

File No. 6689



PIKE CIRCUIT COURT

IN RE: THE MATTER OF INCORPORATION OF CEDARVILLE,
PIKE COUNTY, KENTUCKY.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

7-20-63

This matter having come on for hearing on the petition for incorporation of the City of Cedarville and the defense, remonstrance and petition of The Chesapeake and Ohio Railway Company and the court having considered the petition, the defense and remonstrance of The Chesapeake and Ohio Railway Company and having heard and considered the arguments of counsel and questions of law presented now makes findings of fact and conclusions of law:

FINDINGS OF FACT

1. The boundary as set out and described in the petition conforms to the requirements of KRS 81.040 in that the area proposed to be incorporated is square and does not exceed one-half mile in any direction.
2. At least 125 inhabitants reside within the boundaries proposed to be incorporated.
3. The petition is signed by at least 2/3rds of the voters living within the boundary of the proposed city.

4. The petition was properly filed in the Pike Circuit Court Clerk's Office and notice of the filing of the petition and of its objects was properly published as required by KRS 81.050 by publication in the Pike County News, a newspaper of general circulation in Pike County, Kentucky.

5. The court finds as a fact that the real estate of The Chesapeake and Ohio Railway Company proposed to be included within the boundary of the City of Cedarville as sought in the petition has been improved and adapted by the said The Chesapeake and Ohio Railway Company for use as a railroad and attendant facilities and is being used by said Railway Company as and for a railroad line and that no part of said real estate is adapted or adaptable for any municipal use.

6. The court finds as a fact that except for the territory hereinafter specifically described that the part of the area proposed to be incorporated into said City and lying on the westerly side of the Russell Fork of the Big Sandy River is not adapted or adaptable for any municipal use.

CONCLUSIONS OF LAW

All the procedural steps required to be taken by the statutes controlling incorporation of cities have been taken in compliance with those statutes.

The court finds as a matter of law that property which is not adaptable for any municipal use should not be included within the

corporate limits of the city whether by annexation or incorporation and that the inclusion within the proposed City of any of that part of the real estate of The Chesapeake and Ohio Railway Company described in this action and lying on the westerly side of the Russell Fork of the Big Sandy River would deprive the Chesapeake and Ohio Railway Company of its property without just compensation in violation of Section 13 of the Constitution of Kentucky and would constitute an exercise of arbitrary power over the property of said The Chesapeake and Ohio Railway Company in violation of Section 2 of the Constitution of Kentucky.

The court finds as a matter of law that the area within the boundary proposed to be incorporated as the City of Cedarville and lying on the westerly side of the Big Sandy River not being adapted or adaptable to any municipal use should not be included in said boundary as a part of the incorporation.

JUDGMENT

It is ORDERED and ADJUDGED pursuant to the findings of fact and conclusions of law hereinabove set forth that the City of Cedarville be and the same is hereby established with boundaries as follows:

BEGINNING at a stake on hillside, East of Road and bearing S 65° 00' E 310 feet from mouth of Chestnut Hollow; thence up hillside and crossing point N 84° 00' E 2640 feet to stake on center spur of Elswick Hollow; thence S 6° 00' E 2640 feet crossing ridge, railroad, Beaver Creek and highway to a stake on hillside; thence down Beaver Creek on South side, S 84° 00' W 2640

feet crossing Ky. 80 highway to a point in the low water mark on the westerly side of the Russell Fork of the Big Sandy River; thence turning to the right and running with the low water mark of the said Russell Fork of the Big Sandy River down the same to a stake in the low water mark in said river; thence N 6° 00' W ¹²⁸⁸ ~~2045~~ running back across the river on a line to the point of BEGINNING.

It is further ORDERED and ADJUDGED that the officers of said corporation required by the court to be appointed by KRS 81.060 be and they are:

TRUSTEES:

Thurman Elswick, William Anderson, Edison Wright, Elmer Looney, Ruben Blizzard and Frank Wright.

POLICE JUDGE:

Charles Wright

MARSHALL:

Bill Mullins

TAX ASSESSOR:

Mirul Powell

It is further ORDERED and ADJUDGED that the Clerk of this Court not later than ten (10) days after the entry of this judgment certify and deliver a true copy thereof to the Secretary of State, Commonwealth of Kentucky.

James B. Stephenson
Judge

Copy - Attest
Clerk of Court, Clerk
By: Quincy Justice
D.C.