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Sweetwater Properties et al v. Town of Alta, Utah : Brief of Amicus Curiae Salt Lake County Upon 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 municipal corporation, Defendant and Appellant.	:	

BRIEF OF AMICUS CURIAE SALT LAKE COUNTY UPON REHEARING

Appeal From The Judgment Of The Third District Court
In And For Salt Lake County
The Honorable James S. Sawaya, District Judge

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NATURE OF THE CASE

This is an action by Sweetwater Properties, et al. against the Town of Alta to obtain a declaration that the enactment by the Town of Alta of an annexation policy declaration regarding its willingness to annex property owned by Sweetwater was not in compliance with the requirements of Utah law permitting such enactment and, further, that the enactment of the policy declaration to the extent that it resulted in restricting development of Sweetwater's property improperly interfered with the use of such property and violated state and federal constitutional prohibitions against the taking of property without due process and just compensation. Salt Lake County was joined as a defendant in the action as it would not issue building permits to Sweetwater after the enactment by the Town of Alta of the policy declaration.

DISPOSITION UPON APPEAL

This Court reversed the lower court and held that the Alta policy declaration met the requirements of Section 10-2-401, et seq., Utah Code Ann. (Supp. 1979) and that the development restrictions upon the Sweetwater property did not constitute a taking of property without just compensation or due process of law in violation of the United States and Utah Constitutions.

The Court further stated that under Utah's new annexation law (Section 10-2-401, et seq.), municipalities could annex additional territory without a petition from property owners.

Sweetwater filed a Petition for Rehearing and Salt Lake County filed a Motion for Leave to File a Petition for Rehearing concerning the issue of involuntary annexation. The Petition for Rehearing was granted and the motion of Salt Lake County to file a brief in the rehearing proceeding was also granted.

Motions for clarification of the scope of the rehearing were filed by both the Town of Alta and Sweetwater. On April 20, 1981 the Court entered its order that arguments on rehearing be limited to: "Under what circumstances can the Town of Alta, sua sponte, initiate a Policy Declaration for annexation pursuant to 10-2-401-423, U.C.A. 1953, as amended."

RELIEF SOUGHT

Salt Lake County asks that the Court modify its opinion to hold that a petition must be received from property owners pursuant to the requirements of Section 10-2-416, Utah Code Ann. (Supp. 1979) before a municipality may annex additional territory except where the annexation involves an island or peninsula of

unincorporated territory within the municipality. In the alternative, the Court should eliminate language from the opinion which states that cities may annex additional territory without receiving a petition from a majority of property owners of such territory.

STATEMENT OF FACTS

Sweetwater Properties, Inc. has an ownership interest in approximately 25 acres of land lying outside the Town of Alta adjoining its western boundary. In June of 1979, Sweetwater applied to the Salt Lake County Planning Commission for a conditional use permit to build 226 condominium units on the property. Several hearings were held before the Planning Commission on the application in the summer of 1979. The Planning Commission approved in concept up to 200 condominium units, and on September 13, 1979, gave final approval to the first 15 units. (Stipulation No. 6, 12).

Meanwhile, the Town of Alta was in the process of preparing a policy declaration regarding annexation of the Sweetwater property to the Town of Alta. Exhibit P-7. On September 13, 1979, the Town of Alta adopted the policy declaration after a public hearing was held on the matter earlier the same day. A policy declaration is a plan adopted by a municipality for annexation of additional territory. Utah Code Ann. 10-2-414. Section 10-2-418 limits development in the unincorporated area within a half mile of a municpality which the municipality has proposed for annexation in its policy declaration. This section states as pertinent:

> "Urban development restrictions.--Urban development shall not be approved or permitted within one-half mile of a municipality

in the unincorporated territory which the municipality has proposed for municipal expansion in its policy declaration, if the municipality is willing to annex territory proposed for development under the standards and requirements set forth in this chapter;..."

After enactment of the policy declaration, Salt Lake County refused to issue further building permits to Sweetwater and this lawsuit was instigated. The lower court held in favor of Sweetwater and the Town of Alta appealed.

ARGUMENT

I

INTRODUCTION

Salt Lake County, in its petition for rehearing, takes the position that enactment of a policy declaration by a municipality does not confer the right to the municipality to annex additional territory unless a petition has been filed by property owners pursuant to Section 416. This position does not concede that a policy declaration could legally be enacted without a petition for annexation having been filed by a majority of the property owners within the territory covered by the policy declaration. Cities within Salt Lake County have enacted such policy declarations without petitions having been previously filed, believing that they freeze urban development in the unincorporated territory within one-half mile of the boundaries of the municipalities. Prior to this case, Salt Lake County did not challenge the legality of such policy declarations in the Boundary Commission as cities within Salt Lake County have enacted supplemental or amended policy declarations after receiving petitions for annexation of specific territory exceeding five acres in size. The

amended policy declarations have covered the specific territory requested for annexation in the petitions. Appeals to the Salt Lake County Boundary Commission have been made by Salt Lake County from these amended policy declarations enacted after the petitions have been filed.

However, the Town of Alta now contends that municipalities may sua sponte initiate policy declarations and annex additional territory without a petition from property owners being filed at any stage of the proceeding and without a supplemental policy declaration being enacted after such petitions have been filed.

In response to such position, Salt Lake County points out that Section 416 provides that a petition for annexation may be received "for the purpose of preparing a policy declaration relative to the proposed annexation...." However, Section 414 provides that a municipality may, on its own initiative, adopt a policy declaration. These two sections may be read together consistently by limiting the right of municipalities to initiate or adopt a policy declaration on its own initiative to those annexations of islands or peninsulas of unincorporated territory which are initiated under the provisions of Section 420 which does not require a petition.

Sweetwater has thoroughly covered this issue in its brief and Salt Lake County will not elaborate on this issue.

Assuming arguendo that a municipality may enact a policy declaration pursuant to Section 416 to control development beyond its boundaries as provided for in Section 418 without a petition for annexation having previously been filed by property owners,

this does not mean the municipality may then sua sponte annex the property. Points II through IV of this brief set forth Salt Lake County's position on this issue.

II

THE COURT IGNORED SECTION 10-2-416, UTAH CODE ANN. (SUPP. 1979) IN APPARENTLY HOLDING THAT UTAH LAW NOW PERMITS ANNEXATION OF ADDITIONAL TERRITORY BY A MUNICIPALITY WITHOUT A PETITION BEING FILED BY A MAJORITY OF PROPERTY OWNERS OF SUCH PROPERTY.

The contention that a municipality may annex additional property without a petition being filed by a majority of property owners within the annexed territory was not raised by any of the parties to the litigation at trial or upon appeal. The issue is not properly before the Court as the Town of Alta has not attempted to annex Sweetwater property although it enacted a policy declaration for such property.

However, the Court, in its opinion, stated that under the 1979 annexation law [10-2-401, et seq., Utah Code Ann. (Supp. 1979)], municipalities may annex property contrary to the wishes of a majority of the property owners.

> "Until the present law was passed by the legislature, municipalities could not extend their boundaries except upon petition of a majority of the owners of the property to be annexed who also represented not less than one-third in value of that property. Cities in and of themselves had no right to initiate annexation.
>
> "The legislature in 1979 changed this concept and adopted an entirely new policy and has now made provision for cities to annex contiguous areas, with certain limitations, and has authorized them to do so even though it may be contrary to the wishes of the property owners...."

"Cities are given this authority of annexation without permission of the landowner by Section 10-2-417, which, in effect, and as far as material here, provides that the municipality may extend the municipal corporate limits if the property is (a) contiguous and (b) lies within the area projected for municipal expansion under the annexing municipality's policy declaration.

* * *

"Except for their right to be heard at the public hearing before adoption of the policy declaration and asserting whatever influence they may have within the governing body of the city or other affected entities, the property owner cannot prevent the annexation if there is compliance with these sections of the law."

The Court, in reaching this conclusion, apparently did not consider Section 10-2-416 of the 1979 annexation law. Section 10-2-416 specifically retained the requirement from prior law (10-3-1, Utah Code Ann. 1953) that annexations must be initiated by a petition from property owners.

"10-2-416. Petition by land owners for annexation--Plat or map to be filed--Resolution or ordinance passed by two-thirds vote.--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 under the supervision of a municipal engineer or a competent surveyor, 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 the petitioners. The members of the governing body may, by resolution or ordinance passed by a two-thirds

vote, accept the petition for annexation for the purpose of preparing a policy declaration relative to the proposed annexation. Except as provided for in Section 10-2-420, no annexation may be initiated except by a petition filed pursuant to the requirements set forth herein." (emphasis added)

The original annexation bill that passed the Utah House of Representatives in 1979 did not contain the last sentence in Section 416. Reading other sections of the bill in conjunction with Section 416 it was not entirely clear as to whether the filing of a petition by property owners was the exclusive method to initiate annexation proceedings. This uncertainty was remedied when the Utah Senate amended the bill by adding the final sentence in Section 416 which specifically prohibits initiation of annexation except by a petition filed by property owners unless the annexation meets the requirements of Section 420. Volume 2, Utah State Senate Journal, p. 1365, 1366.

Section 420 reads as follows:

"10-420. Municipal services by adjoining municipality--Annexation by servicing municipality--protest.--Where islands or peninsulas of urbanized territory exist within or contiguous to the boundaries of an existing municipality and require the delivery of municipal-type services under circumstances which are detrimental to full service efficiency, such areas may be serviced by an adjoining municipality through agreement with county or service district authorities. Any municipality servicing such an area under the provisions of this section for more than one year, may, upon initiative of its governing body and without a receipt of a petition therefor, extend its corporate limits to include such territory; however, such an annexation must be preceded by a municipal policy declaration as provided in this chapter and shall be

> defeated if a majority of the owners of real property and the owners of at least one-third in value of the real property, as shown by the latest assessment rolls, of the area file a written protest to such annexation not later than the day preceding the public hearing." (emphasis added)

Section 420 is the only exception to the requirement that annexations must be initiated by a petition. The purpose of Section 420 is to create a method whereby cities and counties could eliminate islands and peninsulas of unincorporated territory within cities without a petition from property owners. This section allows the city to initiate the annexation but still gives the property owners the right to defeat the annexation through a protest filed by a majority of the property owners. If cities could initiate annexations without a petition pursuant to other sections within the act, there would have been no purpose for including Section 420 in the act.

Other sections of the 1979 annexation law do not support the contention that municipalities may initiate annexations without a petition.

Section 414 provides that a municipality may enact a policy declaration upon its own initiative, upon recommendation of its planning commission or in response to a petition. It does not state that a municipality may initiate an annexation without a petition from property owners. The reason the section provides that a municipality may adopt a policy declaration on its own initiative is to allow cities a means of controlling development beyond their boundaries as provided for in Section 418 even

though property owners have not petitioned for annexation. The provision in Section 418 permitting a property owner to develop in the county after 12 months where a good faith effort has been made to annex but where there are legal and factual barriers to annexation was included to prevent the situation where a landowner could not develop within a municipality because he could not annex and also could not develop within the county because the county could not approve the development. This situation could occur where property is located within a half mile of a municipality but is not contiguous and the intervening landowners refuse to petition for annexation. Nowhere does Section 418 provide for involutary annexation although a property owner may be forced to file a petition for annexation in order to develop his property.

Section 417 which lists the standards for annexation does not include as a standard the filing of a petition. However, this section directly follows Section 416 and the County would submit that Section 417 assumes the previous section dealing with initiation of annexation has been complied with. In any event, as previously indicated, the last sentence in Section 416 was added as an amendment to the act to eliminate any possible contention that cities could annex additional territory without the filing of a petition by property owners.

III

THE TOWN OF ALTA INCORRECTLY CONTENDS THAT THE 1979 ANNEXATION LAW PROVIDES THREE SEPARATE METHODS FOR ANNEXATION.

The Town of Alta, in its brief in opposition to rehearing, apparently contends that there are three separate annexation methods: (1) a petition from property owners under Section 416, (2) a policy declaration upon its own initiative under Section 414, and (3) a policy declaration upon its own initiative and an objection from a landowner under 418. The statute does not support this contention. A policy declaration for annexation as provided for in Section 10-2-414 is intended as a planning document for annexation and not a method of annexation. Section 414 requires the municipality to plan and study the consequences from expansion of its boundaries rather than considering proposed annexations upon an ad hoc basis. If Section 414 is read as an alternative to Section 416 as a method for initiating annexation, a municipality could enact a policy declaration covering the entire unincorporated area, and if no affected entity protested the policy declaration, the unincorporated area could then be annexed although the entire population opposed the annexation. Nowhere in Section 414 is there any language which gives municipalities the power to exclude property owners from the annexation process.

Under plaintiff's position an owner of developed or undeveloped property has no right to prevent an involuntary annexation, but one who happens to be in the midst of urban development may

object to the annexation pursuant to Section 418. Such a result makes no sense and is not supported by the wording of the statute. As previously stated, 418 is not a method of annexation or part of the annexation process. Rather, it is a method of giving cities control of development in the unincorporated area within one-half mile of a municipal boundary by preventing approval of urban development by the county in such an area, thus forcing owners to annex in order to develop.[1]

IV

THE 1979 ANNEXATION LAW DID NOT CHANGE THE REQUIREMENT IN UTAH THAT ANNEXATIONS MUST BE INITIATED BY THE FILING OF A PETITION SIGNED BY A MAJORITY OF THE PROPERTY OWNERS.

Utah's annexation law prior to 1979 only required that a majority of real property owners and the owners of at least one-third in value of the property lying contiguous to a municipality file a petition seeking annexation to the municipality. Utah Code Ann. 10-3-1, 1953. The city could then annex the property upon adoption of a resolution by two-thirds of the members of the governing body. The law contained no standards for annexation

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[1] Policy declarations have been enacted by cities covering nearly the entire unincorporated valley area of Salt Lake County. Many unincorporated areas are included within the policy declarations of two or more cities. Prior to the decision in this case, no protest was filed by Salt Lake County or any city within the county as no petitions have been filed requesting annexation of these areas. Prior to actual annexation of five acres or more, cities have been enacting supplemental policy declarations after receiving a petition for annexation. Prior to the decision in this case, Salt Lake County is aware of no city within the state which has attempted to annex additional territory without receiving a petition pursuant to Section 416.

except that the annexation could not create an island of unincorporated territory within a municipality. Section 10-3-2, Utah Code Ann. (Supp. 1975). Counties complained that many cities annexed additional commercial and industrial territory solely to gain the tax base at the expense of counties, ignoring logical boundary lines between unincorporated and incorporated territory. Counties further complained that no planning was being done by cities concerning the impact of annexations on the delivery and cost of providing municipal services and the impact of annexations on counties and other political subdivisions. Cities, on the other hand, complained that counties were approving development adjacent to city boundaries without any input or control over such development by cities. The matter reached the boiling point during 1977 and 1978 when numerous lawsuits were instigated between counties and cities located in Utah contesting the legality of many annexations by municipalities.

The 1979 annexation law was introduced in the Legislature as an attempt to solve this land battle between counties and cities. To satisfy the complaints of counties, the act provided for administrative review of annexations by creating a boundary commission, created additional standards for annexation, and required cities to plan for expansion through the enactment of a policy declaration for annexations. To satisfy the complaint of cities, the Legislature gave cities some control over development beyond their boundaries by prohibiting the approval by counties

of urban development in unincorporated territory within one-half mile of the boundary of a municipality where such municipality included the territory within its policy declaration.

Nowhere in the body of the act, the title of the act, or the history of the act, is there any support for the proposition that the 1979 annexation law provides for annexation of additional territory by a municipality without a petition from a majority of the property owners. Initiation of annexation has been the sole prerogative of property owners in the state of Utah since 1898. R.S. 1898 & C.L. 1907 §§287, 307. If the Legislature intended to make such a radical change in the annexation process as to permit annexation of additional territory by municipalities without the consent of property owners, it would have been very easy for it to have explicitly done so. Instead, the Legislature did just the opposite--it added the last sentence in Section 416 explicitly providing that the petition method was the sole method for initiating annexation except where the annexation involved an island or peninsula of unincorporated territory within a municipality.

Salt Lake County and other counties in the state strongly supported a 1979 annexation law and lobbied for its enactment. If any contention had been made during the legislative process that the bill provided for involuntary annexation, Salt Lake County would have strongly opposed it. However, because Sections 414, 415 and 417 do not directly mention initiation of annexation, the Salt Lake County Attorney's Office suggested and lobbied for an amendment to Section 416 which explicitly would provide

that annexations must be initiated by a petition. This was done by the addition of the last sentence to that section.

If the last sentence of Section 416 does not prohibit initiation of annexation by other than the petition process provided in that section, then the provision has absolutely no meaning at all. It is a well established axiom that the Legislature intended every provision of an statute to have some meaning. This Court, in In Re Richenbach's Estate, 186 P.2d 973 (Utah 1947), quoting from American Jurisprudence, stated the rule as follows:

> "'In the interpretation of a statute the legislature will be presumed to have inserted every part thereof for a purpose, to have intended that every part of a statute should be carried into effect. The maxim 'ut res magnus quam pereat' requires not merely that a statute should be given effect as a whole but that effect should be given to each of its provisions....'" 50 Am. Jur. Statutes, par. 358. See also Metropolitan Water District v. Salt Lake City, 380 P.2d 721 (Utah 1963).

Salt Lake County suggests the axiom is applicable in this case and the Legislature intended exactly what it said when it provided in Section 416 that annexation must be initiated by a petition from the property owners.

CONCLUSION

The language in the Court's opinion indicating that cities may initiate annexations without a petition from property owners will have a far-reaching effect upon the structure of local government. The issue is of critical importance to Salt Lake County and property owners within the state of Utah.

The right of property owners to choose through the petition process the form of local government under which they are to be governed is a right which has been exclusively granted to property owners by the Legislature since 1898. Salt Lake County would submit the Legislature in the 1979 annexation law couldn't have been more explicit than in the language it used in Section 416 to assure that this prerogative remains exclusively with property owners.

> "...Except as provided for in section 10-2-420, no annexation may be initiated except by petition filed pursuant to the requirements set forth herein."

For this reason, Salt Lake County submits that the Court should modify its opinion to hold that a petition must be received from property owners pursuant to the requirements of Section 10-2-416, Utah Code Ann. (Supp. 1979) before a municipality may annex additional territory except where the annexation involves an island or peninsula of unincorporated territory within the municipality. In the alternative, the Court should eliminate language from the opinion which states that cities may annex additional territory without receiving a petition from a majority of property owners of such territory.

Respectfully submitted this 6th day of May, 1981.

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