

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-03

Date issued: March 23, 1993  
Requested by: Phyllis A. Ratcliffe  
Griggs County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a city may annex territory that does not border on the city boundary.

II.

Whether a city has a duty to provide the same services to the annexed territory that it provides to other areas of the city.

III.

Whether a city acquires responsibility and liability for the portion of a county farm-to-market road included in the annexed territory.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a city may not annex territory that does not border on the city boundary.

II.

It is my further opinion that the city has a duty to provide substantially equal services to the annexed territory that it provides to other areas of the city; however, such duty is tempered by economic, political, and other practical contingencies over which the city has no absolute and complete control.

III.

It is my further opinion that a city acquires responsibility and liability for the portion of a county farm-to-market road included in the annexed territory.

- ANALYSES -

I.

N.D.C.C. ch. 40-51.2 governs the annexation of territory to cities. Under this chapter annexation is limited to territory which is "contiguous or adjacent." See N.D.C.C. ?? 40-51.2-03, 40-51.2-07, and 40-51.2-08. However, neither the term "contiguous" nor the term "adjacent" is directly defined.

Under the prior statutory framework, the terms "adjacent" and "contiguous" were apparently used interchangeably. Now repealed N.D.C.C. ? 40-51.1-01 provided that "[a]ny portion of a county not incorporated as part of a municipal corporation but lying contiguous thereto may become a part thereof by annexation as herein provided." Yet, N.D.C.C. ? 40-51.1-06 provided that the "governing body of any municipality may adopt a resolution to annex adjacent territory . . . ."

The term "contiguous" has been defined as "touching; meeting or joining at the surface or border; close together; neighboring, bordering or adjoining." Webster's Dictionary 395 (2nd ed. 1963). The term "contiguous" has further been construed as requiring a substantial degree of contact and something more than mere touching at the corners. See generally, Township of Owosso v. City of Owosso, 189 N.W.2d 421, 423 (Mich. 1971); Erwin S. Barbre, What land is contiguous or adjacent to municipality so as to be subject to annexation, 49 A.L.R.3d 589, 600 (1973); 17 C.J.S. contiguous p. 362 (1963).

The term "adjacent" has been defined as "close, close at hand, close to, convenient, in the neighborhood or vicinity of, in proximity, lying near, near, nearby, neighboring, next to, nigh, present, [but] not necessarily touching or in actual physical contact with." la C.J.S. adjacent, p. 788 (1985). Webster's Third New International Dictionary, p. 26 (1967), defines adjacent as "relatively near and having nothing of the

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same kind intervening" and "immediately preceding or following with nothing of the same kind intervening." (Emphasis added.) See also Words and Phrases adjacent (1955); City of St. Ann v. Spanos, 490 S.W.2d 653, 656, (Mo. Ct.App. 1973).

As these terms have been used in annexation statutes, they have generally been held to be synonymous to the extent both terms require at a minimum some "touching" between the municipality and the territory sought to be attached. See 49 A.L.R.3d, 589, 593, 598. Any distinction would lie in the degree of "touching" required. Id.

Previously, this office issued a letter opinion on this issue which stated:

[T]his office has had the opportunity to construe the term "adjacent thereto" in an annexation statute relating to school districts. . . . [w]e concluded the term "adjacent thereto" as used in what was then Section 15-5326 of the NDRC of 1943 meant that if the territory to be annexed had a common corner with the district to which it was to be annexed and did not result in splitting any district into two separate areas without a common corner or boundary, the area sought to be annexed was "adjacent" to the annexing district.

Thus, we conclude that the term "contiguous or adjacent" as used in Section 40-51.2-03 means that if the territory to be annexed to the city is in actual contact with the boundaries of the city, at least to the extent of touching at a common corner, that the territory is adjacent or contiguous to the city.

Letter from Chief Deputy Attorney General Gerald W. VandeWalle to Mr. J.B. Graham, Ellendale City Attorney (May 12, 1978).

The policy behind requiring at a minimum some contact between the municipality and the territory sought to be annexed seems clear. 56 Am.Jur.2d Municipal Corporations ? 69 (1971) states:

There are obvious objections to the annexation of land to a municipality which is not contiguous thereto but is separated by land constituting some other territorial unit. The legal as well as the

popular idea of a municipal corporation in this country, both by name and use, is that of oneness, community, locality, vicinity; a collective body, not several bodies; a collective body of inhabitants--that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation.

(Footnotes omitted.) Given this legal and popular understanding of municipal corporations, we cannot attribute to the Legislature any intent to allow municipalities to be composed of anything other than a single compact body of land without a specific statutory provision to that effect. See generally, Petitioners of School Dist. No. 9, Caddo County v. Jones, 140 P.2d 922, 924 (Okla. 1943). Therefore, it is my opinion that a city may not annex territory which does not at a minimum touch or border on the city boundary.

It is important to note that N.D.C.C. ch. 40-51.2 speaks in terms of the annexation of "territory." The term clearly contemplates the annexation of land or territory having more than one owner. N.D.C.C. ? 40-51.2-02 provides that "contiguity will not be affected by the existence of a platted street or alley, a public or private right of way, or a public or private transportation right of way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land to be annexed." Thus, the mere fact that an otherwise enclosed given area of territory can be described in terms of multiple tracts of land is simply irrelevant so long as the territory otherwise meets the requirements for annexation including being contiguous or adjacent to the municipal limits.

## II.

The second issue is whether a city has a duty to provide the same services to the annexed territory that it provides to other areas of the city. The North Dakota Supreme Court has said "[t]he annexation to a city of territory which had previously been without the city is an act of the state and such territory thereafter stands just as any other property

within the city." *Montana Dakota Util. Co. v. Divide Co. Sch. Dist. No. 1*, 193 N.W.2d 723, 729 (N.D. 1971). A leading treatise on municipal corporations states:

When territory has been lawfully and finally annexed, the new area becomes, ipso facto, a part of the municipality, subject to municipal jurisdiction, and it may be governed as the original municipal territory was governed prior to change, subject, of course, to terms and provisions of the annexation, requiring variation in government. Newly-annexed territory is entitled, moreover, to share in the municipal services and benefits accorded to the other portions of the municipal territory upon a footing of substantial equality. This principle, of course, is tempered by the economic, political and other practical contingencies, too numerous to mention, over which a municipality has no absolute and complete control. Limitations and restrictions are imposed by other statutory and regulatory provisions, both state and federal, which mandate changes and modifications in the plans and timetables of municipalities.

2 McQuillin, Municipal Corporations, ? 7.46 (3rd ed. 1988) (footnotes omitted). See also, Millard Rural Fire Prot. Dist. 1 v. Omaha, 409 N.W.2d 574 (Neb. 1987); ? 56 Am.Jr.2d Municipal Corporations, ? 56.

Based on the foregoing, it is my opinion that the city has a duty to provide substantially equal services to the annexed territory that it provides to other areas of the city, however, such duty is tempered by economic, political, and other practical contingencies over which the city has no absolute and complete control.

### III.

The third issue is whether a city acquires responsibility and liability for the portion of a county farm-to-market road included in the annexed territory. As previously discussed, annexed territory generally stands on the same footing as other territory within a city. Cities generally "are charged with full power and responsibility in the matter of streets" within their jurisdiction. Maloney v. City of Grand Forks, 15 N.W.2d 769, 773 (N.D.1944). See also Belt v. City of Grand

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Forks, 68 N.W.2d 114 (N.D. 1955).

2 McQuillin on municipal corporations states:

All public highways in annexed territory become, without any action on the part of the municipal authorities, streets of the municipality, and it assumes the same duties and liabilities as to them as rests upon it in reference to the public ways of its original territory. Thus when a municipality annexes territory embracing a county road, the title in fee to such part of the county road vests in the municipality in trust for the public. And on the addition of territory embracing a public highway and a bridge over a stream the municipal authorities acquire at once the right to exercise jurisdiction over the bridge and are chargeable with the duty of keeping it in repair.

2 McQuillin, Municipal Corporations, ? 7.46.70 (3rd ed. 1988) (footnotes omitted).

North Dakota does not have a law that requires an annexing municipality by formal resolution to accept streets in the annexed territory as part of its own street system before the municipality will be held responsible for maintaining them. Thus, it is my opinion that a city acquires responsibility and liability for the portion of a county farm-to-market road included in the annexed territory.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Heidi Heitkamp  
ATTORNEY GENERAL

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