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ANNEXATION - MISSISSIPPI

Matter of Enlarging, Extending and Defining Corporate Limits and Boundaries of City of Canton v. City of Canton

Supreme Court of Mississippi - May 6, 2021 - So.3d - 2021 WL 1807424

Residents of unincorporated community neighboring city petitioned for incorporation. Subsequently, city petitioned to annex five areas of unincorporated territory in same county.

After consolidating the incorporation and annexation proceedings, the Chancery Court granted incorporation petition in part and annexation petition in part. Objectors appealed, and city cross-appealed.

The Supreme Court held that:

- Signatures from original incorporation petition counted in determining whether amended petition met statutory signature requirement;
- Chancellor did not manifestly err in determining that incorporation petition contained requisite signatures;
- City had need to expand with respect to two areas with significant spillover residential development;
- City's path of growth weighed in favor of annexation of those two areas;
- City had reasonable financial ability to annex two areas; and
- Proposed annexation was reasonable in terms of fairness and equity for two areas.

Signatures from original petition to incorporate new municipality counted in determining whether amended petition met statutory requirement of signatures of two-thirds of qualified electors residing in proposed incorporation area, even though petitioners did not attach signatures to amended petition, where grant of petitioners' motion to amend petition was for limited purpose of correcting a legal description to match city's map, and amended petition referred back multiple times to original petition, which included numerous lists of signatures.

A certified copy of voter roll is starting point for determining registered voters as part of a determination of whether a petition to incorporate new municipality contains requisite signatures of two-thirds of qualified electors residing in proposed incorporation area, and a voter's address on roll is the most viable record of whether a voter resided in proposed incorporation area on date of filing.

Chancellor did not manifestly err in determining that petition to incorporate new municipality contained requisite signatures of two-thirds of qualified electors residing in proposed incorporation area, even though voter roll provided by county on date of initial filing was incomplete because it did not contain inactive voters, where chancellor, in his own analysis based on all testimony, accepted petitioners' methodology of accounting for known voters by canvassing area and unknown voters by a process known as reverse engineering voter roll, chancellor calculated margin or cushion of qualified electors, and chancellor used methodology based on a rationale used by county election commission, as well as that used throughout state, when attempting to purge voters.

While voter rolls are the most viable evidence for determining registered voters as part of a determination of whether a petition to incorporate new municipality contains requisite signatures of two-thirds of qualified electors residing in proposed incorporation area, citizens seeking incorporation may offer evidence that voters appearing on voter rolls have died, have moved, or otherwise have become ineligible to vote.

To determine reasonableness of annexation, a court considers: (1) need for expansion; (2) path of growth; (3) potential health hazards; (4) city's financial ability to make improvements and furnish municipal services; (5) need for zoning and overall planning; (6) need for municipal services; (7) natural barriers; (8) past performance and time element involved in city's provision of services to present residents; (9) economic or other impact of annexation upon those who live in or own property in annexation area; (10) impact of annexation upon voting strength of protected minority groups; (11) whether property owners and other inhabitants have enjoyed economic and social benefits of city without paying fair share of taxes; and (12) any other factors that may suggest reasonableness.

Factors for determining whether a city has a need for expansion, as a factor for determining reasonableness of annexation, include: (1) spillover development into proposed annexation area; (2) city's internal growth; (3) city's population growth; (4) city's need for development land; (5) need for planning in annexation area; (6) increased traffic counts; (7) need to maintain and expand city's tax base; (8) limitations due to geography and surrounding cities; (9) remaining vacant land within city; (10) environmental influences; (11) city's need to exercise control over proposed annexation area; and (12) increased new building permit activity.

City had need to expand with respect to two of five areas of unincorporated territory that it sought to annex, so as to support finding that city's proposed annexation was reasonable with respect to those areas, even though city had vacant land within its boundaries and a declining population, where two areas had significant residential development that spilled over from city at a very dense level, unlike the other three areas, and citizens in two areas received benefit of water, sewer services, electricity, natural gas, police response, fire response, and emergency response without having to pay ad valorem taxes to help city fund the large expenses incurred to provide services.

Factors for determining a city's path of growth, as a factor for determining reasonableness of annexation, include: (1) spillover development in annexation area; (2) annexation area immediately adjacent to city; (3) limited area available for expansion; (4) interconnection by transportation corridors; (5) increased urban development in annexation area; (6) geography; and (7) subdivision development.

The "path of growth" factor for determining reasonableness of city's proposed annexation of five areas of unincorporated territory weighed in favor of annexation for first and second areas, was neutral for third and fourth areas, and weighed against annexation of fifth area, where first and second areas had significant spillover residential development, third and fourth areas contained a mix of commercial and residential development with no spillover, fifth area contained commercial development with no spillover, city provided services to first four areas, and third through fourth areas lay, at best, in potential growth paths for city unlike first and second areas which were an active path of growth.

Potential health hazards from sewage and waste disposal existed in proposed annexation areas, as a factor for determining reasonableness of city's proposed annexation of five areas of unincorporated territory, and those potential hazards were worthy of remedy, annexation or otherwise.

Factors for evaluating a city financial ability to make the improvements and furnish municipal

services promised, as a factor for determining reasonableness of annexation, include (1) city's present financial condition; (2) sales tax revenue history; (3) recent equipment purchases; (4) financial plan and department reports proposed for implementing and fiscally carrying out annexation; (5) fund balances; (6) city's bonding capacity; and (7) expected amount of revenue to be received from taxes in annexed area.

City had reasonable financial ability for proposed annexation with respect to two of five areas of unincorporated territory that city sought to annex, so as to support finding that annexation was reasonable with respect to those two areas, which had significant spillover residential development; although city had recent budget cuts and violations of state audit and budget laws, city also a history of stable sales tax revenues, city's bond capacity was healthy, and an expert projected that annexation would generate net general-fund revenues which would be added to city's debt-servic-fund balance.

City's proposed annexation was reasonable in terms of fairness and equity as to the two proposed areas that had significant spillover residential development unlike the three other proposed areas, even though city had highest millage rate in county, where financial impact resulting from city taxes would be offset by savings on both homeowners-insurance premiums and on certain county-tax levies that could potentially be eliminated, residents in annexed areas would begin receiving their water and sewer services at in-city rates which would result in savings on utility bills, and annexation would result in a de minimis tax increase to owners of vacant or agricultural land.