ANNEXATION

Annexation

City of Auburndale v. Town of Polk City,
898 So. 2d 1101 (Fla. 2d Dist. App. 2005)

A party seeking certiorari review of an annexation ordinance does not have standing if it is not "affected" by the annexation. A party is not "affected" if it has only authorization, as opposed to an exclusive right, to provide services to the land, and the party's ability to provide those services is not disrupted as a result of the annexation.

FACTS AND PROCEDURAL HISTORY

The City of Auburndale purchased a parcel of land for use as a sprayfield for the disposal of water from a newly constructed power plant. This parcel of land was within Polk City's Water and Wastewater Reserve Area (Reserve Area). Auburndale subsequently annexed the property into the City. The Reserve Area authorized the Town of Polk City to provide water and wastewater services to the annexed parcel. Polk City petitioned the circuit court for certiorari review of the annexation, claiming that the annexation was improper because the property was not contiguous to Auburndale's existing city limits. Auburndale opposed the petition, contending that Polk City had no standing to request review of the annexation.

The circuit court granted Polk City's petition and invalidated Auburndale's annexation, holding that Polk City had standing as an affected party because the annexation could impact Polk City's rights to provide water and wastewater services to the annexed property. Auburndale appealed.

ANALYSIS

To have standing to challenge an annexation, the party seeking certiorari review must be "affected" by the annexation and must allege it will suffer a "material injury" from the annexation. Fla. Stat. § 171.081 (2005).

Polk City argued it had a right created by Florida Statutes Section 180.06 (2003), which authorized it to provide water and

wastewater services to the annexed property, and that Auburndale's annexation affected this statutory right. The Second District Court of Appeal rejected Polk City's claim, reasoning that having authorization to provide a service is materially different from having an exclusive right to do so, and the statute did not provide for an exclusive right. *Auburndale*, 898 So. 2d at 1103. The court concluded that Auburndale's annexation "cannot materially affect a nonexistent 'exclusive' right"; therefore, Polk City was not an "affected party." *Id.* The court further reasoned that even if Polk City had an "exclusive right," it was not an "affected party" because the annexation did not affect Polk City's ability to provide water and wastewater services.

The Second District distinguished the facts of this case from those of *City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So. 2d 219 (Fla. 5th Dist. App. 1991), in which the City of Mount Dora was not allowed to annex a portion of land because it would interfere with the right of the private utility company to provide sewer and water services. The court stated that the *Auburndale* case was distinguishable because, in the previous case, JJ's Mobile Homes owned an exclusive franchise right, and the land to be annexed belonged to JJ's Mobile Homes, not the City.

SIGNIFICANCE

City of Auburndale v. Town of Polk City helps to define the meaning of "affected" party as it relates to standing to challenge an annexation. A mere authorization to provide water and wastewater services to the annexed parcel is not sufficient to establish standing.

RESEARCH REFERENCE

- 12A Fla. Jur. 2d *Counties and Municipal Corporations* § 56 (2005).

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