IN RE: DE-ANNEXATION OF CERTAIN REAL PROPERTY FROM THE CITY OF SEMINOLE, A MUNICIPAL CORPORATION,
KINSLOW ROUND-UP INC., an Oklahoma Corporation; JACK C. AND BONNIE M. HUMPHREYS TRUST NO. 1; 8:32, INC., a Non-profit Corporation; D. KIRCHER INVESTMENTS, L.L.C.; THE CFS INSURANCE AND SECURITIES MONEY PURCHASE PLAN AND TRUST; GARY and LINDA BLOOMER, HWJT'S; MODERN OIL CO., INC.; BOBBY J. WILLIAMS AND MARY E. WILLIAMS LIVING TRUST; JOE K. and ALYCE ELLIS, HWJT'S; BILLY G. CLARK; HAZEL REYNOLDS; JIM and ROBIN NORRIS (Landlord), JULIA BELLINI and LESLIE HINDS (Tenants); EUGENE and FRANCIS WARRENSBERG; and SUE JARVIS, Petitioners/Plaintiffs/Appellants,
v.
THE CITY OF SEMINOLE, a Municipal Corporation, Respondent/Defendant/Appellee,
and
STATE OF OKLAHOMA, *ex rel.*, OKLAHOMA TAX COMMISSION, Additional Defendant.

ON CERTIORARI TO THE COURT OF CIVIL APPEALS, DIV. I

¶0 The City of Seminole annexed to its municipal boundary certain unincorporated land in Seminole County. In an action by the protestants for a judicial declaration of the annexation's invalidity, the District Court, Seminole County, George W. Butner, trial judge, gave summary relief to the City on the claim challenging the annexation ordinance and certified the decision for immediate appeal in advance of judgment upon all the claims. The Court of Civil Appeals affirmed. On certiorari previously granted upon the protestants' petition,

THE COURT OF CIVIL APPEALS' OPINION IS VACATED AND THE TRIAL COURT'S ORDER DECLARING ANNEXATION ORDINANCE 941 VALID IS REVERSED WITH DIRECTIONS TO DECLARE THAT ORDINANCE INEFFICACIOUS

Michael J. Novotny, Hartzog, Conger, Cason & Neville, Oklahoma City, Oklahoma, for Appellants.
Ed Cadenhead, Elsener & Cadenhead, Seminole, Oklahoma, and Reggie N. Whitten, Jason E. Roselius, Philip W. Anderson, Whitten, McGuire, Wood, Terry, Roselius & Dittrich, Oklahoma City, Oklahoma, for Appellee
Harlan Hentges, Mulinix, Ogden, Hall, Andrews & Ludlam, Oklahoma City, Oklahoma, for Amicus Curiae - Oklahoma Agricultural Legal Foundation[1]

OPALA, V.C.J.

¶1 The dispositive issue tendered on certiorari is whether summary relief for the City was erroneously entered. We answer in the affirmative.

I

THE ANATOMY OF LITIGATION

Ordinance 917

¶2 On 6 December 1999 the City of Seminole (City) enacted Ordinance No. 917, whose terms annexed certain territory to its corporate limits. The territory consisted of several tracts of land along Highway 99 which were connected by a 3-foot-wide strip of land that *touched* the northern boundary of the city, *extending* perpendicularly several (7 to 10) miles (along the west side of the highway) to the I-40 intersection. The protestants (non-consenting landowners and commercial tenants) challenged the ordinance by petitioning the City for de-annexation of the land. Upon denial of their quest they *appealed* to the district court, *brought* an action for a judicial declaration of the ordinance's invalidity, and *sought* an order to restrain the City from proceeding with the annexation. Both parties moved for summary judgment. Protestants argued *inter alia* that the December 6 meeting was held in violation of the Open Meeting Act.[2] Agreeing with the protestants on that issue, the trial court set a hearing date to determine whether the Act's violation was willful. Before disposition of the willfulness issue, the City enacted on 7 August 2001 Ordinance 941, whose terms *vacated* Ordinance 917, *de-annexed* the property included in that ordinance and *re-annexed* the protestants' property as well as the property of consenting landowners.

Ordinance 941

¶3 After adoption of Ordinance 941, the parties amended their district court pleadings and motions for summary judgment. The protestants *incorporated* their earlier arguments directed at Ordinance 917, *challenged* the validity of Ordinance 941

as well as *brought* a third-party claim against the Oklahoma Tax Commission [OTC] for a judicial declaration of their entitlement to all municipal sales taxes paid under protest as well as to taxes illegally collected by the City or by the OTC on the City's behalf.

¶4 The trial court *gave summary relief* to the City on the claim addressing solely Ordinance 941,[3] leaving unresolved the controversy over Ordinance 917, and *certified* the order (as if it were a judgment)[4] for immediate appeal in advance of judgment upon all the claims pressed in the action in accordance with the provisions of 12 O.S.2001 § 994(A).[5] Protestants brought an appeal upon the certified order, which they prosecuted by the accelerated-track method (designed for review of summary judgments).[6] The Court of Civil Appeals [COCA] affirmed.

II

CERTIORARI ARGUMENTS

¶5 Protestants advance three principal theories for declaring Ordinance 941 invalid. Firstly, they claim the statutory municipal annexation scheme entitles owners of property to be annexed to notice and an opportunity either to consent to the proposal or to negotiate a plan for municipal services. Secondly, they argue that the statutory contiguity requirement is not met by the annexation of several discontiguous commercial tracts located at three intersections on a ten-mile stretch of highway, which are tied together by a 3-foot-wide "shoestring strip" of land whose inclusion was doubtless for the sole purpose of meeting the technical contiguity requirement. Thirdly, they argue that neither the trial court nor COCA applied any standard of reasonableness either to the annexation process or to its result.[7]

¶6 City argues that judicial review of a municipal annexation is limited to determining whether the governing body acted within the scope of its legislative authority and its action is reasonable. Because the ordinance was passed in accordance with the statutory requirements - inasmuch as the necessary consents had been obtained and the annexed territory is contiguous to the city limits - City urges the only remaining question for the courts is whether its actions were reasonable. According to City, the reasonableness standard requires a two-step analysis - ascertaining whether the goal and intent of annexation is reasonable under the circumstances and if so, whether the ordinance is a reasonable means to accomplish the goal. City claims that Ordinance 941 meets the reasonableness test because (a) its goals were (a) to establish control over the Highway 99 corridor extending to the I-40 intersection, (b) to increase its tax base through generation of sales tax revenue from the business district located along Highway 99 and (c) to encourage the City's growth towards the I-40 intersection. City contends that a corridor-style annexation constitutes a reasonable method for expanding municipal boundaries.

III

THE STANDARD OF REVIEW FOR APPEALABLE PRODUCTS OF SUMMARY PROCESS

¶7 Summary process - a special pretrial procedural track pursued with the aid of acceptable probative substitutes[8] - is a search for undisputed material facts which, *sans* forensic combat, may be utilized in the judicial decision-making process.[9] Summary relief is permissible where neither the material facts nor any inferences that may be drawn from uncontested facts are in dispute, and the law favors the movant's claim or liability-defeating defense.[10] Only those evidentiary materials which eliminate from trial some or all fact issues on the merits of the claim or defense afford legitimate support for nisi prius resort to summary process for a claim's adjudication.[11]

¶8 Summary relief issues stand before us for de novo review.[12] All facts and inferences must be viewed in the light most favorable to the non-movant.[13] Just as nisi prius courts are called upon to do, so also appellate tribunals bear an affirmative duty to test for its legal sufficiency all evidentiary material received in summary process to support the relief sought by the movant.[14] Only if the court should conclude there is no material fact (or inference) in dispute and the law favors the movant's claim or liability-defeating defense is the moving party entitled to summary relief in its favor.

¶9 The material facts in this case are not disputed. The dispositive issue on certiorari presents a pure question of applying the statute-prescribed standards to the undisputed facts.

IV

THE LAW GOVERNING MUNICIPAL ANNEXATIONS

A.

An Alteration of Municipal Boundaries Is Accomplished By The Exercise Of A State Sovereign Power That Has Been Delegated to Municipalities

¶10 There is only one sovereign power in state government.[15] The exercise of that power in Oklahoma is through the State Legislature.[16] Municipalities[17] are political subdivisions of the State.[18] Their governmental activities - executive, legislative and judicial - must conform to both the mandates of the State's constitution and to the general laws upon matters of statewide interest.[19]

¶11 The power to alter local governmental boundaries falls solely within the State's plenary authority. The State Legislature has conferred the annexation power upon municipalities to be exercised in conformity to the Oklahoma Municipal Code.[20]

B.

The Governing Statutory Annexation Scheme

¶12 A municipality is authorized to annex territory that is **adjacent** or **contiguous** to its corporate limits as the governing body deems desirable for the benefit of the municipality. 11 O.S.2001 § 21-101.[21] Property may be considered to be adjacent or contiguous if it is separated from the corporate limits by a railway, highway right-of-way or an intervening strip less than four rods wide. 11 O.S.2001 § 21-102.[22] The city is required to obtain the written consent of the owners of at least a majority of the acres to be annexed, except in two instances. 11 O.S.2001 §21-103(A).[23] Neither of the two exceptions is applicable here.

C.

Judicial Review of A Municipality's Annexation Decision

¶13 The extension of municipal boundaries by ordinance is a legislative act of the city's governing body.[24] The primary judicial function in reviewing municipal annexations is to determine **whether the city has exercised its annexation power in a reasonable manner and in compliance with the standards of state law.**[25]

¶14 Extant caselaw has frequently described the municipal annexation process as a "**political**" decision.[26] We reclarify today this oft-repeated adjective in an effort to illuminate its correct meaning in the context of municipal annexations. The term "**political**,"[27] when used in its classical sense, refers to **governing**.[28] Political activity relating to governing is reviewable solely by political means. This is so because the U.S. Constitution assigns responsibility for political activity to the political branches of government - to the legislative or executive department. **The answer to a political question is impervious to judicial re-examination**.[29] In sum, for governmental action to be political there must be (a) an **issue of "governing"** coupled with (b) a **mandatory and final resolution by nonjudicial means.**

¶15 For their annexation decision municipalities cannot claim to be impervious to judicial review on the ground that it is a political decision. Municipal annexations have been accorded judicial review from the very inception of statehood.[30] Judicial process tests the annexation ordinance's conformity to applicable state law. It is hence a paradox, if not indeed an oxymoron, to call a municipal annexation decision "political" and yet still subject the legal process governing that function to judicial review.

V

THE STATUTORY CONTIGUITY REQUIREMENT

¶16 This controversy presents the dispositive first-impression issue of whether a city's annexation of **several noncontiguous tracts of** land located along a 7-to-10-mile-long highway corridor, which are connected to the city by a 3-foot-wide strip of land that touches the city limits at its northern boundary and extends perpendicularly alongside the highway, is a reasonable application of the statutory contiguity (or adjacency) standard.

A.

Extant Municipal Annexation Jurisprudence

¶17 In *Sharp v. Oklahoma City*,[31] the court affirmed the annexation of territory connected by a strip of land **177.5 feet wide** and some **1,662 feet long** on the rationale that the shape of annexed property is a "political decision" with which it would not interfere **absent express statutory limitations** relating to the shape of the property.[32] The court's pronouncement, which narrowly focuses on the shape and size of the annexed territory as a nonjusticiable political decision, did not address the question whether the annexation ordinance was in a **reasonable compliance with the statutory prerequisite for adjacency**.[33] Because in the context of a corridor annexation this issue has not been directly addressed,[34] *Sharp* and its progeny[35] cannot be deemed a broad, unlimited jurisprudential approbation of that annexation method.

B.

Statutory Construction

¶18 The fundamental rule for construction of a statute or ordinance is to ascertain and give effect to the legislative intent.[36] That intent is to be ascertained from the text of the statute in light of its general purpose and object.[37] Statutory construction presents a question of law.[38] Only where the intent cannot be ascertained from a statute's text, as might occur when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be employed.[39]

¶19 We must hence examine the annexation statutes as a whole and give them that interpretation which would conform to the divinable legislative intent in view of the objects and purposes sought to be accomplished.

C.

The Contiguity Requirement

¶20 The necessity of **"contiguity"** or **"adjacency"** as an **essential** element of the annexation process is mandated by the Legislature. Although undefined in the enactments, these terms **are treated as synonymous**[40] and are to be used in their **primary** and **obvious** sense.[41] The meaning of these words is not inflexible and may be affected by the facts of each case.[42] While contiguity generally **requires some touching** of the municipality and the territory to be annexed,[43] the law is unsettled on **whether the inclusion of a 3-foot-wide strip, whose only purpose is to provide a connecting link with the lands sought to be annexed, satisfies the statutory standard of contiguity.**

D.

The Basic Concept of Municipality

¶21 A meaningful insight into the legislative purpose for the contiguity requirement can be gleaned from an examination of the concept of a city as it relates to its territorial expansion. The basic idea of a municipality is that of a unified body of inhabitants having a community of interest and gathered together in a single mass, with recognized and well-defined external boundaries, not separate and disconnected areas.[44] **The annexation statute's contiguity requirement is an integral component of the municipality's essential concept**.[45]

¶22 For statutory contiguity to be met where a narrow corridor is used to gain access to discontiguous tracts of land, the corridor itself must have a tangible municipal value or purpose at the time of annexation.[46] The contiguity requirement is not satisfied by means of a **territorial appendage** that connects several remote tracts of land to the annexing municipality, but has little relationship to a beneficial municipal purpose. This method of annexation does not coincide with legislative intent. We note that courts are generally loath to find one territory to be contiguous to another where the only link between the two is forged by a narrow corridor.[47]

E.

The Presumption of Validity

¶23 A reviewing court must indulge in the presumption of validity that attaches to a municipal ordinance.[48] The burden of proof and persuasion rests on the party challenging the ordinance's validity.[49] The protestants bear the burden of showing

noncompliance with the annexation law or the unreasonable features of the annexation process.[50]

¶24 When a **strip of land** connecting the city limits to the area targeted for annexation **is as narrow as 3 feet in width**, the burden of production but not that of persuasion[51] shifts to the annexing municipality to show that the critical strip will confer a beneficial use beyond its advantage to provide merely a connective territorial link to otherwise remote noncontiguous tracts.

F.

The Annexation of Disconnected Tracts of Land By A Connecting Strip That Serves No Municipal Purpose Other Than To Establish Statutory Contiguity Constitutes An Impermissible Exercise of State-Delegated Annexation Power By A Municipality

¶25 The deposition testimony of three City councilmen and the assistant city manager indicates the 3-foot-wide strip in question was needed to connect to the municipality the other tracts along the highway corridor. One City official described the strip as "an umbilical cord to tie it together." **Two City officials stated they knew of no other use for the strip. When asked whether a water line could be laid under the strip, another City official answered "probably not."**

¶26 The individual tracts standing alone would clearly not meet the statutory definition of contiguity (or adjacency). Not only are they located several miles from the city limits, some of the tracts are situated a number of miles from each other. The narrow 3-foot-wide strip provides the only link between the city's boundaries and the individual tracts owned by the protestants.

VI

SUMMARY

¶27 The alteration of municipal boundaries is a state sovereign power which the Legislature has delegated to municipalities. A city's extension of its territorial limits by ordinance constitutes a legislative function of its governing body which stands subject to judicial review to determine whether the city has met the state annexation-law standards in a reasonable manner.

¶28 The words "contiguous" or "adjacent" within the meaning of the annexation statute are flexible terms that may be affected by the facts of a case. A corridor-style annexation by which remote territories are connected to the existing city limits by a narrow 3-foot-wide strip of territory does not satisfy the legislatively crafted contiguity standard. When no beneficial municipal purpose is shown for a connecting strip that is as narrow as 3 feet in width, the burden of proof but not that of persuasion shifts to the municipality to show that the narrow strip will confer a beneficial use beyond its advantage of providing a mere connective territorial link to otherwise remote noncontiguous tracts.

¶29 Because the record fails to show any useful municipal purpose for the connecting strip other than to establish technical or merely illusory contiguity of the city limits with distant and disconnected territories along the highway corridor, Ordinance 941 is subject to invalidation for want of compliance with the statutory contiguity standards.

¶30 On certiorari previously granted upon the protestants' petition, the Court of Civil Appeals' opinion is vacated and the trial court's order declaring annexation Ordinance 941 valid is reversed with directions to declare that ordinance inefficacious.

¶31 OPALA, V.C.J., LAVENDER, KAUGER, BOUDREAU, WINCHESTER, EDMONDSON, JJ., and SIMMS, S.J., concur;

¶32 WATT, C.J., and HODGES, J., dissent;

¶33 HARGRAVE, J., disqualified.