

Island Annexations: Unanswered Questions

Those interested in the ins and outs of LAFCO law reacted excitedly to the news that the Attorney General was poised to issue an opinion on a perplexing question – when is an area of unincorporated land an "island" for purposes of annexation to a city under the Cortese-Knox-Hertzberg Local Government Act? The Attorney General issued the opinion on June 1, and you could almost hear the collective sigh of disappointment – the answer begged the question. ***Why Islands Matter.*** An island for purposes of annexation law can include an unincorporated area entirely surrounded by the annexing city or several cities, or an area "substantially surrounded" by the annexing city. Recognizing the interest in avoiding pockets of unincorporated territory, the Act provides a streamlined procedure for island annexations, including an exemption from protest proceedings and voting by residents and landowners. ***The Definitional Question.*** Unhelpfully, the Act contains no definition either of "island" or of "substantially surrounded." The absence of definitions, coupled with the availability of streamlined procedures, has led some LAFCOs to adopt far-reaching interpretations of the terms "island" and "substantially surrounded." The definitional issue, in most cases, concerns the degree to which the island is surrounded and whether the territory proposed for annexation is actually an island within a larger island of unincorporated land. Both questions matter because, in order to qualify for the streamlined annexation procedure, the island cannot exceed 150 acres. Courts have decided cases involving these questions without offering definitions, finding that unincorporated areas bordered by cities adjacent to as little as 68% of their boundary met the "substantially surrounded" test. But what about areas with between 50% and 68%? Does "substantially" surrounded simply mean "more surrounded than not?" Or does at least two thirds of the island's boundary have to be adjacent to the city? When does a LAFCO interpretation "go too far?" ***Enter the Attorney General to Set Matters Straight.*** In the June 1 opinion, the Attorney General acknowledged criticisms of "some so-called 'island annexations'" and the deprivation of the "legal right to protest and vote upon annexation proposals in situations where the territory in question does not qualify as an 'island.'" The opinion sets out to forestall abuses by attempting to define what is an *island* and what is *substantially* surrounded for purposes of annexation law. ***But the Opinion Didn't Really Do So.*** To answer the question, the Attorney General reviewed the statute and published caselaw without finding anything definitive. The opinion thus turned to . . . Webster's dictionary. The most apt definition of 'island,' the opinion found, is "'something resembling an island by its isolated, surrounded or sequestered position.'" This definition, according to the opinion, "fits well with the statute's requirement that the territory be . . . 'surrounded or substantially surrounded'" But what does "substantially surrounded mean? To the dictionary again, where the aptest definition was found to be: "being that specified to a large degree or in the main." So, in the end, the answer of the Attorney General was that an island is an area of unincorporated territory that is "completely surrounded or substantially surrounded – that is, surrounded by a large degree, or in the main" by a city. The opinion contains a thorough review of the relevant statutory provisions, legislative history and published caselaw, albeit one that's more descriptive than analytical. Courts have the benefit of having concrete fact situations before them. They can always fall back on "I can't define it, but I know I see it here." The Attorney General doesn't have that luxury, and often has to answer questions in the abstract. Sometimes that means the questions don't get answered at all.

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