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## Municipal Corporations - Annexation - Validity of Corridor or Strip Annexation

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## RECENT CASES

**MUNICIPAL CORPORATIONS—ANNEXATION—VALIDITY OF CORRIDOR OR STRIP ANNEXATION**—The city of Houston, Texas attempted to annex by ordinance a 220 acre tract of land. Included within the annexed territory was a strip of land 150 feet wide and six and one-eighth miles long which connected the 220 acre tract with the city limits of Houston. All of the land was within a strip which had been specially annexed previously for limited purposes but was not within the corporate limits of Houston. The trial court granted the appellee a temporary injunction, finding that the land was neither adjacent to the city nor within its territorial jurisdiction. The appellate court reversed the trial court's finding and dissolved the injunction. It found that the ordinance providing for annexation was not void since the city enacted it under constitutional, statutory, and charter authority and because this authority did not provide for any length, width, shape or amount of area that a city might annex, a purely collateral attack was not permissible. *City of Houston v. Houston Endowment, Inc.*, 428 S.W.2d 706 (Tex. Civ. App. 1968).

In the instant case the court determined that the stem or corridor of land was adjacent and contiguous to the city limits in satisfaction of the statutory requirement of contiguity of annexed territory.<sup>1</sup> This decision is in accord with other Texas cases which have dealt with the use of a narrow corridor connecting a larger tract with a city's limits as a valid means of supplying the necessary contiguity between the annexed territory and the annexing city.<sup>2</sup> The position of the Texas courts is that the use of a connecting stem to reach annexed territory is not alone a sufficient reason to render an annexation ordinance void because the statutes providing for annexation do not define the specific shape or form of annexed territory other than it must be contiguous.<sup>3</sup>

Other states are divided with regard to the use of a corridor as a valid means of providing contiguity between annexed territory and a city's corporate limits. Even states taking corresponding

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1. *City of Houston v. Houston Endowment, Inc.*, 428 S.W.2d 706, 709 (Tex. Civ. App. 1968).

2. *See, e.g.*, *City of Wichita Falls v. Bowen*, 143 Tex. 45, 182 S.W.2d 695 (1944); *State ex rel. City of West Orange v. City of Orange*, 300 S.W.2d 705 (Tex. Civ. App. 1957).

3. *Id.* Most states statutorily provide that annexed territory must be "adjacent" or "contiguous" or both. *See*, N.D. CENT. CODE § 40-51.1-01 (1968); 2 E. MCQUILLIN, *MUNICIPAL CORPORATIONS* § 7.20 at 361 (3rd ed. 1966).

positions have arrived at them through various methods of reasoning. Since corridor annexation is a frequently used and often expedient method for the acquisition of additional territory, it would seem necessary that a semblance of order be given to the law involved.

The courts of California have taken the position that corridor annexation is valid, but with a slight variation from the approach taken by Texas. The decision frequently cited by California courts is the early case of *People ex. rel. Peck v. City of Los Angeles*.<sup>4</sup> In this case the California Supreme Court upheld the validity of the use of a corridor one-half mile in width and sixteen miles in length. It reasoned that the shape of an annexed area was a political and not a judicial question. The Court stated:

The size and shape of territory, its adaptability for municipal purposes, its extent and contiguity to another municipality, are all matters which are left to be determined by the people of the territory to be annexed and the annexing municipality. . . .<sup>5</sup>

The problem with a perfunctory finding of the validity of corridor annexation because it is a political rather than a judicial question is in the determination of the scope of the power which a legislature intended to confer when it provided municipalities with the power of annexation. A later California case implied that there definitely were limits to the use of corridor annexation and that such annexation must be examined subjectively in order to determine whether such limits had been exceeded. *People v. Town of Corte Madera*<sup>6</sup> emphasized that the courts will interfere where such annexation amounts to a fraudulent abuse of powers conferred by statute. Although this qualification may seem elementary and obvious, it is mentioned here because courts which look with disfavor upon corridor annexation often invalidate its use on the ground that the use of a corridor is always a fraudulent abuse of power.

Oklahoma takes a position similar to that of Texas and California.<sup>7</sup> In *Sharp v. Oklahoma City*<sup>8</sup> the Supreme Court of Oklahoma determined that the statute regarding annexation did not contain any limitation as to the extent, form, or shape of the annexed territory and that such extent and shape is a political rather than a judicial question. This case was relied on by an Oklahoma federal district court in *Botsford v. City of Norman* in upholding the

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4. 154 Cal. 220, 97 P. 311 (1908).

5. *Id.*, 97 P. at 313.

6. 115 Cal. App.2d 32, 251 P.2d 988 (1952).

7. See, e.g., *Town of Luther v. State*, 425 P.2d 986 (Okla. 1967); *Sharp v. Oklahoma City*, 181 Okla. 425, 74 P.2d 383 (1937).

8. 181 Okla. 425, 74 P.2d 383 (1937).

validity of an annexation involving an angular strip 67 feet wide.<sup>9</sup> *Botsford* was appealed to the Court of Appeals for the Tenth Circuit.<sup>10</sup> The Court of Appeals recognized the political quality of annexation in stating that the judicial function involved is the determination of whether a municipality has acted within its powers and whether such act was reasonable.<sup>11</sup> But with regard to the city's use of a corridor, the Court chose to look no further than to find that the corridor was contiguous, and that fact was sufficient to satisfy the statute:

True, the 67 foot wide strip of land did extend for many miles in an easterly direction away from the old city; nevertheless it was adjacent where it joined the eastern boundary of the city and that connection is enough to meet the adjacent requirements.<sup>12</sup>

The New York case of *Village of Sarnac Lake v. Gillespie*<sup>13</sup> has often been cited as authority for the validity of corridor annexation in New York. However, in this case the city already owned the annexed plot and the corridor was used for the municipal purpose of connecting a sewage treatment plant with the city proper. The court upheld the annexation in a summary opinion, so the process of reasoning used to reach the decision is not known. For these reasons it would not be prudent to assume that New York has upheld corridor annexation as used in the context of this discussion.

Of those states which have found the corridor method of annexation invalid, Illinois is the most notable in terms of litigation.<sup>14</sup> The case which Illinois courts seem to accept as controlling in this area is *Wild v. People of Stephens*.<sup>15</sup> In this case a village annexed several strips of land extending in various directions from its limits and varying in width from 50 to 570 feet. One of the 50 foot strips eventually attached to a larger parcel. The court refused to recognize such a method of annexation, viewing it as ". . . a mere subterfuge, and not a compliance with the law."<sup>16</sup> The facts of the case indicate that the method used was in fact a subterfuge; the act was not reasonable. Yet this case and another equally as

9. 226 F.Supp. 253, 265 (W.D. Okla. 1964).

10. *Botsford v. City of Norman*, 354 F.2d 491 (10th Cir. 1965).

11. *Id.* at 494.

12. *Id.* at 494.

13. 261 App. Div. 854, 24 N.Y.S.2d 403 (1941).

14. *People ex rel. Village of Worth v. Inde*, 23 Ill.2d 63, 177 N.E.2d 313 (1961); *People ex rel. Adamowski v. Village of Streamwood*, 15 Ill.2d 595, 155 N.E.2d 635 (1959); *Village of Morgan Park v. City of Chicago*, 255 Ill. 190, 99 N.E. 388 (1912); *Wild v. People ex rel. Stephens*, 227 Ill. 556, 81 N.E. 707 (1907); *In re City of Springfield*, 85 Ill. App.2d 191, 228 N.E.2d 755 (1967); *People ex rel. Coojar Realty Corp. v. Village of Burr Ridge*, 81 Ill. App.2d 203, 225 N.E.2d 39 (1967).

15. 227 Ill. 556, 81 N.E. 707 (1907).

16. *Id.*, 81 N.E. at 708.

extreme<sup>17</sup> have been applied to invalidate subsequent corridor annexation which, if looked at subjectively, could arguably be considered reasonable.<sup>18</sup>

The use of a strip or corridor in the annexation of territory seems to be viewed by some courts as inherently evil.<sup>19</sup> But the emphasis should not be placed on the means used to annex; rather, the court's inquiry should focus on the purposes sought to be achieved by the annexation. The requirement that the territory annexed be contiguous or adjacent to the corporate limits of the annexing municipality has logical foundation. Where the municipality is completely separated from the annexed area, the municipality is without jurisdiction over the intervening territory and control over this intervening land by another governmental subdivision becomes a possibility which would result in interference or termination of governmental services and other municipal functions to the annexed territory. However, where a municipality has annexed an area in such a manner as to provide an uninterrupted junction of the annexed territory with the corporate limits, the possibility of severance is not involved. If this seems to be a reason for requiring contiguity, then it would seem that the use of a corridor as a means of providing necessary unity would accomplish such a purpose. This statement must be qualified in that the corridor must be capable of being utilized for the provision of municipal services to the annexed territory. As an example, in *State ex rel. Danielson v. Village of Mound*<sup>20</sup> a Minnesota municipality attempted to annex an outlying area by including a five-eighths mile strip of railroad right of way. The Minnesota Supreme Court concluded that the use of such right of way did not provide a means by which the annexed territory could be "adapted to the maintenance of a village government which can feasibly discharge its usual functions for the benefit of all residents."<sup>21</sup> The Court did not condemn the use of corridor annexation as such, but only determined that it was not adaptable for the effectation of municipal activities as it existed. As the Court stated:

No motor vehicle or pedestrian can lawfully, safely, or as

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17. *People ex rel. Adamowski v. Village of Streamwood*, 15 Ill.2d 595, 155 N.E.2d 635 (1959).

18. *People ex rel. Village of Worth v. Ihde*, 23 Ill.2d 63, 177 N.E.2d 313 (1961); *In re City of Springfield*, 85 Ill. App.2d 191, 228 N.E.2d 755 (1967); *People ex rel. Coojar Realty Corp. v. Village of Burr Ridge*, 81 Ill. App.2d 203, 225 N.E.2d 39 (1967). The annexed territory in these cases shared community problems and interests with the annexing municipality and was within one-half mile from the municipal limits.

19. *See, e.g., People ex rel. Adamowski v. Village of Streamwood*, 15 Ill.2d 595, 155 N.E.2d 635 (1959). (The court stated that strip or corridor annexation had been condemned by the courts of Illinois and never been permitted by the legislature.); *Watson v. Doolittle*, 10 Ohio App.2d 143, 226 N.E.2d 771 (1967).

20. 234 Minn. 531, 48 N.W.2d 855 (1951).

21. *Id.*, 48 N.W.2d at 865.

a practical matter, use the railroad right of way in passing from the village to the annexed territory. In other words, the area sought to be added does not by means of any usable territory abut upon the village so as to permit travel to and fro without passing over lands wholly outside the village. . . . Likewise, the railroad right of way cannot reasonably or feasibly be used in providing the new tract with the usual village services by means of water, sewage, gas, and electric connections. Policemen and firemen will be able to discharge their duties only by traveling in part outside their normal jurisdiction.<sup>22</sup>

Thus, it might be argued that if annexation in this case had been by means of a corridor of functional utility to municipal activity, the court could have found it valid.

In addition to determining whether a corridor is capable of furthering municipal functions, such annexation should also be examined for the purpose of determining whether the territory sought to be annexed by use of the corridor is properly subject to annexation. Basically, it should be shown that the annexed territory have a community of interests with the municipality.<sup>23</sup> This necessarily involves an examination of the particular facts of each annexation of which the length of the corridor involved is only one factor. The rate of growth of the municipality, the surrounding topography, the use to which the land annexed is being put, the relative areas and populations of the municipality and annexed territory, respectively, and the proximity of other communities are additional and perhaps more important factors. As an example, in *Watson v. Doolittle*<sup>24</sup> the village of Pioneer, Ohio, having a population of 900 and an area of 440 acres of which 160 acres was undeveloped farmland, sought to reach out by use of a corridor and annex an area of 1,100 acres located approximately two and one-half miles from the village limits. The court found this to be an illegal corridor annexation. Judging from the tone of the court, the annexation would not have been upheld even if it had been attempted under more reasonable circumstances. The court did not focus on the issue of the existence of a community of interests but rather focused on the corridor itself. Here there obviously did not exist a community of interests which would qualify the territory for annexation. But it is this that a court should be concerned with. If a community of interests exists presently or is reasonably expected to develop

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22. *Id.*, 48 N.W.2d at 865.

23. *Clark v. Holt*, 218 Ark. 504, 237 S.W.2d 483 (1951); *Hillman v. City of Pocatello*, 74 Idaho 69, 256 P.2d 1072 (1953); *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 48 N.W.2d 855 (1951); 2 E. McQUILLIN, MUNICIPAL CORPORATIONS § 7.20 at 364, 369 (3rd ed. 1966).

24. 10 Ohio App.2d 143, 226 N.E.2d 771 (1967).

in the near future as indicated by the present growth of the municipality, then it would appear that the annexed area would be properly subject to municipal government. If such is found, the fact that a corridor was used as a means of providing contiguity with the municipality should not prevent a finding of validity of the annexation.

An attempt to apply the "rule of reason" was the approach used in the Wisconsin case of *Town of Mt. Pleasant v. City of Racine*.<sup>25</sup> But the court here concerned itself with the reasonableness of the shape of the boundaries of the annexed territory and concluded that the legal idea of a municipal corporation was that of "oneness," consequently the use of a corridor was not considered in keeping with the legal conception and could not be allowed.<sup>26</sup>

The rule of reason should perhaps be applied to corridor annexation. However, the legal conception of a municipality as being a collective entity should not be viewed from a strictly geographical perspective, but rather from one that emphasizes unity of interest between the annexed territory and the annexing municipality.

In conclusion, it is submitted that the determination of the boundaries of a municipality is fundamentally a political question.<sup>27</sup> But the reasonable exercise of that power is a matter which the courts are entitled to inquire into. The focal point of inquiry, however, should be the relationship between the annexed territory and the annexing municipality. The fact that a corridor was used to connect the territory should not invalidate an annexation where there appears to be a community of interests enabling the annexed territory to be properly subject to the municipal government of the annexing municipality. By the same logic, a municipality should not be permitted to annex territory with which it does not share a unity of interest merely by using a corridor to effect compliance with the requirement of contiguity. But where a unity of interest does exist, the court should examine the corridor involved only for the purpose of determining whether it can adequately be utilized in carrying out the usual functions of a municipality. If the requirements are met, corridor annexation should not be invalidated, even though a better method might have been used.

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25. 24 Wis.2d 41, 127 N.W.2d 757 (1964) (A strip 1,705 feet long and varying in width from 306 feet to 152 feet was involved here.)

26. *Id.*, 127 N.W.2d at 760. This case poses an interesting question with regard to legislative intent in that the court decided that the annexation was unreasonable after the Wisconsin Annexation Review Commission pursuant to WIS. STAT. ANN. § 66.021(11)(c) (1965) determined that it was reasonable. See Johnson, *The Wisconsin Experience With State-Level Review of Municipal Incorporations, Consolidations, and Annexations*, 1965 WIS. L. REV. 462, 479.

27. The distinction between a truly political question and a judicial question where the use of a corridor is concerned is illuminated by the cases of *Village of Inkster v. Board of Supervisors*, 363 Mich. 165, 108 N.W.2d 822 (1961) and *Taylor v. Township of Dear-*