

OSHKOSH, WINNEBAGO COUNTY

NOTICE OF LITIGATION

C. DUANE ERICSON CO., INC.

VS

CITY OF OSHKOSH

OFFICE OF THE SECRETARY OF STATE
State of Wisconsin

STATE OF WISCONSIN
RECEIVED AND FILED

APR 24 1981

VEL PHILLIPS
SECRETARY OF STATE

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

C. DUANE ERICSON COMPANY, INC.,
a foreign corporation,

Plaintiff,

-vs-

CITY OF OSHKOSH, a municipal
corporation of the State of Wisconsin,
and TOWN OF ALGOMA, a governmental
subdivision in Winnebago County,
Wisconsin,

Defendants.

SUMMONS

COURT FILE 81CV355

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Served 4/14/81
D. C. Bink
County Sheriff
Winnebago County
Sheriff's Dept.

THE STATE OF WISCONSIN, TO SAID DEFENDANTS:

YOU are hereby summoned and required to serve upon DEMPSEY, MAGNUSEN, WILLIAMSON & LAMPE, plaintiff's attorneys, whose address is 1 Pearl Avenue, First Wisconsin National Bank Building, P.O. Box 886, Oshkosh, Wisconsin, 54902, an Answer to the Complaint which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service, and in case of your failure so to do judgment will be rendered against you according to the demand of the Complaint.

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VEL PHILLIPS
SECRETARY OF STATE

DEMPSEY, MAGNUSEN, WILLIAMSON & LAMPE

by James J. Williamson
James J. Williamson, Attorneys for Plaintiff
1 Pearl Avenue - POB 886
First Wisconsin National Bank Building
Oshkosh, Wisconsin 54902

(414) 235-7300

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OSHKOSH, WIS.

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WINNEBAGO COUNTY
APR 14 1981
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CATHERINE STAOTMUELLER

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C. DUANE ERICSON COMPANY, INC.,
a foreign corporation,

Plaintiff

COMPLAINT

-vs-

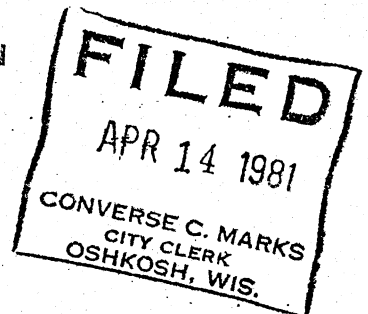
CITY OF OSHKOSH, a municipal
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and TOWN OF ALGOMA, a governmental
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The plaintiff, C. Duane Ericson Company, Inc., by its attorneys
DEMPSEY, MAGNUSEN, WILLIAMSON & LAMPE, complains of the defendant City of
Oshkosh, as follows:-

1. The plaintiff is a foreign corporation with office and principal
place of business located at 140 West Industrial Way, Benicia, California,
where it is engaged in the business of, among other things, the development
of real estate.
2. Defendant City of Oshkosh, is a municipal corporation in the County
of Winnebago, State of Wisconsin.
3. The Town of Algoma is a governmental subdivision located in
Winnebago County, State of Wisconsin.
4. Plaintiff brings this Complaint under Section 806.04, Wisconsin
Statutes, for declaratory relief seeking to have this court declare invalid,
the ordinance adopted by the City of Oshkosh on March 19, 1981, annexing the
following described real estate to the City of Oshkosh:

Part of the SE 1/4 of Section 16, Township 18 North, Range
16 East, Town of Algoma, Winnebago County, Wisconsin, described
as follows:

Commencing at the southeast corner of the NE 1/4 of the SE 1/4
of said Section 16, thence north along the east line of Section
16-18-16 to a point 751.0 feet south of the East-West 1/4
line of Section 16-18-16, thence west parallel with the east-west
1/4 line of Section 16-18-16 to a point 810.5 feet east of the
west line of the NE 1/4 of the SE 1/4 of Section 16-18-16,
thence south parallel to the east line of Section 16-18-16 to a
point 60 feet north of the south line of the NE 1/4 of the
SE 1/4 of Section 16-18-16, thence west parallel to the south
line of the N. 1/2 of the SE 1/4 of Section 16-18-16 to the
west line of the SE 1/4 of Section 16-18-16, thence 60 feet
south along the west line of the SE 1/4 of Section 16-18-16

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to the south line of the N. 1/2 of the SE 1/4 of Section 16-18-16, thence east along the south line of the NW 1/4 of the SE 1/4 of Section 16-18-16 to the southeast corner of the NW 1/4 of the SE 1/4 of Section 16-18-16, thence south along the west line of the SE 1/4 of the SE 1/4 of Section 16-18-16, 330 feet; thence east parallel to the south line of the SE 1/4 of the SE 1/4 of Section 16-18-16 to the east line of Section 16-18-16, thence north along the east line of Section 16-18-16 to the point of beginning.

which ordinance is more commonly known as the "Kickapoo Annexation" ordinance.

5. Plaintiff is vendee of record under a Land Contract for the sale of an estate in possession in fee simple of the following described real estate (which is located within the territory which is the subject of the Kickapoo Annexation Ordinance), to-wit:

That part of the North East 1/4 of the SOUTH EAST 1/4 of Section 16-18-16, in the Town of Algoma, described as follows, viz:-

Commencing on the South line of said North East 1/4 of the South East 1/4, at a point 810.5 feet east of the Southwest corner thereof; thence north parallel with the West line of said North East 1/4 of the South East 1/4, 264 feet; thence east, parallel with the South line of said North East 1/4 of the South East 1/4, to the Westerly line of tract of land described in "Award of Damages for Fee Simple Title by County Highway Committee" as recorded in Volume 886 of Misc. on Page 73; thence southerly, along the Westerly line of tract of land, as described in said Award, to the South line of said North East 1/4 of the South East 1/4; thence west, along the South line of said North East 1/4 of the south East 1/4, to the place of beginning.

which Land Contract is recorded in Winnebago County Registry as Document #559850.

6. Plaintiff has consistently opposed the Kickapoo Annexation because it does not desire its land, described above, to be annexed to the City of Oshkosh. It has called attention to the legal defects in the annexation proceedings before the City of Oshkosh Plan Commission as well as the City of Oshkosh City Council.; however, the City Council has chosen to ignore the obvious legal defects in the annexation proceedings. There is, therefore, a real justiciable controversy between the plaintiff and the City of Oshkosh. This case is a proper subject for declaratory judgment.

7. No claim of any kind is being made against the defendant, Town of Algoma, which is joined in this action only because it has an interest in the controversy equal to that of the City of Oshkosh.

8. Plaintiff has a further interest in the subject matter in that it is a taxpayer of both the Town of Algoma and the City of Oshkosh.

9. Plaintiff maintains that the Kickapoo Annexation Ordinance is void by reason of the utter failure of the City of Oshkosh and the petitioners for annexation to comply with the provisions of Section 66.021, Wisconsin Statutes, relating to direct annexation. Among the numerous violations of the annexation statute, are the following failures by the City of Oshkosh and the annexation petitioners:

- A. The circulation of the Petition for Annexation was commenced less than ten (10) days after the date of publication of the Notice of Intention to Circulate the petition, contrary to Section 66.021(4)(c);
- B. The petition failed to specify the current population of the territory sought to be annexed, contrary to Section 66.021(4)(a);
- C. The person who caused the Notice of Intention to Circulate the annexation petition, failed to serve a copy of such Notice upon the Clerk of the School District affected, contrary to Section 66.021(3)(b);
- D. The Petition for Annexation failed to have attached thereto, a scale map reasonably showing the boundaries of the territory sought to be annexed and the relation of the territory to the municipalities involved, contrary to Section 66.021(4)(a);
- E. The Petition for Direct Annexation was not signed by the owners of one-half of the land in area within such territory or the owners of one-half of the real property in assessed value within such territory, contrary to Section 66.021(2)(a) 1;

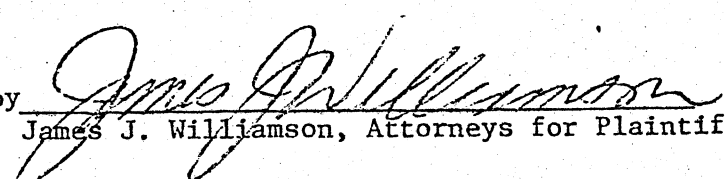
10. The invalidity of the Kickapoo Annexation Ordinance should be freed from doubt and uncertainty so that the property owners thereby affected and the municipalities involved will be able to determine whether such property is in fact still a part of the Town of Algoma, or a part of the City of Oshkosh.

WHEREFORE, plaintiff demands judgment:-

1. That this court make a binding declaration that the ordinance of the City of Oshkosh known as "The Kickapoo Annexation Ordinance" is invalid.
2. That this court, in its discretion, award costs including reasonable counsel fees, to the plaintiff.
3. That the court grant such further relief as to it may seem meet and proper.

DEMPSEY, MAGNUSEN, WILLIAMSON & LAMPE

by


James J. Williamson, Attorneys for Plaintiff

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