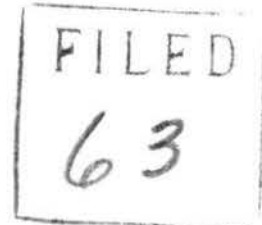


CITIES, TOWNS AND VILLAGES:
ANNEXATION:

Votes in each area counted separately.

OPINION NO. 63

February 11, 1969



Honorable E. J. Cantrell
State Representative - 33rd District
Missouri House of Representatives
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Cantrell:

You requested an official opinion from this office as follows:

"In April 1967 the City of Overland sought to annex a territory generally described as Ashby, Page, Lindbergh and South Island tracks. The residents of this area defeated the proposition.

"The City of Overland is now considering extending its boundaries to include this same area, plus the area known as Elmwood Park. Now those two areas are not contiguous.

"Here is the query on which I would like for you to make an opinion: 'If two non-contiguous areas are presented in April 1969, may the combined votes in both areas be considered so that, if the voters in one area were opposed to the extension, and a sufficient number in the other area were in favor of the extension, so that their combined votes would be favorable, would Overland then be entitled to annex both territories?'"

It appears from the facts as submitted that the City of Overland attempted to annex an area in April 1967 which annexation was defeated by a majority of the residents of said area. The city is now considering submitting a proposition in April 1969 to annex this same area together with another area which is not contiguous to the first area. You inquire whether the votes in each area

Honorable E. J. Cantrell

must be considered separately or whether the votes in both areas to be annexed may be combined in determining whether each area is to be annexed.

Overland is a fourth class city located in St. Louis County which is a first class chartered county.

Section 71.870, RSMo Supp. 1967, provides:

"The legislative body of any city, town or village located within the boundaries of a first class chartered county shall not have the power to extend the limits of such city, town or village by annexation of unincorporated territory adjacent to the city, town or village in accordance with the provisions of law relating to annexation by such municipalities until an election is held at which the proposition for annexation is carried by a majority of the total votes cast in the city, town or village and by separate majority of the total votes cast in the unincorporated territory sought to be annexed. There shall be separate elections submitting the proposition of annexation to the two groups of voters, the same to be held simultaneously. The elections shall be held, except as herein otherwise provided, in accordance with the general state law governing elections in first class counties."

The primary rule of construction of the statutes is to ascertain and give affect as to the intent of the legislature. *Kasten v. Guth, Mo.*, 375 S.W.2d 110.

This statute expressly provides that when a city located within the boundaries of a first class chartered county desires to extend its boundaries, the proposition for extending the boundaries of said city, must be submitted to a vote of the inhabitants of the municipality and of the territory to be annexed with separate elections to be held simultaneously, and a majority of the votes in the municipality and separate majority of the votes cast in the territory to be annexed must approve the annexation before the territory is annexed.

It is our view that under this statute the votes cast by the residents of each area or territory to be annexed must be considered separately in determining whether such area or territory is to be annexed, and if a majority of the votes cast in the election in an area or territory is opposed to annexation, such area or territory cannot be considered annexed. We believe the legislature intended, under this statute, for the residents of each

Honorable E. J. Cantrell

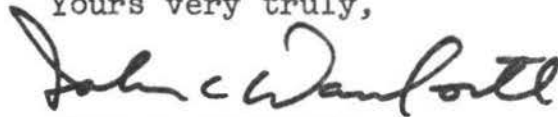
territory to decide by their vote whether such territory or area is to be annexed.

CONCLUSION

It is the opinion of this department that if a municipality located within the boundaries of a first class chartered county wishes to extend its limits by annexation, the proposition for annexation must be submitted to a vote of the people of the municipality and of the territory to be annexed, and if more than one non-contiguous territory or area is to vote on the question of annexation at the same time, the votes in each territory must be considered separately in determining whether each territory or area is to be annexed.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General