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### Summary of Citizens For Cold Springs v. City of Reno, 125 Nev. Adv. Op. No. 16

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*Nevada Law Journal*

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# **Citizens For Cold Springs v. City of Reno, 125 Nev. Adv. Op. No. 16 (October 15, 2009)<sup>1</sup>**

## **Property Law – Standing of Citizens to Challenge a Land Annexation**

### **Summary**

Appeal from a district court's decision to grant the City of Reno's motion to dismiss for a failure to state a claim. The question on appeal is whether the Citizens for Cold Springs had standing under NRS 268.668 to challenge a land annexation when they did not own the property being annexed.

### **Disposition/Outcome**

The Court held that the Citizens for Cold Springs had standing to sue under NRS 268.668<sup>2</sup> concluding that the plain language of the statute confers standing upon, "any citizen" to challenge a land annexation as long as the citizen is adversely affected by the annexation.

### **Factual and Procedural History**

The owners of the subject land (respondents in this action) initiated a voluntary annexation and requested the City of Reno (other respondent in this action) annex nearly 7000 acres of land in the general area of the Cold Springs Valley. The City held a hearing regarding the annexation request and some property owners and residents of Cold Springs attended to oppose the annexation. Despite the opposition of the Cold Springs Citizens, the City voted to approve the petition by a vote of 4-3 which resulted in the adoption of Ordinance 5667 and the annexation of the approximately 7000 acres of land in the Cold Springs Valley.

The Citizens for Cold Springs (Cold Springs) filed suit against the respondents seeking declaratory and injunctive relief as well as a petition for a writ of mandamus seeking the reversal of the annexation. Cold Springs contended that the annexation should be reversed because it would have an adverse effect on the rural community. The respondents moved to dismiss the case for a failure to state a claim.

The district court granted the motion to dismiss determining that Cold Springs' claims were speculative and that Cold Springs lacked standing to sue because it had not shown that it had been adversely affected by the annexation. The district court concluded that the complaint was made up of possible future damages that may result from the annexation and that Cold Springs had not shown that it was suffering current adverse affect that differentiated them from the general public.

Cold Springs then appealed the decision to the Nevada Supreme Court. They argued that they had standing to challenge the annexation under NRS 268.668 and the Nevada Supreme Court's decision in *Hantges v. City of Henderson*.<sup>3</sup>

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<sup>1</sup> By Kristopher Milicevic

<sup>2</sup> NEV. REV. STAT. § 268.668 (2007) states in relevant part that, "any person or city claiming to be adversely affected" by an annexation has standing to challenge it.

<sup>3</sup> *Hantges v. City of Henderson*, 121 Nev. 319, 113 P.3d 848 (2005).

## **Discussion**

The issue in this case involves questions of law and statutory construction and the Nevada Supreme Court reviews such questions de novo.<sup>4</sup> Because the district court granted the motion to dismiss based on a determination that Cold Springs lacked standing, the Nevada Supreme Court limited its holding to the issue of whether Cold Springs had standing to challenge the annexation.

### *Standing to challenge a voluntary annexation under NRS 268.668<sup>5</sup>*

The Court held that the Cold Springs Citizens, who all lived close to the land in question, fell within the “any person” language of NRS 268.668. The Court relied on its tradition of long-standing jurisprudence in looking at the language of the statute itself when determining whether the statute confers rights that are broader than are normally permissible. The Court concluded that this decision extends its holding in *Hantges*, which conferred standing upon citizens who were not property owners standing to challenge redevelopment plans. However the Court decided that in this case, unlike in *Hantges* where the standing issue was resolved once the Court decided who could challenge, Cold Springs has to make an additional showing that they are “adversely affected” due to the “adversely affected” language of NRS 268.668.

### *The meaning of “adversely affected” under NRS 268.668*

The Court held that “adversely affected” NRS 268.668 means “both current and reasonably ascertainable adverse effects.” In making this determination the Court first looked at the plain language of NRS 268.668 and found no guidance as to the meaning of “adversely affected.” Therefore it used principles of statutory construction in determining its meaning. The Court reasoned that because the statute allowed citizens a means to challenge land annexation it should be “liberally construed and broadly interpreted.”<sup>6</sup> Because the statute allowed for any person to challenge an annexation at any stage during the detachment proceeding or within 90 days from its completion, the Court decided that the statute did not limit adverse effects to current harms and included reasonably ascertainable adverse effects in the meaning of “adversely affected.”

## **Conclusion**

The Court concluded that NRS 268.668 confers standing to citizens to challenge land-annexation decisions, even if they do not own the property subject to the annexation, so long as the citizen claims that the annexation will have an adverse effect. Furthermore, the Court concluded that the language of the statute contemplates both current and reasonably ascertainable adverse effects. Accordingly, the Court remanded the case back to the district court to make a factual determination of whether the challenge had merit.

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<sup>4</sup> Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. \_\_\_, \_\_\_, 181 P.3d 670, 672 (2008); Leven v. Frey, 123 Nev. 399, 402, 168 P.3d 712,714 (2007).

<sup>5</sup> The Court rejected an argument by the respondents that NRS 268.668 did not apply to this case because the annexation in this case was a voluntary action under NRS 268.670. The Court relied on the plain language of NRS 268.668 which states that, “[i]f the court finds that any of the steps required by NRS 268.610 to 268.670, inclusive, have not been duly taken ... the court shall make such temporary or final order in the premises as the ends of justice may require,” and concluded that NRS 268.668 includes NRS 268.670.

<sup>6</sup> Dewey v. Redevelopment Agency of Reno, 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003).