



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 4

TO: MEMBERS OF THE SPECIAL COMMITTEE ON MUNICIPAL ANNEXATION

FROM: Mary Offerdahl, Staff Attorney

RE: Three Options for Expanding Use of Alternative Dispute Resolution in Annexation Procedures

DATE: November 9, 2004

At the Special Committee's October 12, 2004 meeting, some committee members expressed interest in a potential role for alternative dispute resolution (ADR) in the annexation process. In his October 12, 2004, written testimony to the Special Committee, the Chair of the State-Local Government-Private Sector Working Group* stated that the Working Group had agreed to recommend "linking and adding references in the annexation statute to section 802.12 of the Wisconsin Statutes" and that such a change "would help promote alternative dispute resolution as a way to reduce costs associated with legal challenges to annexation battles." Recognizing that there may well be other options that the committee might identify for incorporating ADR into annexation procedures, this Memo briefly examines the option identified in that testimony, along with two other options for incorporating ADR into Wisconsin statutes governing annexation, as a point of departure for committee discussion.

According to the American Bar Association, ADR processes are alternatives to having a state or federal judge or jury decide the dispute in a trial, and can be used to resolve any type of dispute. Resolution of disputes involving municipal annexation, as well as boundary and land use disputes in general, could potentially benefit from ADR. One of the main benefits of ADR is reduced costs associated with legal challenges. Other potential benefits include faster dispute resolution, greater participation of the parties in reaching a solution, more control over the outcome, a less formal process with more flexible rules than a trial court, and the possibility of establishing better ongoing relationships between parties to the dispute. A copy of the American Bar Association guide to ADR, entitled *What You Need to Know about Dispute Resolution: The Guide to Dispute Resolution Processes* is included

* Brian W. Ohm, Chair of the Working Group and Associate Professor, Department of Urban & Regional Planning, University of Wisconsin Madison / Extension. Mr. Ohm's testimony is available at the committee's Website: http://www.legis.state.wi.us/lc/2004studies/ANNEX/ohm_oct12.pdf.

with this Memo and may also be accessed via the Internet at <http://www.abanet.org/dispute/draftbrochure.pdf>.

The description of possible options for committee consideration follows.

1. After Adoption of an Annexation Ordinance: Require [or Allow] a Court That Does Not Dismiss a Challenge to Refer the Case to ADR Under s. 802.12, Stats., Before the Case May Proceed in Court.

One option for incorporating ADR into the statutes governing annexation procedures is to require [or allow] a court that does not dismiss a challenge to an annexation ordinance to order ADR before the case may proceed in court. Section 802.12, Stats., governs the use of court-ordered ADR and is included with this Memo. It may also be accessed via the Internet at <http://folio.legis.state.wi.us/>.

2. Before Adoption of an Annexation Ordinance: Authorize the Department of Administration, as Part of its Annexation Review, to Require [or Suggest] ADR Before the Ordinance May be Passed.

Parties to an annexation dispute might well benefit from ADR before the stage at which a case is before a court, in which case s. 802.12, Stats., would not govern in the absence of a court order. One option for incorporating earlier use of ADR into the statutes is to amend those provisions governing the Department of Administration (DOA) review of annexations. Under s. 66.0217 (6), Stats., if an annexation proceeding is within a county having a population of 50,000 or more, the DOA must review the annexation and give its opinion as to whether the annexation is in the public interest. The annexing municipality must then review the DOA's advice before it can take final action. Section 66.0217 (6), Stats., could be amended to authorize the DOA, as part of its annexation review, to require [or suggest] ADR before the annexing municipality is allowed to pass an annexation ordinance.

3. Require DOA's Division of Intergovernmental Relations to Create and Maintain a List of Qualified ADR Professionals to Resolve Annexation (and Boundary and Land Use) Conflicts.

Another option for incorporating ADR into the statutes governing annexation procedures is to facilitate the use of ADR by local officials, whether such use is voluntary on their part or ordered or advised by DOA or a judge. In Colorado, the General Assembly created the Office of Smart Growth during the 2000 Legislative Session and charged it with developing a program to assist local governments in resolving disputes short of litigation. The Intergovernmental Land Use Dispute Resolution Program in the Office of Smart Growth was specifically designed to give local governments the maximum amount of discretion and does not dictate the manner in which disputes are resolved, but rather leaves that to the parties. The program provides local officials with the tools necessary to resolve land use conflicts with neighboring jurisdiction, but its list of qualified dispute resolution professionals may also be accessed and used "for any number of local government disputes." According to the Colorado legislation:

The department shall maintain a list of qualified professionals that are available to assist in resolving land use disputes arising between local governments. Such list shall include only those persons and organizations the department determines have professional expertise and skills in land use, planning, zoning, subdivision, *annexation*, real estate, public administration, mediation, arbitration, or related disciplines. Such list

shall be made available to governmental entities and the public through the office created by this part 32 for the purpose of facilitating the resolution of disputes between or among local governments arising out of land use matters. [Emphasis added.] [C.R.S. 24-32-3209]

One option the committee might consider is to require the DOA to maintain a list similar to the list created by the Colorado office. Further information on Colorado's Intergovernmental Land Use Dispute Resolution Program is available at <http://www.dola.state.co.us/SmartGrowth/ADRMediators/introduction.htm>.

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