

BEFORE THE MUNICIPAL COMMISSION  
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Robert J. Ford	Vice-Chairman
Arthur R. Swan	Member

IN THE MATTER OF THE RESOLUTION FOR THE ANNEXATION  
OF CERTAIN PROPERTY TO THE CITY OF WILLMAR, MINNESOTA

The Minnesota Municipal Commission heard various motions to dismiss the present proceeding on May 7, 1968. Several briefs were filed in support of those motions on September 3, 1968. Counsel for the petitioner submitted a brief in support of the Commission's jurisdiction on October 9, 1968. The Municipal Commission held the proceedings in abeyance until they had time to rule on the motions before it. The Commission having duly considered the arguments of counsel and all of the briefs submitted, hereby makes and enters the:

FINDINGS OF FACT

I.

The petitioner's resolution describes certain lands they intend to annex by referring to the boundaries of that part of Willmar Lake and Foot Lake which are now established by the top of Dam Elevation 1117.19 United States Government survey Datum.

II.

No notice of the hearing was posted in the area to be annexed prior to the first hearing conducted by the Commission on March 14, 1968.

#20298

CONCLUSIONS OF LAW

I.

The description of that area to be annexed which refers to the Dam Elevation of the United States Government Survey Datum is not a proper and adequate description of land for the Municipal Commission to assume jurisdiction in an annexation proceeding.

II.

No hearing may be conducted until after proper notice has

been posted in the area to be annexed. The requirements of posting are mandatory provisions of the M.S. 1967, Section 414.03, Subdivision 3.

O R D E R

The motions to dismiss the proceedings to annex certain lands to the City of Willmar as described in Commission file Number A-1288 on the basis of lack of jurisdiction by the Municipal Commission are granted. All proceedings initiated pursuant to those proceedings are hereby terminated.

Dated this 19th day of November, 1968

MINNESOTA MUNICIPAL COMMISSION  
610 Capitol Square Building  
St. Paul, Minnesota 55101

*Bruce Rasmussen*

Bruce Rasmussen  
Secretary

#20298  
STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
NOV 20 1968

*Joseph A. Johnson*  
Secretary of State

MEMORANDUM

IN THE MATTER OF THE RESOLUTION FOR THE  
ANNEXATION OF CERTAIN PROPERTY TO THE  
CITY OF WILLMAR, MINNESOTA

#20298  
STATE OF MINNESOTA  
DEPARTMENT OF STATE  
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*James J. Johnson*  
Secretary of State

A. Description of Property to be Annexed is inadequate.

The description of territory to be annexed to the City of Willmar as defined by Area B and C in the City's petition is not a legally sufficient definition of the property.

Area B is defined as:

"All that part of Willmar Lake (450) acres lying in Section One (1), Two (2), and Eleven (11), Township One Hundred Nineteen (119) North, Range Thirty-Five (35) West, County of Kandiyohi, the boundaries of which lake are as now established by top of Dam Elevation 1117.19 USGS Datum".

Area C is defined as:

"All that part of Foot Lake (175) acres lying in Section Three (3), Nine (9), Eleven (11), and Sixteen (16) of Township One Hundred Nineteen (119), North Range Thirty-Five (35) West, County of Kandiyohi, the boundaries of which lake are as now established by top of Dam Elevation 1117.19, USGS Datum".

M.S. 1967, Section 414.03 Subdiv. 1 provides that the petition for annexation of unincorporated property to a Municipality shall set forth the boundaries of the territory. The instant petition does not delineate the exact boundaries which these lakes encompass. The areas in the petition are only defined as the boundaries of the lakes now established by the top of Dam Elevation 1117.19 of USGS Datum. The petition must state the legal description of the boundary line established by Dam Elevation 1117.19.

A Municipality is a legal, political and separate body of Government. It is a creature of the State but must remain at all times amenable to the will of the State. Because of these reasons, it is necessary that the territory

included within the municipality must be clearly defined and well bounded. 62 C.J.S. Municipal Corporation, §38. The description must give a definite location and boundary and be such as to include territory within certain lines. State v. Tucker, 48 Mo. App. 531; Cutting v. Stone, 7 Vt 471.

The purpose of the statutory requirement that a description of the boundary of the area to be annexed is that limits of the proposed territory be established with accuracy and that all persons might know whether they are within or without the boundary lines. This policy applies equally to the annexation of territory which includes lakes and its underlying land.

In the present petition, the boundary of the proposed territory could not be ascertained without obtaining USGS Datum information. The residents of the area located adjacent to Willmar and Foot Lakes are entitled to know what exact area is intended to be annexed to the City of Willmar without having to obtain USGS Datum information. The description of the property as it currently exists in the petition is not clear, definite or explicit. In fact, it is ambiguous, and when there is any ambiguity in the terms of the petition rendering its meaning doubtful, the doubt must be resolved against the person initiating the petition.

This memo is not to indicate that the City of Willmar's petition is dismissed with prejudice. The City may amend its petition and give the exact description of the property it intends to annex in Willmar and Foot Lakes. However, this description cannot be defined by giving reference to some other data or informational source. The legal

description must be defined in the petition the same as Area A was defined in the City's present petition.

- B. Adequate notice was not given in the area proposed to be annexed.

M.S. 1967, Section 414.03 Subdiv. 3 provides that in annexation of unincorporated property to a municipality notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition and in three public places in the annexing village or city. As a general rule, where a method of giving notice is prescribed by statute, such method is exclusive and there must be strict compliance with the statute. In re Launsbury, 208 Iowa 596, 226, N.W. 140; Cowl v. Wentz, 107 N.W. 2d 697.66; 66 C.J.S. Notice § 16.

The City of Willmar admits that posted notice was not in the area to be annexed before 20 days of the initial hearing on March 14, 1968. M.S. 1967, Section 645.44 Subdiv. 16 states that the word "shall" is mandatory and not permissive. Therefore, in Section 414.03, Subdiv. 3, the posting of notices 20 days prior to a hearing is mandatory and cannot be waived by any party including the Municipal Commission and the Commission cannot hold a hearing until the posted notice is given.

Again, the City is dismissed without prejudice and it may initiate another petition for annexation of the same property. However, it must fulfill all of the requirements of Section 414.03 before the Municipal Commission has authority to hold a hearing for the purpose of determining whether the property should be annexed to the City of Willmar.

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