

Docket No. 38097—Agenda 58—November, 1963.

The People *ex rel.* The Village of South Barrington *et al.*  
v. The Village of Hoffman Estates *et al.*, Appellees,  
Appellants.

Mr. JUSTICE DAILY delivered the opinion of the court:

This is a *quo warranto* action filed in the circuit court of Cook County by the People, upon the relation of the village of South Barrington and forty-two individuals, against the village of Hoffman Estates to determine the validity of certain annexations to the latter municipality. The village of Barrington Hills and three other individuals were allowed to intervene as plaintiffs, and H-H Ranch, Inc., a corporation, and five natural persons were permitted to join in the proceedings as defendants. Upon plaintiffs' motion for summary judgment, and from the supporting affidavits, the lower court determined that the annexations were invalid and ordered the ouster of the village of Hoffman Estates. The trial judge has certified that the validity of municipal ordinances is involved and that public interest requires direct appeal to this court.

Prior to November, 1961, the northerly boundary of the village of Hoffman Estates extended for almost three miles along the south line of the Northern Illinois Toll Highway which, at that location, ran in an east-west direction. From that time, however, and continuing through September, 1962, various parcels situated immediately north of the tollway and across from what had formerly been the northerly boundary of Hoffman Estates, including that portion of the Barrington Road which ran over the tollway at this point, were annexed by ordinance to the village of Hoffman Estates so as to extend for a distance of approximately three miles along the north side of the tollway. In June, 1962, certain of the present relators tried unsuccessfully to annex a portion of this same property to the village of South Barrington, whereupon they requested both the Attorney General and the State's Attorney of Cook County to institute *quo warranto* proceedings, but without avail. The present action was then filed by leave of court.

Section 7-1-1 of the Municipal Code, (Ill. Rev. Stat. 1961, chap. 24, par. 7-1-1,) provides that territory which is contiguous to a municipality may be annexed if not within the corporate limits of another municipality, and section 7-1-10, (Ill. Rev. Stat. 1961, chap. 24, par. 7-1-10,) also allows the annexation of contiguous streets and highways which are under the jurisdiction of the De-

partment of Public Works and Buildings of the State of Illinois, or of a county or township highway department. Tollways are not, however, included under the provisions of the latter statute and there was no attempt to annex the tollway in the present case. Thus, the determinative question now presented is whether the territory annexed to the village of Hoffman Estates was "contiguous" within the meaning of the Municipal Code.

out { No hard and fast rule has been devised to determine whether or not an area is contiguous to another, but such determination must depend upon the facts of each case. (*Western Nat. Bank of Cicero v. Village of Kildeer*, 19 Ill.2d 342.) Although earlier cases have in some instances emphasized the need for a physical touching, we have heretofore held that such factor is not determinative in itself. In *People ex rel. Adamowski v. Village of Streamwood*, 15 Ill.2d 595, we found the annexation of a 75-mile network of roadways invalid even though it was possible to enter such a disconnected maze from a point within the annexing municipality, and a similar conclusion was reached in *People ex rel. Village of Worth v. Ihde*, 23 Ill.2d 63. Thus, contiguity depends not only upon physical proximity but also upon the unity of the area and the ability of the annexing municipality to furnish necessary services to the territory involved. This was particularly noted in *People ex rel. Clark v. Village of Wheeling*, 24 Ill.2d 267, where, in holding the annexation of a strip of tollroad invalid, we pointed out that the village had no access to the area involved and had no means of providing it with the usual municipal services.

The fundamental notion of a municipal corporation is that of unity and continuity, not separated or segregated area; a group of people gathered together in a single mass. (37 Am. Jur., p. 644.) This necessity for unity of purpose and facilities forms the very basis for the requirement of contiguity. Although the actual joining of territory is in most cases necessary to provide this community of interest, there may be certain instances where, because of physical obstructions such as navigable rivers or waterways, extended boundary contact between the municipality and the annexed area is impossible. Such does not, however, in all instances mean that there is no single community or that the tracts are not contiguous. 37 Am. Jur., p. 645.

out { Webster defines "contiguous" as not only the actual touching but also "near, though not in contact; neighboring; adjoining." (Webster's New Int. Dictionary, 2d ed.,

p. 576.)] In the present case the area lying north of the tollway is physically separated from the village of Hoffman Estates except for the Barrington Road, but it parallels the northerly boundary of the municipality for a distance of almost three miles. Although the strip separating the two areas is only three hundred feet in width, it constitutes a tollway which by statute is made immune from annexation. It does not necessarily follow, however, that the two areas should not be governed as a single community. Since the portion of Barrington Road annexed by the village of Hoffman Estates was part of the county road system prior to its annexation by the village, it did not lose its character as part of the system because of the construction of the bridge by the Toll Road Commission carrying it over the tollroad. (*City of Chicago v. Sanitary Dist.* 404 Ill. 315, 323.) Access may be had to the annexed territory by means of the Barrington Road, and from the affidavits filed in the trial court it appears that Hoffman Estates is already affording police protection, garbage removal, and performing other municipal functions in the area in question. Under these circumstances we believe the annexed territory was contiguous to the village of Hoffman Estates within the meaning of the Municipal Code.

To decide otherwise would be to deny to those communities, which by chance may be bounded by a tollway, the opportunity to acquire additional tracts which it may need for existing municipal purposes and for natural growth. It might also forever deny those persons living across the tollway the opportunity to enjoy the services and facilities which a municipality can offer, or encourage the formation of numerous small and competing local governments having a duplication of effort and affording limited services. Although this question has not been previously posed to this court, it has in at least two instances been considered by our Appellate Courts. In *Village of Flossmoor v. Mutual Nat. Bank of Chicago*, 23 Ill. App. 2d 440, the territory sought to be annexed was adjacent to and parallel with the village but physically separated by the west half of the avenue which marked their common boundary. Nevertheless, the areas were held to be contiguous. A similar decision was rendered in *People ex rel. Henderson v. City of Bloomington*, 38 Ill. App. 2d 9, (petition for leave to appeal denied, 26 Ill.2d 627,) wherein the area annexed was situated across U.S. Route 66 freeway from the city.

Although other points are raised, in view of our present holding their consideration is no longer necessary. For the reasons stated, the judgment of the circuit court of Cook County is reversed.

*Judgment reversed.*

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