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ANNEXATION - ARKANSAS

Houston v. City of Hot Springs

Court of Appeals of Arkansas, DIVISION II - March 14, 2018 - S.W.3d - 2018 Ark. App. 196 - 2018 WL 1312252

Appearing pro se, landowners in unincorporated area of county, which was annexed by city pursuant to city ordinance, brought suit, seeking a declaration that city did not comply with the statutory requirements for annexation, thereby making city ordinance void, seeking a declaration that statutory annexation procedure violated equal protection, and seeking declaration that annexation procedure violated the Arkansas Constitution by infringing on landowners' rights to representation and to vote.

When city filed motion for declaratory judgment and motion for summary judgment, landowners retained counsel, and thereafter, landowners filed an amended and supplemental class-action complaint for declaratory judgment. The Circuit Court entered summary judgment for city, and landowners appealed.

The Court of Appeals held that:

- Until publication, city annexation ordinance was not valid;
- Statutory annexation procedure did not violate equal protection by denying the right to vote to those who resided in area to be annexed; and
- Statutory annexation procedure was constitutional under the equality sections of the Arkansas Constitution.

When city contacted Arkansas Geographic Information Systems (GIS) office, pursuant to annexation statute, 48 hours after it had passed ordinance, annexing unincorporated area of county into city, the ordinance was not yet valid, and would not be until the day the city published the ordinance and three days after it had contacted GIS, and until such publication, ordinance was not valid; ordinance did nothing and was invalid before its post-enactment publication.

Statutory annexation procedure, by which city sought to annex unincorporated area of county into city, did not violate equal protection by denying the right to vote to those who resided in the area to be annexed; city allowed affected property owners a chance to be heard before passage of annexation ordinance, all who wished to speak were allowed to sign up to do so, and those who signed up were allowed to speak even though annexation statute did not create affirmative duty for city to allow everyone to do so, city employed a simple sign-up process to ensure that those who wished to speak were allowed to do so, and city had no responsibility or duty to force people to sign up and speak.

City's actions to comply with statutory maximum-occupant load at city's board of directors' meeting regarding city ordinance, seeking annexation of unincorporated area of county into city, did not violate due process; crowd exceeded the lawful limits of the hearing room and the excess number were asked by fire chief to stand outside the meeting room, with the door to the meeting room open, no one complained that he or she wanted to speak but was not allowed to do so, and landowners

opposing ordinance were entitled to reasonable opportunity to be heard, and they were given that reasonable opportunity.