

1978

Clyde B. Freeman v. Centerville City, Golden L. Allen, , and Centerville Planning C , E. Lee Hawkes, Chairman; and Robert B. Hansen, Attorney General, State of Utah : Brief of Respondents Centerville City, Golden L. Allen, Mayor; and Centerville Planning Commission, E. Lee Hawkes, Chairman

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

CLYDE B. FREEMAN, :
 :
Plaintiff-Appellant, :
 :
vs. :

CENTERVILLE CITY, Golden L. Allen, : Case No. 15904
Mayor; and CENTERVILLE PLANNING :
COMMISSION, E. Lee Hawkes, Chairman; :
and ROBERT B. HANSEN, Attorney-Gen- :
eral, State of Utah, :
 :
Defendants-Respondents. :

BRIEF OF RESPONDENTS
CENTERVILLE CITY, Golden L. Allen,
Mayor; and CENTERVILLE PLANNING
COMMISSION, E. Lee Hawkes, Chairman

On Appeal from the Judgment of the
Second District Court for Davis County,
Honorable J. Duffy Palmer, Judge

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CLYDE B. FREEMAN,

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eral, State of Utah,

15904

Defendants-Respondents.

BRIEF OF RESPONDENTS
CENTERVILLE CITY and
CENTERVILLE PLANNING COMMISSION

I. STATEMENT OF THE NATURE OF THE CASE

This is an action brought by the Appellant against Centerville City and Centerville Planning Commission (hereinafter "Respondents") and Robert B. Hansen, Attorney General, to have the Utah annexation statute, Utah Code Annotated § 10-2-401 (Supp. 1977), under which the Appellant's property was annexed to Centerville City, declared unconstitutional under various provisions of the Utah Constitution.

II. DISPOSITION IN THE LOWER COURT

The Second District Court of Davis County, State of Utah, the Honorable J. Duffy Palmer presiding, granted the Respondent Robert B. Hansen's motion to dismiss the complaint with prejudice and held that section 10-2-401, Utah Code Annotated (Supp. 1977), is constitutional.

III. RELIEF SOUGHT ON APPEAL

The Respondents seek to have the judgment of the lower court affirmed.

IV. STATEMENT OF FACTS

No dispute exists as to the facts in this case. The Appellant agrees that Centerville City has proceeded to annex his property to the City in accordance with section 10-2-401, Utah Code Annotated (Supp. 1977), thereby rendering it subject to

taxation by Centerville City. The constitutionality of this statute is the only issue involved in this appeal.

V. ARGUMENT

POINT I. SECTION 10-2-401, UTAH CODE ANNOTATED (SUPP. 1977), IS CONSTITUTIONAL.

A. THE PROCEDURE FOR ANNEXATION OF CONTIGUOUS PROPERTY BY A MUNICIPAL CORPORATION SET FORTH IN SECTION 10-2-401, UTAH CODE ANNOTATED (SUPP. 1977), DOES NOT DEPRIVE ANY PERSON OF LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF ARTICLE I, SECTION 7 OF THE UTAH CONSTITUTION.

The current statute setting forth the procedure by which a municipality may annex contiguous territory provides:

Whenever a majority of the owners of real property and the owners of at least one third in value of the real property, as shown on the last assessment rolls, in territory lying contiguous to the corporate boundaries of any municipality, shall desire to annex such territory to such municipality, they shall cause an accurate plat or map of such territory to be made . . . and a copy of such plat or map, certified by the engineer or surveyor as the case may be, shall be filed in the office of the recorder of the municipality, together with a written petition signed by a majority of the real property owners and by the owners of not less than one third in value of the real property . . . of the territory described in the plat or map; and the governing body of the municipality, at a regular meeting shall vote on the question of such annexation. The members of the governing body may, by resolution passed by a two-thirds vote, accept the petition for annexation, subject to the terms and conditions as they deem reasonable, and the territory shall then and there be annexed and within the boundaries of the municipality.

Utah Code Ann. § 10-2-401 (Supp. 1977). This procedure for annexation has remained essentially unchanged since 1898, except for the inclusion in 1957 of the additional requirement that the petition signers own not less than one-third in value of the real property to be annexed. See Utah Rev. Stat. § 287 (1898).

The Appellant contends that the annexation procedure outlined in this statute violates article I, section 7 of the Utah Constitution, which guarantees that no person shall be deprived of liberty or property without due process of law. This contention apparently rests upon two assumptions, both of which are invalid: first, that annexation is a deprivation of property and, second, that due process requires notice by publication or mailing and an election by secret ballot in all situations.

A specific statement of the constitutionality of annexation statutes which do not require the consent of, or notice to, the residents or property owners of the areas to be annexed is set forth in 56 Am. Jur. 2d Municipal Corporations § 62 at 116.

It is well settled that the legislature may not only originally fix the boundaries or limits of a municipal corporation, but, subject to constitutional restriction, may subsequently annex, or authorize the annexation of, contiguous or other territory without the consent or even against the remonstrance of persons residing therein. Annexation of land by the legislature without assent of or notice to the inhabitants is not a denial of due process. And it follows that notice by publication does not violate the due process requirements of

the federal and state constitutions. Indeed, the state may authorize the extension of the territorial area of a municipal corporation with or without the consent of the citizens or even against their protest, unrestrained by any provision of the Federal Constitution.

To the same effect are the following discussions in

McQuillan:

[I]n the absence of constitutional prohibition, the legislature may change the corporate boundaries without the consent of the inhabitants of the territory affected thereby, or without the consent and even against the protest of the corporation, or local authorities.

Unless otherwise provided by the state constitution, it is discretionary with the legislature to provide for a referendum on the question of the extension of corporate limits.

2 E. McQuillan, Municipal Corporations § 7.16 at 340, § 7.17 at 344 (3d ed. 1961).

Although there have apparently been no Utah cases dealing with the annexation procedure under the due process provision of the Utah Constitution, courts in other jurisdictions with identical due process requirements have universally held that similar annexation procedures do not constitute a deprivation of property without due process of law. For example, in Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), the Supreme Court found that a Pennsylvania consolidation statute did not violate the due process provisions of the United States Constitution. The plaintiffs, citizens and taxpayers of a small

city which was consolidated into Pittsburgh, contended that their additional tax burden resulting from consolidation with a largely indebted city was a deprivation of property without due process since the statute permitted consolidation in spite of the vote of the majority of the small city against consolidation. The Court reiterated the "settled doctrines" on the nature of municipal corporations:

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.

207 U.S. at 178.

Similarly, the California courts have upheld annexation procedures which do not require an election or consent from the residents against arguments that such procedures violated the due process guarantees of the California and United States Constitutions. For example, in Weber v. City Council of Thousand Oaks, 109 Cal. Rptr. 553, 513 P.2d 601 (1973), the court held constitutional an annexation statute which permitted annexation without petition, vote or consent of the land owners, but provided that the proceeding would be terminated upon filing of a written protest signed by the owners of one-half in value of the

property being annexed. The court noted that

[a]t least 32 states have procedures by which municipalities may annex territory without the consent of its residents or property owners . . . and such unilateral annexation procedures do not infringe on the inhabitants' or the owners' rights to due process of law merely because their consent is not obtained.

109 Cal. Rptr. at 557, 513 P.2d at 605 (citations omitted). Unlike this annexation statute which requires not even the consent of the land owners, the Utah statute provides land owners with even greater voice in the annexation procedure by requiring a written petition signed by a majority of the land owners and the owners of at least one-third in value of the property.

The Arizona annexation statute, which provides for a procedure substantially the same as that of the Utah statute, has also been upheld. Section 9-741, Arizona Revised Statutes (1977) (formerly Arizona Code Annotated § 16-701 (1939)) provides that upon the presentation of a petition signed by the owners of at least one-half in value of the property in a territory contiguous to the city, the common council of the city may adopt an ordinance annexing such territory. In City of Tucson v. Garrett, 77 Ariz. 73, 267 P.2d 717 (1954), the Arizona Supreme Court upheld this procedure, stating:

In analyzing this statute, an enunciation of some of the well-established rules applicable to the addition of territory to municipalities, and the legislative power in connection therewith, is appropriate. The extent of the right of municipalities to enlarge their boundaries is dependent

entirely on the legislature and its power in that respect is plenary in the absence of constitutional limitations, and there are none affecting the problem herein. The legislature may give to municipalities the power to annex territory upon any condition it chooses to impose, either with or without the wishes of the inhabitants of the territory involved, either with or without notice to anyone, with or without the right of objecting inhabitants to protest.

267 P.2d at 719.

The number of cases upholding annexation statutes against claims of deprivation of property without due process of law is extensive. However, the courts have generally emphasized two points in these cases. First, because no person has a vested right to be included or excluded from a local government unit, the mere act of annexation does not deprive an owner of his property or affect his private right. See, e.g., Scarlett v. Town Council of Jackson, 463 P.2d 26, 29-30 (Wyo. 1969). Second, the task of establishing and changing municipal boundaries is distinctively a legislative function and, in the absence of specific constitutional provision to the contrary, the legislature's power in this regard is plenary. See, e.g., Rogers v. City & County of Denver, 161 Col. 72, 419 P.2d 648, 649-50 (1966), appeal dismissed, 386 U.S. 480, reh. den. 386 U.S. 1042 (1967).

Although the Utah Supreme Court has not dealt specifically with the annexation statute in the due process context,

several Utah cases have dealt with the role of the legislature and the courts under the annexation statute and have adopted the general principle that the determination of municipal boundaries is distinctively a legislative function. In Child v. City of Spanish Fork, 538 P.2d 184 (Utah 1975), the court affirmed a summary judgment for the city in an action brought by the owners of real property to challenge the city's requirement that they transfer irrigation water to the city as a condition of annexation. In determining that the city's action was within its powers and did not violate the plaintiffs' rights to equal protection, the court stated:

Certain principles are applicable in considering the plaintiffs' contentions. The first is that a determination of city boundaries is a legislative function, which is to be performed by its governing body. The second logically follows therefrom: that in carrying out that duty the city council is endowed with broad discretion to make decisions and determine policies which it thinks will best fulfill its responsibilities.

538 P.2d at 186 (footnotes omitted).

Similarly, in Bradshaw v. Beaver City, 27 Utah 2d 135, 493 P.2d 643 (1972), the court affirmed a summary judgment for the city in a suit brought to enjoin annexation on the grounds that the annexation would be an unlawful act of the city council. The court noted that

[t]he determination of the boundaries of a city and what may or may not be encompassed therein, including annexation or severance, is a legislative

function to be performed by the governing body of the city.

27 Utah 2d at 137, 493 P.2d at 645.

The Utah Supreme Court has also held that the statute governing the procedure for incorporation of a town is not an unconstitutional creation of a municipal corporation by special law nor an unconstitutional delegation of legislative powers. Cottonwood City Electors v. Salt Lake County Board of Commissioners, 28 Utah 2d 121, 499 P.2d 270 (1972).

The authority of other jurisdictions dealing with annexation statutes and due process requirements, the Utah Supreme Court's decisions concerning the annexation statute, and the facts of the present case demonstrate that section 10-2-401 does not operate in such a manner as to deprive a person of his property without due process of law. First, annexation does not and has not in the present case deprived any person of his property. The fact that property may become subject to assessment or taxation by a municipal corporation, a political subdivision of the state, does not constitute a deprivation or taking of property since such property was always subject to assessment and taxation by the State. Utah Constitution, Article XIII, §§ 2, 3, 10; Kimball v. Grantsville City, 19 Utah 368, 57 P. 1 (1899).

Second, even if a deprivation of property could be found to occur through annexation, the Utah statute contains

sufficient safeguards to insure due process. The Appellant contends that due process would require notice and an election. With regard to notice, under the annexation statute, a certified copy of the plat or map and the petition are filed in the office of the recorder of the municipality. The question is considered and voted upon at a regular meeting of the city council. Pursuant to section 10-3-502, Utah Code Annotated (Supp. 1977), the time and place for such regular meetings are established by ordinance which is published. Pursuant to section 10-3-601, Utah Code Annotated (Supp. 1977), meetings of the city council are open and public. As evidenced by the present case in which the Appellant received notice of the petition and the hearing (Appellant's Brief, p. 7), these provisions insure adequate notice to interested land owners.

A secret election on annexation is not required by the due process provision of the Utah Constitution. The Utah Constitutional requirements that elections be by secret ballot and that the right to vote shall not be denied or abridged on account of sex cannot be construed to require an election to satisfy due process in annexation. The procedure adopted by the legislature of requiring a written petition signed by a majority of the owners of real property and the owners of at least one-third in value of the property provides safeguards sufficient to satisfy due process requirements.

B. THE ANNEXATION STATUTE, SECTION 10-2-401, UTAH CODE ANNOTATED (SUPP. 1977), DOES NOT VIOLATE ARTICLE I, SECTIONS 2, 24 OR 27 OR ARTICLE IV, SECTIONS 1 OR 8 OF THE UTAH CONSTITUTION.

The Appellant cites several provisions of the Utah Constitution in addition to the due process provision in support of his contention that the annexation statute is unconstitutional. However, none of these provisions is directly applicable to the procedure required for annexation, and none is violated by the present statutory procedure.

Article I of the Utah Constitution contains a general declaration of rights. Section 2 states:

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

This court has held that the equal protection provision of this section is not violated by the operation of the annexation statute. Child v. City of Spanish Fork, 538 P.2d 184 (Utah 1975).

Section 24 of article I simply requires that "[a]ll laws of a general nature shall have uniform operation." And section 27 states that "[f]requent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." Although these rights are unarguably necessary to the continued functioning of our system of

government, they contain no provision specifically relevant to the procedure required for annexation by a municipal corporation.

Article IV of the Utah Constitution concerns elections and the right of suffrage. Section 1 states:

The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

This provision is simply not relevant since there is no contention that a right has been denied on account of sex.

Section 8 of article IV provides that "[a]ll elections shall be by secret ballot." The Appellant, however, has cited no authority for his proposition that an election is necessary or would even be beneficial in determining whether municipal boundaries should be extended by annexation. As discussed in Point A, the determination of municipal boundaries is a legislative function and the power of the legislature in this regard is plenary. The annexation statutes of other states cited by the Appellant, as well as those in the cases discussed in Point A, confirm this general principle by evidencing the great diversity of legislative choices. Because of the absence of constitutional provisions requiring an election for annexation and the legislature's exercise of its function by specifying annexation

by petition of a majority of land owners, section 8 of article IV cannot be construed to require an election by secret ballot for the determination of municipal boundaries.

For the reasons set forth above, it is submitted that section 10-2-401, Utah Code Annotated (Supp. 1977), is constitutional and that the lower court's order dismissing the Appellant's complaint should be affirmed.

POINT II. THE EXTENSION OF MUNICIPAL BOUNDARIES BY ANNEXATION OF CONTIGUOUS TERRITORY AND THE IMPOSITION OF MUNICIPAL TAXES THEREON IS A LEGISLATIVE MATTER.

Since it is difficult to categorize the discussion of the questions raised under Point I or Point II of the Appellant's Brief inasmuch as they are interrelated and generally treated together in any such discussion, the Respondent incorporates herein the argument set forth under Point I, above. However, 56 Am. Jur. 2d Municipal Corporations § 57 at 113 summarizes the law applicable to the legislative powers pertaining to annexation as follows:

The power to annex contiguous territory to municipal corporations is a legislative power, existing exclusively in the legislature as an incident to the power to create and abolish municipal corporations at will. It is a power that neither the judicial nor the executive branches of the government can exert, and in the exercise of that power great latitude must necessarily be accorded to the legislative discretion, and every reasonable presumption in favor of the validity of its action must be indulged.

A more specific statement as to the validity of annexation statutes as against the contention that annexation will result in the imposition of municipal taxes and thus be violative of individual rights is contained in 56 Am. Jur. 2d Municipal Corporations § 59 at 114:

A statute annexing or authorizing the annexation of territory to a municipal corporation does not violate the rights of the individual residents of the affected territory either as citizens or as taxpayers. . . . A statute providing for the annexation of territory to an existing municipality is not objectionable because it may result in the taxation of property within the annexed territory to pay a pre-existing indebtedness of the municipality to which it has been added.

Section 10-2-401, Utah Code Annotated (Supp. 1977), which establishes the procedure for the annexation of territory to municipal corporations, has not been shown to violate either the state or federal constitutions and should be upheld.

IV. CONCLUSION

The annexation procedure set forth in section 10-2-401, Utah Code Annotated (Supp. 1977), which the Appellant agrees was followed by the Respondent Centerville City in annexing the Appellant's property to the city, does not deprive the Appellant of his property without due process of law nor violate any other provision of the state or federal constitution as contended by

the Appellant. Accordingly, the order of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE

I hereby certify that ten copies of the foregoing Brief were filed with the Supreme Court of the State of Utah this ___ day of September, 1978.

I further certify that two (2) copies of the foregoing brief were served on each of the following parties and counsel of record, at the respective addresses indicated, by mailing said copies to their offices by first class mail, postage prepaid, this ___ day of September, 1978:

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