



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

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Mr. David B. Rogers
Attorney at Law
720 College Avenue
St. Maries, ID 83861

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

QUESTION PRESENTED

The following responds to your request on behalf of the City of Plummer for assistance with regard to the following annexation question: If the Coeur d'Alene Reservation is still in existence, does the City of Plummer, which is surrounded by the Reservation, have the authority to annex adjacent properties as requested by the property owners? Your request notes that substantial controversy exists over the Reservation's existence but, as the question states, seeks a response assuming such existence.

CONCLUSION

As discussed more fully below, I conclude that the City has annexation authority under the circumstances presented in the question.

ANALYSIS

I. Introduction

Annexation by cities of land outside their corporate limits is controlled by Idaho Code § 50-222. That provision provides for annexation in three situations. Each has its own procedural requirements. My understanding is that the first of these categories is involved here—*i.e.*, all adjacent landowners have consented to the annexation. See Idaho Code § 50-222(3)(a). Compliance with § 50-222's requirements is assumed.

Idaho statutes do not except land within Indian reservations from the annexation process. Consequently, any exclusion from annexation must arise as a matter of federal

Mr. David B. Rogers
April 10, 2006
Page 2

statute or common law based preemption. No federal statute effects such an exclusion, and relevant decisional authority counsels against preemption.

II. Relevant Decisional Authority

The most recent decision concerning the authority of state political subdivisions to annex within Indian country is Shakopee Mdewakanton Sioux Community v. City of Prior Lake, 771 F.2d 1153 (8th Cir. 1985). There, the Eighth Circuit Court of Appeals rejected a city's contention that reservation residents were not part of its jurisdiction and therefore ineligible to vote in municipal elections or receive city services. The city predicated its position on a council resolution that deemed certain reservation lands—which had been previously annexed—outside reconfigured municipal election precincts. Id. at 1155. "That a tribal government exercises sovereign powers on a reservation and that reservation lands are held in trust by the United States[.]" the court reasoned, "does not prevent the reservation from constituting a portion of a state and a political subdivision of a state." Id. at 1156.

The Shakopee decision relied heavily upon Howard v. Commissioners of Louisville Sinking Fund, 344 U.S. 624 (1953), where the United States Supreme Court had held, in rejecting a challenge to a municipality's annexation of federally owned land, that "[a] state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States." Id. at 626-27. The Supreme Court further stated that "[a] change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property." Id. at 627; see also Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs, 347 F. Supp. 42, 45 (C.D. Cal. 1972) (relying on, *inter alia*, Howard for the proposition that "the federal ownership of the Indian land in question did not bar the inclusion of the land within the City of Palm Springs upon its incorporation in 1938").* The Court then examined whether the complainants, who were federal employees aggrieved by the imposition of a city income tax, enjoyed protection from the tax by operation of the Buck Act, 4 U.S.C. §§ 105-110; *i.e.*, the real issue was not the annexation but whether, given the city's action in that regard, the employees enjoyed some independent immunity from the involved tax.

* The district court's judgment in Agua Caliente was subsequently vacated on appeal and remanded (see Capitan Grande Band of Mission Indians v. Helix Irr. Dist., 514 F.2d 465, 468 n.3 (9th Cir. 1975)), but no reason exists to believe that its analysis concerning the authority of California to authorize political subdivisions to annex land held by the United States for its own or a tribe's benefit was erroneous. Cf. Cabazon Band of Mission Indians v. City of Indio, 694 F.2d 634, 637-38 (9th Cir. 1982) (invalidating annexation of reservation lands where city failed to satisfy federal-consent condition precedent imposed under *state law*).

Any preemption issues related to the City's exercise of its annexation authority here will arise from substantive obligations imposed on landowners by virtue of being incorporated within a state political subdivision. Those issues can and do arise without regard to the reason for the incorporation. A tribal member who purchases land within the City's original boundaries from a nonmember might argue, for example, that the newly acquired property is not subject to city zoning regulations. This member's legal rights and obligations as to such regulations would not differ from those of a member who owns land recently annexed into the City.

I recognize that the New Mexico Supreme Court reached a contrary result in Your Food Stores, Inc. v. Village of Espanola, 361 P.2d 950 (N.M. 1961). It held that a municipality's annexation authority was preempted by operation of (1) article XXI, section 2 of the state constitution disclaiming "all right and title . . . to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereign" (361 P.2d at 953); (2) Public Law No. 83-280, 67 Stat. 588 (1953) (codified as amended in relevant part at 18 U.S.C. § 1162 and 28 U.S.C. § 1360) ("Public Law 280"), which the court construed as reflecting Congress' consent for a State "to assume jurisdiction over the Indians within its boundaries" but to "prohibit[] the State from exercising such jurisdiction until the State should amend its Constitution or statute, as the case may be, removing any legal impediments to such assumption of jurisdiction" (361 P.2d at 954); and (3) its conclusion that the exercise of annexation authority would interfere impermissibly with tribal self-government under Williams v. Lee, 358 U.S. 217 (1958) (361 P.2d at 957).

Each ground for the Your Food Stores holding has been undermined significantly by later decisional authority. *First*, the Supreme Court strongly suggested in Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983), that state constitution "disclaimer" provisions do not affect ordinary Indian law preemption principles. *Id.* at 563 ("our many recent decisions recognizing crucial limits on the power of the States to regulate Indian affairs have rarely either invoked reservations of jurisdiction contained in statehood enabling acts by anything more than a passing mention or distinguished between disclaimer States and nondisclaimer States"). *Second*, Public Law 280 has no relevance to determining the scope of the City's annexation authority, as binding precedent has since established. *E.g.*, Brvan v. Itasca County, 426 U.S. 373, 385 (1976) ("the primary intent of [the civil component of Public Law 280] was to grant jurisdiction over private civil litigation involving reservation Indians in state court"). *Third*, the Supreme Court has adopted an interest-balancing test to be used as an ordinary matter in determining whether federal law preempts state civil regulatory authority in Indian country (Bracker v. White Mountain Apache Tribe, 448 U.S. 136, 144-45 (1980)), and not the categorical approach deemed required by the New Mexico court. *See Your Food Stores*, 361 P.2d at 957 (exercise of annexation authority "would affect the authority of the tribal council

Mr. David B. Rogers
April 10, 2006
Page 4

over reservation affairs and, hence, would infringe on the right of the Indians to govern themselves"). The exercise of annexation authority, again, merely alters municipal boundaries. Whether preemption exists as to the subsequent application of municipal law should be resolved on a case-by-case basis in accordance with the Bracker interest-balancing test. Finally, I note that the New Mexico court gave no consideration to Howard.

III. Conclusion

The City of Plummer's annexation authority is not compromised by the assumed reservation status of the adjacent lands. Whether the full breadth of its regulatory authority applies to landowners or activities within the annexed territory is a question that falls outside the scope of your request for assistance. That question must be answered by reference to ordinary Indian law preemption principles under the particular facts and will be answered no differently for those landowners or activities than for other landowners or activities within the City's territory.

Sincerely,



CLAY R. SMITH
Deputy Attorney General
Natural Resources Division

CRS/pb