

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 41

ANNEXATION - What constitutes "wholly surrounded land";
MUNICIPAL GOVERNMENT - What constitutes "wholly
surrounded land";

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PROPERTY, REAL - What constitutes "wholly surrounded land";

MONTANA CODE ANNOTATED - Sections 7-2-4201 to 7-2-4210, 7-2-4204, 7-2-4301 to 7-2-4331, 7-2-4304, 7-2-4401 to 7-2-4421, 7-2-4408, 7-2-4501 to 7-2-4511, 7-2-4502 to 7-2-4505, 7-2-4601 to 7-2-4621, 7-2-4609, 7-2-4701 to 7-2-4761, 7-2-4718.

HELD: A parcel of land is "wholly surrounded" under section 7-2-4501, MCA, when access may be gained only by crossing through the municipality.

18 November 1987

Leo W. Tracy
Whitefish City Attorney
6336 Highway 93 South
Whitefish MT 59937

Dear Mr. Tracy:

You have requested my opinion concerning the following questions:

1. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is bordered on three sides by the municipality and on the remaining side by a large navigable lake?
2. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is directly bordered on three sides by the municipality, on one side by a railroad right-of-way for trackage, and on one side by a railroad right-of-way for station grounds?

I conclude that the municipality may annex the area described in the first question but not the area in the second under sections 7-2-4501 to 4511, MCA.

Montana provides various methods for municipalities to annex additional territory. §§ 7-2-4201 to 4210, MCA (additions to municipalities); §§ 7-2-4301 to 4331, MCA (annexation of contiguous lands); §§ 7-2-4401 to 4421, MCA (annexation of contiguous government lands); §§ 7-2-4501 to 4511, MCA (annexation of wholly surrounded lands); §§ 7-2-4601 to 4621, MCA (annexation by voter petition); §§ 7-2-4701 to 4761, MCA (annexation

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under the Planned Community Development Act); see State ex rel. Hilands Golf Club v. City of Billings, 198 Mont. 475, 477-78, 647 P.2d 345 (1982); Montana Legislative Council, Montana's Annexation Laws 12-18 (Nov. 1980). More than one of these annexation procedures may apply to a given parcel of land, and the municipality's governing body is authorized to select that procedure "appropriate to the circumstances of the particular annexation." See §§ 7-2-4204(2), 7-2-4304(2), 7-2-4408(2), 7-2-4505(2), 7-2-4609, 7-2-4718(2), MCA. Presently, the City of Whitefish desires to utilize the "wholly surrounded land" provision with respect to two parcels of land. Whether annexation may be effected under this provision is significant because, unlike the other applicable procedures, consent by a majority of resident freeholders is not required. § 7-2-4502, MCA; see Comment, Annexation in Montana--A Time for Change, 35 Mont. L. Rev. 71, 73, 77-78 (1974).

The first parcel includes land which is bordered by Whitefish Lake on one side and the city on the remaining sides. The second parcel is irregularly shaped but basically five-sided. The city abuts this parcel on three sides, while a railroad right-of-way abuts it on the remaining two sides. Although part of the right-of-way is used only for trackage, the railroad's large station grounds are directly contiguous to one side of the parcel. The station grounds are not surrounded by the city.

Section 7-2-4501, MCA, states that "[a] city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation." Certain types of property, including that used for transportation purposes such as the railroad right-of-way, are excluded from this method of annexation, but the property sought to be annexed here is not among them. § 7-2-4503, MCA. While not statutorily defined, the term "wholly surrounded" was construed in Calvert v. City of Great Falls, 154 Mont. 213, 217, 462 P.2d 182, 184 (1969), to include land which, while not completely contiguous with the municipality, was nonetheless surrounded by it: "The term 'wholly surrounded' means that ... where all lands on the side of the tract are within the city and where it is impossible to reach the tract without crossing such territory, the tract is 'wholly surrounded'." The term "wholly surrounded" in section 7-2-4501, MCA, must therefore be practically interpreted to achieve the legislative objective of permitting annexation when a particular parcel has become, in essence, landlocked by a municipality. Under this

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analysis, the first tract is "wholly surrounded" because, as to all sides bordered by land, it is surrounded by the municipality. The applicability of section 7-2-4501, MCA, is not vitiated by the lake's presence on the remaining side since all land access to the parcel must be through the municipality.

In contrast, the second parcel is not "wholly surrounded." Access to the parcel is possible from the railroad's station grounds, and those grounds are not surrounded by the municipality. Because of this access, it is unnecessary for me to address the issue of whether the railroad right-of-way, insofar as it is used exclusively for trackage, is "a street or other roadway ... or a strip of unplatted land too narrow or too small to be platted," which may be ignored for purposes of contiguity under section 7-2-4504, MCA.

THEREFORE, IT IS MY OPINION:

A parcel of land is "wholly surrounded" under section 7-2-4501, MCA, when access may be gained only by crossing through the municipality.

Very truly yours,

MIKE GREELY
Attorney General