

State v. Buffalo Chip

At the heart of this case is the validity of Buffalo Chip City, a newly incorporated municipality in Meade County, South Dakota. The Buffalo Chip is a campground located just outside of the City of Sturgis, South Dakota, home of the annual Sturgis Motorcycle Rally. The controversy giving rise to this case began in 2015 when area residents petitioned the Meade County Board of County Commissioners to incorporate Buffalo Chip campground as a city. At the time, SDCL 9-3-1 provided that: “No municipality shall be incorporated which contains less than one hundred legal residents or less than thirty voters.”

After holding a hearing and considering testimony, the Board concluded that the area of incorporation had more than thirty registered voters and that more than a quarter of the voters signed the petition as required by law. The Board, believing SDCL 9-3-1 had been satisfied, voted to incorporate Buffalo Chip. It scheduled an election for May 7, 2015 so that the voters in the proposed area could decide whether to assent to incorporation. The voters approved the request to incorporate, and Buffalo Chip City filed its articles of municipal incorporation with the Secretary of State.

Following the election, several Meade County residents and the City of Sturgis appealed the Board’s decision. After more than a year of litigation, the circuit court declared the incorporation of Buffalo Chip City void, finding the Board’s decision a legal nullity due to deficiencies in the petitioner’s filings and the Board’s procedural process. Buffalo Chip City and the Board appealed the circuit court’s ruling to the South Dakota Supreme Court.

In the appeal, captioned *Lippold v. Meade County Board of Commissioners*, the Supreme Court reversed the circuit court’s judgment of dissolution because the Court held that Sturgis and the petitioners lacked standing to challenge the Board’s decision. 2018 S.D. 7, 906 N.W.2d 917. Only the State of South Dakota, the Court explained, could seek to vacate the incorporation of a city when the challenged city is already acting as a municipality.

On May 29, 2018, in response to *Lippold*, the State filed a quo warranto proceeding to annul the existence of Buffalo Chip City. Quo warranto is a legal action utilized to vacate a corporation’s charter or its articles of incorporation. Buffalo Chip City moved to dismiss the lawsuit, contending the State lacked authority to commence the action. It argued that SDCL 21-28-12, which authorizes the State to forfeit a corporation’s charter or articles, could not be used to dissolve municipalities because dissolution of municipalities is specifically excluded from the statute. The circuit court denied the motion to dismiss, holding that SDCL 21-28-2(3), authorized the State to challenge any association that had not been duly incorporated.

The parties then filed cross motions for summary judgment. The Buffalo Chip again challenged the State’s authority to proceed, this time arguing the action

was prohibited by SDCL 9-3-20. SDCL 9-3-20 provides that “[t]he regularity of the organization of any acting municipality shall be *inquired into* only in an action or proceeding instituted by or on behalf of the State.” (Emphasis added). According to the Buffalo Chip, use of the phrase “inquire into” within SDCL 9-3-20 inserted a temporal element into the statute requiring that investigation into a city’s organization occur contemporaneous with incorporation. In response, the State argued the language of SDCL 9-3-20 and the Supreme Court’s holding in *Lippold* gave it authority to make the challenge.

The parties also debated the proper interpretation of SDCL 9-3-1, the statute outlining the population requirements for incorporating a municipality. The State argued Buffalo Chip City did not satisfy SDCL 9-3-1 because even though it had thirty voters at the time of incorporation, it did not have one hundred legal residents. The Buffalo Chip disagreed, arguing that SDCL 9-3-1 required either one hundred legal residents *or* thirty voters but not both.

The circuit court granted summary judgment to the State. It held that SDCL 9-3-20 and SDCL 21-28-2(3) authorized the State to bring the action and determined that the dictates of common sense and the plain language of SDCL 9-3-1 required at least one hundred residents *and* thirty registered voters to be incorporated. A contrary interpretation, in the court’s view, would mean that the Legislature intended to allow incorporation of a municipality that had no residents but thirty voters. Because the area of incorporation had less than one hundred legal residents, the circuit court dissolved Buffalo Chip City on the basis that it was not lawfully incorporated.

The Buffalo Chip appeals the circuit court’s judgment of dissolution, raising the following issues:

1. Whether the circuit court erred by allowing the State to bring an action to vacate Buffalo Chip’s Articles of Incorporation and annul Buffalo Chip City’s existence.
2. Whether the circuit court erred by finding that SDCL 9-3-1 required both one hundred legal residents and thirty voters in the area before the Meade County Commission could set an election.

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