

## Attorney General “opinion” on annexation of city land

by Dave Featherly

In an 8-page letter to County Attorney Peter Froelicher, dated January 17, 2006, Wyoming Attorney General Patrick J. Crank wrote what read like the identical words used by City Councilman Patrick Collins at an earlier city council meeting on the same subject.

While it is possible that Collins could have correctly anticipated the words of the State's Attorney General, it is more probable that they had discussed the question before it was presented and the friends from hockey knew what the opinion of the AG would be, if one were requested.

The question basically comes down to whether a municipality can annex land it owns if it is in violation of most of the legal requirements if the annexation were of the land that was privately owned.

While the AG's opinion letter waffles at times, his conclusion is that a city does not have to comply with state annexation statutes on land they own - wherever that land may fall. That suggests the land could be in another municipality or even in another county. Other parts of the statutes may contradict that but his open-ended opinion presents that opportunity.

His opinion cited a Supreme Court decision on “*Kroenlein v. Eddington*.” He even makes it clear in a footnote that the *Kroenlein* case was based on previous state law, not current state law.

Crank conveniently ignores subsequent Wyoming Supreme Court decisions related to annexation which should affect the opinions of Justices now on the court: *Cox v. City of Cheyenne* (2003 WY 146) and *Cotton v. City of Cheyenne* (2004 WY 16\*). The only Justice now on the court who did not participate in those decision is Justice Burke. His decision from the District Court was overturned on the *Cox* matter so he would have to recuse himself if a similar dispute came before this court.

Before anyone gets too excited about an opinion from this Attorney General, I would remind you that he offered opinions to the Governor on wolves management, Indian Gaming, term limits and protection of the bucking bronc and rider trademark. Those opinions were wrong and costly to the residents of the State.

Crank refers to “relevant case law” in his letter but cites only *Kroenlein* - which had nothing to do with a city annexing land it owned. It was a “407” annexation (which now exclusively deals with that provision but at the time of *Kroenlein* also provided for an annexation of petitioned land which the city did not own) but dissimilar to the question at hand.

His premise is that in the *Kroenlein* case, the Court wrote that a petitioner for annexation under the “407” provision did not have to meet the full requirements for an annexation. He writes about the “plain language” construction of a statute but then conveniently ignored what the Supreme Court wrote subsequent to his cited *Kroenlein* case.

He twisted his interpretation of words to suit his goal of siding with the city - and perhaps the Governor. He uses double negatives to prove a positive. “... if the city is not required to conduct such a hearing ..., it stands to reason that the city is likewise not required to make the determination that the annexation complies with ...” Say what?

Reading this opinion letter to his friends at the City of Cheyenne, it appears that the AG is blissfully unaware of the *Cox* and *Cotton* rulings.

He quoted from *Kroenlein* liberally, but did not mention the two later annexation or annexation-related cases which the City lost. He wrote: “We find that the legislature deliberately stayed silent regarding addressing public interest concerns in a 407 proceeding ...”. He concluded, “... if the legislature had intended to exclude those procedures, it would have specifically done so.” That assumes a lot. Wyoming statutes are often unclear, incomplete and ambiguous.

His interpretation of the law on this matter, coupled with his avoidance of the *Cox* and *Cotton* case law, makes Bill Clinton's “it depends on what the meaning of ‘is’ is,” intelligible and sound.

Pat Crank further confuses a once-held belief that no landowners except those within the area to be annexed can object to that annexation and that shutting them out of a public hearing is done deliberately on land the city owns because there are no property owners within the city owned land. But, the *Cox* ruling contradicts his conclusion.

While no one has argued the intent of allowing a municipality to annex land it owns, even though not contiguous or adjacent with the city boundaries, it seems to me it was done for the very reasons Tom Segrave recited. The water tank north, the waste treatment plant and transfer station west were annexed to allow the small parcels to be under city control. Not for development.

If the stance he took when referencing those specific distant annexation holds, the city will now have to annex the dump, the water treatment plant, the Belvoir Ranch, land by Curt Gowdy Park and any other holdings outside the city limits.

The fact that the legislature was not clear on the matter is not surprising. As I said, the statutes are often unclear, confusing, contradictory and inconsistent.

In *Cox*, the Supreme Court ruled that neighbors to an annexation will be affected and/or aggrieved by the act and do have legal standing - even though the statutes had been lacking that distinction and clarity. So Crank's conclusion that no public hearing is required to annex city-owned land because no one else has a legal right to object has been contradicted by the Supreme Court in *Cox*.

Also, the question of whether land that is going to be developed in any manner - now or in the future - has to be adjacent or contiguous to the annexing municipality, was dealt with in *Cotton*. Not only does it have to be adjacent or contiguous, it must have “substantial touching.”

Just like the Supreme Court interpreted annexation statutes to the legislative intention in *Cotton*, it would likely do the same if the annexation of the distant city-owned land west of the base is appealed. And, contrary to Pat Crank's assertion, there is no case law on point.

*Kroenlein* was decided on prior annexation law. §15-1-407 used to read: “If the city is the sole owner of any territory whether or not contiguous that it desires to annex, or if all of the owners of such land sign a petition to annex, the governing body, by ordinance, may annex the territory to the city or town without notice or public hearing, ...” The words in bold no longer appear in 407.

*Kroenlein* was a dispute over property owners of private land being annexed without all signatures and a fight over a city liquor license being issued before the annexation was completed.

In summary, I think this AG's opinion letter is better summed up by his own admission on page 4 of his letter to Peter Froelicher:

*On the other hand, the relevant statutes do contain some language which creates uncertainty regarding this conclusion. In particular, §15-1-402(a)(v) specifically references §15-1-407 seemingly indicating that the legislature intended to also require these findings to be made under a §15-1-407 annexation. Additionally, the language of §15-1-407 specifically*

*references portions of §15-1-402 perhaps indicating that the legislature knew how to specifically exclude the §15-1-402 procedures from the §15-1-407 annexation process and, therefore, if the legislature had intended to exclude those procedures, it would have specifically done so.”* (Bold and italics added.)

Amen, Brother. I accept your waffling and setting up a way out when the Supreme Court hands yours to you.

Below is from *Cotton*. Four of the five Justices who agreed in that unanimous decision, written by Justice Voigt, are still on the Court. It is clear that they fully understand and appreciate the need for a municipality to grow from the center out and not leapfrog all over the landscape. A ruling that municipalities can legally annex land that they own (even if recently bought for the purpose of annexation and then sale for residential or commercial development) opens a can of worms these Justices seem to want to avoid. A governing body could assure the Court and its own residents that such an annexation is not intended to grow the city or town but there can be no guarantee that future governing bodies will feel the same. Later, the annexed land could be surplus and sold for the development the annexing body said would never happen.

¶[30] We agree not only with the result in the cases finding adjacent and contiguous to be synonymous in the annexation context, but with their reasoning as well. The public policy behind geographically limited municipal annexation was well stated in *Hawks*, 261 S.E.2d at 97: Contiguity has always been viewed as synonymous with the “legal as well as the popular idea of a municipal corporation in this country,” which is one of “oneness, community, locality, vicinity; a collective body, not several bodies; a collective body of inhabitants—that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interest because residents of the same place, not different places. So, as to territorial extent, the idea of a city is one of unity, not of plurality, of compactness or contiguity, not separation or segregation.” 56 Am.Jur.2d, Municipal Corporations § 69, quoting *City of Denver v. Coulehan*, 20 Colo. 471, 39 P. 425 (1894). Contiguity, then, is an essential component of the traditional concept of a municipal corporation, which is envisioned as a governmental unit capable of providing essential governmental services to residents within compact borders on a scale adequate to insure “the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development.” G.S. 160A-33(2).

The element of contiguity helps to preserve the economic and political viability of municipal government. The costly package of services provided by municipal government can be economically maintained only within the compact boundaries fostered by the contiguity requirement. Conversely, the requirement of contiguity discourages prohibitively expensive extension of municipal services to noncontiguous areas where municipal services cannot be economically supplied. Moreover, it goes without saying that, from a political standpoint, a compact, contiguous area is more easily governed than one split into diverse, noncontiguous enclaves. Vicinity engenders a unified sense of community identity which facilitates the formation of the consensus essential to effective government. See generally, *City of Denver v. Coulehan*, supra.

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