10-25-1968

Board of County Com'rs of Arapahoe County v. City and County of Denver

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NO. 23614

IN THE SUPREME COURT OF THE STATE OF COLORADO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO; SHERIDAN SCHOOL DISTRICT NO. 2, ARAPAHOE COUNTY, COLORADO, AND BOB D. McAFEE, EDNA JEANNE McAFEE, JAMES E. JACKSON, DENMER A. WELLS, JR., DOROTHY M. WELLS, JACK O. BANKS, DOROTHY BANKS, JOHN L. DORLAC, JR., AND JUANITA J. DORLAC, Plaintiffs in Error, v. THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION; THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; ROBERT B. KEATING, JOHN F. KELLY, IRVING S. HOOK, PAUL A. HENTZELL, KENNETH M. MacINTOSH, CARL N. DeTEMPLE, EDWARD F. BURKE, JR., ELVIN R. CALDWELL, AND ERNEST P. MARRANZINO, IN THEIR CAPACITIES AS AND BEING AND CONSTITUTING THE MEMBERS OF THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; AND EARL WANKE, AS ASSESSOR OF THE COUNTY OF ARAPAHOE; AND PAUL W. WOLF, AS THE TREASURER OF THE COUNTY OF ARAPAHOE, AND LAWRENCE BAULER, DOUGLAS TUCK, JOHN H. McLAUGHLIN, JOHN E. CARON, CHARLES J. MACKET, GLEN H. ADAMS, DAVID R. MILEK, DONALD R. OLSON, AND JOSEPH DELIO, Defendants in Error.	Error to the District Court of the County of Arapahoe State of Colorado HONORABLE WILLIAM GOBIN Judge

BRIEF OF PLAINTIFFS IN ERROR

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NO. 23614

IN THE SUPREME COURT OF THE STATE OF COLORADO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO, et al.,	)	Error to the District Court of the County of Arapaho State of Colorado
Plaintiffs in Error,	)	
v.	)	
THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION, et al.,	)	HONORABLE WILLIAM GOBIN Judge
Defendants in Error.	)	

BRIEF OF PLAINTIFFS IN ERROR

STATEMENT OF THE CASE

The within action involves the validity of an attempted annexation of certain lands in the County of Arapahoe to the City and County of Denver.

The issues of fact are substantially uncontested in the pleadings, and are practically all matters of stipulation upon the record, and matters of written exhibit.

The property which is the subject matter of the action was heretofore attempted to be annexed to Denver as part of an annexation sometimes referred to as the Fort Logan Annexation. That annexation was declared void by the Colorado Supreme Court in CARROLL C. ELKINS, et al. and BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY v. THE CITY AND COUNTY OF DENVER, 157 Colo. 252, 402 P.2d 617 (May 17, 1965), which concluded:

> ". . . the plaintiffs established without question that the owners of more than 50% of the area proposed to be annexed had not joined in seeking the annexation . . .. The ordinance of the city council, purporting to annex to the City and County of Denver the 1040 acres included in the petition involved in this case, is void."

Subsequently, new annexation proceedings were commenced, under the former statute, C.R.S. 1963, Chapter 139, Article 10, provision for eligibility of land for annexation being made in C.R.S. 1963, 139-10-2, which provides that territory shall be eligible for annexation if not embraced within a city, city and county, or incorporated town, and:

> "(c) abuts upon or is contiguous to the city, city and county, or

> incorporated town to which it is proposed to be annexed in a manner which will afford reasonable ingress and egress thereto, provided that not less than one-sixth of the aggregate external boundaries of the territory proposed to be annexed must coincide with existing boundaries of the existing municipality."

The allegations of paragraphs 1 through 14 of the complaint are admitted to be true, and, further there was entered into a pre-trial order, under which substantially all other facts were agreed, the essential record in the case being a stipulation, dictated by the parties into the record, admitting certain exhibits.

Therefore, we will detail the stipulated matters in the pleadings, the content of the pre-trial order, and the content of what we believe to be the pertinent exhibits, which, as we understand and as the matter was tried, constitute an undisputed record.

There was no evidence or testimony of any kind presented by the defendants, and it is, therefore, believed that the questions arise entirely as a matter of law.

Individual plaintiffs are residents of Arapahoe County and of School District No. 2 therein; they are real estate taxpayers; and they are not residents within the area sought to be annexed. The Plaintiff School District is a regularly organized school district, containing the properties sought to be annexed. Plaintiff Commissioners are the County in its corporative capacity, and is the owner of roads, streets, and public ways in the subject annexation area.

That area has sought to be annexed by Ordinance 278, Series of 1965, of the City and County of Denver, annexation plat under which was filed of record September 27, 1965.

Plaintiffs bring action under the provisions of C.R.S. 1963, 139-10-6, as persons aggrieved by the annexation proceedings, the individual plaintiffs acting representatively of innumerable others in the Plaintiffs County and School District.

The City and County of Denver is a municipal corporation. Defendant Council and its members are the members of the Council at times pertinent to the action. Defendant Wanke is the Assessor of Arapahoe County and Defendant Wolf is Treasurer.

The subject property was previously attempted to be annexed to Denver as part of the Fort Logan Annexation, declared invalid by this Court, after which that part of the lands the subject matter of the present action were again sought to be annexed to Denver, in pursuance of a purported petition for annexation, approved by a resolution of the City and County of Denver, and by an ordinance, No. 278 of 1965, which resolution and ordinance are attacked by the instant proceedings. Denver maintains the property to have been annexed and to constitute a part of School District No. 1 in the City and County of Denver, and the County, District, and plaintiff citizens contest that matter.

Individually named Defendants in Error sought to intervene as residents in the annexed area, and their intervention was permitted, as a discretionary intervention, though not one of right, by the trial court.

Section 139-10-3 requires the filing of a petition for annexation, which petition is required to contain a description of the property to be included within the area proposed to be annexed, and which is owned by each person signing the petition, and this petition must be accompanied by four copies of a map or plat of the territory sought to be annexed,

"showing, with reasonable certainty, the territory to be annexed, the

boundaries thereof, and its relationship to the established corporate limits of the municipality to which said property is proposed to be annexed."

There were admitted in evidence, by pre-trial order and by stipulation, the petitions submitted in connection with subject proceedings, being Exhibit 1-A, a group of petitions, submitted in numerous and identical parts, each containing a description. There were also admitted in evidence the plats filed with that petition, Exhibit 1-B, also containing a written description.

It is undisputed that the description contained in the plats is different from that contained in the petition, because of omission of substantially all of one call from the map description. The description in the petition, as to its applicable portion, reads:

"* * * thence westerly and northwesterly along the center line of West Union Avenue to the centerline of South Irving Street;

"thence northwesterly and northerly along the centerline of South Irving Street to the north line of Trumac Subdivision, as recorded in Arapahoe County, Colorado;

"thence westerly along the said north line of Trumac Subdivision, as recorded in Arapahoe County, Colorado, to the east line of Section 7;"

The description, as contained on the plat, was as to the subject portion, as follows:

". . . thence westerly and northwesterly along the centerline of West Union Avenue to the centerline of South Irving Street; [* * *] to the north line of Trumac Subdivision, as recorded in Arapahoe County, Colorado."

There are omitted from the plat the course and distance words, and, at the place indicated above as [* * *] the above emphasized portion of the description, namely: "thence northwesterly and northerly along the centerline of South Irving Street."

In order that annexation take place, there must be enactment by the Council of the annexing municipality a preliminary resolution, and, subsequently, an ordinance. Both that resolution and that ordinance, No. 278, Exhibit 1-C, contain the legal description given in the petition, and not that given in the plat.

In order to complete the annexation, there are required to be filed and

recorded copies of the annexation plat, duly accepted by the Council. Those copies are in evidence as Exhibit 1-D. The recorded and filed and approved plat is defective, as to description, in exactly the manner described of the original plat. It is, therefore, pleaded and admitted that the description in the plat differs from both the ordinance purporting to annex and the preliminary resolution relating to the petition, inasmuch as it omits a substantial part of the call, as shown above.

The map or annexation plat, Exhibit 1-D, etc., further does not contain distances for the larger number of its calls. That plat does not contain anywhere a statement of the total perimeter of the annexation. That plat does not contain any statement by which it is possible to calculate or determine the relation between the total perimeter of the property sought to be annexed, and the portion thereof claimed to be contiguous to the annexing City and County of Denver.

By stipulation, there was placed in evidence, the full minutes of the Denver City Council concerning all meetings dealing with the subject annexation. Nowhere in those minutes is there either data from which it can be determined what is the perimeter of the subject annexation, or what

proportion thereof is contiguous to the City and County of Denver. The Council of the City and County of Denver did not make any finding of the perimeter of the annexation or any finding of the length of perimeter coincident with claimed boundary of the City and County of Denver. There is, therefore, nowhere in the record any figure, either as to perimeter or coincident boundary, from which it is possible to ascertain whether or not there is the statutorily required one-sixth contiguity.

Plaintiffs have pleaded in their pleading that there is nowhere a showing of one-sixth contiguity; that this is jurisdictionally necessary; and that unless there is the specific finding or the specific data appearing in the annexation record, there is no jurisdiction to annex. The record does not contain that data, although it is contended, apparently, that if one were to take a ruler, and measure on the map the some forty calls of the description, some aggregate boundary could be obtained. The trial court apparently indicates so, but did not attempt to obtain such a boundary, or total of boundary, nor did anyone of the Council, and no finding concerning it is made either by the court or Council in point of quantification.

It was contended by the plaintiffs and is contended upon the record that jurisdictional facts must appear from the record and proceedings before the Denver City Council, which must make such specific findings as to place a court, reviewing its proceedings, in a position to know the facts before the Council.

Accordingly, it was contended that since nowhere in the petition, map, resolution, ordinance, or recorded plat to either the aggregate external boundaries of the territory or the portion thereof contiguous to Denver appear; and since nothing appears to justify or support general findings of more than one-sixth contiguity, the annexation must fail.

It was specifically contended that the fact of the map's purporting to be scaled does not afford the Court a criterion for ascertainment of the matters, since measurement from map by ruler would not apprise the Court accurately, and in any event the omitted and curvilinear call could not be calculated in that manner. It was contended that since the map or plat has no distances in most of its numerous and rather complex calls, it does not, as required by statute, show with "reasonable certainty" the territory to be annexed, the boundaries thereof, and the relation to the

established corporate limits of the municipality, and that, the contiguity requirement not being complied with, the annexation was ineffective.

It was further contended that the larger portion of lands immediately adjacent to the City and County of Denver are lands for which no signature appears in the petitions, and park and school lands which cannot be used as a basis for contiguity of other lands, owned by petitioners, entirely surrounded by Arapahoe County.

The petitioners live in areas which are surrounded by Arapahoe County and do not abut Denver. It is contended, therefore, that they may not utilize non-signing, but abutting, school and park lands as a basis for their non-abutting properties to the City and County of Denver.

It was stipulated by the parties and found in the pre-trial order that the plats of areas referred to as Pinehurst Estates, Bow-Mar Heights, Bow-Mar Heights Filing No. 1, and Bow-Mar Heights, Filing No. 2, were plats which were accepted and processed only by the City and County of Denver and its agencies. No action upon those plats was ever taken by the County of Arapahoe or other agencies, including its planning department, and the plats were neither accepted or approved by Arapahoe County.

The annexation during which those plats were attempted to be approved by Denver was declared "void" by the Supreme Court, as mentioned above. Accordingly, at the time the lands were purported to be platted, they were actually in Arapahoe County and not in Denver, causing the purported plats to be without effect.

Accordingly, descriptions in accordance with those plats were contended to be without effect, and accordingly, since the only descriptions are in terms of the void plats, it was contended that there were not descriptions of the lands upon the petitions and annexation plat in manner required by the statute, this involved in the second claim for relief.

The third and fourth claims for relief are predicated upon United States constitutional grounds, involving effects upon suffrage, and under the due process and equal protection provisions of the United States Constitution, involving necessary changes in congressional, representative, and other districts created by those reapportionments required by decision of the Supreme Court of the United States and the Supreme Court of Colorado, and arising since the reapportionment decisions in the LUCAS and associated cases.

The trial court made written "FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT." (f. 236) The plaintiffs appropriately and within time provided by law filed "MOTION FOR NEW TRIAL; MOTION TO AMEND FINDINGS, MAKE ADDITIONAL FINDINGS, AND AMEND JUDGMENT; MOTION FOR JUDGMENT; AND MEMORANDUM IN SUPPORT THEREOF." (f. 262)

It was therein pointed out that the proceeding was one tried to the court, wholly upon written and oral stipulations and agreements and upon documentary evidence presenting no evidentiary conflict, no evidence being presented by the defendants, who made no motions for orders at conclusion of plaintiffs' case, thus admitting prima facie showing.

It was accordingly pointed out that the court should make the specific findings and conclusions, in no manner contestable upon the record, set forth and requested in paragraphs 1 through 22, and on pages 1 through 13, of the said motion.

Further, and by way of motion for new trial, plaintiffs alleged error on the part of the court in the following particulars:

1. Trial court erred in permitting interventions, there being no intervention of right and no basis for permissive intervention.

2. The trial court erred in its finding 4, inasmuch as the map does not outline the area in any manner permitting determination of perimeter of the annexed area or the contiguity to Denver; with two exceptions, there are no distances recorded on the map; the Council did not have before it a statement of perimeter or contiguity; and the Council did not have information from which it could make the required jurisdictional finding; did not make in justiciable fashion the jurisdictional finding; and plaintiffs are not required to do so.

3. It is admitted that there is omission of a call from the plat description, both in the map presented with the petitions, and in the plat recorded, causing the recorded plat to differ from the petition and the ordinances, and to be void.

4. The court has erred in sustaining signatures to the petitions. The signatures are required to be accompanied by property descriptions. Those descriptions cannot be given in terms of void plats, and the plats are by statute wholly void, since the property was in Arapahoe County when the plats were purportedly approved, and Arapahoe County has never platted or approved plats of the lands.

5. The trial court has erred in its rulings of burden of proof, assuming that it is incumbent on the plaintiffs to establish that lands are not eligible for annexation, while, contrarily, it is necessary that the annexing City and petitioners affirmatively show, and that annexation record affirmatively find all of the facts necessary to prove eligibility for annexation. Nothing in the record indicates either the perimeter of the annexation, or the contiguity correspondence required, and there was accordingly no jurisdiction to annex.

6. Contiguity of lands, isolated from Denver and surrounded by Arapahoe County, cannot be obtained for annexation purposes by including in a plat, not signed by contiguous owners, lands lying between the petitioning land and the annexing municipality and consisting of park and school lands primarily, in order to establish by such non-signing and non-petitioning lands the requisite contiguity.

7. The court cannot refuse consideration of the admitted discrepancies between the map and the petitions and between the ordinance and resolution and the plat. The description is either correct or not, and if incorrect, as it is found to be, the annexation must fail.

8. The findings of the court relative to constitutional matters alleged are at variance with the requirements of the Supreme Court of the United States insofar as concerns equal protection of the law..

9. The court has generally misconceived its own jurisdiction and obligation under the statute.

Inasmuch as the matters here involved are almost entirely legal issues, it is not possible to state more in the statement of the case without presenting argument. The record as stated is a stipulated one, and the matters foregoing are not argument, but are synopses as required by the rule, of the matters in the pleadings, stipulations, and motions for new trial.

Motion for new trial, etc., was denied, and this matter proceeded upon writ of error and preparation of the record in normal course.

SUMMARY OF ARGUMENT

1. The trial court has failed in its obligation, refusing to make findings of fact in accordance with the stipulated evidence, all matters of fact being admissions in the pleadings, orders at pre-trial, and a stipulation as to exhibits, which comprises the whole of

the evidence in this action, the defendants having presented no evidence of any kind, and rested without such presentation.

2. The trial court has erred in abdicating its own jurisdiction and judicial duty herein.

3. The court has failed to apply the standards for annexation found in the statute. The burden is upon the persons seeking annexation, and the legislative body enactment annexation, do make findings and demonstrate by its record eligibility of the territory sought to be annexed, including matters of boundary and contiguity. No such facts appear. No such finding is made. There is no burden upon the plaintiffs to demonstrate the facts which the petitioners and annexing municipality fail to show or find. Jurisdiction not being shown, annexation must fail.

4. The petitioning areas are areas which have no contiguity with Denver. Substantially all of the intervening lands are non-petitioning park and school lands, parts of the old Fort Logan and of the Mullen Home. Those lands, contiguous to Denver but non-petitioning, may not be used by persons wholly discontiguous from Denver for purposes of creating a contiguity for annexation purposes.

5. Since the petitions must contain descriptions of the lands signing, and since these are given entirely in terms of void plats, the signatures to the petitions are not valid, and the petitions are void.

6. There having been a failure to follow the jurisdictional requirements as to annexation, the annexation is void.

7. The plats being variant as to legal description from the petition, and the recorded plat being variant from both the resolution and ordinance approving it, varying in the same manner by omission of a call, and this matter being admitted and found, the defect may not be ignored, but, like the defects originally invalidating the Fort Logan Annexation, is fatal to the annexation attempted.

8. The findings of the Council must be such as to set forth the facts known to its members, and to place the reviewing court in equal position with the Council, failing which the resulting action of the Council cannot be sustained.

9. The State Legislature by the 1965 legislation attempted to preserve school districts. The present annexation, sought to be rushed to completion before the effective date of the 1965

legislation, but after its enactment, was designed to take in three annexations which had been voided as the single Fort Logan Annexation, and so to avoid the prohibited school tax base deprivations under the new statutes. Such a policy circumvention is impermissible.

10. The attempted annexations violate the Fourteenth Amendment and its equal protection clause, in permitting Denver, by unilateral action, to revise and alter the apportioned areas properly reapportioned, in order to comply with requirements of the Fourteenth Amendment, under the orders of this Court and of the Supreme Court of the United States.

11. The trial court generally erred in overruling the motions, including motion for new trial and for findings, made by the plaintiffs.

ARGUMENT

I. THE CITY COUNCIL NOWHERE MADE THE NECESSARY FINDINGS OF ELIGIBILITY OF THE TERRITORY SOUGHT TO BE ANNEXED; THE BOUNDARY REQUIREMENTS ARE NOWHERE SHOWN UPON THE RECORD AND NOWHERE SPECIFICALLY FOUND; AND ACCORDINGLY THE COUNCIL WAS WITHOUT JURISDICTION, AND THE COURT HAS INVERTED THE OBLIGATION OF PROOF TO SUSTAIN THE ANNEXATION, NOT SUSTAINED UPON THE RECORD AND HENCE VOID.

The statutes of the State of Colorado are very clear in defining eligibility of land for annexation. The land must not be within an incorporated area. Moreover, as provided by C.R.S. 1963, 139-10-2, it is necessary that the land:

> "(c) abuts upon or is contiguous to the city, city and county, or incorporated town to which it is proposed to be annexed in a manner which will afford reasonable ingress and egress thereto, provided that not less than one-sixth of the aggregate external boundaries of the territory proposed to be annexed must coincide with existing boundaries of the existing municipality."

The "aggregate external boundaries of the territory proposed to be annexed" obviously is simply another way of saying the "perimeter" or total distance around the property to be annexed. The existing boundaries of the existing municipality contiguous to that perimeter must be at least one-sixth of that perimeter. In order to establish mathematical relation, it is necessary that there be known, in actual numerical value, (1) the perimeter, and (2) the length of the contiguous portion of the existing boundary.

Neither the perimeter, nor the length of the existing contiguous boundary appears in the record.

Normally this would appear in the petition, but the petition is silent as to this numerical value.

Normally it would appear on the map, or be capable of being simply ascertained by the map or plat, by stating in the calls the length of the line resultant from each call. However, there are here some 40 calls in the description, and linear length is a part of only two of those calls.

It is claimed that since there is a scaled map, it would be possible to add up the matters by scaling, and to compare them. This (1) was not done or found by the Council, and (2) is impracticable, in any event, because of the curvilinear nature of some of the calls, and (3) is made doubly difficult by the omission from the plat description of one of the calls, which is, moreover, if one refers to the drawing, a curvilinear call.

The map does not have relation to any actual survey, and none apparently was made by the petitioners or introduced in the record.

The Council's proceedings and minutes are in the record. All that is there set forth is a general finding in the words of the statute, but no finding of the fact as to the length of the perimeter of the annexed territory, or the portion thereof which is or is claimed to be contiguous to any boundary of Denver, so that there is nothing which can be reviewed.

It is apparently the thesis of the trial court and of the defendants, who presented no evidence and whose record as sent to the Court contains non-measurement of either the perimeter or the contiguous boundary, that it is the duty of the defendants to prove that there is not one-sixth contiguity. It is the position of the plaintiffs that if nothing in the record demonstrates the actual fact and shows that there is such contiguity, this being a jurisdictional matter, there is no establishment of jurisdiction of the Denver City Council to annex, and its purported action in so doing is void.

There is no question, moreover, that the plats filed with the petition have a description different from the petition; that the resolution and ordinance contain the same description as in the petition but different from the plat; and that the final recorded plat is also in error by the omission from its description of one call, as set forth in the statement of the case:

> "thence northwesterly and northerly along the centerline of South Irving Street."

Reference on the plat to that call further demonstrates a curvilinear line to be involved.

It is a basic precept in proceedings such as annexation that, where the legislature prescribes a statutory procedure, that statutory procedure must be substantially adhered to, and any departure therefrom renders the resulting order, process or decree a nullity.

Such matters as annexation, disconnection, incorporation, organization of districts, and the like have always been treated by the Court as essentially of the same order of proceedings.

PEOPLE ex rel. v. SOUTH PLATTE WATER CONSERVANCY DISTRICT, 139 Colo. 503, 343 P.2d 812 (1959), demonstrates very clearly the need for adherence to prescribed organizational procedure. Deviation, even by a court, renders the organization proceeding void. Where a particular fact finding is necessary in order to confer jurisdiction, then, such a finding of the ultimate fact is absolutely requisite.

This Court remarks in the SOUTH PLATTE case:

"These cases are merely an application of the general rule that where the legislature prescribes a statutory

> procedure, it must be substantially adhered to, and any departure therefrom renders a resulting decree a nullity." (Emphasis supplied.)

This results, of course, because in such cases all of such requirements are jurisdictional:

> "The court has jurisdiction only if the statutory requirements are met and it can act only in strict accordance with the powers delegated to it by the language of the statute . . .. This is a statutory proceeding and the powers conferred may not be expanded by inference or construction beyond the language of the statute."

There is no presumption in favor of jurisdiction in such circumstances. Jurisdiction must be shown, and it must be found, upon the basis of specific facts, shown in the record. The existence of the proper boundary relationships of annexed and annexing territory is jurisdictional. If the contiguity relationship does not exist, there is simply not jurisdiction to annex.

Thus, No. 21335, IN THE MATTER OF THE DISSOLUTION OF THE CITY OF SHERIDAN AND ITS ANNEXATION TO CITY AND COUNTY OF DENVER, et al. v. CITY OF SHERIDAN, A MUNICIPAL CORPORATION, et al., was

pending before this Court at the time of the invalidation of the original Fort Logan Annexation. That annexation being invalidated, there was no contiguity between Denver and Sheridan. Upon motion, therefore, this Court dismissed the proceedings on error from disallowance of the annexation, and did not allow annexation, since there could be no contiguity, which was the jurisdictional prerequisite to annexation.

Matters of amount of land, its description and boundaries, are fundamentally jurisdictional in these matters relating at base to organization of territories, municipalities, and districts, as stated in the SOUTH PLATTE case, above:

> "The statute controlling the formation of water conservancy districts embodies a procedure much like that involved in many states in incorporating villages and cities or annexing or detaching territory, or in establishing various kinds of special improvement districts, school districts, and other municipal or quasi-municipal corporations. The first step is the filing of a petition signed by a specified number of people. The obvious purpose of this is to establish that the project or district has sufficient popular support before the law will compel others to pay their share of the cost. To make

this support meaningful, and to comply with the notice requirements of due process, the proposal in the petition must be specific; otherwise, a citizen cannot form an intelligent opinion as to whether to sign and has no way of knowing what he is petitioning for or what he is agreeing to pay and the effect of his signing upon others who also will be taxed.

"In Colorado the petition must describe generally the territory involved with sufficient precision to enable a person to ascertain whether his land is included. Such a description, however, provides more than a notice to landowners; it furnishes a basis for estimating the quantity of water needed, the size of the tax base and population involved and the benefit which might be anticipated in terms of the cost per acre foot of water supplied. The Colorado statute also requires that the petition describe generally the 'purpose of the contemplated improvement' (not the district).

"Once these facts have been stated in the petition and the people in the district have weighed the merits of the proposal and each has estimated the burden and benefit for himself it would be grossly unfair to permit changes to be made, as has been done in this case, by eliminating properties

> belonging to numerous individuals and municipalities, thus multiplying the cost per acre foot of water to the user. The signer's original petition is materially and substantially amended without his authority, subjecting him to additional burdens. We cannot give approval to such procedure." (Emphasis supplied.)

In GORDON v. BOARD OF COUNTY COMMISSIONERS, 152 Colo. 376, 382 P.2d 545, it was held that in a zoning situation, amendment to an existing zoning resolution must be enacted precisely in accordance with the statutory grant of power, and not otherwise:

> "Failure to comply with the essential mandates of the statute constitutes a jurisdictional defect and invalidates the entire proceeding."

The strictness with which such statutes are construed is indeed, shown in ELKINS, et al. v. THE CITY AND COUNTY OF DENVER, 157 Colo. 252, 402 P.2d 617 (1965), invalidating this annexation for the first time on the basis of a failure to have the petitions signed by the appropriate proportion of the owners of the property.

GAVEND v. CITY OF THORNTON, ___ Colo. ___, 437 P.2d 778 (March 4, 1968), is strongly to the same effect. It was necessary to a particular annexation that there be consent in writing by the school board. The superintendent apparently gave consent, but the board did not. This Court held that the statute was to be strictly and literally construed, and invalidated the annexation. The Court specifically disallowed the argument of "substantial compliance" indulged by the City and County of Denver, and by the trial court here, saying (p. 779):

> "Defendants further contend that the procedure followed here constituted 'substantial compliance' with the statutory requirement of written consent by the school board. They argue that since the annexation here would not affect the ownership of school property or change the boundaries of the school district, the giving of consent by the school board was at most a ministerial act, which the superintendent could properly perform in behalf of the Board. But C.R.S. 1963, 139-10-1, which is quoted above in its entirety, draws no such distinction. It explicitly requires, in all cases of annexation involving school property, 'the written consent of the board of education' of the school district involved. Faced with the clear mandate of the statute,

> we are not at liberty to hold that, in some cases, the giving of the required consent is but a ministerial act, not requiring formal action by the board. Cf. Big Sandy School District v. Carroll, Colo., 433 P.2d 325." (Emphasis supplied.)

The Court held that the school board could act only at public meetings, and the act of its superintendent was without effect. It held, further, that the deficiency was not cured by a subsequent resolution ratifying the superintendent's "consent":

> "On September 14, the date of final passage of the annexation ordinance here, and on September 19, the effective date thereof, no valid written consent of the board of education had been obtained. The ordinance, therefore, was invalid when passed. No action taken by the board of education thereafter could in and of itself, breathe life into this dead ordinance."

As of the date of the proceedings here involved, no finding was made as to perimeter or contiguity, no measurements appeared in the record; and the qualification of the land for annexation was not made affirmatively to appear. That being the case, there was a like jurisdictional defect, and it cannot be

subsequently corrected. The Council made no proper finding, and had no proper fact before it from which to find, and the annexation, we submit, must fail.

It is somehow claimed that though the necessary measurements were not before the Council; though the Council made no finding of them; and though the relationship resulting is a jurisdictional prerequisite to annexation, somehow the opponents to annexation have a duty to do that which the Council did not do, and prove that there was no contiguity. That is not so. The statutory burden is where the statute places it, on the petitioners and on the Council, not on those who do not wish annexation. Thus, in BIG SANDY SCHOOL DISTRICT v. CARROLL, ___ Colo. ___, 433 P.2d 325 (November 13, 1967), this Court remarked that: "However, legislative or judicial powers, involving judgment and discretion on the part of the municipal body, which have been vested by statute in a municipal corporation, may not be delegated unless such has been expressly authorized by the legislature." (Emphasis supplied.)

The Council, then, could not delegate its obligation to determine the relationship between perimeter and boundaries of Denver. It could not make the determination without facts upon which to make it. It could not willy-nilly turn

over the determination to someone else, have that person report to it the naked legal conclusion, and adopt that conclusion without any fact before it or any fact finding supporting the conclusion. It could not because the finding is jurisdictional to annexation, and as to the reason for the City Council's having so to perform, as stated in the CARROLL case:

> "In short, by statute the school board is empowered to hire teachers and while it may well want to act on the recommendation of its superintendent, it cannot escape this statutory duty by completely shifting the responsibility to its superintendent. This is so because that is the way the legislature wanted it." (Emphasis supplied.)

Similarly, the City Council of Denver and the court cannot state that Denver is exculpated from proving jurisdiction and finding jurisdictional fact, and shift that burden to the persons aggrieved by resultant non-jurisdictional annexation. That is because the burden by the statute is on Denver, the annexing authority, and the petitioners to prove jurisdictional requisites, and not on others to disprove it.

A. The Denver City Council has Failed to Make the Necessary Findings and Record, and the Trial Court Upon Review has Failed to Exercise its Jurisdiction Properly to Review and Reverse the Attempted Annexation.

Where findings of fact are required incidental to an administrative or quasi-judicial act, or a legislative act, those findings must be made, after notice, as a result of hearing, and they must be findings clearly and explicitly set out as findings, and if any of these matters be omitted, then there is a violation of due process.

SWIFT v. SMITH, 119 Colo. 126, 201 P.2d 609, a matter involving findings of probable value as to property preliminary possession of which was sought in condemnation, specifically points out that "findings" must be made from "evidence," and that this is a judicial procedure, requiring at least the presentation before the finder of some fact from which the finding may properly derive.

Moreover, where such findings must be made, it is clearly not enough that there be a general conclusion in the words of the statute. Thus, in GEER v. STATHOPULOS, 135 Colo. 146, 309 P.2d 698, involving defective

findings in a liquor licensing procedure before a city agency, the Court stated:

> "When a court is called upon to review the action of an administrative agency, it should be placed in the same position as such agency. If the administrative agency has 'knowledge of some fact and acts upon such knowledge, the agency should see to it that what it knows becomes part of the record in order to permit the reviewing court to evaluate the matter so known. Only then can the court be in the same position as the agency in a consideration of the problem successively confronting agency and court. People v. Walsh, 244 N.Y. 280, 155 N.E. 575. The point of the matter is so ably stated by Judge Cardozo in the cited case: 'But the power of the board to do justice informally and promptly is not limited to cases where witnesses may have been heard. Without any witnesses at all, it may act of its own knowledge, for, as constituted by the statute * * * it is made up of men with special qualifications of training and experience. In that event, however, it must set forth in its return THE FACTS KNOWN TO ITS MEMBERS BUT NOT OTHERWISE DISCLOSED. TO CHARACTERIZE THE SITUATION AS A HARDSHIP WITHOUT MORE DOES NOT TEND

IN ANY SUBSTANTIAL DEGREE TO ENLIGHTEN A REVIEWING COURT. There must be a disclosure of the facts from which hardship is inferred.

"'We find neither evidence at the hearing, nor any statement, equivalent to evidence, by the board in its return, that this land, if not occupied by a garage, is incapable of application to a profitable use.'

"With his usual logic and eloquence Judge Cardozo concludes: 'We thwart the scheme of the statute if we uphold a resolution for the concession of a privilege with neither evidence at the hearing, nor allegations in the answer to be accepted as a substitute for evidence. The Legislature has said that there shall be a review by certiorari. * * * Such review becomes impossible if without supporting evidence or equivalent averment the mere conclusion of hardship is sufficient and indeed decisive. There has been confided to the board a delicate jurisdiction and one easily abused. * * * Nothing is before us to justify or even suggest a doubt of the good faith and sincerity with which the power has been exercised. At the same time judicial review would be reduced to an empty form if the requirement were relaxed in the return of the proceedings the hardship

and its occasion must be exhibited fully and at large.'" (Emphasis supplied.)

We submit that like difficulty is occasioned at bar. There is nothing in the Council's record to indicate the fact of jurisdiction, and there is no requirement upon the objectors to the annexation to prove that Denver did have jurisdiction to annex. Petitioners for annexation and the petitioning Council did not so establish. No one knows the perimeter or contiguity relationship, and it is not the duty of the plaintiffs to establish it, for it must be established before there can be annexation. That was the duty of petitioners and Council, a duty in which both failed. The descriptions do not help, containing no dimensions.

Findings by the Council in a procedure such as that at bar are not a lesser requirement than that placed upon the courts themselves under Rule 52(a), discussed in MOWRY v. JACKSON, 140 Colo. 197, 343 P.2d 833, and in RAY v. BRUSH, 152 Colo. 428, 383 P.2d 478, it being held by this Court that "it is the duty of the trial court to see that a final judgment supported by findings of fact and conclusions of law is entered in each case heard and decided by it so that on writ of error this court can be fully advised as to the complete results of the trial."

The difficulties resultant where there are no such proper findings is clearly stated by this Court in GEER v. PRESTO, 135 Colo. 536, 313 P.2d 980:

> "Where the findings and determination of the administrative authority are so imperfect and contradictory as to preclude the trial court from basing a considered judgment thereon, we being in no better position than the trial court, have but one course to pursue -- we must reverse. To hold that eight outlets, including that of applicant, satisfies the needs of the neighborhood, yet deny applicant a license, as was done here, poses a dilemmatic determination upon the horns of which we dangle in frustration. Imperfection of the determination of an administrative board which leaves no avenue for the court to take in reviewing the matter, and which furnishes no basis upon which to resolve whether the board may or may not be sustained, requires reversal . . .."

The trial court appears to find that because the Council has no record and no facts; because the plat contains no dimensions and no data which can be accurately computed or added together; because the Council without evidence has made a naked conclusion, then there is an obligation upon the objectors to annexation to disprove that

unsupported conclusion. The court announces that from the plat there could be made a finding, but it does not make one, and fails to make such a finding even though requested specifically to do so, and even though there is specifically challenged by motion the possibility of so doing. There are no facts found by or before the Council, no boundary, perimeter, measure of contiguity, distance, or proper calls. These deficiencies the trial court adds up to sustain the annexation, and the trial court thus inverts the matter wholly.

Not only did the Council fail in making any findings from which its jurisdiction could be ascertained, the trial court failed in its obligations, making findings of fact even when its attention is called to the facts contrary to the undisputed and stipulated record, and failing to make any rulings upon the fundamental questions of the case, even despite specific request for rulings.

The court peculiarly denies and abdicates its own jurisdiction, saying in its findings:

> "This Court has no jurisdiction relating to the nullifying of an ordinance and the granting of such relief is beyond the jurisdiction of this court which under 139-11-6

> [sic] CRS 1963 has only supervisory authority to regulate, hear and give appropriate relief concerning procedural irregularities in 'annexation proceedings.' There were no procedural irregularities established in the subject annexation of a nature sufficient to justify a finding that the subject annexation is null and void."

The court not only errs, but has miscited the statute. There is no "139-11-6 CRS 1963." The operative section of the statute is 139-10-6, which contains no such restrictions as stated by the court, but contrarily provides as follows:

> "Any person aggrieved by any annexation proceedings had under this article may apply at any time within ninety days after the effective date of the approving ordinance to the county court of the county in which his land is situated for a hearing and appropriate relief. No appeals shall be prosecuted from judgments of the county court in any proceedings under this article, but writs of error to such judgment shall be as in other civil cases." (Emphasis supplied.)

No longer does the County Court either exist or hear such cases. The court which did and does hear them is the District Court, which is a court of

plenary jurisdiction, having its powers under Article III on separation of powers, and Article VI, on the Judiciary, under the Colorado Constitution, and being not only a nisi prius court of plenary jurisdiction, but being one authorized, under the express statute, to give "appropriate relief," which is any relief, including invalidation of any involved ordinance as unconstitutional.

Indeed, the jurisdiction to consider constitutionality of any matter in any proceeding in which constitutionality is raised is not only a jurisdiction which the Court may not eschew, but of which it cannot be deprived.

PEOPLE v. MAX and PEOPLE v. WESTERN UNION, 70 Colo. 100, 198 Pac. 150; 70 Colo. 90, 198 Pac. 146, 15 A.L.R. 326, hold unequivocally that a state constitutional provision prohibiting a trial court from passing on constitutional questions, or taking from a party the right to interpose constitutionally based claims or defenses, would itself be and was unconstitutional and invalid, as violating the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Very few attempts, as that made by the trial court here, have been made

since MARBURY v. MADISON, to assert the principle that a court of plenary jurisdiction cannot, in an action attacking the validity of an annexation, question or determine the validity of annexation ordinance. We believe the statement manifests a procedure of the trial court predicated upon a complete misapprehension as to its powers and duties.

It is hardly possible for the court to have made so egregious an error in the light of the very litigation previously had with respect to this case, since in the first proceedings voiding the Fort Logan Annexation, ELKINS, et al. v. THE CITY AND COUNTY OF DENVER, 157 Colo. 252, 402 P.2d 617 (1965), this Court held that the county was a "person aggrieved" under the statute; that such a person might bring action under C.R.S. 1953, 139-11-6, the same statute under which the present action was brought, "at any time within ninety days after the effective date of the approving ordinances to the County Court of the County in which its land is situated for a hearing and appropriate relief," and that this statute provides for plenary relief to the plaintiffs, and is not limited by any other measures or steps which might have been resorted to by persons opposing the proposed annexation, the right of "any person aggrieved" being limited only by the terms of 139-10-6. There

is no "administrative remedy" required to be pursued, and the Court can grant any "appropriate relief."

Problems relating to annexation are, as indicated above, rather cognate to proceedings relating to incorporation or disconnection of territory, as this Court has remarked in the quoted materials in the SOUTH PLATTE CONSERVANCY DISTRICT case above.

Thus, in the recent case of WILTGEN, et al. v. BERG, et al., ___ Colo. ___, 435 P.2d 378 (1968), the Court sustained the jurisdiction of the District Court with relation to an attempted and improper action of the old County Court with relation to annexation, upheld the right of the District Court to act and grant relief under Rule 106, and said, further:

> "However, our holdings in the Blake and Enos case, supra, that incorporation proceedings are judicial in nature brings into play the usual rules concerning the duties of a court with respect to dual actions involving the same subject matter and substantially the same parties, as in the case here."

If incorporation matters are "judicial," so then are annexation matters, held in the CONSERVANCY DISTRICT case to be of a basically similar type. If judicial,

then there is not only requirements upon the Council in the first instance of findings meeting a judicial standard, but there is requirement that the trial court in review proceed judicially, and not abdicate its function, as the trial court has done in the questioned and quoted paragraph above.

II. THE PETITIONING AREA HAS SUBSTANTIALLY NO CONTIGUITY WITH DENVER, AND CANNOT USE INTERVENING SCHOOL AND PARK LANDS IN ORDER TO ESTABLISH SUCH A CONTIGUITY FOR ANNEXATION PURPOSES.

The petitioning areas have substantially no contiguity with Denver. They are areas, denied annexation in the first Fort Logan Annexation, and subsequently and illegally platted in Denver at a time when the property was located actually in Arapahoe County, the attempted annexation being void.

Upon declaration of the nullity of that attempted annexation, some persons in those areas petitioned for annexation anew, but, having no contiguity, sought to include in their petition lands which are the property of Mullen Home and School, or which are public or park lands, a part of the old Fort Logan. None of these, of course, signed, and none of them is available as a basis for annexation, since one cannot, completely surrounded by Arapahoe County, in this manner seek to leap-frog property into Denver.

Such a situation as that here presented is closely related to the situation presented in CITY OF PUEBLO v. STANTON, 45 Colo. 423, 102 Pac. 512, where it was held that the area to be annexed, contiguous to park lands which are the property of and owned by the city, but not part of the city, cannot use those park lands to establish contiguity for purposes of annexation.

That decision, on pages 527 and 528, states as follows:

> "We find no authority in support of the proposition that the purchase by the city of contiguous property makes the property a part of the city, or extends the boundary line to include the property purchased. Authority is given for the purchase of property for park purposes without the city limits, and such property, when purchased, although the city has jurisdiction over it, for certain purposes, and to that extent it becomes a part of the city, is not included within the boundary lines of the city unless the proper procedure is taken for annexation.
>
> "The manner of annexing contiguous territory is provided for by the chapter on towns and cities, and the right of determining whether such territory shall or shall not be annexed appears to rest with the

qualified electors of the city, and not with the council or trustees; and as towns and cities have only such power as is granted them by the legislature, we must hold that the mere purchase of property, for park purposes, does not extend the boundaries of the city, nor annex the property to the city. We must, therefore, hold that the boundary line of the city extended southward from the northeast corner of the Stanton and Chilcott tract, so as to exclude the tract from the city limits.

"But counsel say: 'Admitting, for the sake of argument, that the property marked park property is not a part of the city, the tract covered by the ordinance is still "included or embraced" within the city limits, within the meaning of the statute, for the limits of the city would then run north at the railroad tracks, and, at the north of Mineral Palace Park, would turn east and run as far east as the eastern limits of the land covered by the ordinance, before it again turns north. The land included in the ordinance would then have the city limits extended on all sides, north, south, east, and west.'

"But, if the land marked 'Park Property' is not a part of the city, the boundary line, when it reaches

> the northeast corner of the Stanton and Chilcott tract, must be extended south. There is no authority to extend the line from the northeast corner of the tract in question to the railroad tracks. The boundary line must be an unbroken line, and should, at each and every point, separate property within from property without the city limits. The words 'included' and 'embraced', we regard as synonymous, as used in the statute, and when property is, by the boundary lines of a city, excluded from the limits thereof, such property cannot be regarded as 'included' or 'embraced' therein."

The proposed annexation was, therefore, disallowed. It appears that the principle involved is here the same, for if the City cannot consider its own property a park, as establishing a contiguity for annexation, then we cannot see how a non-consenting school and the park lands derivative from old Fort Logan can, by act of the petitioners, persons entirely surrounded by Arapahoe County, be willy-nilly embraced in their petition to make possible the petition annexation of non-contiguous lands. It would appear reasonable that the lands abutting Denver ought first have been annexed to Denver, so that there was some contiguity with Denver on the part of the petitioners.

This seems to be the rule of reason particularly in the light of another case, DENVER v. COULEHAN, 20 Colo. 471, 39 Pac. 425, which held that even the General Assembly could not by statute add to the city islanded lands, separate from it and located in another county, this as a constitutional matter, inasmuch as the very notion of a city had implicit within it territorial contiguity.

III. SINCE THE DESCRIPTIONS CONTAINED IN THE PETITIONS ARE ALL IN TERMS OF PLATS WHICH WERE FILED IN DENVER, WHEN THE PROPERTY WAS IN ARAPAHOE COUNTY, AND NEVER REPLATTED IN ARAPAHOE, THE DESCRIPTIONS ARE VOID, AND THE ANNEXATION PLAT ITSELF IS DEFECTIVE, USING DESCRIPTIONS FROM THE SAME VOID PLATS OF SUBDIVISIONS.

At the time the subject property was first sought to be annexed to Denver, in that annexation held to be void by this Court, the lands were not platted.

Subsequently, platting was attempted in the City and County of Denver, but never in Arapahoe County. Plats were purportedly approved by the Denver City Council, but such plats were not approved by Arapahoe County. The areas involved and so attempted to be platted in Denver while the property was actually in Arapahoe County.

It was stipulated by the parties and found in the pre-trial order that the plats of areas referred to as Pinehurst Estates, Bow-Mar Heights, Bow-Mar Heights Filing No. 1, and Bow-Mar Heights Filing No. 2, were plats accepted and processed only by the City and County of Denver and its agencies. No action upon those plats was ever taken by the County of Arapahoe, its planning commission, or other County agencies, nor were the plats either accepted or approved by Arapahoe County.

ELKINS, et al. v. CITY AND COUNTY OF DENVER, 157 Colo. 252, 402 P.2d 617, supra, specifically voided the annexation attempt by Denver:

> ". . . the plaintiffs established without question that the owners of more than 50% of the area proposed to be annexed had not joined in seeking annexation . . .. The ordinance of the city council purporting to annex to the City and County of Denver the 1040 acres included in the petition involved in this case, IS VOID."

If the ordinance is "void," then obviously Denver did not have jurisdiction of the land, and could not plat it.

Platting is now controlled by C.R.S. 1963, 106-2-9(3)-(5), so far as the unincorporated portions of the County are concerned. The applicable portions of the statute provide as follows:

"(3)(a) All plans of streets or highways for public use, and all plans, plats, plots, and replots of land laid out in subdivision or building lots not exempted from the provisions of this section by sub-section 2(g) of this section, and the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the district planning commission for review, if located within such planning district, and if not so located, then to the county planning commission, if one has been created, and if no district or county planning commission exists, then to the regional planning commission, then for approval by the county before they are recorded. It shall not be lawful to receive or record any such plan or plat in any public office unless the same shall bear thereon by endorsement or otherwise, the approval of the district, county or regional planning commission. If any plats, plots, or replots have been recorded

prior to the effective date of this article without bearing thereon, by endorsement or otherwise, the approval of such commission, such plan, plats, plots, or replots shall be deemed to have complied with all requirements of this article.

"(b) The approval of said plan or plat by such commission shall not be deemed an acceptance of the proposed dedication by the public. Such acceptance, if any, shall be given by action of the governing body of the municipality or by the board of county commissioners. The owners and purchasers of such lots shall be presumed to have notice of public plans, maps, and reports of such commission affecting such property within its jurisdiction.

"(4) Whoever, being the owner, or agent of the owner of any land located within a subdivision, transfers or sells or agrees to sell or negotiates to sell any land by reference to or exhibition of or by use of a plan or plat of a subdivision, before such plan or plat has been approved by any such planning commission and recorded or filed in the office of the county recorder, shall forfeit and pay a penalty of five hundred dollars for each lot or parcel so transferred or sold or agreed or negotiated to be sold. Each day of

> violation shall constitute a separate offense. The description of such lot or parcel by metes or bounds in the instrument of transfer or other document used in the process or selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality or county may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction and may recover said penalty by civil action in any court of competent jurisdiction." (Emphasis supplied.)

It would appear, then, that the plats involved of the several subdivisions involved do not exist. Accordingly, the annexation plat, which is based upon them, cannot be said to be a proper plat, and the petitions for annexation cannot be proper, containing illegal legal descriptions. Moreover, the petitions, required to set forth the descriptions of the property owned, appear not to be proper, since the descriptions in terms of the illegal and void plats are no descriptions at all of property in Arapahoe County, and concededly it must be in Arapahoe County, else it could not be annexed or petitioned to be annexed from there to Denver.

No factual dispute of any kind exists about this matter of platting, all being specifically admitted or stipulated into the record. The statute

is clear. There never was valid platting of the lands involved. Accordingly, when the plats are used both as the basis of description in the annexation map or plat and the petitions, and when the plats are further used to give the land descriptions following the names of owners purporting to sign the petitions, this is giving of very substantial legal effect to non-existent plats, and is, we submit, a direct violation of the planning and platting statutes, and renders the annexation so dependent void.

IV. THE SUBJECT ANNEXATION IS IMPERMISSIBLE AS BEING A DIRECT ATTEMPT TO THWART THE POLICY OF THE LAW AS TO THE PROTECTION OF SCHOOL DISTRICTS.

The original Fort Logan Annexation, voided by this Court in ELKINS v. CITY AND COUNTY OF DENVER, 157 Colo. 252, 402 P.2d 617, supra, included, as mentioned in the portion above quoted, 1,040 acres of land. That annexation was voided in May, 1965.

By Laws of 1965, p. 1186, there was enacted a new statute, "The Municipal Annexation Act of 1965." That statute was approved by the Governor in May, 1965. Under its terms, and by Section 139-21-23, the article is to take effect January 1, 1966.

One of the principal reasons for the new act was the protection of school districts, sought to be accomplished by a tax-base protection device, set forth in C.R.S. 1963, 139-21-19, as amended (Volume 9):

"139-21-19. Court approval required for certain annexations.--(1) Any annexation which would have the effect of detaching part of the territory of an existing school district shall not become effective prior to court approval as specified in this section, except this sub-section (1) shall not apply to enclave territory as defined in section 139-21-5(1) which has five hundred or less inhabitants; nor to any annexation the petition for which is signed by one hundred per cent of the landowners in the territory to be annexed.

"(2) In the event of an annexation as set forth in subsection (1) of this section, the annexing municipality shall, within ten days following the election as provided in section 139-21-6, or the adoption of the ordinance as provided in section 139-21-5, give written notice of intention to annex pursuant to this article, to the board of education of the school district from which it is proposed the territory will be annexed.

"(3) Within thirty days after notice of annexation proceedings specified in subsection (2) of this section is delivered to the board of education, the annexing municipality shall petition the district court in accordance with the jurisdictional requirements set forth for review of city council actions in section 139-21-15(1) for granting or denial of the requisite court approval to consummate annexation. The petition shall name the board of education as party defendant.

"(4)(a) The Court shall determine:

"(b) On the basis of the most recent assessment, the aggregate assessed value of all property in the school district and the aggregate assessed value of all property in the territory proposed to be annexed; and

"(c) On the basis of the most recent enrollment records of the school district, the aggregate number of pupils enrolled in the school district and the aggregate number of pupils so enrolled who live in the territory proposed to be annexed.

"(5) If the pupil percentage, (the percentage of all enrolled pupils that is reflected by all enrolled pupils living in the territory proposed to

> be annexed, carried to four decimal places) is less than three-fifths of the property percentage (the percentage of aggregate assessed value of all property that is reflected by property lying within the territory proposed to be annexed), then the court shall disapprove the proposed annexation, and such annexation shall not become effective; except, that the court shall not be required to disapprove a proposed annexation if it finds that ninety per cent of the aggregate assessed value of property in the territory to be annexed consists of unimproved land. In no event shall the court approve a proposed annexation which together with the assessed value of all other property detached from a school district in any one calendar year exceeds five per cent of the aggregate assessed value of all property in the school district."

Denver commenced the subject annexation in such manner as to endeavor to make it effective immediately prior to the effective date of the new statute, that is, prior to January 1, 1966. Since there are more than 800 children in the area, as shown by the admitted statements into the record, and several million dollars of property values, a major part of the values in the Sheridan School District, it would, of course, have been completely

impossible to annex the territory under the current statute.

Moreover, the single Fort Logan Annexation, 1,040 acres, voided by this Court, as divided for purposes of attempted annexations into three parts, the present annexation, and two others, represented by Civil Action Nos. 23723 and 25814, both pending in the Arapahoe County District Court, and being actions involving attempted annexations of the remainder of the once-voided Fort Logan Annexation.

This three-bite procedure was entirely a contrivance to attempt to annex to Denver, in the light of the new statute, those lands annexation of which was voided by the Court immediately at the time of enactment of the new statute, and which could not be annexed again if treated as one annexation and under that new statute.

The General Assembly attempted to preserve school districts and their tax base relatively intact. Denver knew both that that was the policy of the Annexation Act of 1965, and that its attempted Fort Logan Annexation was void. In three gulps, one here, and one in each of the said Nos. 23723 and 25814, the full records in which were judicially noted and a part of the record herein, it tried to take back the lands, but could not do so before January 1, 1966. Accordingly, it here attempts to take

$5,000,000 of property valuation and 800 students, and it tries a second bite in 1966 and one in 1967 in order to obtain the remainder. Taken at once, the new statute would have prevented the annexation absolutely.

We suggest, therefore, that inasmuch as the present proceeding is a calculated effort to do that which now lawfully could not be done, as a last desperate chance effort under a dying statute, and since that statute has not been complied with, every intendment of the statutes should be indulged against the Denver annexation attempt here, it being an annexation clearly violative of public policy announced by the legislature before Denver even attempted it.

V. IN VIEW OF THE APPORTIONMENT DECISIONS OF THE UNITED STATES SUPREME COURT AND OF THIS COURT, AND OF THE LEGISLATION ON REAPPORTIONMENT RESULTANT THEREFROM, THE ANNEXATION HERE ATTEMPTED VIOLATES THE RIGHTS OF THE INDIVIDUAL PLAINTIFFS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

There are presented in the third and fourth claims for relief matters which arise particularly out of the matter of reapportionment.

In the November, 1962, elections, there was adopted an amendment on re-apportionment, Amendment No. 7 on the ballot at that time. That amendment was invalidated by the Supreme Court of the United States in LUCAS v. FORTY-FOURTH GENERAL ASSEMBLY OF COLORADO, 377 U.S. 713, 84 S.Ct. 1472 (No. 508, October Term, 1963).

Thereafter, the United States District Court specifically approved a method of reapportionment adopted by the General Assembly of Colorado, as Senate Bill No. 1, 1964 Special Session. Attempting to rescue some portion of the destroyed Amendment No. 7, the proponents thereof argued that single-member districts were permissible under the pre-existing constitutional arrangement in Colorado, and the United States District Court so held. This Court disagreed, and held the single-member districts violative of State Constitutional law, doing so in its decisions in MacDONALD v. LOVE, 155 Colo. 316, 394 P.2d 345, and WHITE v. ANDERSON, 155 Colo. 291, 394 P.2d 333 (July, 1964).

In both those decisions, this Court held Amendment No. 7 to be totally void, remarking specifically that "we defer to the federal court in the resolution of the federal questions," and quoting the LUCAS opinion, voiding Amendment No. 7 on constitutional grounds.

Further attempt was made to appeal to the Supreme Court of the United States in No. 661, October Term, 1964, dismissed upon motion to dismiss or affirm:

> "Insofar as the judgment of the District Court decides federal questions, it is affirmed. Insofar as the judgment decides other questions, it is vacated and the cause is remanded for further considerations in light of the supervening decisions of the Colorado Supreme Court in White vs. Anderson, ___ Colo. ___, 394 P.(2d) 333 (1964)."

The reapportionment cases, and particularly LUCAS, have upheld the principle that equality of representation in the General Assembly is a Federal Constitutional matter, and of the very essence of equal protection of the laws. A pattern of representation was established immediately after those rulings, and that pattern has been reaffirmed by subsequent Colorado Constitutional Amendment, following strictly the requirements of the LUCAS and allied cases. It therefore becomes impossible to change, as to location within senatorial and representative districts, any substantial block of voters without raising a material question under the Fourteenth Amendment.

This theory was urged before this Court long ago in BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY v. CITY AND COUNTY OF DENVER, 150 Colo. 198, 372 P.2d 152 (April, 1962). There it was contended that changes in boundaries created by annexation were a direct violation of the guarantees of the Fourteenth Amendment. This Court rejected that contention, and said that "the contention that Art. XX, Sec. 1 of the state constitution is an improper delegation of legislative power to change the boundaries of congressional districts in view of power of General Assembly to fix such boundaries is invalid, the annexation of territory to Denver being the product of the free choice of a majority of statutorily authorized persons of the congressional district seeking annexation."

This is not the case. It was specifically held in LUCAS that the fact of popular vote, even adoption of a State Constitutional Amendment by popular vote, could not affect the constitutional rights of other persons to equal protection of the law, and create unequal representational districts. Annexations like the present one, involving thousands of persons, change materially congressional district populations, legislative district populations, both senatorial and representative. Our present representative districts, for example,

contain approximately 27,000 persons each. Therefore, to add to any such district some 3,000 persons, or to subtract from another such district that number, is to create a district of 30,000, opposed to another district of 24,000, and to exceed very greatly the differential found practical under the statute, where the difference between the largest and smallest Denver districts is only 600 persons, but would be a change of some 500 per cent by just one such annexation.

The same kind of result has recently been extended by this Court to municipal districting, in the case of HARTMAN, et al. v. CITY AND COUNTY OF DENVER, et al., No. 23045 (May 13, 1968), in which this Court followed AVERY v. MIDLAND COUNTY, TEX., ___ U.S. ___, 88 S.Ct. 1114, ___ L.Ed. 2d ___.

The decision of this Court in BOARD v. CITY AND COUNTY OF DENVER, supra, we submit antedated by several years the substantial portion of the apportionment litigation, and certainly antedated LUCAS and the allied decisions. The assumption that in some manner guarantees of the Fourteenth Amendment may be abrogated by vote of the people, modifying the basic right of other persons and under equal protection of the laws, expressed by this Court in BOARD v. CITY AND COUNTY was, we believed,

entirely inconsistent with the principles announced by this Court in PEOPLE v. WESTERN UNION, 70 Colo. 90, 198 Pac. 146, and PEOPLE v. MAX, 70 Colo. 100, 198 Pac. 150, supra, stating most clearly, that the question of right under the Fourteenth Amendment "cannot be reviewed by popular vote of the citizens of Colorado, or of one of its municipalities, under any pretended constitutional provisions of this state assuming to provide such method of Review."

The constitutionally required congressional and legislative districting cannot be ripped asunder by the City and County of Denver, under the guise of "annexation." If either proper districting or the right to annex must fall, then the districting, being a federally guaranteed right of individuals under the Fourteenth Amendment, must stand, and the annexation prerogatives of Denver must subordinate. For this reason the individuals here plaintiffs are joined in this action. They assert their own rights under the Fourteenth Amendment to the security of congressional and legislative districts against change and alteration by annexation on the part of Denver. They have that right specifically under the LUCAS case. If it is annexation which seeks to deprive them of it, they may attack that annexation just as they could attack the direct apportionment bills and constitutional provisions,

and that they do, here setting out and clearly asserting those federally protected rights.

LUCAS itself specifically states:

"An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of Equal Protection Clause."

The rationalization utilized to sustain these proceedings in COMMISSIONERS v. CITY AND COUNTY, above, we submit is directly at variance with the fundamentals of the decisions in the subsequent re-apportionment cases, and, we submit, involving as it does a consideration of purely federal questions considered at length after the rendition of opinion by this Court in the earlier cases, by the Supreme Court of the United States in the later apportionment decisions, it is desirable to represent the matter to this Court for consideration.

We might note that the Arapahoe County Court held the Sheridan Annexations invalid upon these very grounds. There was an attempt, in IN THE MATTER OF DISSOLUTION OF CITY OF SHERIDAN, etc., No. 21335 in this Court, to review that matter. As we have noted above, that

review was not necessary because the intervening voiding of the Fort Logan Annexation rendered Sheridan discontiguous with the City and County of Denver, so that annexation was impossible, and the action was dismissed in this Court upon motion of the defendants in error.

The matter is, however, entirely cogent, and is most strongly urged as a matter of federally guaranteed right of the individual plaintiffs representatively and personally involved.

In LUCAS, the Supreme Court of the United States continues:

> "Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. As stated by this Court in West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638, 'One's right to life, liberty, and property . . . and other fundamental rights, may not be submitted to vote; they depend on the outcome of no elections.' A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so. We hold that the fact that a challenged legislative apportionment plan was

> approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in Reynolds vs. Sims."

When there has been adopted an apportionment scheme which does meet constitutional requirements, both as to congressional districts and legislative districts, we most seriously submit to this Court that that scheme cannot again be put out of balance by the device of annexation and transfer from county to county, even by vote of the people involved, for once the balance has been judicially achieved, it is not open to be disturbed by translation of whole population masses by annexation.

What is more, the Colorado Constitution, Article XIV, Section 3, provides:

> "No part of the territory of any county shall be stricken off and added to an adjoining county, without first submitting the question to the qualified voters of the county from which the territory is proposed to be stricken off; nor unless a majority of all the qualified voters of said county voting on the question shall vote therefor."

In the aforementioned BD. OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY v. CITY AND COUNTY OF DENVER, it was held by this Court that that provision is superseded by Article XX, creating home rule for Denver. The contrary had been argued. It may now reinforcedly be argued that the opinion of this Court in that case is questionable, for the reason that we now know, as this Court in the early history of Article XX, declared, that there cannot be, at least insofar as the vote is concerned, separation of various areas of the State, granting it in one and denying it in like circumstances in another. Adams, Jefferson, and Arapahoe Counties cannot be treated, vis-a-vis disconnections of territory and addition to them of Denver, in its capacity as a County, differently than any other area of the State. Its voters cannot be denied franchise on a question upon which other voters in other places are granted vote, and denied it purely on a geographical basis.

It has, in the context of applicability to local situations of the one-man-one-vote rule, been aptly remarked in HANLON v. TOWEY, 142 N.W.2d 741 (Minn., May 20, 1966):

"While it appears to be well within the power of the legislature under

> Minn. Const. art 11 to withdraw county government from electoral control and appoint or otherwise designate municipal officials ex officio to exercise the powers delegated to the county without running afoul of the equal protection clause, so long as the present system of a representative form of government is maintained, the fundamental nature of the right to vote inescapably requires the application of fundamental principles. Although not urged by appellants, the fact that the right to vote is granted by statute rather than by our constitution is a distinction without constitutional significance. Once granted, it became a fundamental right indigenous to self-government and preservation of other civil and political rights, including the right of equal representation. THUS, WHETHER GRANTED BY THE CONSTITUTION OR BY STATUTE, ANY SUBSTANTIAL DILUTION OF THE RIGHT BECAUSE OF THE PLACE OF RESIDENCE OF A VOTER IMPAIRS BASIC CONSTITUTIONAL GUARANTEES. * * *" (Emphasis supplied.)

No County is subject to dismemberment in Colorado without vote of its population. The interpretation given by the Court to Article XIV, Section 3, does deprive Adams, Jefferson, and Arapahoe County voters of that right, at the will of Denver. That is federally impermissible. It has been so held by

this Court in a series of cases from the earliest interpretations given Article XX.

We believe that PEOPLE v. SOURS, 31 Colo. 369, 384, 74 Pac. 167, is yet the law in Colorado. There it was argued that Article XX of the Colorado Constitution, the home rule amendment, meant Denver could within its boundaries replace the laws and Constitution of Colorado absolutely. The Supreme Court of Colorado categorically held such was not the meaning of the constitution, and that if it were, Article XX would be void:

> "If this amendment must be given that construction, it cannot be sustained. Even by constitutional amendment, the people cannot set apart any portion of the state in such manner that that portion of the state shall be freed from the constitution, or delegate the making of constitutional amendments concerning it to a charter convention, or give to such charter convention the power to prescribe the jurisdiction and duties of public officers with respect to state government as distinguished from municipal, or city, government. THE DUTIES OF JUDGES OF THE DISTRICT COURT, COUNTY JUDGES, DISTRICT ATTORNEYS, JUSTICE OF THE PEACE, and generally, of county officers are mainly governmental and,

> so far as they are governmental, they may not be controlled by any other than state agencies without undermining the very foundations of our government. Under the constitution of the United States, the state government must be preserved throughout the entire state; it can be so preserved only by having within every political subdivision of the state, such officers as may be necessary to perform the duties assumed by the state government under the general laws as they now exist or as they may hereafter exist." (Emphasis supplied.)

The opinion in the SOURS case is basic. We suggest that it ought be read in its entirety, for it is fundamentally instructive as to the actual relation necessarily obtaining between Denver and the State, as a matter of FEDERAL CONSTITUTIONAL LAW. It is of such length, however, that it cannot be usefully reproduced in full in this brief.

PEOPLE v. JOHNSON, 34 Colo. 143, 154, 86 Pac. 233, left no doubt at all as to what, precisely, the Supreme Court had meant in the SOURS case, supra. The problem involved attempted to prescribe by Denver Charter provision the existence of two judges of the then and former County Court. The attempt was held improper and impermissible, and not to be a charter matter at all,

since such judges are STATE JUDGES, and are in no circumstance county officers.

"In other words, so long as the charter designates some one who shall perform the acts and duties of county judge and other county officers, respondent contends that the charter convention can do what it pleases with the county court and other county officers. It may abolish them, it may increase the number of incumbents, it may increase the term of office indefinitely, it may change the time of election or abolish elections entirely, making the office appointive, it may vest the appointing power in one man or any number of men, or it may qualify and designate one man to perform the acts and duties of all county officers.

"Referring now to the construction placed by this court on article XX, the learned justice who wrote the majority opinion in the Sours case used this language: 'If this amendment must be given <u>that construction</u> [Emphasis by the Supreme Court] it cannot be sustained.'

"What construction? Unquestionably the construction contended for by counsel who were seeking to establish the invalidity of the amendment, the

construction stated in the quotation immediately preceding and which called forth the declaration above quoted. The construction contended for here -- a construction which, as expressed by counsel for respondent herein, would 'cut loose the city and county of Denver from any and all constitutional limitations and restrictions and make the people, whether deliberately or hysterically expressed, the law in that locality.'

"In the Sours case the court repudiated such construction and upheld the validity of the amendment, saying: 'The amendment is to be considered as a whole in view of its expressed purpose of security to the people of Denver absolute freedom from legislative interference in matters of local concern [emphasis by the Supreme Court]; and so considered and interpreted we find nothing in it subversive of the state government or repugnant to the constitution of the United States.'

"If the majority of the court in the Sours case had been of the opinion that article XX had for its purpose the securing to the people of Denver absolute freedom from legislative interference in all matters [Emphasis by the Supreme Court] relating to county and state governmental offices, officers,

> and functions, the inevitable conclusion would have followed that the amendment WOULD HAVE BEEN SUBVERSIVE OF A REPUBLICAN FORM OF GOVERNMENT AND REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES."

The Colorado Supreme Court stated that the charter provision purporting to increase the number of county judges to two, to change the time of election and term of office and qualification, and to provide for appointment by the mayor was illegal and unconstitutional. It is to be noted that it was so as a violation OF THE CONSTITUTION OF THE UNITED STATES. It is claimed now that the Colorado Constitution expressly permits this, and that is entirely aside from the point, because if it does so permit in the most express terms, IT IS STILL A VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, uniformity being requisite in these matters throughout the State. The Colorado Supreme Court held that such a situation would allow creation of a city-state, an imperium in imperio, and that is forbidden:

> "To concede that article XX authorizes a charter convention to legislate upon <u>any subject whatever</u>, in contravention of <u>any</u> of the provisions of the constitution relative to governmental or state matters or county or

state offices and officers, is to concede that such convention might displace the constitution in every respect, and the charter, being the organic law of the city and county, would thereby become supreme within the territory included in the boundaries of the city and county; hence we would have a portion of the state freed from the constitution -- over which the state had no right to legislate -- which could have no interest whatever in any legislation which might be enacted by the state relating to state and governmental affairs. In short, an imperium in imperio, a condition which cannot be brought about or exist even by constitutional amendment as emphatically decided by the majority opinion in the Sours case." (Emphasis by the Court.)

The Supreme Court concludes (at p. 161):

"A close analysis of the language of the opinion discloses that there are three separate and distinct things which THE PEOPLE CANNOT DO EVEN BY CONSTITUTIONAL AMENDMENT:

"1. Free any portion of the state from the operation of the constitution.

"2. Delegate to a charter convention the making of constitutional amendments.

"3. Give a charter convention the power to prescribe the jurisdictional duties of public officers with respect to state government as distinguished from municipal or city government.

"Under the language used no one of the three things can be done by the people, and it follows that no portion [emphasis by the Court] of any one of them can be done; that no portion of the state can be freed of any provision of the constitution; that the first step along the road to the accomplishment of either one of the three prohibited acts is just as much prohibited as the second or third or last steps, and it is the duty of this court to promptly and emphatically call an immediate halt and retreat whenever it is in a proper manner brought to the attention of the court that the first step has been taken or attempted along the forbidden highway."

No part of this State, including Denver, can be freed from the general operation of the constitution, and cannot be so by the device of constitutional amendment. Denver may not dismember neighbor counties without vote and change apportionments differently from other parts of the State.

The doctrine of the SOURS case is fully in effect to this date. In PEOPLE v. MAX, 70 Colo. 100, 110, there is the most express affirmation of the "rationale" of SOURS, the Court stating:

> "Having held said Section 1, art. VI null and void so far as it attempts to prohibit the trial court from adjudicating state constitutional questions, it becomes our bounden duty to say to what extent, if at all, this decision is affected by the recall provisions of said section. This is true for the same reasons set out in our opinion in No. 9522, and for the reasons there given we are forced to declare such recall provisions null and void. If the people cannot by statute or constitutional enactment deny to any person 'due process of law' no more can they accomplish the same object by popular vote under the guise of the recall of a court decision. The prohibition of the federal Constitution is against the state itself. What the state cannot do it cannot authorize one of its municipalities to do.
>
> "Even by constitutional amendment, the people cannot set apart any portion of the state in such manner that that portion of the state shall be freed from the constitution.

People ex rel Elder vs. Sours, 31 Colo. 369, 74 Pac. 167, 102 Am. St. Rep. 34. * * *

"If a city of Colorado be empowered by a vote of its citizens to determine when it will and when it will not permit the state constitution to be enforced within its borders, it is thus free from the fundamental law of the land and may set at defiance the whole power of the people of the commonwealth. It may enact its own constitution, establish its own courts of general jurisdiction, provide its own criminal code, refuse to pay state taxes, and do any and all things which a sovereign power may do."

DENVER v. SWEET, 138 Colo. 41, 329 P.2d 441 (1958), at page 48, categorically states:

"The United States Constitution provides for a national government with a federal system of states. All powers not expressly granted the federal government are reserved to the states or to the people. United States Constitution, Tenth Amendment. Colorado's Enabling Act approved by the federal government when we acquired statehood, insured that our state will have a republican form of government. Enabling Act, Article 4. Clearly our federal system does not

> envisage as a part thereof city-states. It therefore follows that home rule cities can be only an arm or branch of the state with delegated power. That is the kind of power granted by Article XX." (Emphasis by the Court.)

We have recently had further such problems in Colorado. Denver refused also to believe that its Council had to conform to the LUCAS rule, and argued that it was free to "experiment" upon a local basis, not adhering to strict popular representation. The Supreme Court of the United States repudiated that theory entirely while litigation was pending in Colorado; the Supreme Court of Colorado did so as well in HARTMAN, et al. v. CITY AND COUNTY OF DENVER, et al., No. 23045, decided May 13, 1968. The Court pointed out in that decision (p. 5):

> "Whatever doubts existed or whatever disparity of view prevailed at the time of the lower court decision as to whether the 'one man, one vote' principle of Reynolds vs. Sims, 377 U.S. 533, 84 S.Ct. 1326, 12 L.Ed.2d 506, applied to writs of local government, was dispelled when on April 1, 1968, the United States Supreme Court extended the rule in Avery v. Midland County, Tex., ___ U.S. ___, 88 S.Ct. 1114, ___ L.Ed.2d ___. The following apt

language in the Avery case is decisive as to the issue herein involved:

"'Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of local government are the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of the law.

"'When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the

members of a city council, school board, or county governing board are elected from districts of substantially unequal population. * * *

"'That the state legislature may itself be properly apportioned does not exempt municipalities from the Fourteenth Amendment. While state legislatures exercise extensive powers over their constituents and over the various units of local government, the States universally leave much policy and decision making to their governmental subdivisions. Legislators enact many laws but do not attempt to reach those countless matters of local concern necessarily left wholly or partly to those who govern at the local level. What is more, in providing for the governments of their cities, counties, and districts, the States characteristically provide for representative government -- for decision making at the local level by representatives elected by the people. And, not infrequently, the delegation of power to local units is contained in constitutional provisions for local home rule which are immune from legislative interference. In a word, institutions of local government have always been a major aspect of our system, and their responsible and responsive operation is today of increasing importance to the quality

> of life of more and more of our citizens. We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of Reynolds vs. Sims, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties.'"

We respectfully submit this argument because, inasmuch as almost the whole of the reapportionment authority has developed after the determinations of this Court in 1962, and inasmuch as the matters involving local aspects of reapportionment have developed only within the last six months, we think the previous statements of the Court ought be developed in the light of developing constitutional law, and we submit that the time has arrived when the local peculiarities of Denver, under Article XX, so impinge upon the rights of other persons in the State under the equal protection provisions of the Fourteenth Amendment, that Article XX, if interpreted as heretofore, comes into grave conflict with the fundamentals of equal protection of the law.

CONCLUSION

In conclusion, then, we most respectfully submit that the trial court has erred in substantial particulars, and that, either by reason of failure to adhere to the statutes, or by reason of constitutional deficiencies implicit in the procedure, the attempted annexation should be declared invalid.

Respectfully submitted,

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