

Bond Case Briefs

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INCORPORATION - SOUTH DAKOTA

State through Attorney General v. Buffalo Chip

Supreme Court of South Dakota - November 10, 2020 - N.W.2d - 2020 WL 6601926 - 2020 S.D. 63

State filed a petition for, or in the nature of, a writ of quo warranto seeking a judgment declaring that campground did not lawfully incorporate as a municipality, after the Supreme Court concluded that county residents and neighboring city lacked standing to challenge the incorporation.

The Circuit Court granted State's motion for summary judgment. Campground appealed.

The Supreme Court held that:

- As a matter of first impression, statute that barred suits seeking to annul the existence of an actually incorporated municipality did not apply;
- State was not barred by doctrines of laches, estoppel, and waiver from bringing petition; and
- A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters.

Statute that barred suits seeking to annul the existence of a municipality that had actually incorporated did not apply to State's petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality; State did not allege that campground abused its powers or surrendered its charter as legally existing corporation, but rather State sought to prevent campground from further acting as municipal corporation because it did not lawfully incorporate in the first instance.

State was not barred by doctrines of laches, estoppel, and waiver from bringing petition for writ of quo warranto that sought judgment declaring that campground did not lawfully incorporate as a municipality, despite contention that State would have known from census that campground did not have requisite 100 residents when it sought to incorporate and State should have challenged its existence then; no statute required State to institute action prior to a municipality's purported incorporation, and Secretary of State's filing of certified copy of canvas of votes in favor of incorporation was ministerial act that could not operate as waiver.

A municipality is prohibited from incorporating if it contains less than 100 residents or if it contains less than 30 voters; under either scenario, a municipality is not allowed to incorporate.