



STATE OF MINNESOTA
MUNICIPAL BOARD

Suite 165 Metro Square
7th & Robert Streets
St. Paul, Minnesota 55101

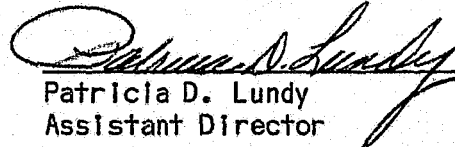
August 4, 1986

Secretary of State
c/o Donna Scott
State Office Building
St. Paul, Minnesota 55155

Re: Municipal Board Docket Number: A-4282 St. Cloud

The subject order of the Minnesota Municipal Board makes no changes in the population of the City of St. Cloud.

Official date of the "Order Of The Board Concerning The Hearing Of Evidence Upon Proposed Settlement" is August 4, 1986.


Patricia D. Lundy
Assistant Director

PDL:sg

cc: Wallace O. Dahl, Director
L.G.A. & A. Division
Department of Revenue
2nd Floor Centennial Building

R. Thomas Gillaspay, Ph.D.
State Demographer
200 Capitol Square Building

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 8 1986

Secretary of State

A-4282 St. Cloud

BEFORE THE MUNICIPAL BOARD
OF THE STATE OF MINNESOTA

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 18 1986

John Andrew Howe
Secretary of State

IN THE MATTER OF THE RESOLUTION
FOR THE ANNEXATION OF CERTAIN
LAND TO THE CITY OF ST. CLOUD
PURSUANT TO MINNESOTA STATUTES
414

ORDER OF THE
BOARD CONCERNING
THE HEARING OF
EVIDENCE UPON
PROPOSED SETTLEMENT

The above-entitled matter came on for hearing on April 23, 1986. At that time the matter was continued to July 16, 1986 at the request of the city and town of St. Cloud for the purpose of permitting the city and town to present for Board consideration a proposed settlement agreement between the city and town.

The settlement agreement as proposed by the city and town would provide for, among other things, a three-phase joint orderly annexation resolution for annexation of specified portions of the town to the city of St. Cloud on January 1, 1989, January 1, 1992, and January 1, 1995. This joint resolution, it is proposed, would be submitted by the parties pursuant to that part of Minn. Stat. § 414.0325, subd. 1, which provides:

If a joint resolution designated an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the board is necessary, the board may review and comment, but shall, within 30 days, order the annexation in accordance with terms of the resolution.

Under the proposed settlement the city and town further provide that on January 1, 1995, the portions of the town

not annexed to the city shall be incorporated into a new city.

The proposed settlement further provides that effectuation of its terms are to be contingent upon the Municipal Board approving the agreement and ordering the proposed 1995 incorporation as set forth in the agreement, and upon approval of the agreement at a referendum of the city and town voters to be held in November of 1986.

On June 9, 1986, a meeting of the Board was convened to discuss procedural and jurisdictional issues raised by the settlement proposal.

Subsequent to that meeting the city and town submitted a revised proposal which retains the substantive features of the original proposal but modifies slightly the order of procedures contemplated.

It is contemplated by the parties that the Board will conduct a hearing to consider evidence pertinent to the proposed incorporation. Following this hearing the city and town propose to hold a referendum concerning the terms of the proposed settlement. In the event the referendum is favorable to the proposal, the Board would be authorized to order the incorporation exactly as proposed in the petition or to deny such incorporation but would have no jurisdiction or authority to issue any other order whatever pertaining to incorporation of any portion of the town of St. Cloud.

After considerable effort, the Board is unable to determine that it has authority to conduct formal incorporation proceedings subject to the conditions proposed.

Minn. Stat. § 414.02, subd. 1, expressly provides, in part:

Subdivision 1. **Initiating the incorporation proceedings.** This section provides the exclusive method of incorporating a municipality in Minnesota.

Thus, there appears no authority for the Board to order an incorporation except pursuant to section 414.02. However, nothing in section 414.02 indicates that a formal incorporation proceeding commenced pursuant to that section is or may be bound absolutely by conditions or non-statutory factors or procedures sought to be imposed by the petitioners or by agreement between petitioners and other persons or entities.

Nonetheless the Board recognizes that the public interests embodied in Minn. Stat. ch. 414 are best served if municipal growth and incorporation can be achieved in a manner which meets the statutory procedural and substantive requirements and also satisfies the interests and concerns of the affected political subdivision.

For this reason the Board desires to give full consideration, within the scope of its statutory authority, to the proffered settlement into which the parties have put substantial good faith effort and to give interested parties an opportunity to present evidence thereon.

Minn. Stat. § 414.031 pursuant to which this matter is before the Board clearly contemplates that the appropriateness of incorporation of town territory not annexed is a proper matter for Board consideration in an annexation proceeding. Minn. Stat. § 414.031, subd. 4(m). The fact that potential incorporation is expressly made pertinent to an annexation proceeding strongly implies the authority of the Board to receive evidence and make findings upon a potential incorporation outside the context of a formal incorporation proceeding.

Accordingly, the Board hereby directs:

1. The town and city shall submit to the Board not later than August 15, 1986, all the information pertinent to the proposed incorporation which would be required by Minn. Stat. § 414.02 as part of a petition for incorporation.

2. On August 27, 1986, the Board will reconvene this proceeding to hear all evidence any party may wish to offer concerning the proposed incorporation (together with any evidence concerning other aspects of the proposed settlement which might be relevant thereto).

3. Thereafter the Board will issue interim findings and conclusions directed to the feasibility of the incorporation as proposed in light of the evidence adduced and the statutory criteria established in Minn. Stat. § 414.02, subd. 3(a)-(j).

4. Following the issuance of such findings and conclusions the town and city shall, within days, advise the Board whether or not they intend to proceed with the proposed settlement. If they do intend to proceed, the advisory shall be accompanied by a formal Petition for Incorporation pursuant to Minn. Stat. § 414.02, subd. 1, and any joint resolutions respecting orderly annexation pursuant to Minn. Stat. § 414.0325 which may be appropriate for Board consideration at that time.

5. If the city and town do not advise the Board that they intend to proceed with the settlement, the Board will, absent further motions by the city or town, reconvene at a time to be determined by the Board to receive further evidence upon the Petition for Annexation as originally submitted in this matter.

Dated this 4th day of August, 1986.

MINNESOTA MUNICIPAL BOARD
165 Metro Square Building
St. Paul, Minnesota 55101

Terrence A. Merritt

Terrence A. Merritt
Executive Director

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DEPARTMENT OF STATE
FILED
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Jean Anderson Howe
Secretary of State

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