

1981

Sweetwater Properties et al v. Town of Alta, Utah : Brief of Town of Alta in Opposition to Sweetwater Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SWEETWATER PROPERTIES, SBC
INVESTMENT COMPANY and
BLACKJACK TRUST,

Plaintiffs and
Respondents,

vs.

Case No. 17064

TOWN OF ALTA, UTAH, a municipi-
pal corporation,

Defendant and
Appellant.

BRIEF OF TOWN OF ALTA IN OPPOSITION TO
SWEETWATER PETITION FOR REHEARING

Appeal from Judgment of the Third District Court
in and for Salt Lake County
The Honorable James S. Sawaya, District Judge

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FEB 23 1981

Clerk, Supreme Court, Utah

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	:	
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pal corporation,	:	
	:	
Defendant and	:	
Appellant.	:	

BRIEF OF TOWN OF ALTA IN OPPOSITION TO
SWEETWATER PETITION FOR REHEARING

The Town of Alta, pursuant to Rule 76(e)(2) Utah Rules of Civil Procedure, herewith submits its answering Brief in response to the Petition for Rehearing filed by the Respondents, Sweetwater Properties, et al., in this Case on February 2, 1981.

Any possible doubt surrounding the judicial soundness and validity of the unanimous Opinion of this Court issued in this appeal on the 14th day of January, 1981 is entirely removed by the Petition for Rehearing of the Respondents (hereafter "Sweetwater"). The Petition for Rehearing not only mischaracterizes and misreads the Opinion of the Court, it misstates the substantive law of municipal annexation

under the newly enacted statutory arrangement set out in 10-2-401, et seq. U.C.A. (Repl. Vol. 2A 1979).

A balanced reading of the Opinion fairly reflects that it is a studied and accurate legal analysis of the Statutes on municipal annexation and that under the exigent facts of the Case at Bar, the right results were reached for the right reasons. The Petition for Rehearing has no probative merit, reurges, in part, questions that have already been fully briefed and argued, and should be summarily denied.

PRELIMINARY STATEMENT

The contentions of Sweetwater on Rehearing break-out in three parts:

1. Under the January 14, 1981 Opinion this Court has allegedly misread and misapplied the annexation Statutes of Utah to hold that there is only one method of municipal annexation and that such can now be accomplished, under the 1979 Legislation, with or without the acquiescence or desires of the property owner. Sweetwater argues on Rehearing that contrary to such alleged view by this Court, the only methodology for municipal annexation is through or in conjunction with a voluntary petition for annexation filed by a landowner(s) under the purported auspices of 10-2-416 (Repl. Vol. 2A 1979).

Even were this allegation of Sweetwater a legally sound interpretation (which it is manifestly not) of the annexation

Statutes of this State, it remains a mystery how such interpretation cuts in favor of Sweetwater under the factual merits of the Case so as to justify a plenary rehearing. Nonetheless, Alta does not demur to the legal argument of Sweetwater but will answer the same.

2. That Salt Lake County Service Area No. 3 and Salt Lake City were "affected entities" requiring full written notice of the Alta Policy Declaration adopted on September 13, 1979. This issue has already been fully briefed and argued by the parties as well as closely examined by the Court in its January 14, 1981 Opinion. The rule is well recognized in this Jurisdiction that the reargument of questions that have been fairly and fully decided in the main Opinion will not be reviewed and answered a second time on rehearing. Cummings v. Nielson, 42 Utah 157, 129 Pac. 619 (1912).

3. That contrary to the Opinion of the Court, the purported "vested property rights" of Sweetwater in and to the zoning and building regulations of Salt Lake County vis-a-vis the Policy Declaration of Alta were fully and constitutionally ripe under the facts of the Case.

Although extended examination is quite unnecessary to answer the arguments of Sweetwater, contentions 1 and 3 will be briefly treated. Argument 2 of Sweetwater is impaled both substantively and procedurally by examination in the main appeal and will not be repetitively reexamined for the second time in this Brief.

A R G U M E N T

POINT I.

THIS COURT WAS CLEARLY CORRECT IN ITS
CONCLUSION THAT THE ANNEXATION STATUTES OF
1979 ANTICIPATE THAT UNOPPOSED MUNICIPAL
ANNEXATION MAY TAKE PLACE WITHOUT THE CONSENT
OF THE ABUTTING AND AFFECTED PROPERTY OWNER.

1. Controlling Law on Rehearing.

The claim is made by Sweetwater in its Petition for Rehearing that the unanimous Opinion of this Court filed on January 14, 1981 misconstrued the 1979 Utah Annexation Statute and invented a new proposition of law enabling a municipality to annex against the consent of the affected landowner.^{1/} In principal part such Sweetwater contention was urged in the main Appeal.^{2/}

As noted above, Sweetwater is not entitled to a second debate on rehearing to reurge issues that have already been fairly submitted and cited. In the watershed case of Cummings v. Nielson, 42 Utah 157, 129 Pac. 619 (1912) this Court declared as the controlling law:

^{1/} See Sweetwater Petition for Rehearing pp. 4-8.

^{2/} Sweetwater Brief on Appeal pp. 9-16, 42-44.

"In this case nothing was done or attempted by counsel, except to reargue the very proposition we had fully considered and decided. If we should write opinions on all the Petitions for Rehearings filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases."

The Ninth Circuit Court of Appeals, in Anderson v. Knox, 300 F.2d 296 (9 Cir. 1962) put the issue in a more laconic manner when it observed:

"It is obvious from the statements in the affidavit that appellant plans, under the guise of a petition for rehearing, to study and reargue the case anew. Such is not the proper function of a petition for rehearing, and an attempt to do as suggested is an abuse of the privilege of making such a petition. Furthermore, such efforts are ill-advised and self-defeating." 300 F.2d at 297.

The Opinion of January 14, 1981 treating the issue of involuntary annexation of private property by a municipality was squarely raised by the Sweetwater Brief in the main Appeal. It is unentitled to march across the same ground a second time on rehearing. To that end, the Petition for Rehearing should be denied.

2. This Court Correctly Determined That the New Annexation Statute Envisions Involuntary Municipal Annexation of Private Property.

The flawed argument of Sweetwater is that 10-2-416, providing for a voluntary petition by landowner for annexation, is the sine qua non of all annexation under the 1979 Legislation

and that without a voluntary petition being filed by a majority of affected real property owners having at least one-third of the real property value, annexation may not be a legally accomplished fact. The trouble with that argument is they read Section 416 with myopic tunnel vision to the exclusion of the other substantive sections of the 1979 annexation Legislation and specifically 10-2-414, 415, 417 and 418 as well as the public policy proclamation set out in Section 401.

In point of fact, the recent annexation Statutes cited above, read in juxtaposition (along with Section 416), contemplates three methods in which municipal annexation may be accomplished. Besides the traditional method of annexation under a petition signed by a majority of property owners having one-third of the value (as set out in Section 10-2-416), 10-2-414 and 415 contemplates annexation by a municipality of abutting property without the consent and, perhaps, contrary to the desires of the property owner(s). That conclusion is all but axiomatic under an even-handed reading of 10-2-414 which provides, in substance, that a municipality, "on its own initiative" may adopt a policy declaration in conformance with particular requirements. Such declaration, under 10-2-414 would serve as a basis for an ordinance of annexation provided there is no protest filed by an affected entity or a written notice and objection of the affected landowner under 10-2-418.

Following such procedure and upon a certified copy of the annexation ordinance being filed with the County Recorder:

"* * * the annexation shall be deemed and held to be part of the annexing municipality, and the inhabitants thereof shall enjoy the privileges of the annexing municipality."
10-2-415 U.C.A. (Repl. Vol. 2A 1979).

Such methodology provides, a procedure on its own, without relationship to the Statute 10-2-414 upon which Sweetwater's argument hangs and falls.

But the landowner, as noted by this Court at page 4 of the Slip Opinion, is not without recourse. If a landowner is in the midst of urban property development, objects to the municipal policy declaration to annexation, and his property comes within one-half mile of the municipality, the annexation process falls under a third methodology and is subject to the provisions of 10-2-418.^{3/} That Statute is directly germane to this Case. Under Section 418, the owner may raise by written notice all legal and factual defenses "preventing an annexation to the municipality" after a policy declaration has once issued by the City. The landowner thereafter has 12 months from the filing of his written notice to negotiate in good faith and diligence the issues surrounding annexation. If an understanding has not been reached at

3/ If the property owner objects but his land is not within one-half mile of the municipal boundaries, his remedy is objection before the municipal body under the hearing procedures of 10-2-414 and 415. Slip Opinion of January 14, 1981.

the end of 12 months, property development may thereafter go forward as permitted by law. As this Court noted in its Slip Opinion p. 4, Sweetwater gave no written notice of its objection to the Alta Policy Declaration and desire to annex and undertook no negotiations at all, much less in good faith and diligence, to accomplish the annexation "in accordance with the legislative policies". Sweetwater can hardly claim that it is aggrieved when all that Alta did in this Case was to file a policy declaration in substantial compliance with 10-2-414 which, in turn, invoked the provisions of 10-2-418. A rational construction of the annexation policy set out in the 1979 Legislation under 10-2-401 et seq. supports fully the annexation procedural methodology described above and the Court in its January 14, 1981 Opinion so held.

The attempt upon the part of Sweetwater to read 10-2-416 as the sole litmus for any annexation under the 1979 Legislation is to ignore the plain legislative policy, and, in fact, would emasculate the pragmatic basis for a municipal policy declaration of annexation as plainly contemplated by 10-2-414, 415, and 418 in the first instance; indeed, those sections of the annexation chapter would be rendered moot. This Court has let it be known heretofore that it will not assume that the Legislature was engaged in idle penmanship in the construction of a comprehensive enactment. Worthen v. Shurtleff and Andrews, Inc., 19 Utah 2d 80, 426 P.2d 223 (1967); Howe v. Jackson, 18 Utah 2d 269, 421 P.2d 159 (1966).

The point of and answer to Sweetwater's argument on Rehearing is that 10-2-416 provides a method for municipal annexation upon petition by landowners. It simply inculcates the remnants of the earlier statute on the subject so that annexation may be pursued voluntarily at the option of landowners having a majority of the subject real property and one-third of its value. It is, however, an illogical non-sequitur to contend, as does Sweetwater herein, that 10-2-416 is the only method of municipal annexation and that voluntary, landowner petition is a statutory condition precedent to municipal annexation. That tortured construction reads 10-2-414, 415, 417 and 418, as well as the legislative policy of 10-2-401 out of the Statute books. 10-2-416 says no more and no less than a voluntary petition for annexation, but for the exception of island and peninsula annexation under 10-1-420, shall meet the majority and value requirements of Section 416.

The argument of Sweetwater is deficient in law presently as it was in the main appeal and should be swiftly rejected in this Rehearing.

3. The Flawed Argument of Sweetwater is, in All Events, to No Avail.

Even were Sweetwater to be granted its contention for the sheer sake of academic argument, it would not salvage its bankrupt position on rehearing. The facts are clear that the only action undertaken by Alta was the execution and enactment of a Policy Declaration relative to the Sweetwater property

on September 13, 1979. Sweetwater took no steps, under 10-2-418, to object to the Policy Declaration or to negotiate with Alta regarding the beneficial facets of annexation. Such was noted by this Court in its Slip Opinion, page 4, of January 14, 1981. Ergo, Sweetwater is without standing to argue its position on rehearing without attacking the constitutional validity of 10-2-414, 415 and 418. As this Court correctly noted, Sweetwater declined to and never made such constitutional attack.

POINT II.

THIS COURT CORRECTLY DETERMINED THAT ANY
CLAIM OF SWEETWATER AS TO VESTED RIGHTS UNDER
SALT LAKE COUNTY ZONING AND BUILDING REGULATIONS
WERE IMMATURE AND NOT PROPERLY PRESENTED.

Sweetwater argues on rehearing that its alleged constitutional guarantees to develop their property within Alta under the latter's Policy Declaration pursuant to the same zoning, density, and use ordinances and regulations as existed in Salt Lake County was fully mature in this appeal. The facts of the matter belie that contention.

Sweetwater commenced the instant litigation in the District Court three days before the Alta Policy Declaration was adopted on September 13, 1979. Sweetwater made no showing at trial that it either had any constitutional vested rights to develop their property in a particular fashion

within Alta or that they had been denied by Alta any such rights. Indeed, that was the record in the matter for Sweetwater had made no attempt, whatsoever, to either negotiate with Alta or to seek a determination as to the nature and extent of high-density condominium development within the territorial boundaries of Alta. Rather, what the record does manifest is that Sweetwater filed its action in District Court three days before Alta even adopted its Policy Declaration on September 13, 1979 claiming that the Policy Declaration was void, unenforceable and denied to Sweetwater its property rights without just compensation.

Thus, on appeal from the District Court decision, this Court could not reach the issue of any alleged constitutionally protected rights of property development, for the Alta Policy Declaration, in its broadest scope, had not passed on much less denied any claims or alleged rights to property development.

It is hardly surprising that this Court should find that the issue of any alleged constitutional and vested property rights of development were not justiciable in this matter. Such questions were not mature on the main appeal and they surely are not on rehearing.

C O N C L U S I O N

The Petition for Rehearing of Sweetwater in this Case is ill-fated and must be rejected. Most of its argument is

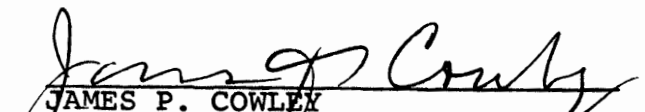
repetitive of the main Appeal and does not raise issues that were either unresolved or raised for the first time in the January 14, 1981 Opinion of the Court. A petition for rehearing is not a ceremonial formality for a disenchanted litigant.

The proposition advanced by Sweetwater that annexation, under the 1979 Utah annexation Legislation may only take place upon a voluntary petition being filed by concerned property owners having a quantified property value places such strain upon the legislative policy of 10-2-401 et seq., as well as ordinary commonsense that it literally reads out of existence the public predicate for a municipal policy declaration of annexation under 10-2-414 and 415.

This Court reached a sound and fully supported decision in its Opinion of January 14, 1981. The Petition for Rehearing of Sweetwater to review that Opinion, should be denied.

Respectfully submitted,


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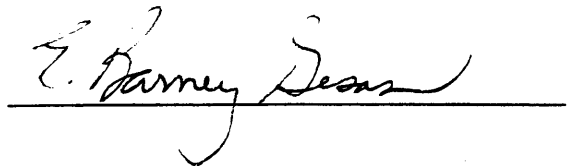
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Brief of Town of Alta in Opposition to Sweetwater Petition for Rehearing were served on counsel of record at the respective addresses indicated, by mailing said copies to their offices, first class mail, postage prepaid, this 20th day of February, 1981:

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A handwritten signature in cursive script, appearing to read "E. Craig Smay", is written over a horizontal line.