

Opinion No. 23**Annexation—County Property—Control Pending Appeal of Annexation**

Held: 1. Tracts or parcels of land remain county property pending appeal from a District Court ruling that a City has properly followed the statutory requisites for annexation, when the Montana Supreme Court has enjoined the City from proceeding with the annexation or from annexing to the City the involved area.

July 19, 1957

Mr. Anthony F. Keast
Missoula County Attorney
Missoula, Montana

Dear Mr. Keast:

You have presented the following question for my opinion.

Do tracts or parcels of land remain county property pending appeal from a District Court ruling that a city has properly followed the statutory requisites for annexation when the Montana Supreme Court has enjoined the city from proceeding with the annexation or from annexing to the city the involved area?

In answer to your inquiry, the District Court in and for the County of Missoula, Missoula, Montana, ruled that the City of Missoula had followed the statutory requirements for annexation of a contiguous area to the city and quashed an order restraining the city from annexing this area. A motion was then directed to the Montana Supreme Court for an injunction pending appeal of this ruling and in *Penland v. City of Missoula*,Mont....., 304, Pac. (2d) 621, the Court granted the injunction and stated that the city of Missoula:

“. . . be enjoined from proceeding with the annexation of, and from annexing to the said City of Missoula, Montana, the certain areas and lands, or any thereof . . . and also from taking any action whatsoever by any means directly or indirectly under Resolutions Nos. 1820 and 1859 of the said City of Missoula or either of them, or otherwise, for the purpose of accomplishing or furthering the annexation of the said lands and areas to the said City as is the intent of Resolutions Nos. 1820 and 1859 aforesaid . . .”

The Court, by the language used, prohibited the City of Missoula from “proceeding with” and “from annexing to the said City of Missoula” the disputed land. It is therefore my opinion that the involved property remains in the control of Missoula County pending a final adjudication of this matter by the Montana Supreme Court.

Very truly yours,
FORREST H. ANDERSON
Attorney General