple ownership, none were counted unless all consented. *Id.*

A landowner is counted only once regardless of the number of tax lots he owns in the territory. *Id.*

FURTHER CITATIONS: *City of Tualatin v. City of Durham*, (1968) 249 Or 536, 439 P2d 624; *Griffin v. City of Roseburg*, (1970) 255 Or 103, 464 P2d 691.

LAW REVIEW CITATIONS: 46 OLR 458-471.

## 222.180

ATTY. GEN. OPINIONS: Taxation of annexed property, 1956-58, p 104.

## 222.190

CASE CITATIONS: *Spence v. Watson*, (1947) 182 Or 233, 186 P2d 785.

## 222.210 to 222.310

ATTY. GEN. OPINIONS: Preparing population status of Lincoln City, 1964-66, p 160; disposition of debts of consolidating cities, 1966-68, p 365.

## 222.210

## NOTES OF DECISIONS

1941 c. 459 was not an Act of the legislature incorporating any city or town, violative of Ore. Const. Art. XI, §5, and it was not a revenue measure, violative of Ore. Const. Art. XI, §11. *State ex rel. Cutlip v. City of North Bend*, (1943) 171 Or 329, 137 P2d 607.

1941 c. 459 was a general law, applicable alike to all cities and was not inimical to Ore. Const. Art. XI, §2 or former Art. IV, §1a. *Id.*

ATTY. GEN. OPINIONS: Effect of consolidation of cities on consolidation of the school districts located therein, 1942-44, p 273.

## 222.230

## NOTES OF DECISIONS

Even though this section imposes upon a city council duties in addition to those prescribed by its charter, these duties relate to matters not covered by the charter, and though the section be thus construed as amending the charter, it is not unconstitutional. *State ex rel. Cutlip v. City of North Bend*, (1943) 171 Or 329, 137 P2d 607.

The legislature had in mind the governing bodies of

the cities, which it mentioned as "common councils or other governing bodies" and intended to include the mayor as "a constituent part of the council." Id.

**222.240****NOTES OF DECISIONS**

The legislature had in mind the governing bodies of the cities, which it mentioned as "common councils or other governing bodies," and in carrying out some of the duties imposed upon each council, the mayor is the presiding officer, who in case of a tie may cast the deciding vote. State ex rel. Cutlip v. City of North Bend, (1943) 171 Or 329, 137 P2d 607.

**222.250****NOTES OF DECISIONS**

The legislature had in mind the governing bodies of the cities, which it mentioned as "common councils or other governing bodies," and in carrying out some of the duties imposed upon each council, the mayor is the presiding officer, who in case of a tie may cast the deciding vote. State ex rel. Cutlip v. City of North Bend, (1943) 171 Or 329, 137 P2d 607.

Even though 1941 c.459, of which this section is a part, imposes upon a city council duties in addition to those prescribed by its charter, these duties relate to matters not covered by the charter, and though the statute be thus construed as amending the charter, it is not unconstitutional. Id.

**222.260****NOTES OF DECISIONS**

The legislature had in mind the governing bodies of the cities, which it mentioned as "common councils or other governing bodies." State ex rel. Cutlip v. City of North Bend, (1943) 171 Or 329, 137 P2d 607.

**222.270****NOTES OF DECISIONS**

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The legislature had in mind the governing bodies of the cities, which it mentioned as "common councils or other governing bodies." Id.

**222.280**

ATTY. GEN. OPINIONS: Preparing population status of Lincoln City, 1964-66, p 160.

**222.510 to 222.580**

LAW REVIEW CITATIONS: 37 OLR 19.

**222.510**

ATTY. GEN. OPINIONS: Most suitable method of furnish-

ing sewage disposal service for incorporated and unincorporated area with one plant, 1948-50, p 454; sanitary authority as a district, 1966-68, p 530.

**222.520**

ATTY. GEN. OPINIONS: Withdrawal of annexed area from rural fire protection district, 1958-60, p 264; sanitary authority as a district, 1966-68, p 530.

**222.524**

ATTY. GEN. OPINIONS: Withdrawal of annexed area from rural fire protection district, 1958-60, p 264; procedure to dissolve remainder if there are no residents, 1964-66, p 380.

**222.528**

ATTY. GEN. OPINIONS: Withdrawal of annexed area from rural fire protection district, 1958-60, p 264.

**222.530**

ATTY. GEN. OPINIONS: Failure to make equitable division of assets on effective withdrawal date, 1958-60, p 264.

**222.540**

ATTY. GEN. OPINIONS: Construing "district," 1966-68, p 530.

**222.550**

ATTY. GEN. OPINIONS: Procedure to dissolve remainder if there are no residents, 1964-66, p 380.

**222.570**

ATTY. GEN. OPINIONS: Validity of organizing a metropolitan sanitary district including one or more municipal corporations as well as unincorporated areas, 1948-50, p 454.

**222.610**

ATTY. GEN. OPINIONS: Consolidation of water districts having outstanding debts, 1948-50, p 47.

LAW REVIEW CITATIONS: 37 OLR 19.

**222.620**

LAW REVIEW CITATIONS: 37 OLR 19.

**222.690**

ATTY. GEN. OPINIONS: Consolidation of water districts having outstanding debts, 1948-50, p 47; disposition of debts of consolidating cities, 1966-68, p 365.

**222.750**

LAW REVIEW CITATIONS: 37 OLR 19, 21; 46 OLR 458-471.

**222.830**

LAW REVIEW CITATIONS: 37 OLR 20.