

NEBRASKA SUPREME COURT HOLDS THAT “STRIP” ANNEXATION IS STILL “STRIP ANNEXATION”

David J. A. Bargaen, Esq.
Rembolt Ludtke LLP

Fresh on the heels of upholding the City of Omaha’s annexation of territory to reach and annex the City of Elkhorn in *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007), the Nebraska Supreme Court issued its ruling in *County of Sarpy v. City of Gretna* on February 23, 2007. In *Sarpy County*, the Court struck down Gretna’s attempt to annex a strip of federal highway 6/31 and a strip of state highway 370 and their adjacent rights-of-way. Gretna sought to annex the portions of the highways in an attempt to have some control over development that would occur within those areas and one mile beyond them—the so-called “extra-territorial jurisdiction” (ETJ). The two cases provide an opportunity for cities of all classes to learn from the experience of others, and to be reminded of the law on annexation. If done correctly with careful attention to state statute and controlling case law, cities may avoid the pitfalls of improper annexation.

The Court did not necessarily plow new ground in *Sarpy County*, but it did clarify its prohibition on “strip” or “corridor” annexation enunciated in previous cases. In *Johnson v. City of Hastings*, 241 Neb. 291, 488 N.W.2d 20 (1992) and *Cornhusker Public Power District v. City of Schuyler*, 269 Neb. 972, 699 N.W.2d 352 (2005), the Court disapproved of cities annexing narrow strips of land in order to reach larger parcels, which parcels were the apparent target of the annexation efforts in those cases. In *Johnson*, the City of Hastings attempted to annex a nearby community college campus located three-quarters of a mile east of the city’s limits by also annexing a connecting 120-foot-wide strip of a federal highway and its right-of-way. The Court noted in *Johnson* that “the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation.” Statutory language permitting annexation by cities generally provides that territory “contiguous or adjacent” to the city may be annexed. The Court in *Johnson* stated that the words “contiguous” and “adjacent” in the statute are synonymous, and that a territory is not “contiguous” to a city unless a *substantial part* of the territory is *adjacent and parallel* to the existing city limits. Thus, a strip of land, the long side of which touches a city’s limits, would likely be subject to proper annexation by a city, whereas a strip of land connected only by a considerably short side to a city’s limit would not be subject to annexation. The Court struck down Hastings’

Municipal Law Practice Group

David J. A. Bargaen
dbargaen@remboltludtke.com

Mark A. Fahleson
mfahleson@remboltludtke.com

Timothy L. Moll
tmoll@remboltludtke.com

Rembolt Ludtke LLP

1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
Fax: 402 / 475-5087
402 / 475-5100

125 South 6th Street
Seward, NE 68434
Fax: 402 / 643-3969
402 / 643-4770

www.remboltludtke.com

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attempt as impermissible “strip” annexation. A similar scenario arose in *City of Schuyler*, where the city attempted to annex a strip of land thirty feet wide and over 4,000 feet long to reach a larger parcel of land. Again, the Court struck down the annexation.

In this case, Gretna had not attempted to include a larger parcel of land at the end of the strips of highway it annexed, but annexed only the strips of highway and corresponding rights-of-way. Thus, Gretna argued, the decisions in cases such as *Johnson* and *City of Schuyler* did not invalidate Gretna’s attempt, because the situations were different. Gretna argued, based on those cases, that “strip” annexation is invalid only when it is used to reach a larger parcel of land. The Court did not agree. “The invalidity of a strip annexation is not based upon the existence of a larger tract at the distal end of the strip, but, rather, upon the lack of substantial adjacency where the proximal end meets the corporate limits of the city.”

The lesson learned is that annexation of just a strip of territory, without a larger parcel connected to the end of the strip, is still impermissible “strip” annexation under state law and the Court’s precedent. The city’s in all of these cases were attempting to extend their zoning and regulatory authority over areas that did not touch the cities’ limits. In this case, however, Gretna attempted to do so through use of its ETJ, which would have extended one mile beyond the annexed strips of land, while the cities in *Johnson* and *City of Schuyler* attempted outright annexation of the larger parcels by including a narrow strip of land. The Court has now struck down both methods. Cities wishing to annex territory or to extend their regulatory power beyond their limits will need to ensure they annex sufficient territory between their limits and the object territory, or to avoid annexing merely a strip of land, to accomplish their goal. Careful adherence to state statute and Nebraska Supreme Court precedent is critical for success. As cities continue to use annexation as a means of economic development and to ease budget concerns, they will need to seek competent legal advice to achieve that success.

Bargen is an associate with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or dbargen@remboltludtke.com. This article is provided for general informational purposes only and should not be construed as legal advice. Those requiring legal advice are encouraged to consult with their attorney.