

BEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Thomas R. Byrne	Vice-Chairman
Edward L. Henry	Member
John Vukelich	Ex-Officio Member
Fred C. Barrett	Ex-Officio Member

IN THE MATTER OF THE PETITION FOR THE
ANNEXATION OF CERTAIN LAND TO THE
CITY OF VIRGINIA, MINNESOTA

The Minnesota Municipal Commission on February 25, 1965, received a petition for the annexation of land to the City of Virginia. The hearing date was postponed until July 16, 1965, on agreement of all parties because the objectors counsel, as a member of the Legislature, was not available due to a legislative session. Hearings were held on July 16, 1965, July 23, 1965, September 28, 1965, and December 16, 1965.

On the conclusion of petitioners testimony the objectors to the petition moved for dismissal on the grounds that the petition lacked signatures of a majority of owners in the area to be annexed.

The Commission having duly considered the testimony of the witnesses, the exhibits received in evidence and all other evidence, upon all the files, records, and briefs, being fully advised in the premises, makes and enters the following:

FINDINGS OF FACT

I.

That the petition contained the signatures of three owners of land in the area to be annexed on the date said petition was filed with the Commission, February 25, 1965, i.e., Associated Builders, Inc., John E. Holt, and James Gustafson;

II.

That on said date there were at least three additional

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owners in the area to be annexed who did not sign said petition; i.e., United States Steel Company, Arthur A. Beischjold, and Lillian R. Holt.

CONCLUSIONS OF LAW

1. The petition does not contain a majority of signatures of owners in number of the area to be annexed as required by Minn. Stat. 1961, 414.03, Subd. 2.

2. The Commission lacks jurisdiction in the matter.

ORDER

IT IS HEREBY ORDERED: That said petition be dismissed.

Dated this 14th day of July, 1966

MINNESOTA MUNICIPAL COMMISSION
459 Rice Street
St. Paul, Minnesota 55103



Irving R. Keldsen
Secretary

MEMORANDUM OPINION

Minn. Stat. 1961, Sec. 414.03, Subd. 2, provides that "The owner or a majority of owners in number may petition" for annexation. The provision does not contain a definition of the word "owner."

The petition submitted contained the signatures of three alleged owners. Thus a Finding that there are three owners in the area covered by the petition who did not sign the petition would be sufficient to defeat it since a majority would be lacking. It is undisputed that there are two non-signing owners in the area, U. S. Steel and one Arthur A. Beischjold. The objectors allege further owners as the State of Minnesota; Lillian Holt, wife and joint tenant of John Holt; and two railroads and a power and light company which hold easements in the area.

The Commission is of the opinion that the evidence sustains ownership of the three signers of the petition. John Holt and Associated Builders, Inc., were owners of record on the day the petition was filed, as evidenced by copies of abstracts furnished the Commission. John F. Gustafson, the third signer, was not an owner of record until after the date of the petition. However, the deed by which he was conveyed property is dated prior to the date of the petition; and, in the absence of evidence to the contrary, a deed is presumed delivered on its date of execution. 5B Dun. Dig. "Deeds" Section 2663; 23Am.Jur.2D "Deeds" Section 108. There being no evidence to the contrary, he qualified as an owner when the petition was filed.

The Commission is of the opinion that the State should not be considered as an "owner" in computing a majority of owners to determine the validity of the petition. At the time the petition was filed, no state official was authorized to join in such petitions. See, Minn. Stat. 1965, Sec.414.065.

To include the State as an "owner" when it could not join the petition would unduly burden those attempting to acquire a majority of signatures.

The Commission is of the opinion, however, that Lillian Holt does constitute a third non-signing "owner" fatal to the validity of the petition. Joint tenancy represents separate estates in the land and each qualifies independently as an owner. There is no compelling reason or authority to hold that the signature of the husband alone binds the estate of the wife. In State v. City of Reno, 310 P.2d 850, the court reached the same conclusion.

Thus, there are signatures of three owners on the petition and at least three owners who have not signed the petition in the area to be annexed. Therefore the petition does not contain signatures of "a majority of owners in number." It is unnecessary to decide whether the holders of easements qualify as "owners" since they could only increase the lack of a majority.

Since the petition lacks a majority of signatures of owners, the Commission is without jurisdiction in the matter. Cf., State ex rel. Smith v. Village of McKinley, 132 Minn. 48, 155 N.W. 1064.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 15 1966

Joseph L. Donovan
Secretary of State

CITY OF VIRGINIA
VIRGINIA, MINNESOTA

MILTON W. LOGAN
CITY ATTORNEY

CARPENTERS BUILDING
PHONE SH 1-5592

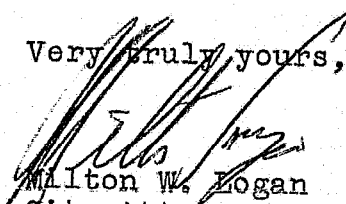
February 24, 1965

Secretary of State
State Capitol Building
St. Paul, Minnesota

Gentlemen:

I enclose herewith Petition for Annexation,
Certificate of Filing and an area plat which I am
serving upon you by mail.

Very truly yours,


Milton W. Logan
City Attorney

Enc.
MWL:tl

Municipal Order - Dismissed

PETITION FOR ANNEXATION OF HEREINAFTER DESCRIBED TERRITORY TO THE
CITY OF VIRGINIA, MINNESOTA

TO THE CITY COUNCIL OF THE CITY OF VIRGINIA, MINNESOTA:

Your petitioners respectfully represent and show to the City Council of the City of Virginia, Minnesota, that they are and constitute a majority of the landowners in the territory hereinafter described, and are desirous of procuring the annexation to the City of Virginia of the following described territory, to-wit:

Beginning at the Southeast corner of Section Twelve, Township Fifty-eight North, Range Eighteen West (Sec. 12, Twp. 58N, R18W), thence West along South line a distance of Six hundred eighty-three and seventy-four hundredths feet (683.74') to a point; thence deflect Eighty-seven degrees, eight minutes and forty-six seconds (87°-08'-46") right along East Right of Way line of the Duluth, Winnipeg and Pacific Railway a distance of Five thousand three hundred two and forty-six hundredths feet (5302.46') to a point on the North line of said section; thence deflect Ninety-five degrees twenty-one minutes and four seconds (95°-21'-04") right along North line of said section a distance of One Thousand Forty-four and twenty-three hundredths feet (1044.23') to a point which is the Northeast corner of Section Twelve; thence deflect Eighty-eight degrees fifty-seven minutes and five seconds (88°-57'-05") right along East line of Section Twelve a distance of Twenty-six hundred thirty and eighty hundredths feet (2630.80') to the east quarter corner; thence deflect zero degrees Forty-eight minutes, Fifty-five seconds (0°-48'-55") left along East line of Section Twelve a distance of Two thousand Six hundred twenty and fifty-two hundredths feet (2620.52') to the point of beginning and there ending. Said parcel to contain (104.6+) acres more or less.

Your petitioners further represent that the above described territory is not platted, lies entirely in the Township of Nichols, does not exceed 200 acres, and is not within the limits of any city or village and is adjacent to the City of Virginia, Minnesota.

Your petitioners further represent that the above described territory is so conditioned as properly to be subjected to city government, and that there is the presence of an existing or reasonably anticipated need for governmental services in said territory, such as water system, sewage disposal, zoning, police and fire protection, and that it is feasible and practicable for the City of Virginia to provide these governmental services presently or when they become necessary.

Your petitioners further represent that they desire to procure the annexation of the above described territory to the City of

Virginia, St. Louis County, Minnesota, pursuant to Minnesota Statutes 414.03, Subdivision 2, which is a section of the Minnesota Commission Act.

Your petitioners further represent that a map of the above described property is attached hereto and made a part of this petition showing said property in relationship to the City of Virginia, the municipality to which it is to be annexed.

WHEREFORE, Your petitioners pray that the proper and necessary procedural steps be taken by your honorable body for the annexation of the above described territory to the City of Virginia, Minnesota.

LANDOWNER

ADDRESS

Associated Builders & Trades
By Carl E. Sankowski

Virginia, Minn.

John E. Holt

Virginia, Minn.

James Harbauer

Duluth, Minn.

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

John E. Holt, being first duly sworn, deposes and says that he is one of the foregoing petitioners who has subscribed said petition; that the number of landowners of the territory described in said petition is five, and that the majority of said landowners have signed said petition.

That the deponent further states that he has read said petition, and that he knows the contents thereof and the same is true in substance and in fact and that all of the statements contained in said petition are true.

John E. Holt
John E. Holt

Subscribed and sworn to before me this 22nd day of February, 1965.

K. Paulson
Notary Public
K. KEITH PAULSON

CERTIFICATION OF FILING AND AFFIDAVIT OF MAILING

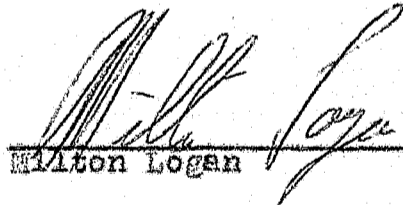
STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

Milton Logan, being first duly sworn on oath, deposes and says that on the 24th day of February, 1965, he filed the enclosed Annexation Petition with the City of Virginia, St. Louis County, Minnesota, it being the City in which the petitioners are desirous of being annexed by handing to and leaving with Paul Lundmark, City Clerk, at the Virginia City Hall, Virginia, Minnesota, a true and correct copy thereof.

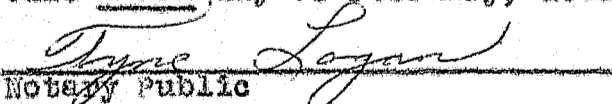
Affiant states further that he served a notice of the filing of said Petition upon the Township Board of the Township of Nichols, St. Louis County, State of Minnesota, by depositing said Petition in the United States mail at Virginia, Minnesota, addressed to Gordon Johnson, a member of the said Township Board with address at Nichols Town Hall, Parkville, Minnesota, with the postage prepaid.

Affiant states further that he served the notice of the filing of said Petition with the St. Louis County Commissioners by depositing said Petition in the United States mail at Virginia, Minnesota, addressed to the Office of the St. Louis County Commissioners, St. Louis County District Court House, Duluth, Minnesota, with the postage prepaid.

Further affiant sayeth not.


Milton Logan

Subscribed and sworn to before me
this 24th day of February, 1965.


Notary Public

MYNE LOGAN
Notary Public, St. Louis County, Minn.
My Commission Expires July 6, 1966

SEE
OVERSIZED
DOCUMENT(S)

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C.D.

PETITION FOR ANNEXATION
