

33454
NO. 071341

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON

CITY OF CHARLES TOWN

Petitioner

v.

THE COUNTY COMMISSION OF JEFFERSON COUNTY, a public body corporate of
the State of West Virginia; and FRANCES B. MORGAN, President and Member;
ARCHIBALD M.S. MORGAN, III, Member; C. DALE MANUEL, Member; JAMES T.
SURKAMP, Member; and GREGORY A. CORLISS, Member, and JENNIFER
MAGHAN, Clerk, County Commission of Jefferson County,

Respondents.

AMICUS CURIAE BRIEF ON BEHALF OF THE
CITY OF RANSON

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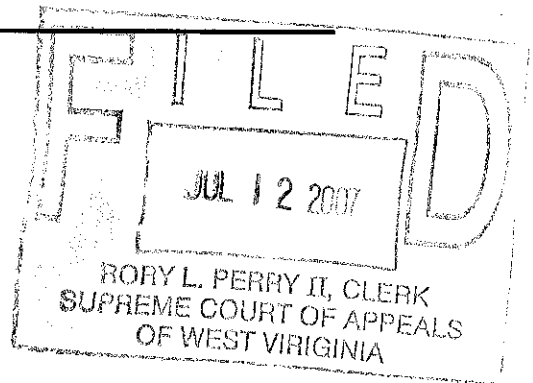


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INTRODUCTION AND INTEREST IN THE CASE

As a municipality, the amicus, the City of Ranson, asserts its ability to file an amicus curiae brief in this case, as a matter of right, pursuant to Rule 19 of the *West Virginia Rules for Appellate Procedure*. Ranson is the most populated and largest city within Jefferson County. Over the last several years, the Ranson City Council has accepted over thirty (30) voluntary annexation petitions, representing approximately 4200 acres, from property owners requesting the City to annex their properties pursuant to W. Va. Code § 8-6-4. As a result, Ranson has and will continue to experience an influx of commercial and residential development and has a direct interest in the current case.

The City of Ranson submits this amicus in cooperation with the Petitioner, City of Charles Town, to encourage this Honorable Court to issue a writ of mandamus commanding the Respondents to sign and enter the subject annexation orders as required by the clear language of W. Va. Code § 8-6-4; and, to further enter a broad order requiring the Jefferson County Commission to obey the clear authority of the pertinent annexation statutes for all future annexations submitted to the County Commission by the municipalities located within Jefferson County. The County Commission should not be allowed to ignore the clear language of the pertinent annexation statutes.

Additionally, the City of Ranson wishes to stress the positive economic impact that current annexation legislation has had on the City of Ranson. Regardless of the reasons individual property owners have voluntarily petitioned Ranson to be annexed, Ranson welcomes the positive economic impact that the annexations have had and will have on the City. The annexations accepted by Ranson have reduced the chances of commercial and residential development on the fringe of the City where Ranson would

have had to provide services, but have not received any taxes from development. By annexing properties into the City, Ranson receives revenues through ad valorem and business & occupation taxes to offset the cost of the services, where otherwise, the properties would simply be an economic drain on the City. Ranson has a direct interest in assuring that the Jefferson County Commission obeys the clear language of W. Va. Code §§ 8-6-3 and 8-6-4.

FACTUAL BACKGROUND

Ranson hereby adopts the Statement of Facts contained in the Petitioner's Writ for Mandamus.

ARGUMENT

- I. *County Commission is in violation of the clear language of W. Va. Code § 8-6-3 and § 8-6-4.*

The Jefferson County Commission wishes to have discretion and the ability to determine whether each annexation certificate forwarded to it is reasonable. Simply, the Jefferson County Commission has no discretionary power to determine whether such annexation is reasonable under the law. "A county commission only has powers expressly conferred by the West Virginia Constitution and our State Legislature, or powers reasonably and necessarily implied for exercise of those expressed powers. It can only do those things that are authorized and only in the manner or mode prescribed by law." *Berkeley County Comm'n v. Shiley*, 170 W. Va. 684, 685-686 (1982). The West Virginia Legislature has prescribed the exact manner in which an annexation shall take place by municipalities. The Legislature has prescribed three (3) methods of annexation: (1) annexation by election; (2) annexation without election; and (3) annexation by minor boundary adjustment. "Each of these three methods of annexation have different

statutory requirements.” *Petitioner of City of Beckley to Annex. by Minor Boundary Adjustment*, 194 W. Va. 423, 426, 460 S.E.2d 669, 672 (1995). Pursuant to W. Va. Code § 8-6-4, annexation without election, “[t]he governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if: (1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.” The Legislature has placed the duty upon the municipality to determine whether “the petition is sufficient in every respect.” *Id.* If the municipality is satisfied, the municipality “shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the municipality...is located.” *Id.* Upon being forwarded the annexation certificate by the municipality, W. Va. Code § 8-6-3 states, “[t]he County Commission *shall* thereupon enter an order as described in the immediately preceding section [8-6-3].” Once entered by the County Commission, W. Va. Code § 8-6-4 states, “[a]fter the date of the order, the corporate limits of the municipality shall be as set forth therein.” No language in the pertinent statutes gives the County Commission power to deny annexations because of reasonableness or because the County Commission simply does not like the annexation petition.

It is very important that the subject annexations in this case and the annexation petitions submitted to Ranson over the last several years have been under the statutory authority of W. Va. Code § 8-6-4, annexation without election, rather than W. Va. Code § 8-6-5, annexation by minor boundary adjustment. Under W. Va. Code § 8-6-5, the

“municipality may apply to the county commission ... for permission to effect annexation by minor boundary adjustment.” Under W. Va. Code § 8-6-5, “a county commission enjoys a broad discretion in exercising its legislative powers in determining the geographic extent of a minor boundary adjustment sought by a municipality...so long as a portion of the area to be annexed is contiguous to the municipality.” *In re City of Beckley*, 194 W. Va. at 431, 460 S.E.2d at 677. No such discretionary provision exists under annexation process described in W. Va. Code § 8-6-4. Thus, under W. Va. Code § 8-6-4, the County Commission simply “is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures of sections 2 or 4.” *Matter of City of Morgantown*, 159 W.Va. 788, 792, 226 S.E.2d 900, 903 (1976) (referring to the version of W. Va. Code § 8-6-4 in effect in 1976.)

As stated in *Petitioner of City of Beckley to Annex. by Minor Boundary Adjustment*, 194 W. Va. at 429, 460 S.E.2d at 675, “the statute[s] do[] not otherwise define the term “contiguous.” This Honorable Court, however, in discussing the term contiguous in the aforementioned case agreed with the Illinois Supreme Court statement that “the legislature has left to the city council and the electors, rather than the court, the question of the reasonableness of a petition for annexation.” (referencing W. Va. Code § 8-6-5.) Under the annexation process described in W. Va. Code § 8-6-4, the majority of the qualified voters and a majority of the qualified freeholders of the additional territory must start the annexation process. Then, the respective municipality must enter it into its journal if the petition is sufficient in all respects. W. Va. Code § 8-6-4. If an annexation petition is outrageous or an unreasonable distance from the current municipal limits or

the municipality simply cannot provide the necessary services, the municipality simply will not enter the petition into its records and forward a certificate to the County Commission for entry into the land books. It is the municipality's role, however, to determine reasonableness under the legislative authority of W. Va. Code § 8-6-4; it is not the County Commission's role to determine reasonableness. Furthermore, it should not be the role of the County Commission to "deny" or "veto" an annexation when the property owner has voluntarily petitioned the municipality to be annexed and the municipality has agreed. All of the petitions for annexation Ranson have entered and forwarded to the County Commission have been voluntarily submitted by property owners; none have been forced or coerced. Property owners' individual choice of being allowed to petition the municipality for annexation should be allowed to stand and should not be threatened by a possible veto of the County Commission.

The Jefferson County Commission is ignoring the law and this Honorable Court should issue a writ of mandamus commanding the Respondents to sign and enter the subject annexation orders as required by W. Va. Code § 8-6-4; and, to further enter a broad order requiring the Jefferson County Commission to obey the clear authority of the pertinent annexation statutes for all future annexations submitted to the County Commission by the municipalities located within Jefferson County.

II. Current annexation legislation has had and will have a positive economic development impact upon the City of Ranson and Jefferson County.

The voluntary annexation petitions submitted and accepted by the City of Ranson over the past several years have translated into substantial commercial and residential development, creation of new jobs, and an increased tax base for the City and the County. Annexations have been an important part of the growth and economic vitality of Ranson

and Jefferson County. The annexations accepted by Ranson have reduced the chances of commercial and residential development being placed on the fringe of the City where Ranson would have had to provide services, but not have received any revenue or opportunity from development. By annexing properties into the City, Ranson receives revenues through ad valorem and business & occupation taxes to offset the cost of the services, where otherwise, the properties would have simply been an economic drain on the City. Annexations and commercial development also increase the chances of Ranson obtaining a higher bond rating and fiscal integrity. Not only does the City benefit from an increased tax base, but also do the County Commission and the Board of Education. In the County Commission's response, the County acts as though it sees no benefit from commercial and residential development. The County Commission ignores that municipal residents are also its constituents: municipal residents pay County property taxes; municipal residents pay 9-1-1 fees; and municipal residents vote for County Commissioners. Contrary to its assertion, the County Commission does not provide all of the services and for the services it does provide, Ranson and other municipal residents pay their fair share. Furthermore, for each new residential and commercial unit developed within Ranson, not only does Ranson receive increased ad valorem taxes, but also does the County Commission. Simply, the former cow pasture which now is the location of the Kohl's Department Store pays commercial ad valorem tax rates where formally the land was assessed at a lower agricultural rate. This does not even take into consideration the broader economic considerations such as an increased tax base and lower unemployment. The County Commission stating that annexation is overly burdensome is overly simplistic.

Generally, annexation increases a city's size and population, and in some instances raises its level of political influence, prestige and ability to attract desirable commercial and industrial development as well as employment opportunities. Thus far, this has been the case in the City of Ranson. Aside, however, from the increased tax base, influence, and commercial opportunities, the City benefits by being able to control its own fate – by being able to influence the type and quality of development that occurs and by being able to maintain that quality. Residents of Ranson also benefit from annexation. With increased tax revenue and commercial development, Ranson is able to provide more services – services that City residents have come to expect. Every resident of Ranson has the benefits of residential trash service, leaf and limb pickup, substantial police protection, municipal water and sewer, street lighting, new and rehabilitated neighborhood sidewalks, flexible planning and zoning, street sweeping and maintenance, property maintenance code enforcement, community development and business incentives.

As this Honorable Court is well aware, the City lacks the power and ability to enforce its ordinances on properties directly adjacent to its own municipal limits. Thus, a subdivision, property, development or business located directly adjacent to the municipal border does not have to comply with municipal codes and regulations. Even though the property is not within Ranson, the property directly affects the City and its citizens. Ranson currently has a subdivision like the one described above. Most people believe that the subdivision is within Ranson, but it is not. Even though the subdivision is surrounded by Ranson, Ranson has no ability to enforce property maintenance codes, provide police protection, pave streets or maintain the overall quality of the

neighborhood. The streets within the neighborhood are not up to City standards, the neighborhood lacks City amenities, and the Jefferson County Sheriff's Department must be the first to respond anytime there is an incident. Recently, a situation took place in the subdivision where two children were held hostage. Even though the City Police Department is literally four blocks away from the subdivision, the Jefferson County Sheriff's Department had to respond first. A Sheriff's deputy was shot by the hostage taker and was flown by helicopter for treatment. Luckily, the deputy survived, the children were rescued and the hostage taker took his own life. The same situation would have most likely taken place had the subdivision been in the City, but the Ranson Police Department could have been the first responder from a mere four blocks away. The annexations Ranson have accepted will hopefully solve many of the issues that plague the subdivision directly adjacent and surrounded by the municipal limits.

The ability of Ranson to accept voluntary annexations and sustain growth is critical to the long-term fiscal health of the City of Ranson and for every other city in West Virginia. Annexation is a very important tool the City needs to increase its tax base, attract commercial business, maintain economic development and create a sense of community as demonstrated by the following list of amenities and benefits stemming from some recent Ranson annexations:

- o Ranson is the new location for Carl M. Freeman Retail. Freeman Retail is developing approximately 150 acres of previously vacant land adjacent to West Virginia State Route 9, a limited access 4-lane highway, into a commercial mixed use development that will contain a cinema/entertainment complex, multiple restaurants, a drug store, hotels,

office buildings, banks and other commercial users. Presently, the commercial development contains Kohl's, Home Depot, Weis Supermarket, City National Bank, and numerous specialty stores and restaurants. The next phase of development is well underway and will provide additional jobs and tax revenue to the area. This annexation will also result in a four-lane boulevard from the existing City center of Ranson to State Route 9 allowing easy access from the City through the commercial development to the four-lane highway. The new developer has substantially increased Ranson's business and occupation tax intake.

- Annexation by Ranson directly led to a donation of a 1 acre site for the new Jefferson County Ambulance Authority. The Developer donated the land to the City for municipal purposes. In turn, with the Developer's consent, the City of Ranson agreed to donate the land, valued at approximately \$80,000, to the Ambulance Authority.
- A recent annexation, directly adjacent to the existing City limits, will transform an existing Brownfield's parcel into a vibrant commercial parcel. The benefits of voluntary annexation are clearly evident in this situation because the subject parcel was surrounded by the municipal corporate limits. Without the annexation, the parcel would have most likely sat as a vacant Brownfield's parcel because development rights were very limited under County zoning regulations. Annexation will allow this property to be remediated and developed.

- An additional annexation petition accepted by the City of Ranson has lead towards the dedication of a 30 acre City park in the new center of Ranson. The park will be a natural / recreational area which will preserve Flowing Springs. This park will benefit citizens all over the City and County and will eventually become a centerpiece of recreational opportunity.
- Ranson is the new home for the Jefferson County Youth Football League thanks to a private/public partnership and a million dollar football field equipped with lights, bleachers, and a state-of-the-art building which will house a concession stand, press box and meetings rooms. The field will be dedicated to the City of Ranson to be maintained by the Ranson Parks & Recreation Department. The City of Ranson has contributed approximately \$20,000 into the project, but has actively worked with developers to provide density credits which will benefit both the Developer and Ranson.
- Another residential and commercial developer who voluntary annexed into the City will be dedicating baseball and soccer fields to the City, along with an arts and cultural center. Every development annexed into the City must provide recreational and commercial opportunities.

III. County commissions and municipalities are separate governmental entities charged with governing their own respective territories.

The Jefferson County Commission's Response in Opposition to Petitioner's Writ for Mandamus seems to leave the erroneous impression that the County Commission believes it has supremacy over the municipalities. Contrary to its beliefs, the County Commission has no legal rights under either the West Virginia Constitution or the powers

granted by the State Legislature to govern municipalities. West Virginia's counties do not possess the inherent rights of self government. Like municipalities, West Virginia's 55 counties are under the State's complete control as their creation and their authority to perform even local functions is spelled out in the Constitution or by legislative enactments:

A county commission only has powers expressly conferred by the West Virginia Constitution and our State Legislature, or powers reasonably and necessarily implied for exercise of those expressed powers. It can only do those things that are authorized and only in the manner or mode prescribed by law.

Berkeley County Comm'n v. Shiley, 170 W. Va. 684, 685-686, 295 S.E.2d 924, 926 (1982). These powers may be increased or diminished at the pleasure of the legislature, so far as that body is not restrained by the constitution. *Watkins v. County Court*, 30 W. Va. 657, 5 S.E. 654 (1888). It is also well-established that any grant of power to a county must be strictly construed against the county—especially when the power conflicts with the powers expressly granted to a city. As the West Virginia Supreme Court has explained

Municipal corporations are bodies politic and corporate of the general character above described established by law to assist in the civil government of the country. The distinction between municipal corporations proper, such as cities and towns whether created by special charters or by general laws, and involuntary *quasi* corporations, such as counties, is this: the former are called into existence by the consent of the persons composing them for the formation of their own local private advantage and convenience; while counties are at most local organizations, which for the purpose of civil administration are invested with a *few functions* of a *corporate* existence, created almost exclusively with a view to the policy of the State at large in the administration of justice, the support of the poor and the

establishment and repair of public highways. The public statutes confer on them *all the powers* they possess, prescribe all the duties they owe, and enforce all the liabilities to which they are subject. As corporate bodies of limited powers they rank *very low* down in the grade of corporate existence, and hence they are often called *quasi* corporations. (1 *Dill. Mun. Corporations*, sec. 18, 25.) In the construction of the powers, granted to them the courts adopt a strict rather than a liberal construction, the rule being, that, where any ambiguity or doubt exists arising out of the terms used by the legislature, it must be resolved in favor of the public.

Exchange Bank v. County of Lewis, 28 W. Va. 273, 286 (1886) (emphasis in original).

The Supreme Court of Idaho, a court the County Commission cited to in its response, perhaps said it best in *State v. Robbins*, 59 Idaho 279, 81 P.2d 1078 (1938) (emphasis added):

when a municipal corporation is organized within the limits of a county, then so much of the territory of such county as is comprehended within the municipal limits of such corporation is, so far as local government is concerned, withdrawn from the county, and **any ordinances passed by the latter can have no binding or any force upon the municipality** as to any matters or subjects as to which the latter is vested with the power to enact prohibitory or regulatory local laws.

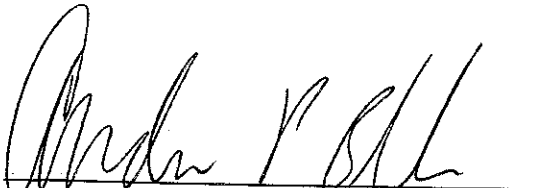
The Jefferson County Commission, however, seems to believe that it has general power and authority over the municipalities within the County. Furthermore, it seems as though the Commission believes that it controls the overall policies of government, inclusive of municipal government. Simply, it is not the role or duty of the County Commission to be the “watchdog” over municipal governments. Denying or vetoing annexations is just another way the County Commission is attempting to exercise its unsubstantiated belief that it has “power” over municipalities. Nowhere in the

Constitution or in legislative enactments does the power or authority exist for counties to govern and control municipal governments.

CONCLUSION

The Jefferson County Commission is ignoring the clear statutory language of W. Va. Code §§ 8-6-3 and 8-6-4. The Commission "is required to perform a ministerial function when it enters an order reflecting the change in boundaries after municipal authorities certify compliance with the statutory procedures..." *Matter of City of Morgantown*, 159 W.Va. at 792, 226 S.E.2d at 903 (1976). It has no other power. The Commission erroneously believes that it has the power to use discretion in determining which annexation orders it should enter. Simply, the Commission has no such power. Furthermore, the County Commission is improperly and illegally trying to take away the annexation ability the Legislature has given to cities to expand its borders. Annexations have been beneficial to the City of Ranson and its citizens.

WHEREFORE, the City of Ranson joins the City of Charles Town in requesting this Honorable Court to issue a writ of mandamus commanding the Respondents to sign and enter the subject annexation orders as required by W. Va. Code § 8-6-4; and, to further enter a broad order requiring the Jefferson County Commission to obey the clear authority of the pertinent annexation statutes for all future annexations submitted to the County Commission by the municipalities located within Jefferson County.



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CERTIFICATE OF SERVICE

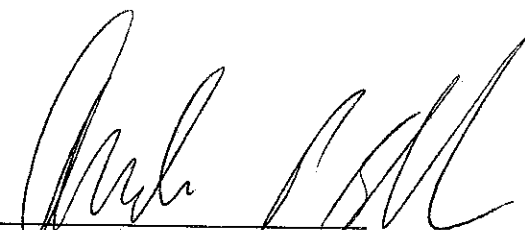
Service of the foregoing AMICUS CURIAE BRIEF ON BEHALF OF THE CITY OF RANSON was made upon the parties herein by delivering a true copy thereof by United States Mail, postage prepaid, this 12th day of July, 2007, to the following counsel of record:

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