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MUNICIPAL INCORPORATION FOR THE PURPOSE
OF LIQUOR SALE; A CASE STUDY OF
IMPACT, TEXAS

THESIS

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CHAPTER I

PRELUDE TO OPPORTUNISM

Moral, economic, political, and legal debates over alcoholic beverages have been frequent in American history. Numerous sections of the United States have effectively enforced prohibition before and after the period of national abstinence.

Prohibition controversies have frequented Texas history. Temperance advocates held sixteen conventions within the state prior to World War I.¹ On three occasions in statewide elections, Texas voters expressed their desire to have the state legislature submit a prohibition amendment to the state constitution, but each time the plebiscite failed.² Often in Texas politics prohibiting the sale of all alcoholic beverages has been a significant political issue.³ Texas, especially in rural areas, has been

¹Ernest William Winkler, editor, Platforms of Political Parties in Texas (Bulletin of the University of Texas, No. 53; Austin, 1916), pp. 6-10.

²Ibid., p. 652.

³During the years of Governor O. B. Colquitt's term, 1911-1915, the prohibition controversy dominated domestic politics. Texas Almanac 1964-1965 (Dallas, 1963), p. 50; Rupert N. Richardson, Texas the Lone Star State, 2nd edition (Englewood Cliffs, New Jersey, 1958), pp. 286-288.

traditionally "dry" even before national prohibition. Of the state's 243 counties in 1909, 152 forbade all alcoholic beverages.⁴

One such traditionally "dry" area existed in west-central Texas in Taylor County around the city of Abilene.⁵ Bringing legalized liquor into this territory precipitated a controversy that lasted four years, went to the state supreme court twice, and became a political issue in a state senatorial race. The crisis produced an unusual alliance between religious groups and bootlegger forces, turned church groups into legal opponents in court battles, and exhibited the effects of community pressure on government officials. Evidence of corruption, bribery and disregard for legal processes was evident on the part of each of the opposing forces. From this well-known Texas controversy a freak of political maneuvering and moral hypocrisy emerged: Impact, Texas. An incorporated town consisting of a few streets inside the corporate limits of a larger city, Abilene, Texas, Impact exists for the primary purpose of liquor sale.

⁴Ernest Cherrington, Anti-Saloon League Year Book (Chicago, 1909), p. 50.

⁵See figure 1 for map of Texas showing the location of Abilene and Taylor County, p. 3.

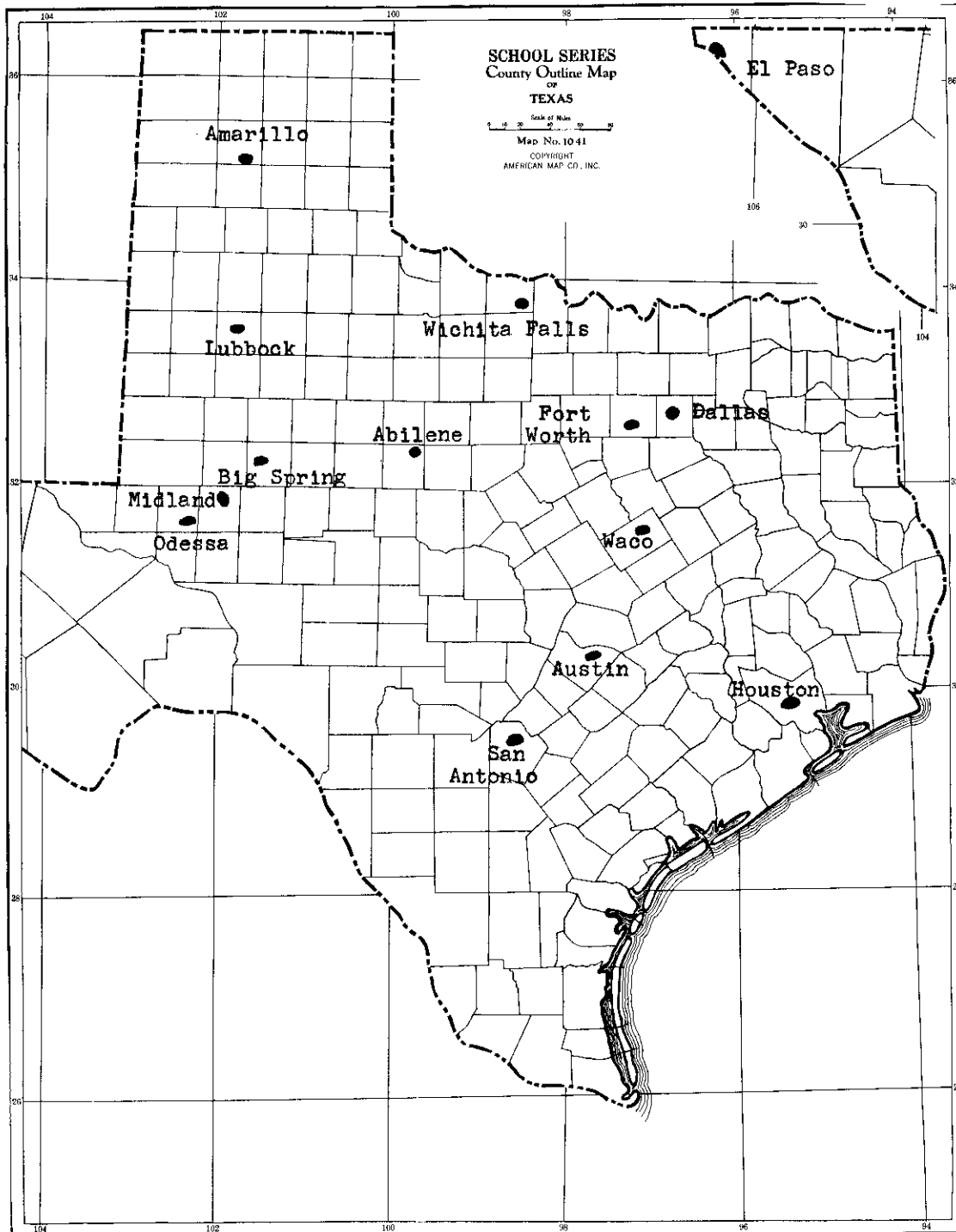


Fig. 1--Map of Texas Cities, Including Abilene

An extensive examination of the economy, attitudes, and population of this West Texas community enables one to understand the controversy that developed. A study of the law or lack of it in Texas which invited such a pocket incorporation for the sale of alcoholic beverages is also of importance.

Taylor County came into existence in 1858. Extensions of track by the Texas and Pacific Railway Company in 1881 caused the formation of the city of Abilene, with a subsequent gathering of settlers around this new trade and transportation center.⁶ The county's population of approximately 2,000 inhabitants in 1880 increased to approximately 7,000 by 1890.⁷ As the community developed, a newspaper, The Taylor County News, began publication. Within a short time congregations of Baptist, Methodist, and Church of Christ sects organized in the county.⁸ Taylor County's economy in its early stages became based on the production of cotton and wheat, with a substantial number of the local citizens earning a livelihood in livestock raising.⁹

⁶"Historical Information," printed brochure issued by the Abilene, Texas Chamber of Commerce, undated [1960's], two pages.

⁷Texas Almanac 1964-1965, p. 120.

⁸Fort Worth Directory Company, Directory of Abilene 1907-8 (Fort Worth, 1908), p. 48.

⁹"Historical Information," Abilene, Texas Chamber of Commerce.

The revivalistic character often found in rural churches existed in Abilene. This reformist attitude with its emphasis on piety and austerity in private morals abhorred the use of intoxicants.¹⁰ This worldly pleasure was condemned especially by the religious denominations most active in Abilene. Reports of saloon owners burning their businesses and their products as the result of an especially fervent church meeting occurred in the Abilene area.¹¹

Many articles in the early days of The Abilene Reporter, a local newspaper, condemned the use of liquor in an extreme manner. One such opinion from a local minister denounced the prescription of alcohol as a remedy by physicians. He said, ". . . whenever there is alcohol there is poison."¹² Another newspaper, The Taylor County News, from its inception strongly advocated statewide prohibition. Whiskey advertisements were not allowed in the newspaper.¹³

¹⁰James H. Timberlake, Prohibition and the Progressive Movement 1900-1920 (Cambridge, 1963), p. 4.

¹¹The Abilene Reporter, September 7, 1894.

¹²Dr. Felix Kerr, "As an Article of Diet Liquor is Wholly Useless and Injurious," The Abilene Reporter, September 14, 1894.

¹³Naomi Hatton Kincaid, "The Abilene Reporter News, Its Contribution to the Building of the Abilene Country," unpublished master's thesis, Hardin-Simmons University, Abilene, Texas, 1945, p. 4.

The first county-wide election to determine if the sale of liquor should be prohibited took place in March of 1894. Of the 1,106 voters, a majority of 114 defeated the attempt.¹⁴ Perhaps the defeat resulted from prevalent attitudes such as the one expressed at the time by a Taylor County resident who opposed drinking but believed prohibition an ". . . old woman's dream, calculated only to paralyze business, to reduce the price of real estate and in effect to eventually destroy the town."¹⁵

Eight years after the 1894 election the prohibition forces achieved more success in Taylor County. Of the sixteen churches in Abilene by 1902, the Baptist, Methodist, and Presbyterian denominations predominated. Each of these sects proclaimed evangelism, fundamentalism, and prohibitionism. The efforts of two ministers brought about the victory. The Reverend R. L. Scarborough, pastor of the First Baptist Church, and the Reverend C. E. Brown, pastor of the First Methodist Church, actually began the campaign by circulating a petition upon which they obtained more than 250 signatures.¹⁶ In the called election on June 7, 1902, 1,196 voters trooped to the

¹⁴Minutes of the Taylor County Commissioners Court, Abilene, Texas, March 22, 1894, p. 425.

¹⁵Henderson McCune, letter to the editor, The Abilene Reporter, January 19, 1894.

¹⁶Hugh E. Cosby, History of Abilene (Abilene, 1955), pp. 194-195; 210-211.

polls to cast their vote for prohibition of all alcoholic beverages, while 966 took the negative stance.¹⁷ Taylor County then became "dry" by a 230-vote majority some years before the unsuccessful statewide prohibition campaign of 1911 to 1915, and seventeen years before the adoption of nationwide prohibition.

Taylor County remained a rural agriculturally-based community through the 1920's and 1930's. Farming and livestock raising continued to flourish and the population steadily increased. The peak years in farm production occurred in the 1920's. Wheat output crested in 1920 at 638,097 bushels produced in the county. Cotton reached a summit in 1925 with 41,502 bales harvested. In addition to this prosperous agricultural economy, oil became another boon to Taylor County in the late 1920's.¹⁸ A sizeable growth in population occurred as well; the 1900 population figure of 10,499 for the county increased to 41,023 by 1930. By 1930 the effects of the Great Depression caused an economic recess in Taylor County which lasted until 1935.¹⁹

¹⁷Minutes of the Taylor County Commissioners Court, June 18, 1902.

¹⁸Overton Faubus and William E. Wright, An Economic Base Report for Abilene (Austin, 1965), pp. 47-49.

¹⁹Bureau of Business Research, College of Business Administration of the University of Texas, An Economic Survey of Taylor County (Austin, January, 1949), pp. 4.0101 and 4.0801.

The next major test of the county's attitude toward liquor sale came in 1933, when Texas voted on the question of repeal of the Eighteenth Amendment. Twenty-two states demonstrated approval of the Twenty-first Amendment when, in August of 1933, Texas faced the issue.

General support existed for the amendment throughout the state. President Franklin D. Roosevelt's spokesman, Postmaster General James A. Farley, explained the administration's policy on the repeal issue in speeches throughout the state as he had done in other states. In radio speeches, he urged voters to support repeal and the legalization of 3.2 per cent beer in the state as a means of decreasing lawlessness and bootlegging. He spoke of the repeal issue as one "dear to the President's heart." Governor Miriam A. Ferguson supported repeal of the amendment.²⁰

Not all was smooth sailing for the repeal forces. One of the co-authors of the prohibition bills was a Texan, Senator Morris Sheppard. In a strongly waged campaign he accused the repeal forces of being "a group of millionaires" who wanted to avert their taxes by shifting them to the masses through liquor sale. Many leaders of the prohibition forces hailed from West Texas, such as the presidents of two religious colleges in Abilene, McMurry College, a Methodist

²⁰Abilene Daily Reporter, August 25, 1933.

affiliated school, and Abilene Christian College, a Church of Christ associated college. The minister of Abilene's First Baptist Church participated as well.²¹ J. D. Sandefer, later to be president of Hardin-Simmons College, served on the board of managers of the Texas Anti-Saloon League.²² This organization had been a major lobby for prohibition forces nationwide since the early 1900's.²³

The Twenty-first Amendment and the statewide legalization of 3.2 per cent beer were both accepted by almost two-to-one majorities. In Taylor County as in many other Texas counties voters took the advice of the Abilene newspaper when it editorialized that attention be diverted from waste in fighting repeal to planning methods of controlling and prohibiting liquor sale in all possible areas. At the same time, counties held local option elections to vote on the status of liquor in their areas. Most counties in Texas voted to remain without alcoholic beverages of any type, especially in the eastern and western areas of the state, while many southern, central, and northern counties voted "wet."²⁴

²¹Ibid.

²²Cherrington, Anti-Saloon League Yearbook 1931 (Chicago, 1931), p. 195.

²³Timberlake, Prohibition and the Progressive Movement, pp. 125-148.

²⁴Abilene Daily Reporter, August 27, 1933.

West Texas remained an especially liquorless section. Only five of nineteen West Texas counties voted for the sale of 3.2 per cent beer. The vote within Taylor County differed from the state choices. In all three issues, repeal of the Eighteenth Amendment, statewide sale of 3.2 per cent beer, and the county beer election, prohibition forces won by a substantial majority. The strongest support for the sale of beer occurred in the city of Abilene where "wet" forces captured four boxes, although voting on all three issues seemed extremely close.²⁵

In 1934 pro-beer-sale forces attempted to legalize 3.2 per cent beer within the Abilene city limits. Since the "wet" supporters had fared so well in the previous county-wide election, they now expected victory within the city. Persons favoring the end of anti-alcohol laws, largely led by the business community, secured more than the necessary 700 signatures to call such an election. On the eve of the election the Abilene Daily Reporter published a plea by the prohibition forces to the people to consider in their voting whether they were willing "that their sons and daughters go down with others in the maelstrom of unsavory social conditions that are found . . ." where beer is sold.²⁶ Included among the article's

²⁵Ibid.

²⁶Ibid.

many arguments was one arguing that the preservation of the three church colleges depended on the continued outlawing of liquor since people sent their children to them knowing temptations of beer sale were absent. It suggested that the good names of these institutions would be damaged with beer sale in Abilene.²⁷

A town-wide anti-beer rally, held on the eve of the election, included speeches against beer sales by the presidents of each of the colleges, along with those by many ministers. J. D. Sandefer, then president of Hardin-Simmons University, urged people by their vote to make Abilene a synonym ". . . for virtue, for sobriety, for religious integrity, and for every spiritual and cultural value. . . ." ²⁸ The "dry" forces emerged victorious, but their persuasion barely succeeded. Out of 2,801 votes cast the "dry" supporters won by only 35 votes.²⁹

In 1938 beer forces made another attempt in Taylor County. By this date the population of the Abilene area had reached approximately 26,000. The main motivation behind this move to legalize the sale of 4 per cent beer was provided by a group of Abilene businessmen who circulated the necessary

²⁷Ibid.

²⁸Dr. J. D. Sandefer as quoted in The Abilene Morning News, June 29, 1934.

²⁹The Abilene Morning News, July 1, 1934.

petitions to have an election called. Many of these persons belonged to the Texas Business Men's Association, which had been influential in the early 1900's against prohibition.³⁰ This group circulated pamphlets, arguing that beer sales would help remedy the failing economy of Abilene by bringing in more tax revenue.³¹

Opposition to this attempt quickly formed. The increase in murder and lawlessness resulting from the sale of beer was one argument stressed.³² Other persons attacked arguments used by the pro-beer forces. The president of Abilene Christian College said: "the time has come for self-respecting, decent men and women to tell the liquor people who are debauching our youth and disrupting our moral surroundings that we don't need their money. . . ." ³³ Protest parades by some churches preceded a city-wide public meeting, held on the court house lawn, sponsored by the churches and colleges. Church services were dismissed to encourage attendance at the meeting. The pastor of the First Baptist Church directed the rally.³⁴

Huge turnouts materialized on May 15, the day of the election. Over three-fourths of the city's qualified voters

³⁰ Ibid., May 15, 1938.

³¹ Ibid.

³² Ibid., May 13, 1938.

³³ J. P. Sewell, President of Abilene Christian College, as quoted in The Abilene Morning News, May 12, 1938.

³⁴ The Abilene Morning News, May 12, 1938.

participated, as the "dry" forces won in a sweeping five to two majority.³⁵ This decisive victory for the "drys" prevented any further successful attempts to have liquor option elections held in Abilene or Taylor County.³⁶

Rather significant in these elections is the lack of objective coverage in the county newspapers for both sides of the question. The "dry" forces received extensive space each time to argue their position. The men in this movement were the civil, religious, and economic leaders of the community. The close race of 1934 in the city of Abilene shows most support for beer sale came from within the city and opposition from the rural areas. The domination of the religious forces on the life of the area continues today. No sale of alcoholic beverages of any type would have come to the county if an election had been held in 1960. Pro-liquor advocates had to find a new method to take the choice from the hands of the strongly religious majority. A decision of the Texas Supreme court in 1959 opened the way for this move.

Local option had been the method used in Texas to determine the sale of alcoholic beverages since the adoption of the 1876 state constitution. Prior to that date the sale of all

³⁵Actual vote count was 4,984 for the "drys" to 1,971 for the "wets."

³⁶The Abilene Morning News, May 15, 1938.

alcoholic beverages was permitted in the state.³⁷ Court interpretation of local option in 1886 held that counties, justice precincts, and cities could each exercise the practice of local option in their respective areas. A county could vote "dry," but a justice precinct within that county could vote "wet."³⁸

In 1887 this interpretation changed when the legislature enacted a law eliminating prohibition elections in subdivisions of a county after the county had voted "dry."³⁹ Later court decisions on this question upheld this law.⁴⁰ After nationwide prohibition had come and gone with no cases on this point tried, legal observers generally believed that no precinct or city could vote "wet" after the county had voted "dry." A 1952 edition of a standard textbook emphasized this commonly accepted principle.⁴¹

In 1959 the Texas Court of Civil Appeals decided that the Dimmit County Commissioners' Court could not block a local option election in the town of Asherton even though

³⁷Seth S. McKay and Odie B. Faulk, Texas After Spindletop (Austin, 1965), pp. 23-27.

³⁸Woodlief v. State of Texas 2 Southwestern Reporter 812 (1886).

³⁹Gammel's Laws of the State of Texas 1879-1889, Vol. IX (Austin, 1898), p. 896.

⁴⁰See Kimberley v. Morris, 31 Southwestern Reporter 808 (1895) and Board of Trustees of Town of New Castle v. Scott 101 Southwestern Reporter 944 (1907).

⁴¹Stuart A. McCorkle and Dick Smith, Texas Government, 2nd edition (New York, 1952), p. 125.

the county had previously prohibited the sale of alcoholic beverages. In its opinion the court pronounced that

. . . the Legislature, in submitting [a] constitutional amendment and enacting statute thereunder, and the people in adopting [the] 1935 constitutional amendment, intended that counties, justice's precincts and incorporated cities or towns should be on an equal footing.⁴²

The court stated specifically that ". . . a city located within a "dry" county may vote to legalize the sale of liquor within [the] corporate limits of such city."⁴³ The Texas Supreme Court upheld the lower court's decision by refusing a writ of error on the case.⁴⁴ This clarification of the law allowed a town to incorporate within a "dry" county such as Taylor County and hold a local option election despite the wishes of the county as a whole.

Another situation existed in the municipal annexation laws of Texas in 1960, which allowed a town on the fringe of a city's limits to do what the town of Impact accomplished. Home-rule cities, those with populations exceeding 5,000, such as Abilene, had considerable freedom of annexation over unincorporated areas surrounding the city. By the attachment

⁴²Myers v. Martinez 320 Southwestern Reporter 2d, 862 ref. n. r. e. 160 T 102 (1959).

⁴³Ibid.

⁴⁴Myers v. Martinez 326 Southwestern Reporter 2d, 171 (1959).

of an area on first reading a city could hold the section without completing the union for many months. The municipality might then decide not to annex the area or to release it after the initial annexation. These extensive freedoms resulted not from favorable legislation but from a lack of such legislation.⁴⁵

Absence of controls in this area of municipal development could be disadvantageous to the city. Under general law, areas near a larger city's limits could incorporate a section containing at least 200 inhabitants.⁴⁶ The Municipal Annexation Law of 1963 closed this gap, by requiring such pocket areas within the extra-territorial jurisdiction of a city to gain permission from the city before beginning incorporation procedure.⁴⁷

From 1959, when the law allowed a "wet" precinct or a "wet" town to exist in a "dry" county, to 1963, when a fringe town could no longer incorporate against the will of the larger city, the situation was vulnerable in Texas for a small minority of people to impose their will on the larger

⁴⁵Stuart A. MacCorkle, Municipal Annexation in Texas (Public Affairs Series No. 63) (Austin, 1965), pp. 17-25.

⁴⁶Ibid.

⁴⁷"Municipal Annexation Act," General and Special Laws of the State of Texas; Fifty-eighth Legislature, Regular Session (Austin, 1963), pp. 447-454.

community. This invasion was made in Abilene, Texas, in 1960.

By 1960 Abilene had become the urban center for an eleven-county area surrounding it in West Texas. The population within the city limits exceeded 90,000 and this figure increased to 125,000 within the entire Abilene metropolitan area.⁴⁸ From a largely rural community, Abilene had changed into a metropolitan center where urban dwellers composed 90 per cent of the population.⁴⁹

The failure of campaigns to legalize the sale of intoxicants resulted largely from the dominance of fundamental religious viewpoints within the city. Of the 138 churches in Abilene in 1960, over 100 expressed an extremely fundamental doctrine and strongly voiced opposition to the use of liquor. Included in this group are Baptist Churches, which make up 50 of the 100, Churches of Christ, Assemblies of God, and other similar fundamental Protestant sects.⁵⁰

⁴⁸U. S. Bureau of the Census, U. S. Censuses of Population 1960; Texas: Number of Inhabitants (Washington D. C., 1960), p. 45-21.

⁴⁹Ibid., p. 45-27.

⁵⁰Abilene City Directory, 1966 (Including: City of Impact) (Dallas, 1966), pp. 54-55.

The three religious colleges located in Abilene and their affiliations are Hardin-Simmons University, Baptist; Abilene Christian College, Church of Christ; and McMurry College, Methodist. The total enrollment of these schools exceeded 5,000 students in 1960.⁵¹

Abilene serves as the major national headquarters for the Churches of Christ. This demonination sponsors an elementary school in the city. The Christian Chronicle, the international publication of the Churches of Christ, originates in Abilene, Texas. In addition, the Church of Christ sponsors a publishing company, Fidelity Company; a bookstore, Fidelity Bookstore; and a film company, Fidelity Enterprises. The doctrines of this church most strongly oppose the sale or use of intoxicating beverages.

The presence of the three colleges and the importance of Abilene in the framework of the Churches of Christ attracted many people to the area who were connected with these organizations. Their influence was not limited to religious matters, but was quite obvious in local government activity. In 1960 one official of Abilene Christian College served on the Board of Commissioners for the city of Abilene.⁵²

⁵¹Texas Almanac 1964-1965, pp. 486-487.

⁵²Minutes of the Abilene Board of Commissioners, February 11, 1960.

Despite the open denial of liquor's sale in Abilene and Taylor County, illegal liquor activity prior to the establishment of Impact was extensive. A survey of the annual reports of the Texas Liquor Control Board from 1957 to 1961 reveals Abilene's position as consistently second or third in the amount of fines collected in the eighteen Liquor Control Board Districts in the state. Each year from 1957 to 1961, over \$60,000 was collected for violations, primarily bootlegging, in the Abilene area.⁵³

Approximately 300 bootleggers, or those who sold liquor illegally in a "dry" area, operated in Abilene at any given time from 1957 to 1960. The bootleggers generally received their commodities from "rum runners" who brought liquor in from nearby "wet" centers.⁵⁴ Wichita Falls, Fort Worth, Midland, Odessa, Lubbock, and Big Spring, all cities with legal liquor for sale, served as the major supply points for bootleggers.⁵⁵ Although one can not determine accurately the amount of liquor brought into Taylor County and Abilene from "wet" areas, the sizeable fines for bootlegging indicate the important illegal market present in Taylor County.

⁵³Survey of the Annual Reports of the Texas Liquor Control Board from 1957 through 1961 (Austin, 1957-1961), p. 29 of each report.

⁵⁴See map of Texas cities, figure 1, p. 3.

⁵⁵Interview with Frank Owens, District Director of the Texas Liquor Control Board, Abilene, Texas, October 3, 1966.

Abilene, Texas, in 1960 was legally a liquorless city, but, in reality, a sizeable illegal liquor market existed. Numerous influential religious groups opposed to legalizing the sale of any form of intoxicants had successfully defeated all attempts. Loose legislation regarding municipal annexation and incorporation, coupled with a clarification by the Texas courts enabling a city to sell liquor in a "dry" county, made the situation pregnant for formation of the daring, opportunistic plan to incorporate a town for the sale of liquor.

CHAPTER II

A PLAN IS CONCEIVED

Money, motivation, careful planning, and daring are needed to carry out the bold plan of successfully subverting majority opinion. This chapter will examine the motives of those who worked for Impact's incorporation, the tactics of planning, and the people involved.

The man who is the symbol of Impact, who originated the idea for its formation, and who has since been its mayor and largest property owner, is Dallas Perkins. A native of Abilene and an alumnus of McMurry College, Perkins operated his own advertising agency, Impact Incorporated, when the controversy erupted.¹ He is well known in Abilene Democratic Party politics, having served twice as the Taylor County Democratic Chairman. Active in the Democratic liberal faction of this period, Perkins gained statewide recognition for his work on several committees in the 1950's.² In 1962 Perkins stepped directly into the political spotlight when he came

¹The Abilene Reporter News, September 25, 1947, and August 2, 1957.

²Ibid., May 21, 1957, and June 17, 1958.

into competition for the Twenty-fourth District state senatorial seat. In campaigning, Perkins championed the creation of Impact against its critics.³

The position of Perkins in Abilene prior to the incorporation apparently was favorable and well-established. His leadership role in the local political organization, coupled with his ability to manage an advertising business, aid in explaining the qualities present in the man who virtually waged a singlehanded battle against a whole community.

Preceding incorporation, the land area which became the town of Impact occupied a low-value flood plain on the outskirts of Abilene. Its 47.45 acres two miles northeast of the city was an unidentifiable few blocks of a large unincorporated residential district.⁴ In 1957 flooding from nearby Elm Creek precipitated the departure of numerous home owners from the flood-prone land. Vacated dwellings survived as low-rent lodgings.⁵ Others remained vacant; a 1960 survey taken

³Ibid., April 27, 1962; Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

⁴Ellison R. McCarty's testimony, "Statement of Facts," Vol. I, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, pp. 18-20.

⁵Dallas Perkins's testimony, "Statement of Facts," Vol. II, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, p. 196.

by the Abilene Department of Engineers indicated fifteen of the total seventy houses were unoccupied.⁶

By 1960 a low evaluation existed on property in the Impact area. An estimate by Pat Patterson, an Abilene land agent, fixed the value of houses at approximately \$2,000 each. Patterson rated the total market value of the community's land and buildings at only \$217,950.⁷ None of the houses in the section had sewer or water from the city of Abilene; each had its own independent system. None of the streets was paved.⁸

The relationship of this locality to the city of Abilene prior to 1960 caused widespread discussion in West Texas at the time of its incorporation. One unchallenged fact exists; Abilene had never attempted to annex Impact into the city before Perkins's incorporation move. Had Abilene neglected the area and refused to provide city services or to annex it, thereby forcing the small incorporation as a means of gaining much needed improvements? Or had no previous attempts been made by the Impact community to gain these services or request incorporation?

⁶McCarty's testimony, "Statement of Facts," Vol. I, p. 19.

⁷C. O. (Pat) Patterson's testimony, "Statement of Facts," Vol. I, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, p. 59.

⁸McCarty's testimony, "Statement of Facts," Vol. I, p. 51.

Jimmy T. Rogers, a twelve-year resident of the Impact area, testified that he signed two petitions in 1951 and 1956 asking for city sewer and water from Abilene. He expressed hope for the one in 1956, but stated that the flood of 1957 killed its chances. Upon further questioning, he admitted that he personally had nothing to do with presenting either of the petitions to the Abilene Commissioners and did not know if they had ever been presented.⁹

Dan Sorrells, the lawyer representing Perkins, stated that in 1959 a group from Impact met with him and other city officials to request annexation. Sorrells held the position of Abilene City Attorney at that time. The prohibitive cost of extending sewer and water facilities guided the action of the authorities as they denied the request for annexation. Sorrells's position as city attorney when this request occurred caused him to withhold the information in court testimony concerning Impact's relationship to Abilene.¹⁰ Russell Day, an Abilene City Commissioner, stated that on one occasion the residents of Impact appeared informally before the commission to ask for an extension of city services, but

⁹Jimmy T. Rogers's testimony, "Statement of Facts," Vol. I, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, pp. 301-306.

¹⁰Interview with Dan Sorrells, Abilene, Texas, July 2, 1966.

dropped this request when they learned of taxes and improvement expenses they would have to assume.¹¹

Minutes of the Abilene Board of Commissioners' meetings do not reveal that the residents from the Impact area appeared before the commission requesting annexation before February 11, 1960.¹² The Minutes, however, contain only motions made and actions taken or rejected formally. An informal appearance before the commissioners might not have been mentioned. Also, proceedings are only taken at official meetings, not at informal ones. City Secretary Lila Martin stated that she did not attend or keep minutes of any informal meetings.¹³ On February 11, 1960, when a group of residents from the unincorporated area around Impact asked the Board of Commissioners for annexation, the board stated that "No previous request [has been made] to this Board by the citizens living in the community concerned, to be annexed to the city of Abilene. . . ." ¹⁴

From this dispute one can conclude that the inhabitants of the Impact area had never formally requested annexation or city services, although some indication exists that they

¹¹Interview with Russell Day, Abilene, Texas, July 1, 1966.

¹²Lila Martin's testimony, "Statement of Facts," Vol. II, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, p. 94.

¹³Ibid., p. 97.

¹⁴Minutes of the Abilene Board of Commissioners, Abilene, Texas, February 11, 1960.

desired these services and informally investigated them. One can also deduce that in these informal requests the Impact inhabitants did not want to pay for these improvements. J. T. Rogers stated that the city of Abilene should provide these services and make improvements without cost to Impact residents.¹⁵ Seemingly, the persons involved desired the improvements but did not want to assume the expense.

What did these people who had not actively requested improvements or annexation from Abilene hope to gain from incorporation? How would they be able to organize this move effectively when they could not even organize to present a petition formally to the Abilene Commissioners before this time? The answers to these questions lie in the leadership of Dallas Perkins. Before Perkins came to Impact no one had taken up the cause of this neglected area.

Benefits the residents hoped to gain through incorporation are difficult to determine, but their main motive seemed to be the hope of better things without any concrete method of obtaining them. Residents felt the city of Abilene had neglected this outskirt section in previous situations.¹⁶

¹⁵J. T. Rogers's testimony, "Statement of Facts," Vol. III, p. 313.

¹⁶"Statement of Facts," Vols. I, III filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963.

Perkins and residents of Impact denied that the introduction of the sale of liquor into the new town was the reason for the incorporation. Dallas Perkins and his lawyer, Dan Sorrells, both disclaim that they approached Impact residents concerning prevailing attitudes toward local liquor sales when they circulated the petition for incorporation.¹⁷ Perkins said that the question of liquor was first brought up by the Abilene Board of Commissioners and not by anyone in Impact.¹⁸ J. T. Rogers said the first time he heard anything about liquor in Impact was when the personnel adviser for Abilene came to his house and asked him if he wanted the sale of beer and liquor there, and that that was what the town had been "set up for."¹⁹ Evidence shows that at least some of the residents were promised improvements by Perkins if incorporation were effected.²⁰

In March, 1963, Jolly Adams, a resident and commissioner of Impact, entered the office of David Hooper, an Abilene

¹⁷Interview with Dan Sorrells, Abilene, Texas, July 2, 1966; Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

¹⁸Perkins's testimony, "Statement of Facts," Vol. II, pp. 145-146.

¹⁹Rogers's testimony, "Statement of Facts," Vol. III, p. 304.

²⁰The Abilene Reporter News, December 30, 1961.

lawyer, for the purpose of discrediting Dallas Perkins.²¹ In a sworn and notarized affidavit he testified that liquor sale was in fact the only purpose of the town's formation. He stated that Perkins told him prior to the incorporation election that he would receive \$500.00 per month ". . . right after the first liquor sales started in Impact."²² Perkins said, "Impact would be an 'oasis,' and 'there would be plenty of money for everyone' who helped get it going and brought whiskey into Impact."²³ J. T. Rogers, involved with Adams in making charges against Perkins,²⁴ remained firm in his statements that liquor sale was not a factor until after incorporation.²⁵

Further insight into Dallas Perkins's motives and purposes for Impact's incorporation are revealed by his own explanation of the incorporation idea and the manner in which

²¹David Hooper practiced law as a junior partner of Tom K. Eplen, Abilene's lawyer in the Impact cases. In 1963 Hooper left Eplen's firm to set up a practice of his own. His close involvement on all sides of the Impact question was made possible by his representation of opposing interests at various times.

²²Statement by Jolly Adams in a signed affidavit filed in the law office of David Hooper, Abilene, Texas, March 15, 1963, p. 2.

²³Ibid., p. 3.

²⁴Charges of payoffs and maneuvering of the Impact city commissioners by Perkins in these affidavits will be discussed in Chapter VI.

²⁵Statements by J. T. Rogers in a signed affidavit filed in the office of David Hooper, Abilene, Texas, March 15, 1963, pp. 1-2.

he proceeded to set boundaries for the new town. Perkins maintains he had no thought of incorporating a town in 1959, when he bought twenty acres of land in the area now a part of Impact. Sometime later the same year, he decided to move into a house there with his wife and their three children. Thought of incorporation began as a joke. When his friends inquired what he would do with his twenty acres, he said, "I'm going to incorporate my own town out here."²⁶ As he seriously began to consider the incorporation and discussed it with his lawyer, Dan Sorrells, he kept the matter quiet to prevent annexation by Abilene.

Perkins based the boundaries of the proposed town on his success in obtaining options to buy the land. From late 1959 until February 1, 1960, he secured three tracts, empowering Impact Development Corporation, which he formed with himself as president, to finance the purchase.²⁷ By February of 1960, he and his corporation controlled about thirty acres in the forty-eight acres currently constituting Impact.²⁸ He even

²⁶Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

²⁷Official land transactions read into the record, "Statement of Facts," Vol. I, filed in the Texas Supreme Court Case No. 9284, State v. Perkins, Supreme Court Building, Austin, Texas, 1963, pp. 15-16.

²⁸Ibid., Vol. II, p. 128.

decided not to extend one boundary of the town one street more because he was unable to obtain any options there.²⁹

Although much of Perkins's financial support for the Impact venture came from the Impact Development Corporation, evidence uncovered in 1962 points to his involvement in graft and misuse of funds between 1959 and 1961, and reveals the source of much of his financial backing. Complaints from stock-holders of the Taylor County Electric Co-operative in Merkel, Texas, a small town near Abilene, prompted an investigation into irregular activities of Lester Dorton, manager of the co-operative. Inquiries by the stockholders in March and by the district court grand jury in May, 1962, terminated with no charges being filed.³⁰ Dorton resigned, however, and then revealed at a stockholders meeting much misuse of funds and mismanagement on his part. From 1959 to 1961 a total of \$28,192.85 had been paid to Dallas Perkins from co-operative funds without any authorization or knowledge by the stockholders or the board of trustees.³¹

The bookkeeper at the Taylor County Electric Co-operative stated that Dorton told her he had hired Perkins as a lobbyist

²⁹Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

³⁰The Abilene Reporter News, May 8, 1962.

³¹Ibid., March 16, 1962.

for the organization. Payment began in 1959 in the amount of \$50.00 a month but increased after Impact's incorporation in 1960 to \$850.00 a month.³² According to statements made by Dorton's secretary to attorney David Hooper, who was representing a consumer of the Taylor County Electric Co-operative in the investigation, Perkins neither mailed his statement to the co-operative office nor appeared in the office. Dorton handled the matter himself. The secretary also stated that in February, 1960, the month Impact openly began its struggle for incorporation, Dorton said he would put ". . . every penny he could into the development of Impact."³³ Someone, it appears, had confidence that Perkins's Impact plan would succeed.

Perkins maintained that his reason for incorporation was to get improvements in the area. In testimony he said ". . . when we first moved out there, we had no intentions of holding a local option election. Those ideas never occurred to us."³⁴ This direct contradiction of the purpose of incorporation can not be resolved; but whatever his motives,

³²Ibid.

³³Statements by an employee of the Taylor County Electric Co-operative (name confidential) on file in the law office of David Hooper, Abilene, Texas, October 2, 1962.

³⁴Perkins's testimony, "Statement of Facts," Vol. II, p. 143.

Perkins's actions indicate he intended to play a major role in whatever happened, since he owned most of the town. His selection of the boundaries on the basis of whether or not he could buy the land casts doubt as to his motives for general improvement. As one resident of Impact pointed out later, Perkins wanted "all the gravy for himself."³⁵

³⁵Statement by Mrs. Jimmy Lorenz as quoted in The Abilene Reporter News, December 30, 1961.

CHAPTER III

THE BATTLE TO PREVENT INCORPORATION

Incorporation of Impact proved to be a battle along a hard-fought path extending from February, 1960, to August, 1961. Obstacles to block the town's formation reveal the forces of opposition. The strength of these groups and their influence on the town's incorporation expose this power play in local government machinery over an issue of intense interest in the community--the sale of alcoholic beverages. The clarification of Texas law regarding the powers of county judges by the Impact incorporation is also of importance.

In early February, 1960, Dallas Perkins took the public step necessary to make his incorporation plan a reality. On February 2, 1960, he presented to Taylor County Judge Reed Ingalsbe a petition containing twenty-nine signatures for the incorporation of a town to be known as Impact.¹ Following a brief hearing, the judge, after "careful consideration," found that all requirements had been met. He set the election for February 13, 1960, and appointed Perkins as election judge.²

¹The Abilene Reporter News, February 3, 1960.

²"Notice of Incorporation Election," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, pp. 12-15.

The question of Impact's existence began to create controversy even before the election could be held. On February 7, Judge Ingalsbe returned to Abilene from a three-day trip and called a public hearing to consider "charges, counter charges, and rumors" concerning the incorporation. He declared that he had the power to revoke a petition if he acted before the time of the election.³ In an announcement issued after the meeting the judge gave the following explanation for his action.

. . . Upon my return [I] found that a great controversy had arisen over such election so ordered, for which reason I set a public hearing . . . for the purpose of hearing such proof and argument as the parties at interest might have to offer relative to the correctness of said previous order of election, and to determine if I should revoke such order.⁴

The holding of such a conference after it has been determined that all requirements have been met and an election date has been set is unusual. A question exists as to the judge's legal power to have such a meeting. In contrast, Judge Ingalsbe said the authorizing of such assemblies is a commonplace practice which he had done on other occasions in his term as county judge.⁵ Article 1136 of the Texas Civil

³The Abilene Reporter News, February 7, 1960.

⁴"Order Revoking Incorporation Election Order," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, p. 21.

⁵Interview with Reed Ingalsbe, Abilene, Texas, June 27, 1966.

Statute on Cities, Towns, and Villages reveals a hearing should be held to satisfy the judge that the proposed town meets the necessary requirements.⁶ This requirement had been met by the judge before he signed the petition. Dan Sorrells, Perkins's lawyer, considered the second session extra-legal and outside the county judge's power.⁷

The controversial hearing occurred on February 10, just three days before the scheduled incorporation election. Dallas Perkins and his lawyer attended the meeting. Tom K. Eplen, a lawyer specially hired by the city of Abilene to deal with Impact, and several members of the Abilene Board of Commissioners participated. Judge Ingalsbe presided.⁸

Eplen argued Impact was not a town as required by law since it had neither churches, schools, businesses, nor enough taxes to support a municipal government. In addition, he asserted that Impact was part of a larger community known as North Park and had been formed without regard to the feelings of that section's residents. A petition with fifty-six signatures from residents of the North Park area who objected to

⁶Vernon's Civil Statutes on Cities, Towns, and Villages, Article 1136, 2B (Kansas City, 1963), p. 16.

⁷Dan Sorrells, "Brief of Appellant," Perkins v. Ingalsbe, Abilene, Texas, 1961, p. 11.

⁸The Abilene Reporter News, February 11, 1960.

Impact's incorporation accompanied the charge. Dan Sorrells protested the suitability of the hearing itself.⁹

As the public meeting concluded, Ingalsbe promised to give his decision the following morning after he studied the law and the arguments presented.¹⁰ In a later statement Judge Ingalsbe admitted he had already decided what he was going to do before the session but called it ". . . to give the other side a chance."¹¹ After signing the petition, he realized the purpose of Impact's incorporation was not to form a community ". . . but to set up a saloon in the middle of a 'dry' county."¹²

The morning after the public hearing, Judge Ingalsbe issued the order revoking the election. It contained basically the same arguments used by Abilene's lawyer in the hearing.¹³ Also on the morning of February 11, Ingalsbe telephoned Perkins and promised to allow the election if the entire North Park area were added to the proposed town. According to Ingalsbe, Perkins said he had no reason to include this area because he "had a good deal in Impact."¹⁴

⁹Ibid.

¹⁰Ibid.

¹¹Interview with Reed Ingalsbe, Abilene, Texas, June 27, 1966.

¹²Ibid.

¹³"Order Revoking Incorporation Election Order," pp. 20-22.

¹⁴Ibid., p. 19.

The city of Abilene's reaction to this attempted incorporation near its outskirts was one of open and determined opposition. On February 3, one day after the filing of the incorporation petition, Abilene's Board of Commissioners held a special meeting to discuss the Impact situation. The possibility of a liquor option election taking place in the area occupied much of the commission's discussion.¹⁵ On the following day the commissioners hired the Abilene law firm of Eplen, Daniel, and Hooper to act as counsel for the city in their fight against Impact's incorporation.¹⁶

On February 11 at 10:30 in the morning, just an hour and a half after Judge Ingalsbe issued his order revoking the incorporation election for Impact, the commissioners held a "workshop" meeting. Since it was not an official meeting, no minutes were kept. An uncustomary meeting place and the exclusion of news media representatives characterized this first of many secret meetings by the Abilene Board of Commissioners. On this occasion Judge Ingalsbe met with the board.¹⁷

¹⁵Interview with Russell Day, Abilene, Texas, July 1, 1966.

¹⁶The Abilene Reporter News, February 4, 1960.

¹⁷Ibid., February 11, 1960.

At 1:30 that afternoon the Board held an official meeting, and, without discussion, on first reading annexed the entire area of North Park, including the proposed town of Impact. The commissioners explained their position on the now cancelled election, "we opposed the incorporation of the small 47-acre tract because it was our firm conviction that if there was to be annexation, the whole community should be included and not just a small segment."¹⁸

Judge Ingalsbe's formal objection to Impact's incorporation had been the exclusion of the North Park area. Perkins and his lawyer took the judge on a tour of Impact. They pointed out the impossibility of expanding the town's boundaries, since Abilene had annexed the surrounding area, and asked the judge to withdraw his revocation order. He refused.¹⁹ Sorrells and Perkins later charged that the city of Abilene conspired to deprive Impact residents of their rights.²⁰

An evaluation of the judge's actions might not reach this extreme conclusion; undoubtedly the Abilene Board of Commissioners influenced Judge Ingalsbe's handling of the situation. His reasons for revoking the election, which he

¹⁸Minutes of the Abilene Board of Commissioners, Abilene, Texas, February 11, 1960.

¹⁹"Plaintiff's First Original Supplemental Petition," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, p. 28.

²⁰Ibid.

stated were decided before the hearing, and their identicalness with the arguments given at the second meeting by the city's lawyer, tend to show cooperation and influence. Also, Tom Eplen, who later represented Ingalsbe as well as the city of Abilene against Impact, stated that he answered for Ingalsbe at the second session.²¹ Despite the judge's denial of any such cooperation, the very fact that he called the hearing to "let the other side have a chance" shows his predetermination and misuse of this public meeting. It appears to be only an excuse for the issuance of his order revoking the election.

Indications exist of other methods used to deter Impact's existence by preventing the incorporation election. On February 9, the day before the public hearing, Abilene city employees Archie M. Brannon, Jr. and Darrell Yancy, reported to the Abilene city attorney four anonymous, threatening telephone calls. Both men lived in the Impact area and had signed the incorporation petition. Nothing could be proven, however. Also, rumors circulated that these city employees would be discharged if they did not remove their names from the petition.

²¹Tom K. Eplen, "Brief for Appellee," Perkins v. Ingalsbe, 1961, p. 26.

The Abilene city manager denied any such action.²² Before considering the major court struggle by the city of Abilene, the beginnings of opposition from another aspect of Abilene's life should be mentioned--the churches.

In examining the reaction of religious groups one must remember that at this stage no open threat of liquor sale existed. All that actually happened was the attempt to form a town on the outskirts of Abilene. A prompt hostility characterized their response at this early period. On February 5, only three days after the filing of the incorporation petition, the executive cabinet of the Abilene Ministerial Alliance met to discuss the situation.²³ The Ministerial Alliance, composed of all Protestant churches in Abilene excluding the Church of Christ, is a loosely formed organization without any power to make decisions for its member churches. The main purpose of the Alliance is to encourage cooperation in a general manner, and to serve as a coordinating agency for community religious activity.²⁴

At a meeting on February 5 the executive cabinet of the Ministerial Alliance discussed the possibilities of liquor sales if Impact incorporated. The group decided that all

²²The Abilene Reporter News, February 9, 1960.

²³Ibid., February 9, 1960.

²⁴Interview with Francis Benton, Pastor of the First Presbyterian Church, Abilene, Texas, June 29, 1966.

member churches would be asked to contact their congregations and explain the possible consequences of incorporation. Ministers from the Alliance also went into the Impact area circulating petitions drawn up by Tom Eplen, lawyer for the city of Abilene. Harassing signers of the incorporation petition proved to be the goal of this effort. The ministers pleaded for the signers' participation in a new list which would nullify their original signature. Two persons acquiesced.²⁵

The Ministerial Alliance made no attempt to use legal arguments in its opposition at this early stage. As the Reverend Norman W. Conner, pastor of Abilene's First Christian Church, agreed: "we are not questioning the legality of the move to incorporate."²⁶ Legal opposition came later. Protesters at this time confined their arguments to moral objections of the possibility of liquor sale in Impact. These few actions at the outset of Impact's incorporation attempt were the only organized responses by churches until the sale of intoxicants became an open issue.

The court battle of Perkins v. Ingalsbe, though technically between Perkins and the county judge, was really between Abilene and Impact. As an editorial in the local

²⁵The Abilene Reporter News, February 6, 1960.

²⁶Norman W. Conner as quoted in The Abilene Reporter News, February 6, 1960.

Abilene newspaper emphasized, the city of Abilene ". . . is really the force behind the fight and should exhaust every legal recourse to block Impact's incorporation."²⁷ This was really Abilene's effort against Perkins, and the city fathers thought they had won until the case reached the high court.

It all began when the election that Judge Ingalsbe revoked was held anyway, as originally scheduled, on February 13, 1960. Dallas Perkins as election judge reported the results as a twenty-seven to naught vote in favor of incorporation.²⁸ In order for such an election to be valid the county judge must canvass the election results and enter a record of such results with the commissioners court.²⁹ When Judge Ingalsbe refused to do this, a suit for a writ of mandamus was begun, with Perkins representing Impact, to force the judge to count the results. Perkins's lawyer filed a petition requesting the issuance of this writ with the Forty-second District Court of Taylor County. The court set a date for a hearing on the suit.³⁰

²⁷Ed Wishcamper, "Impact Has No Reason to Be," The Abilene Reporter News, June 23, 1961.

²⁸The Abilene Reporter News, February 14, 1960.

²⁹Vernon's Civil Statutes of the State of Texas, Article 1139 (Kansas City, 1963), p. 18.

³⁰"Plaintiff's Original Petition," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, pp. 3-5.

Before the hearing could take place, Ingalsbe through his lawyer, Tom K. Eplen, filed a "Motion to Abate and Dismiss" the petition for a writ of mandamus on the following grounds: the district court does not have jurisdiction to grant a writ of mandamus in a case of this type. Facts brought out at the public hearing called by Judge Ingalsbe show that Impact was not a town or village as defined by law but only a small part of the larger North Park community. The incorporation of Impact was not a bona fide attempt to incorporate strictly for town purposes and for the welfare and advantage of the entire area, but was an attempt to bring about a local option election. Finally, the power to revoke the election was solely the county judge's and not subject to judicial review. Ingalsbe also stated that these reasons were not included in his order revoking the election, but that he wanted the court to be aware that he did consider all of these facts before revoking the order.³¹

In a supplemental petition filed with the court, Dan Sorrells detailed charges against Ingalsbe. His main point was that after acting on the original incorporation petition by setting the election date, the judge's power was exhausted. He then had no authority to call a new hearing or to revoke the election. More detailed charges given in this petition

³¹"Respondent's Motion to Abate and Dismiss," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, pp. 17-19.

criticized the public hearing and the role Ingalsbe and the city of Abilene played. It charges that no notice of the hearing was given to Perkins or his lawyer except by news media.³²

Another charge against Ingalsbe was that the real purpose of the hearing was masked. Perkins claimed it was called to investigate the possibilities of a liquor election being held there, not into the qualifications for incorporation. Also, the petition stated that the actions of the city of Abilene and the county judge constituted a fraud on the citizens of Impact by denying them their right to vote. Finally, it charged that the county judge, by revoking the election, had put special and additional requirements on the incorporation of towns, thereby giving unconstitutional power to county judges. The petitioners claimed that this action must be corrected by the courts.³³

Tom Eplen, representing Ingalsbe, replied that Perkins had shown no legally acceptable grounds to prove that Ingalsbe had acted in bad faith or was guilty of fraud, factors that would justify a court to issue a writ of mandamus. Eplen

³²"Plaintiff's First Original Supplemental Petition," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, pp. 24-27.

³³Ibid., pp. 28-31.

dismissed the allegations as being arguments representing conclusions without facts to prove them.³⁴ Ingalsbe, speaking in his own behalf, said that he ". . . at no time conspired with the Board of Commissioners of Abilene or any other person, relative to what he did or should do in connection with the order of the election for Impact or the revoking of said order as he did."³⁵

The filing and counter-filing of petitions was all that took place on the case in the district court. No hearing or trial materialized. On May 13, 1960, the district court dismissed the case. The following explanation appeared in its "Order of Dismissal."

The Court . . . finding that . . . Dallas G. Perkins, has alleged no acts or conduct on the part of Respondent, Reed Ingalsbe, sufficient in law to constitute such fraud or other ground as would authorize this Court to grant the petition for mandamus [grants] Respondent's motion to abate and dismiss³⁶

The district court then had accepted the motion entered by Ingalsbe to dismiss the case, thereby defeating Perkins and leaving Impact in a position of semi-existence. Under the

³⁴"Respondent's Original Answer," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, pp. 33-35.

³⁵Ibid., p. 34.

³⁶"Order of Dismissal," filed in the Transcript of the Texas Supreme Court Case No. 8121, Perkins v. Ingalsbe, Supreme Court Building, Austin, Texas, 1961, p. 39.

leadership of Perkins this quasi-town appealed to the Eleventh Court of Civil Appeals at Eastland, Texas.

Dallas Perkins and his lawyer concentrated their case in the appeals court on two basic points previously emphasized in their petitions to the district court. The duties of a county judge, they argued, are ministerial; after he carries them out his powers are extinguished. He can not set boundaries or decide the areas to include or exclude. The more serious of the protesting allegations was a charge of fraudulent activity against Judge Ingalsbe.³⁷

A major precedent Sorrells entered to back up these contentions was the case of Ewing v. State of Texas (1891). This quo warranto proceeding against city officials of Oak Cliff, Texas, found that county judges do not have the power to withhold an order of election when the proposed limits of a town include territory which should not be included. The inhabitants must set the boundaries for themselves.³⁸ In argument, Tom Eplen said the Ewing case does not deny to the county judge power to cancel an election if the boundaries as set by the petition do not meet with the requirements of

³⁷Dan Sorrells, "Brief of Appellant," Perkins v. Ingalsbe, Abilene, Texas, 1961, pp. 4-11.

³⁸Ewing v. State of Texas, 16 Southwestern Reporter, 874 (1891).

law, or if the rights of surrounding property owners have been violated.³⁹

Another case Sorrells cited was Cameron v. Baker (1929), a successful attempt to force a county judge to canvass the returns of a common school district election. The court ruled that the judge's power ceases after the election date is set.⁴⁰ In contrast, Eplen argued that the judges who delivered the decision failed to understand it, and that it had not been followed in law since that time.⁴¹

Sorrells also used the case of Glass v. Smith (1951), which dealt with the refusal of city officials of Austin, Texas, to call an election on an ordinance concerning the classification of city firemen and policemen. The court ruled that the officials must perform their purely ministerial duty of holding an election even if the ordinance would be invalid if adopted.⁴² In opposition, Eplen stated that this case did not apply to the issues of Perkins v. Ingalsbe since it dealt with city officials and city employees, not with any type of incorporation.⁴³ Eplen also

³⁹Tom K. Eplen, "Brief of Appellee," Perkins v. Ingalsbe, Abilene, Texas, 1961, p. 19.

⁴⁰Cameron v. Baker, 13 Southwestern Reporter 2d, 119 (1929).

⁴¹Tom K. Eplen, "Brief of Appellee," Perkins v. Ingalsbe, Abilene, Texas, 1961, p. 20.

⁴²Glass v. Smith, 244 Southwestern Reporter 2d, 645 (1951).

⁴³Tom K. Eplen, "Brief of Appellee," Perkins v. Ingalsbe, Abilene, Texas, 1961, pp. 22-23.

dismissed other cases cited by Sorrells as not being pertinent to the issue.⁴⁴ Ingalsbe's attorney, Tom Eplen, countered that the judge possessed singular power to call an incorporation election. Any plebiscite held without official sanction, therefore, would be invalid. Also he contended that actions of county judges in such elections are not subject to review by the courts unless fraud on the part of the judge can be proven. No such fraud could be proven, the lawyer stressed, since the judge was guiltless of wrongdoing.⁴⁵

Eplen cited precedents to prove the power of the county judge. His basic case was State of Texas v. Town of Clyde (1929), a quo warranto proceeding attacking the action of a county judge. The judge granted an election when the population requirement had not been met. The court ruled that unless bad faith or fraud could be charged, the judge's actions are not subject to review by the courts.⁴⁶

Eplen also used the case of State of Texas v. Goodwin (1887), which found that the decisions of county judges are conclusive as to the number of inhabitants in an area, and that no provision had been made by the legislature to revise

⁴⁴Sorrells had referred to the decisions in: City of El Paso v. State of Texas 209 Southwestern Reporter 2d, 989 (1947) and State ex. rel. George v. Baker, 40 Southwestern Reporter 2d, 21 (1931).

⁴⁵Ibid., p. 9.

⁴⁶State of Texas v. Town of Clyde, 18 Southwestern Reporter 2d, 202 (1929).

a judge's conclusions.⁴⁷ Also, the case of Scarborough v. Eubank (1899), in which the Texas Supreme Court stated that the determination of the county judge should be conclusive in incorporations rather than allow his decisions to be inquired into by contest.⁴⁸ The case of Beyer v. Templeton (1948), specifically dealt with a county judge's power to revoke orders for incorporation elections. In this case it was found that part of an area to be incorporated was already part of an incorporated city. The court held that ". . . the county judge had the power to revoke the election order at any time before the proceedings contemplated thereunder were finally consumated."⁴⁹

The Eastland Court of Civil Appeals upheld the decision of the district court in the Impact case, by stating that the county judge had the power to revoke his order of election before the election was held. It further decided that the actions of a county judge in the absence of provable charges of bad faith or fraud are not subject to review by the court. It found that the charges made against Ingalsbe by Perkins contained no facts, but consisted of conclusions insufficient

⁴⁷State of Texas v. Goodwin, 5 Southwestern Reporter, 678 (1887).

⁴⁸Scarborough v. Eubank, 53 Southwestern Reporter, 573 (1899).

⁴⁹Beyer v. Templeton, 212 Southwestern Reporter 2d, 134 (1948).

to show fraud.⁵⁰ The cases cited by Eplen in his brief for Ingalsbe were also cited by the appeals court as the bases for their decision. A motion for rehearing presented by Perkins to the court of appeals was denied and Perkins appealed the case to the Texas Supreme Court.

The Texas Supreme Court issued its decision on June 14, 1961, reversing the decision of both lower courts. It held that

. . . because the petition [for incorporation] was in due and legal form . . . and because the respondent had a hearing on the petition and found the statutory requirements present, and ordered the election . . . it follows that the election process was lawfully put in motion and the County Judge could not prevent its being carried to its conclusion.⁵¹

From this decision it is clear that the public hearing after which Judge Ingalsbe revoked the election order could be defined as the interference with the election process already in motion and that it was not within the judge's power to call such a hearing.

The high court relied for its decision on the cases of Cameron v. Baker and Ewing v. State, both of which had been used by Sorrells in his argument. It dismissed almost all of the cases Eplen had presented to the Court of Civil Appeals,

⁵⁰Perkins v. Ingalsbe, 339 Southwestern Reporter 2d, 346 (1960).

⁵¹Perkins v. Ingalsbe, 347 Southwestern Reporter 2d, 929 (1961).

because those decisions involved the original actions of county judges and did not pertain to the revocation of a previously made order of election. The case of Beyer v. Templeton was an exception, but the court said that the county judge had no jurisdiction to call an election in this case since part of the area to be incorporated was already part of another municipality.⁵²

As to the contention of Ingalsbe that the area of Impact was part of a larger community and the wishes of that area should be taken into consideration, the judicial body ruled that the statutes do not give power to the county judge to set boundaries or change them, and certainly not to revoke an election after he had called it. The judges then granted the writ of mandamus to force the county judge to canvass the incorporation election results. According to the decision, the city of Abilene had no right to annex the area of Impact while the election process was still in motion. The one dissenting opinion by Justice Clyde E. Smith basically stated that the county judge did have the power to revoke his first election order since he found the area of Impact did not constitute a town according to the law.⁵³

⁵²Ibid.

⁵³Ibid., p. 936.

With the canvassing of the votes by Judge Ingalsbe on August 2, 1961, Impact officially became a town some seven months after the election for that purpose. Through this decision, the supreme court clarified the powers of Texas county judges in the incorporation of towns. Now it became clear that in this type of situation the duties of the county judges are purely ministerial, not judicial. Once he had performed his duties of determining the statutory requirements for incorporation, he had no choice but to set the election date and could not interfere with it once it had been ordered.

The early community reactions to the incorporation attempt centered in the Abilene city government and soon began in the churches. The leadership role played by the city throughout this controversy is evident in this stage. Its influence on the Taylor County Judge is obvious. The positional connection of church and the Abilene city government is evident even this early through the petitions drawn up by the city's lawyer, and grew noticeably during the controversy. The clarification of the powers of county judges by the Texas Supreme Court is not only important in Texas law, but marked an unexpected defeat for the city of Abilene. The early phase of the Impact controversy hardened the battle lines for the coming struggle. The victory of Impact in the court made the threat of legalized liquor in Taylor County a reality.

CHAPTER IV

IMPACT IS VICTORIOUS

The writ of mandamus suit ended when Impact became officially recognized as a town. The city of Abilene began new procedures to crush the infant town before liquor sales could be authorized. The Abilene commissioners used pressure on Impact residents.¹ A quo warranto suit to question the validity of Impact's incorporation constituted Abilene's main opposition following its defeat in the writ of mandamus suit.²

On September 1, 1961, legal proceedings began anew when the Texas Attorney General Will Wilson, North Park resident J. C. McKee, Jr., and thirty additional persons from this unincorporated area surrounding Impact brought suit in the Forty-second District Court of Taylor County against Impact. Will Wilson co-signed the suit because the state must be a party to a quo warranto proceeding. Wilson voiced his opinions on the incorporation when he stated: "We do not feel the development of satellite fringe cities around the municipality

¹Two employees of the Abilene sanitation department were elected to the city council of Impact. They were forced to resign their positions in Impact's government or be discharged from their city jobs. The Abilene Reporter News, August 17, 1961 and August 24, 1961.

²Quo warranto is the method used to question the right of a person or corporation to exercise a public franchise or privilege. It is the proper method to challenge the legal existence of a municipal corporation. See Texas Jurisprudence 2d, Public Officials to Railroads, Vol. 47 (San Francisco, 1963), pp. 464-466.

such as the city of Abilene, which is carrying the main load, is in the best interest of everyone concerned."³ He also expressed concern that development of small satellite incorporated cities might be a loophole in the local option statutes.⁴ The district attorney or county attorney could have signed to make the state a party in the suit instead of or in addition to the state attorney general. Personal jealousies and ill feelings prevented this course, however. County Attorney Bill Thomas felt his position indicated he should have been the lawyer to represent the county judge in the writ of mandamus suit, but he was by-passed and the private law firm of Eplen, Daniel, and Hooper handled the case. Thomas was unwilling to cooperate later as a party in the quo warranto suit.⁵

Tom K. Eplen's firm continued to represent Abilene in opposing Impact in the quo warranto suit. The decision not to fight the validity of Impact's incorporation at first and to have the county judge refuse to canvass the incorporation election results rests with Eplen. In an interview years later David Hooper, a member of Eplen's law firm and a critic of Eplen's handling of the situation, pointed out that a quo

³Will Wilson as quoted in The Abilene Reporter News, September 1, 1961.

⁴Ibid.

⁵Interview with Bill Thomas, Abilene, Texas, October 3, 1966.

warranto suit from the beginning would probably have ended in victory for the anti-Impact forces.⁶ The Citizens Committee for a Better Taylor County financed the hiring of Clint Small, a well-known conservative Austin lawyer, who worked with Eplen's firm in the quo warranto suit.⁷

Dan Sorrells continued to represent Impact. When the case reached the Texas Supreme Court, another Austin law firm, Cofer and Cofer, was retained. Perkins, however, did not pay the fees of this firm nor did the city of Impact. Carrion, Carrion, and Hernandez Corporation, an organization trying to open liquor stores in Impact, hired this firm.⁸

Anti-Impact forces presented four reasons to the district court to prove Impact's invalidity. First, they held that Impact was only a small portion of a larger unincorporated community. Second, the boundaries for the town had been arbitrarily set. They contended that the people of Impact had nothing to do with setting the boundaries or any other phase of the incorporation; it was solely the work of Perkins. The boundaries had been drawn in such a way as to "... obtain a unanimous vote for incorporation and a majority for the sale of liquor."⁹ Third, they asserted that Impact was

⁶Interview with David Hooper, Abilene, Texas, October 4, 1966.

⁷The Abilene Reporter News, May 15, 1962.

⁸Interview with David Hooper, Abilene, Texas, October 4, 1966.

⁹Eplen, Daniel, Hooper, "Supplemental Brief for Appellant," State of Texas v. Perkins, Abilene, Texas, 1962, p. 5.

not suited to municipal government since it was not an autonomous area. Finally, they argued that the area was not going to be used solely for town purposes. Tom Eplen charged that Perkins's reason for obtaining the land was to use it as a ". . . site for the retail liquor business at the back door step of a city that was notoriously 'dry.' "¹⁰

Representing Perkins, Sorrells countered that Impact was not a part of a larger community nor were the boundaries set arbitrarily to exclude other areas. Speaking in his own behalf, Perkins denied creating Impact to legalize the sale of liquor, but stated such a purpose was not illegal or improper if other requirements were met. They also argued that the Attorney General of Texas alone does not have the authority to be a party to the suit, but the district attorney or county attorney must do so.¹¹ Perkins also brought to the court's attention that two validating acts passed by the Fifty-seventh Legislature would validate the incorporation.¹²

The jury in the district court ruled in favor of Impact on all but one point; it determined Impact part of a larger community prior to incorporation. On the three other points, it found that the boundaries of Impact had not been set

¹⁰Ibid., p. 9.

¹¹Dan T. Sorrells and Douglass D. Hearne, "Brief for Appellees," State of Texas v. Perkins, 1962, pp. 1-20.

¹²For validating acts see Vernon's Civil Statutes of the State of Texas; Cities, Towns and Villages, Article 966h (1963), p. 41 and Article 974d (1961).

arbitrarily, that Impact had been functioning as a municipal government, and that it was intended to be used for town purposes.¹³

The city of Abilene, the residents in the area around Impact, and the state as a party in the suit appealed the case to the Eastland Court of Civil Appeals. The higher court reversed the district court's decision, thereby declaring the incorporation of Impact invalid. It based its opinion on the district court jury's answer that Impact was part of a larger community. It held that the incorporation was an "arbitrary slice" of a town and therefore did not meet with the definition of a town in the incorporation statute. It also contended that the two validation acts did not validate Impact because they ". . . did not apply to towns whose incorporation has been in violation of law, and that Impact had been so incorporated."¹⁴

Dallas Perkins filed an application for a writ of error against the Court of Civil Appeals to the Supreme Court of Texas. Waggoner Carr, now the Attorney General, continued Will Wilson's position on the Impact matter and argued the case before the high court. On April 17, 1963, the high court upheld Impact's validity, based on the legislative acts which

¹³State of Texas v. Perkins, 360 Southwestern Reporter 2d, 555 (1963).

¹⁴Ibid.

permitted Impact to exist even if the town had been invalid at its inception. The Supreme Court carefully pointed out that it was unnecessary for it to decide on the initial validity or invalidity of Impact, that it did not need to decide on the attorney general's right to be involved in the suit without either the district attorney or the county attorney, and that the liquor question was not a matter for it to decide since it was a political question, not a judicial one. The pleasure of the residents of the area of Abilene to have the sale of intoxicants near them was not the court's duty or right to decide.¹⁵ The Supreme Court then had considered the case on none of the points concerning the purposes of the town or the intentions in its creation, but as a legislative question. The court refused a motion for rehearing and rejected a special request by Attorney General Waggoner Carr to reverse its decision on Impact.¹⁶ The city of Abilene had then failed to stop the sale of liquor in Impact, but the city had shown its extreme opposition by carrying the battle as far as possible in the courts.

After the final judgment by the court, Abilene annexed all of the area surrounding Impact. The first annexation had taken place soon after the petition for incorporation had

¹⁵Perkins v. State of Texas, 367 Southwestern Reporter 2d, 140 (1963).

¹⁶The Abilene Reporter News, May 16, 1963.

been filed in February, 1960, but it was made invalid by the first high court decision in Perkins v. Ingalsbe. The Abilene commissioners then annexed the surrounding area omitting Impact, but rescinded this annexation when the quo warranto suit was started. The area of North Park contained 1.8 square miles of land and had a population of 1,200 when the city of Abilene finally annexed it in June, 1963. With this annexation Abilene completely surrounded Impact.¹⁷

A successful local option election had been held by Impact in September, 1961, but liquor licenses had been delayed pending the outcome of the quo warranto suit.¹⁸ An examination of community attitudes and reactions to the threat of liquor sale from September, 1961, until its actual sale in 1963 is most revealing as to the extent to which the community was willing to carry its opposition.

¹⁷"North Park Records," office of the City Clerk, Abilene, Texas, undated, four pages. See figure 2 for map of Abilene and Impact showing the North Park annexation, p. 60.

¹⁸The Abilene Reporter News, September 18, 1961. The vote in the election was eighteen for the sale of all alcoholic beverages on an "off premises" basis and two votes against.

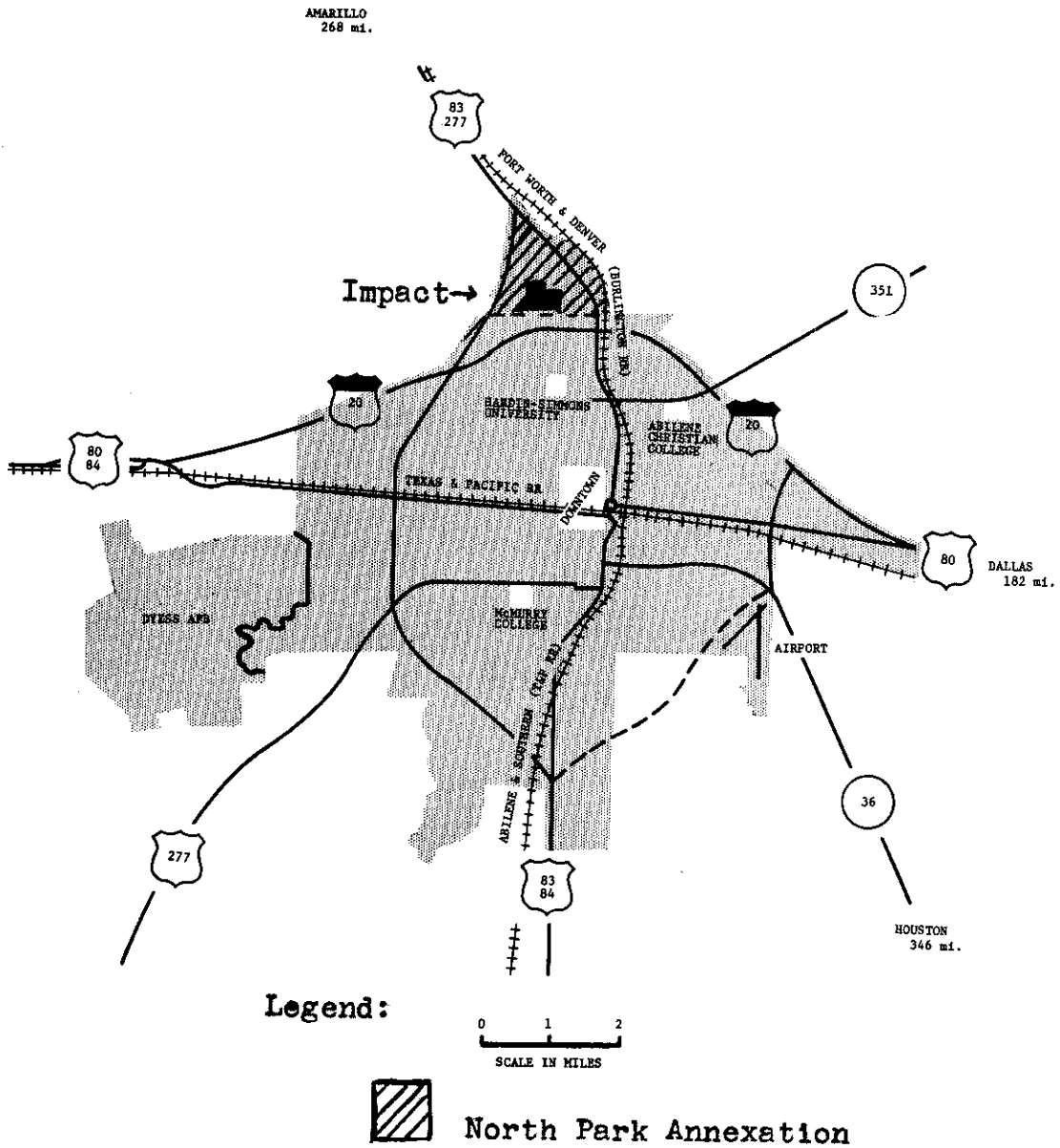


Fig. 2--Map of Abilene, Texas as of 1967, indicating major landmarks.

CHAPTER V

COMMUNITY RESPONSE TO LIQUOR THREAT

With applications for liquor licenses already filed and successive reaffirmations of Impact's existence in the courts, attitudes toward the possibility of liquor being sold in Taylor County began to crystalize and become more vocal. Church groups developed new tactics. Hints of liquor interest involvement could be heard. State senatorial candidates made Impact their chief campaign issue. Residents of the "dry" West Texas area rallied behind one of the opposing forces. A newspaper statement made at that time aptly expressed the extent of community involvement. "At present there are two major problems confronting the United States: The Berlin crisis and the Impact controversy."¹

Soon after the Texas Supreme Court reached its decision favoring Impact, major church opposition formed. An organization known as The Citizens for a Better Taylor County served as the vehicle for religious protest of liquor sale. It began with a meeting at the First Baptist Church in late August, 1961. At the meeting the group took no action other than the publication of a policy statement in the local

¹The Haskell Free Press, November 23, 1961.

newspaper. Moral objections to the sale of liquor, praise of actions against Impact by the city government of Abilene, and a list of fifty-five names, mostly ministers and officials of the denominational colleges, supporting the policy, constituted this statement.²

Leaders from the ministerial alliance, who had led in previous protests against Impact, continued to conduct the citizens' group. This leadership existed only in the background since private citizens became officers in the newly formed body. Widening the base of opposition through the framework of a citizens' group enabled funds to be brought in for the opposition of Impact on a legal basis.³ Extensive public meetings became the vehicles for such financial contributions. One meeting resulted in over \$4,000 of collections.⁴

Although neither the total amount of money collected nor the sources of these contributions are available, the secretary-treasurer of the citizens' group made public a list of churches contributing.⁵ Of the twenty-five churches participating, over half were Baptist. Churches of Christ and Methodist Churches

²The Abilene Reporter News, August 27, 1961.

³Ibid., May 15, 1962.

⁴Ibid., October 23, 1961.

⁵Although minutes of the meeting of The Citizens for a Better Taylor County were recorded, its Secretary-Treasurer, Garvin Beauchamp, Dean of Students at Abilene Christian College, declined to release them for examination.

made heavy donations as well.⁶ Presbyterian churches were the only major Protestant group not involved. One Presbyterian minister, explaining this lack of participation, said he felt the citizens' group had no legal grounds for opposition, thus making it useless to join the protest.⁷ Non-Protestant groups in the city donated no funds, thus reflecting their absence of doctrines opposing use of all intoxicating beverages and their non-alignment with the ministerial alliance. Contributions paid the fee of Clint Small, an Austin lawyer, who worked with Tom Eplen in the quo warranto suit.⁸

Later, The Citizens for a Better Taylor County unsuccessfully attempted to secure an injunction to stop the issuance of liquor licenses in Impact. Grounds given for the request were the increased traffic hazard accompanying the sale of alcohol and the violation of the best interests of the county as a whole.⁹

Direct influence on Liquor Control Board Administrator Coke Stevenson, Jr., to forbid liquor permits in Impact constituted another method used by the citizens' group. A

⁶Interview with Garvin Beauchamp, Dean of Students at Abilene Christian College, Abilene, Texas, July 1, 1966.

⁷Interview with Francis Benton, Pastor of the First Presbyterian Church, Abilene, Texas, June 29, 1966.

⁸Interview with Gordon Bennett, President of McMurry College and member of The Citizens for a Better Taylor County, Abilene, Texas, October 6, 1966; The Abilene Reporter News, May 15, 1962.

⁹The Abilene Reporter News, October 23, 1961.

caravan of influential Abilene citizens journeyed to Austin for a conference with Stevenson. Included in this core of Abilene's leadership were Gordon Bennett, President of McMurry College, and George L. Graham, Interim President of Hardin-Simmons University.¹⁰ A representative of Abilene Christian College carried the view of its President, Don Morris, that Impact ". . . is unnatural and unwholesome . . . for the entire community, including the colleges. There isn't a business or a church in Impact, just a bunch of substandard houses. Its incorporation was a subterfuge" ¹¹ Officials of the Abilene public schools, the Abilene councilmen, the district attorney, the sheriff of Taylor County, and numerous ministers made the pilgrimage to Austin.¹²

The citizens' group also sent telegrams to the Liquor Control Board signed by Abilene city officials. The request for a public meeting by Coke Stevenson, Jr., to investigate "all facts surrounding the applications . . ." from Impact residents was the major goal of this tactic.¹³ Several individuals and churches used the telegram method to have their

¹⁰Ibid., October 12, 1961.

¹¹Don Morris as quoted in The Houston Chronicle, October 22, 1961, Sec. A, p. 1.

¹²The Abilene Reporter News, October 4, 1961.

¹³Ibid., October 10, 1961.

influence felt. Typical of such protests to prevent the issuance of liquor permits to Impact came from the Pioneer Drive Baptist Church. A portion of its content stated,

. . . our sincere conviction is that [liquor] would contribute substantially to a moral decline in our city. We protest vigorously the attempt of two dozen people of Impact overruling the majority of a city of 92,000 people that had grown to its present greatness without the aid of the liquor industry.¹⁴

These pressures on the Liquor Control Board resulted in delay of the permit's issuance. Stevenson said: "any applications which draw protests certainly require more careful study than those applications which draw no objections."¹⁵ Postponement did come in November, 1961, for the purpose of awaiting the outcome of Impact's validity in the quo warranto decision.¹⁶

Leadership in church protests against Impact came primarily from the Baptist Churches of Abilene and from one man in particular within this group, the Reverend Elwin Skiles, then pastor of the First Baptist Church. As previously mentioned, Baptist churches contributed most heavily to funds used to battle Impact legally. The Dallas-based state publication of the Southern Baptist Convention, The Baptist

¹⁴ Interview with Gordon Brown, Chairman of Deacons at the Pioneer Baptist Church, Abilene, Texas, July 10, 1966.

¹⁵ The Abilene Reporter News, October 13, 1961.

¹⁶ Ibid., November 3, 1961.

Standard, published editorials expressing disapproval of the newly-formed community. Political in nature, the attention marked a departure from strictly moral opposition. Statements, such as one that Impact has awakened voters ". . . to what is going on in their state capitol . . ." and "it is common knowledge that the liquor interests have dominated the law-making bodies for several years," show this new method of argument.¹⁷

Skiles, following precedents of former pastors of the Abilene First Baptist Church, led throughout the entire movement. Not only were all meetings held in his church, but the bulletin of the church announced the citizens' meetings along with usual church announcements. Members reading the bulletins were encouraged to give the meetings "their prayerful support."¹⁸

The citizens' group printed a special tabloid newspaper, The Abilene Press, for the purpose of expressing opposition to Impact. Statements in one editorial by Skiles show the close alliance between his group's protests and those of the city of Abilene. He argued that, "the natural growth

¹⁷E. S. James, editorial, "The Impact of Impact, Texas," The Baptist Standard, October 18, 1961, p. 6.

¹⁸"The First Baptist Advance," bulletin of the First Baptist Church of Abilene, Texas, December 1, 1961.

of the city is obstructed by the incorporation of fringe communities which ought to be part of the whole."¹⁹ Skiles urged immediate annexation of other similar areas.²⁰

Opposition to Impact from Abilene's religious elements evidenced very different techniques as threat of liquor's sale neared. The broadening of the base of protest from that solely connected with the ministerial alliance and the churches to one of a general citizens' group is perhaps the predominant technique. The change from solely moral objections to the adoption of Abilene's fight against Impact in the courts marks another of the new methods. Leadership in these protests rested with the Baptist churches of Abilene, led by Elwin Skiles. The seriousness of their protests is evidenced by the financial contributions obtained. Effectiveness is more difficult to determine. Their pressures on the Liquor Control Board perhaps contributed to the delayed issuance of liquor permits, but the actual postponement of their issuance awaited the court's decision in the quo warranto suit. Their cause in the court lost with the victory of Impact, but this group had a major influence in the introduction of legislative bills against the new incorporation.

¹⁹Elwin Skiles, "Liquor Cannot Build a Sound Community," The Abilene Press, November 18, 1961.

²⁰Ibid.

Two western Texas members of the Texas Legislature, Representatives Truitt Latimer, of the Eighty-fourth House District, and David Ratliff of the Twenty-fourth Senatorial District, championed the anti-Impact cause. Both men introduced bills to exclude Impact from the validating act as a move to satisfy their influential supporters in Abilene.²¹ The Legislature was not in session when the significance of the validating acts was discovered. A special session called early in 1962 by Governor Price Daniel presented them with the opportunity to prove to their constituents that they would do something to stop liquor's invasion of Abilene.

Obstacles plagued their political gesture from the first. Both men had voted for the validating act in their respective legislative bodies. Statements such as one made by Latimer that he voted for the validating bill earlier because he thought it was a local bill for the city of Plano, Texas, were weak at best.²² The limitation of a special session to the purposes of its call by the governor proved to be another major obstacle.

Latimer's anti-Impact bill never reached consideration by the House. It met with immediate opposition and died in

²¹Interview with David Ratliff, State Senator of the Texas Twenty-fourth Senatorial District, Stamford, Texas, October 7, 1966.

²²The Abilene Reporter News, January 27, 1962.

committee. Statements such as those by one representative that Abilene was ". . . the most alcohol drinking town in Texas . . ." and that it [the bill] discriminated against one area only were the common responses to the bill.²³

David Ratliff's bill did leave committee, but the raising of a point of order that it was not on the governor's schedule caused it to go again to committee.²⁴ In a meeting with Governor Price Daniel, Ratliff requested his measure be put on the schedule of bills to be considered in the special session. The governor said he looked upon Ratliff's request kindly, but no legislation could be considered until the purposes of the special session had been fulfilled. Ratliff considered the governor's response an effort to extract Ratliff's pledge of support for the governor's program.²⁵ In a later hearing the bill itself could not be found. After an unsuccessful search the committee chairman dismissed the hearing.²⁶

The difficulties of getting such special legislation passed explain sufficiently the lack of success, but a most

²³V. E. (Red) Berry, Texas State Representative from San Antonio, as quoted in The Abilene Reporter News, January 27, 1962.

²⁴Interview with David Ratliff, Stamford, Texas, October 7, 1966.

²⁵Ibid.

²⁶Ibid.

interesting version told by Daniel Hooper, the lawyer for liquor dealers who wanted a share of the business in Impact, merits attention. Hooper contends that liquor interests performed influentially in the opposition to, and defeat of the bills.²⁷ Tom Eplen, lawyer for Abilene, agreed with Hooper and said that "Very definitely beer and liquor interests took an active part . . ." in defeating the anti-Impact bills.²⁸

Nineteen sixty-two was an election year for Senator Ratliff. As a result of the bill he proposed against Impact a rather interesting campaign developed. Ratliff became Senator of the Twenty-fourth District in a special election in 1954 to complete an unexpired term. Truitt Latimer of Abilene, later a state representative, ran unsuccessfully against Ratliff in the election. Ratliff had held this position largely unopposed since that time. In 1962 Latimer decided to put in his bid for the senate once again against Ratliff.²⁹ Since both men were conservative Democrats, few issues were present. The campaign at this point had nothing to do with Impact except that both men agreed in opposing it. Ratliff's position as incumbent appeared considerably stronger than Latimer's.

²⁷Interview with David Hooper, Abilene, Texas, October 6, 1966. Further discussion of liquor involvement is contained in Chapter VI.

²⁸The Abilene Reporter News, January 30, 1962.

²⁹Interview with David Ratliff, Stamford, Texas, October 7, 1966.

When Ratliff introduced his bill against Impact, Dallas Perkins suggested he would win the senate seat from him if he continued with the bill. In his argument for the bill in the senate chamber, Ratliff said that Perkins's promise to defeat him was a threat and constituted political blackmail.³⁰ In late April, less than two weeks before the Democratic Party Primary, Perkins filed. His main platform issue was Impact. He contended that the Ratliff and Latimer bills discriminated against the tiny town.³¹ Impact then became the major issue in the race.

Results of the first primary election in May, 1962, show surprising support for Perkins, even though he did not make the runoff. Ratliff gained a plurality with 16,629 votes, while Latimer received 14,281 votes, and Perkins trailed with 10,388 votes. In Taylor County Perkins ran only 125 votes behind Ratliff.³² This showing for an inexperienced Liberal Democrat against two veteran legislators with conservative backgrounds is exceptional. Since Perkins's major campaign issue was Impact, the votes he gathered could be taken as support of his cause. On the morning of election day the

³⁰The Abilene Reporter News, January 15, 1962.

³¹Ibid., April 27, 1962; Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

³²The Abilene Reporter News, May 6, 1962.

newspaper led with Impact's victory in the district court, which could have influenced some undecided voters.³³

The votes Perkins received in the senatorial race show his strongest support centered in Taylor County, but this county was also the scene of his strongest opposition. The only measurements of support or opposition in this area are from those who in some way made their opinions public. The church opposition with its citizens' group, though most vocal, was not the only indication of attitudes toward the inception of liquor sale in Impact.

Another such pointer is found in the Letters to the Editor of the local newspaper. Though such opinions are not necessarily representative, they do reveal attitudes of some community members. From the many letters published concerning Impact, intense community involvement is obvious. These opinions ranged from support to ardent condemnation of the new town.

The major argument used by pro-Impact letters was that legalization of liquor sales would help control a business already in existence undercover. Funds collected in tax form from this sale would benefit the public.³⁴ Some letters leveled criticism at methods used by Abilene. The city

³³Ibid., May 5, 1962.

³⁴Ibid., April 26, 1962; April 10, 1962.

government was accused of circumventing the law by using social and economic pressures to prevent the counting of votes expressing the will of the people.³⁵

The other extreme of opinion suggested if a human fence were built around Impact with each member praying, all law suits and other unpleasantness would disappear.³⁶ One answer to the question of bootlegging by an anti-Impact letter stated, "no amount of bootlegging could possibly debauch a community like free-flowing booze sold all over town in businesses of 'respectability.'"³⁷ The dramatic found a place in such indictments as "we stand almost unflinchingly while the Devil's imps bring their Imp-Act out of Hell to damn and destroy the precious lives of lost humanity."³⁸

Another indicator and perhaps mold of community attitudes is the local newspaper. The Abilene Reporter News's editorial policy toward Impact was one of opposition. It clearly praised the Abilene city government's stand toward Impact and the methods used to fight it.³⁹ A survey of

³⁵Ibid., June 2, 1963.

³⁶Ibid., August 25, 1963.

³⁷Joseph H. Randolph, Letter to the Editor, The Abilene Reporter News, June 24, 1963.

³⁸Henry H. Carty, Letter to the Editor, The Abilene Reporter News, May 26, 1963.

³⁹Ed Wishcamper, editorial, The Abilene Reporter News, June 23, 1961.

newspaper coverage surrounding the Impact controversy showed objective and unbiased reporting. Dallas Perkins reaffirmed praise for the paper's handling of the matter.⁴⁰

In a discussion of community attitudes another question needs to be asked concerning involvement of nearby liquor dealers to the threat of competitive business in Impact. George Dolan, a columnist for the Fort Worth Star Telegram, hints at such opposition in reference to Impact. "If any group is reacting more indignantly than the bootlegger clique it is the church leader lobby."⁴¹ This alliance existed in theory between the two groups, but any active alliance is difficult to determine.

Since records of the Citizens for a Better Taylor County are not available, the possibility of liquor contribution exists. No concrete indications of such support were discovered, however. Perkins stated that the liquor opposition had its battle fought for it by the city of Abilene and the churches. The real contest came after the validity of Impact had been decided, in the form of squabbling for a share of the sales within the town. The legal business from Abilene and the supply to bootleggers in Abilene territory were undoubtedly threatened by the possibility of liquor sale in Impact. The

⁴⁰Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

⁴¹George Dolan, "Bootleggers are Worried," from column, "This is West Texas," Fort Worth Star Telegram, October 19, 1961, Sec. I, p. 1.

"wet" precinct in Haskell, Texas, about forty miles from Abilene and the nearest "wet" area prior to Impact, would be especially hurt since most of its business came from Abilene.⁴²

Although the sale of liquor in Impact would damage surrounding liquor dealers, no open opposition is apparent. Perhaps the answer lies in Perkins's explanation that the battle was being fought for the liquor interests and they hoped to wait and secure a share of Impact's business for themselves.⁴³

Other opposition to Impact came in an effort by "wet" forces in Abilene to vote the sale of intoxicants into that city. Their main argument was economic. The funds from liquor sales which had been going to illicit trade would go to Impact if it were allowed to sell liquor. A legalization of liquor sale in Abilene would bring the money there. Businessmen were promoters of this move.⁴⁴ Elwin Skiles was also active in opposing the effort. Only 2,500 signatures of the 4,500 needed were obtained on the petition for an

⁴²The Haskell Free Press, November 2, 1961 and October 19, 1961.

⁴³Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

⁴⁴The Abilene Reporter News, September 6, 1961.

option election.⁴⁵ One reason for the pro-liquor advocates' lack of success was the absence of organization such as that maintained by the "dry" forces.⁴⁶

One Abilene resident leveled criticism at the city government of Abilene for its payments to Tom Eplen's law firm for services connected with Impact. Robert Preston, an Abilene businessman, filed a suit against the city accusing it of misappropriation of funds by payments to Eplen.⁴⁷ Preston believed the use of public funds to oppose or favor liquor sale was wrong. The attempt to make his viewpoints felt was unsuccessful, however.⁴⁸

A wide range of activities and opinions about Impact existed in the Abilene community especially after liquor sale became a reality in the tiny municipality. Religious opposition increased in strength, broadened its base, and developed varied weapons of combat. Contenders for state office involved the Impact issue in a state campaign. The variety of opinions concerning Impact, and their intensity, reveal involvement of the entire community in a matter of considerable importance to them.

⁴⁵Ibid.

⁴⁶Interview with Sam Milano, leader of the move to vote Abilene "wet" in 1966, Abilene, Texas, July 10, 1966.

⁴⁷Interview with Robert Preston, Abilene, Texas, October 3, 1966.

⁴⁸Ibid.

CHAPTER VI

LIQUOR IN IMPACT

Excitement and controversy did not die when Impact finally began the sale of intoxicants. They merely altered in form. Instead of church groups and citizens from Abilene protesting liquor sale, inside bickering over who would benefit from liquor profits within the city developed. Area liquor interests who remained largely silent during the incorporation and later validation proceedings now began to vie for control. Residents of the newly formed town expected to reap some of the profits from the town's major industry. The controversies arising from the ambitions of divergent groups reveals possible bribery and pay-offs.

The effect a "wet" Impact has had on the Abilene community as well as its effect on the town of Impact itself are of interest. Did bootlegging continue after liquor began to be sold? Who benefitted most from the sale of intoxicants in Impact? Have improvements been effected in the area to merit incorporation? All of these questions must be considered in evaluating Impact's total place in the West Texas community.

Soon after incorporation, Dallas Perkins took steps to insure his control over all sale of liquor in Impact. In an overwhelming eighteen-to-two vote on September 18, 1961, Impact residents voted for the sale of off-premises liquor consumption.¹ Three days later, September 21, in a special meeting called by Dallas Perkins, the city council adopted an ordinance prohibiting the sale of liquor within the residential limits of Impact, and prescribed a fine for violators.²

The interesting aspect of this decision can best be understood in consideration of the residential zoning ordinance passed a few months earlier by the council, designating areas of the city to be residential. Eighteen of the town's forty-seven acres reserved for business use belonged to Perkins and the Impact Development Corporation.³

One might question why the council allowed such a monopolistic move which would not be of any benefit to the residents. Statements made by two of the council members, Jolly Adams and Jimmy T. Rogers, two years after this incident, illuminate the actions which occurred prior to the meeting. They indicated that Perkins completely dominated council meetings.

¹The Abilene Reporter News, September 18, 1961.

²Minutes and Records of the Board of Alderman of the City of Impact, Texas, Impact, Texas, September 21, 1961.

³Ibid., August 17, 1961.

"He would tell us which way he wanted the votes to go on specific matters before the Commission meetings . . .," Adams said.⁴ According to the statements made by these two council members, Perkins told them that the zoning of Impact to give the Impact Development Corporation control of all the liquor business was necessary. Perkins could then be in a position to get a tax on the gross sales from liquor business and could pay these councilmen the \$500.00 monthly salary he promised them.⁵ Rogers said all of the council members voted this way because they expected the \$500.00 a month stipend.⁶

Perkins had some very obvious control of the council owing to his position as mayor of the small town. His wife held the posts of city secretary, treasurer, tax-collector, and city engineer. Dan Sorrells, the lawyer who had represented Perkins and Impact, continued as the city's attorney.⁷

This obvious dominance by Perkins did not go uncontested. Wendon Rogers, an Impact resident who had already begun construction of a liquor store, protested at the September 21

⁴Statement by Jolly Adams in a signed affidavit filed in the law office of David Hooper, Abilene, Texas, March 15, 1963, p. 2.

⁵Ibid.; Statement by Jimmy T. Rogers in a signed affidavit filed in the law office of David Hooper, Abilene, Texas, March 15, 1963, p. 2.

⁶Statement by Jimmy T. Rogers in a signed affidavit filed in the law office of David Hooper, Abilene, Texas, March 15, 1963, p. 2.

⁷Minutes and Records of the Board of Alderman of the City of Impact, Texas, Impact, Texas, August 15, 1963.

council meeting that his property had been zoned residential, preventing its use for commercial purposes. Several other requests for liquor store permits on residential land in the town failed at this time.⁸ Wendon Rogers allied with other discontented residents in an attempt to have another election and vote Impact out of existence. He even started selling poll taxes, without any authority, to unregistered voters of the town. A sign in his window advertised "Poll Taxes for Sale." After the purchase, the newly-qualified voter would be encouraged to sign the convenient petition Rogers had been circulating.⁹ Rogers vowed, "If I can't sell it [liquor], they can't sell it. I don't think Dallas Perkins has done any of us right and I won't let him sleep until justice is done."¹⁰ Judge Ingalsbe set the election date, but the discovery of two forged names on the petition ended Rogers's effort.¹¹

Under Perkins's guidance, the council began looking for someone of their choosing to run the liquor stores. Roy Jackson, a San Angelo liquor dealer, became their choice.

⁸The Abilene Reporter News, October 8, 1961 and October 19, 1961.

⁹Ibid., October 19, 1961; Interview with Dallas Perkins, Impact, Texas, June 28, 1966.

¹⁰Statements by Wendon Rogers as quoted in The Abilene Reporter News, October 8, 1961.

¹¹The Abilene Reporter News, October 9, 1961.

According to Jimmy Rogers, an Impact councilman, "he gave us a better deal than anyone else" ¹² Jackson appeared before the council and agreed that the proposed store should operate for the benefit of the town. At the meeting Perkins said, "a big part of the money derived from these stores will stay right here in Impact." ¹³ Perkins began construction of a building for Jackson to manage. It would be located on Perkins's property and would be leased to Jackson. Impact council members sent letters to the Liquor Control Board recommending that it issue a liquor permit to Jackson. ¹⁴

Over a year's delay in the issuance of the permits, caused by the Texas Liquor Control Board's awaiting the outcome of the final court decision on Impact, delayed the matter until December, 1962. When the permits finally were issued, two groups in addition to Roy Jackson received them, Columbia Liquor Stores of San Antonio, Texas, and Carrion, Carrion, and Hernandez Incorporated of Odessa, known locally as C.C.H. Corporation. Columbia leased a building from Perkins's Impact

¹²Statement by Jimmy T. Rogers in a signed affidavit filed in the law office of David Hooper, Abilene, Texas, March 15, 1963, p. 2.

¹³Statement by Dallas Perkins, from the Minutes and Records of the Board of Alderman of the City of Impact, Impact, Texas, October 2, 1961.

¹⁴Letter from John Baird, Impact City Councilman, to Coke Stevenson, Jr., October 5, 1961 and letter from Nancy Perkins, Impact City Marshall, to Coke Stevenson, Jr., October 5, 1961.

Development Corporation. For some unknown reason Roy Jackson returned his permit and relinquished his lease from Impact Development.¹⁵ The C.C.H. Corporation continued to play a more prominent role.

C.C.H. had hired the law firm of Cofer and Cofer to assist Impact in its final supreme court fight.¹⁶ This organization also sought to speed the date of liquor sale in Impact by petitioning the district judge in Odessa to force the Liquor Control Board to grant their liquor permit in Impact. Their contention that the board had no right to delay the permit's issuance got nowhere when an injunction against the district judge of Odessa prevented him from delivering a decision. A hearing on a motion filed by C.C.H. attorneys for a writ of mandamus to force the lifting of the injunction was dismissed by special request of State Attorney General Will Wilson.¹⁷ Although this group's attempts proved to be unsuccessful, it obviously had considerable interest in liquor sale in the small town.

A change in the zoning ordinance allowed this corporation to buy the land on which its store was built instead of merely

¹⁵The Abilene Reporter News, December 21, 1962.

¹⁶Interview with David Hooper, Abilene, Texas, October 4, 1966.

¹⁷The Abilene Reporter News, August 22, 1962 and October 24, 1962.

leasing it. The Impact City Council actually extended the city's commercial property to include the land purchased by C.C.H. Corporation.¹⁸ The official reason given for the change in the records of the city council meeting was to enable the town's first paved street to be installed.¹⁹

Tom (Pinkey) Roden, a large West Texas liquor operator, headed C.C.H. Corporation. Roden's name is well known in the western Texas liquor business. "Pinkie's" stores are located in Odessa, Lubbock, Big Spring, Stamford, and Midland, Texas.

The obvious question to be asked here is why Perkins would give up his land and, therefore, much of his control to such a large liquor dealer? Did this arrangement occur because Perkins was forced into a compromising position or had some sort of bargain been made with Tom Roden? Although any attempt to solve this problem is speculation, a few interesting facts do exist, and must be presented.

In March, 1963, Tom Roden loaned Jimmy Rogers of Impact \$4,095 without collateral to back the transaction.²⁰ A promissory note constituted the sole basis for security.²¹

¹⁸Ibid., April 13, 1963.

¹⁹Minutes and Records of the Board of Alderman of the city of Impact, Texas, Impact, Texas, April 2, 1963.

²⁰Roden v. Rogers No. 28,468-A, Forty-second District Court of Taylor County, Texas (1963).

²¹Interview with David Hooper, Abilene, Texas, October, 4, 1966.

Why had Roden, a large West Texas liquor dealer from Odessa, lent money to an Impact city councilman without collateral?

About two weeks after the loan, Rogers and Jolly Adams, another Impact councilman, signed affidavits claiming illegal activities committed by Dallas Perkins in the formation and operation of the newly incorporated city.²² On March 15, in the office of an Abilene lawyer, the two men expressed their desire to give the statements and have them notarized.²³ The grand jury immediately investigated, with the two councilmen's statements forming the major portion of their study.²⁴

Another consideration in the grand jury investigation in March, 1963, was a gross receipts tax of 1.5 per cent, imposed in July, 1962, by the Impact City Council.²⁵ Liquor sales beginning in December, 1962, brought in approximately \$9,000 revenue in only three months of collection.²⁶ Representatives from the Texas Attorney General's Office, and the Texas

²²Affidavits by Jolly Adams and Jimmy T. Rogers on file in the office of David Hooper, Abilene, Texas, March 15, 1963.

²³Interview with David Hooper, Abilene, Texas, October 4, 1966.

²⁴The Abilene Reporter News, March 20, 1963 and March 21, 1963.

²⁵Minutes and Records of the Board of Alderman of the City of Impact, Texas, Impact, Texas, July 2, 1962.

²⁶Statements by Dallas Perkins as quoted in The Abilene Reporter News, April 6, 1963.

Liquor Control Board met to discuss this tax since all revenue from the measure had been from the sale of liquor and such a tax violated state law.²⁷ In a meeting on April 4, 1963, the Impact city council repealed the gross receipts tax. In the meeting Perkins explained the tax had been repealed because ". . . it had been misunderstood by everyone. . ."²⁸

The repeal of this tax removed much of the force from the grand jury investigation. It completely disintegrated when Jolly Adams and Jimmy Rogers failed to appear before the grand jury to elaborate further on their signed statements. No indictments regarding Impact resulted from the investigation.²⁹ Perkins and Impact obviously feared the possibility of positive results from the grand jury's probing, as evidenced by their rapid repeal of the sales tax. Later, in April, the local newspaper announced that Tom Roden had purchased the land and building of C.C.H. Corporation in Impact that he had been operating since the onset of liquor sale in December, 1962.³⁰

²⁷The Abilene Reporter News, March 20, 1963, March 21, 1963, March 27, 1963.

²⁸Minutes and Records of the Board of Alderman of the City of Impact, Texas, Impact, Texas, April 4, 1963.

²⁹The Abilene Reporter News, May 8, 1963.

³⁰Ibid., April 13, 1963.

Perhaps these facts are only coincidences and Roden did not threaten Perkins with exposure unless he were given a portion of Impact's liquor business, but they are quite interesting and thought-provoking, anyway.

In the summer of 1963 liquor dealers from cities surrounding Abilene, who were obviously being hurt by Impact's presence, began attempts to either open Impact profits to themselves or to close the legal sale of liquor completely. They first attempted to gain control of the Impact city government and, thereby, control policy.

On April 4, 1963, the third municipal election in Impact's brief history occurred. Dallas Perkins had faced no opposition in his bid for mayor of the city in the two previous elections, and his wife had just as easily been swept into the office of city secretary and other positions. When formed in 1961, the city council consisted of four members, all of whom returned to office in the 1962 election. By April, 1963, however, two council members had left Perkins's ranks and signed statements against his activities. A complete slate of candidates opposing Perkins entered the 1963 election. Many voters brought lists of the anti-Perkins slate to the polls and tried to use them in voting. Despite this attempt, Perkins won, and the two councilmen who had opposed him were unseated. Perkins's wife and father even won places on the Impact city council.³¹

³¹Minutes and Records of the Board of Alderman of the City of Impact, Texas, Impact, Texas, August 15, 1961 and April 2, 1962; The Abilene Reporter News, April 5, 1963.

The next method by which the liquor interests hoped to gain a foothold in the town was through the formation of a corporation which attempted to set up a liquor store in Impact in violation of the restrictive zoning code. A leasing corporation formed in late July, 1963, calling itself The North East Taylor County Recovery Organization, or NETCRO.

Discontented Impact residents served as its officers. Floyd Isabell, the former deputy marshall of Impact, became president, while Jimmy T. Rogers, the councilman who signed a statement against Perkins, acted as secretary-treasurer of the new organization. Several other Impact residents participated in the leadership. Five West Texas liquor dealers, G. B. Jeter of Fort Worth, Harold Letcher of Big Spring, Floyd Bullock of Breckenridge, and Hubert Odom and L. S. Newman of Odessa provided most of the financial backing. These liquor dealers hired the Abilene lawyer, David Hooper, to represent NETCRO.³²

According to President Isabell, the organization sought for Impact residents ". . . a part of what Dallas Perkins was getting all of."³³ They sold shares of stock to residents at \$1.00 per share with a 300-share limit.

³²The Abilene Reporter News, August 14, 1963.

³³Ibid., July 31, 1963.

The way the organization hoped to overcome the zoning ordinance, which put all property not belonging to Perkins or Impact Development Corporation in the town's residential zone, was the leasing of property formerly occupied by a grocery store which had operated before Impact became a town. They contended that it could not be zoned residential once it had been used for business.³⁴

Perkins used every weapon available to stop the move, such as refusing to let the electric company wire the building until the dissident organization obtained a certificate of occupancy and compliance required by the city's zoning ordinance.³⁵ Confusion increased when Wendon Rogers, the man who had been refused a liquor permit in 1961 because his land was on residential property, now claimed that he too had an effective lease on the land NETCRO leased. He started a forceable entry and detainer suit, and on August 24, succeeded in ending the attempt to break the liquor monopoly when the court found that the land had been leased to Rogers first.³⁶

³⁴The Abilene Reporter News, July 31, 1963; Interview with David Hooper, Abilene, Texas, October 4, 1966.

³⁵The Abilene Reporter News, August 1, 1963.

³⁶Ibid., August 15, 24, 1963.

After this failure to bring liquor profits in their direction, NETCRO began a campaign to vote Impact "dry." Isabell stated that most of the voters were on his side.³⁷ This same group had tried a previous "dry" movement in February, 1963, but three of that petition's signers had withdrawn their names before an election could be called.³⁸ The legal counselor in this move, David Hooper, said Tom (Pinkey) Roden offered \$250.00 for the withdrawal of signatures from the petition, thereby making it difficult to gather the necessary signatures.³⁹

The August "dry" campaign at first seemed more successful. Necessary signatures for the release of petitions calling for an option election came in easily.⁴⁰ By August 30, the "dry" petition collected ten signatures, two more than needed, to make up the 25 per cent of the qualified voters necessary to call a local option election. The election did not occur, however, because an amendment had been made to the law changing the wording on petitions. The county clerk, uninformed of the change until after the law went into effect, had authorized

³⁷Ibid., August 17, 1963.

³⁸Ibid., February 5, 8, 1963.

³⁹Interview with David Hooper, Abilene, Texas, October 4, 1966.

⁴⁰The Abilene Reporter News, August 20, 29, 1963.

the form, but the county attorney refused to accept the petitions unless they were changed to conform with the new law.⁴¹

The liquor dealers' organization made a final attempt to crack the Perkins-Roden control of Impact begun in October, 1963, when it backed a suit to contest the validity of Impact's zoning ordinance in the district court. Three Impact residents who had been refused permits to operate liquor stores in Impact's residential zone brought the suit against Nancy Perkins, Impact's city clerk. The petition stressed the unfairness and monopolistic aspects of the zoning ordinance as well as the unsuitability of a town such as Impact to have such an ordinance.⁴²

Before any action could be taken on the formal written request, David Hooper, NETCRO's lawyer, received notice from the liquor dealers to stop the suit immediately. The liquor dealers gave him a blank check to fill in for his fees. Hooper received no explanation as to why the suit was being terminated.⁴³

⁴¹Ibid., September 18, 1963.

⁴²The petition held that only towns with a charter are allowed to have zoning regulations and Impact was not such a town. Petition for Writ of Mandamus, Thompson v. Perkins, 104th Judicial District Court of Taylor County, Texas (1963).

⁴³Interview with David Hooper, Abilene, Texas, October 4, 1966.

Thus, the attempts of area liquor dealers and Impact residents to share in the profits of liquor sale in Impact ended unsuccessfully after more than two years of effort. Local residents have been unable to share in the profits of liquor sale except as employees of the liquor businesses located in the small town. In 1967 only three businesses are located in Impact; all are liquor stores. Present control of the town appears to remain with Dallas Perkins; he has continued to occupy the position of mayor, his wife the office of city secretary, and his father a member of the city council. Perkins continues to own the land and lease buildings to two liquor establishments. The independence of Tom Roden's liquor store, C.C.H. Liquors, obviously takes much of the profit from Perkins. Much speculation exists that Roden actually is in control.⁴⁴ The estimated total yearly sales in the town amount to approximately \$2,500,000. Although Perkins's share of the profits is not known, a Newsweek writer estimated it to be approximately \$100,000. a year.⁴⁵

Improvements have been made in the town to the benefit of all its residents. Obvious physical improvements include

⁴⁴David Hooper claims that while gathering evidence for the suit, he found that more of Roden's employees live in the town than anyone else, thereby, constituting a majority. Interview with David Hooper, Abilene, Texas, October 4, 1966.

⁴⁵"Enterprise Liquorville," Newsweek, LXVII (February 14, 1966), 77.

the paving of every street and the installation of elaborate street lighting, illuminating the main street, Impact Drive, which connects the town's business district to the outside world. Only in 1966 did the Abilene city council vote to let Impact purchase water and sewer services from the metropolitan center. Fire services were also extended to the tiny municipality at the same time, while before, Impact had constituted a "no-man's land for fire protection."⁴⁶

Flooding still plagues the low-level town during major rains. In May, 1963, one rain covered the town under four feet of water. Even though water came into several houses, business did not stop. Some customers drove as near as they could in a pick-up truck and in a small boat paddled to their six-pack.⁴⁷

Of the fifty-seven houses in Impact in 1966, sixteen still remained vacant, with most still in a rather run-down condition. Only Dallas Perkins's house and the liquor stores are exceptions to this general appearance. The population has altered little since the town's inception; a little over two hundred people inhabit Impact, of whom forty-four are qualified

⁴⁶The Abilene Reporter News, September 8, 1966.

⁴⁷Ibid., May 31, 1963.

voters. Property taxes and occupation taxes comprise the major sources of revenue for the city government. The budget for Impact has increased from \$3,500.00 in 1962 to \$47,812.50 in 1966.⁴⁸

Relations between Impact and Abilene have been especially strained, as evidenced by the delay of over two and one-half years in permitting Impact to purchase Abilene city sewer and water services. Although some Abilene councilmen still hesitate to have anything to do with Impact, such as George Graham, who is also the Vice President of Hardin-Simmons University, most councilmen have adjusted to Impact's presence. A case in point is the September 8, 1966, decision of the Abilene city council to cooperate in paving streets between Impact and Abilene.⁴⁹

Even though many people in Abilene are still unable to tolerate Impact's presence, an attitude of general acceptance exists. Corruption and moral decay have not materialized as a result of liquor sale in Impact. Some people who had actively opposed Impact's formation, such as Gordon Bennett, president of McMurry College, look favorably on the present situation of no on-premises liquor sale and the compressed

⁴⁸Abilene City Directory, 1966 (Including: City of Impact), (Dallas, 1966), pp. 171, 283, 180, 92, 120, and 247.

⁴⁹The Abilene Reporter News, September 8, 1966.

sale of liquor into the few-block radius outside the city of Abilene. Its presence has answered the demands of liquor purchasers, yet no bars exist within the city of Abilene.⁵⁰

One minister claims a definite benefit resulting from Impact's presence; legalization of liquor sales has placed more enforceable restrictions on the purchase of liquor by minors.⁵¹

Bootlegging, which was such a large business in pre-Impact days in Abilene, has virtually ended. Of the eighteen Texas Liquor Control Board Districts throughout Texas, the Abilene district had consistently reported Abilene second and third in number of cases filed and amount of fines collected for liquor violations in the three years prior to Impact's incorporation.⁵² The year after liquor sale began in Impact, Abilene dropped to eleventh place. This decline has continued consistently since that time.⁵³ The only bootlegging in the Abilene area today is "hip pocket bootlegging" and selling beyond the prescribed time limit, according to Frank Owens, District Director of the Liquor Control Board.⁵⁴ He also

⁵⁰Interview with Gordon Bennett, Abilene, Texas, October 2, 1966.

⁵¹Interview with Francis Benton, Abilene, Texas, June 29, 1966.

⁵²Survey of the Annual Reports of the Texas Liquor Control Board (Austin, 1958-1961), p. 29 of each report.

⁵³Ibid., 1961-1965, p. 29 of each report.

⁵⁴Interview with Frank Owens, Abilene, Texas, October 3, 1966.

said that while fines for bootlegging prior to Impact ran approximately \$25,000. each month, they now total from \$500. to \$1,500. each month.⁵⁵ A slight decline in arrests for driving while intoxicated was reported after Impact began selling liquor. In the fifteen months before Impact's sale of liquor, Abilene police arrested 2,190 persons for driving while intoxicated. In the fifteen months after Impact's inception, 2,171 cases were filed, thus indicating a slight decline.⁵⁶

Another important effect Impact has had on the Taylor County area is the encouragement of other municipalities to establish liquor sales. The first of these was Buffalo Gap, located eleven miles southwest of Abilene, which voted for the sale of all alcoholic beverages in December, 1965.⁵⁷

The actual struggle for a portion of the profit began only after the existence of Impact had been definitely affirmed in the courts. Tom (Pinkey) Roden seems to have forced his way into the Perkins liquor monopoly profits by underhanded methods. All other attempts to break the Perkins monopoly failed. The only improvements in the town seem to

⁵⁵Ibid.

⁵⁶Eddie S. Hughes, "Impact the Town that Thirst Built," The Dallas Morning News, April 18, 1964, Sec. I, p. 10.

⁵⁷Thirty-first Annual Report of the Texas Liquor Control Board, 1965 (Austin, 1965), p. 38.

be those associated with liquor sale; few benefits have actually gone to the residents themselves. Attempts to terminate the existence of the town have diminished considerably. Most residents of the Abilene community have adjusted to its presence. Bootlegging and fines collected from it have been reduced through Impact's legalized sale of alcoholic beverages.

CHAPTER VIII

CONCLUSIONS

The chance emergence of Impact, Texas resulted from peculiar circumstances. Alert legal observers noted the precedent established by the 1959 Texas Supreme Court decision of Myers v. Martinez would allow a city or precinct to sell alcoholic beverages within a larger unit of government where spirits had been prohibited. Lack of legislation controlling municipal annexation and incorporation allowed fringe areas to form towns on the outskirts of larger communities without regard for or control by the larger city.

Taylor County, Texas, particularly its county seat of Abilene, had repeatedly refused to allow sale of all intoxicants and had prohibited sale of all liquor many years before national prohibition. These attitudes against liquor resulted from the rurally based economy and the predominantly fundamental religious beliefs.

In 1960 Dallas Perkins chose an underdeveloped area north of Abilene to accomplish the daring plan of bringing liquor sale into West Texas against the majority will. He formed the boundaries for the town, controlled a major portion of the land, and financed the attempt without aid from local residents.

Backing did exist, however, through a special corporation formed with himself as president. Suggestions were advanced that the town's creator took sums of money in an underhanded manner from a speculator who served as manager of the Taylor County Electric Co-operative. Two members of the Impact city council indicate that Dallas Perkins chose men to be on the city council and promised to reward them monetarily when liquor sales started in Impact. Evidently Perkins controlled the town to such an extent that he persuaded the city council to zone property in order that only his land could be used for business purposes, thus insuring a monopoly on liquor profits.

Incorporation attempts of the town met with immediate opposition. The city government of Abilene and religious forces attempted to stop Impact. Seemingly, the Taylor County Judge cooperated with forces opposing Impact by cancelling the incorporation election. As a result of the court battle, Perkins v. Ingalsbe, the judge certified the legal existence of the newly-formed town. Despite contrary opinions reached by the District Court and the Court of Civil Appeals, the Texas Supreme Court clarified the functions of county judges in the incorporation of towns to be purely ministerial, declaring the judge powerless to stop an incorporation election after he had once called it.

The quo warranto suit brought against Impact sought to prove its invalidity as a legitimate town and to show its perversion of the law since its sole purpose for existence was liquor sale. Again this case journeyed to the state's highest court with Impact emerging victorious, but, with the actual issues relating to the town's formation unanswered.

Accompanying the Abilene city government in the lengthy and costly struggle, organized religious groups provided leadership and donations to supplement municipal taxes in combating legal alcohol. Their opposition broadened from moral grounds to include legal and political arguments against the new town and a strong alignment with the city of Abilene in its fight. The churches exerted pressure on the Texas Liquor Control Board to deny liquor permits and sought to block the threat through judicial injunctions. Baptist churches and individuals within this sect led the religious opposition.

No indication of liquor interests opposing or favoring the formation of this town created for liquor sale exists, despite the high rate of illegal liquor traffic in the area prior to incorporation. After liquor sale actually started, area liquor dealers began their battle for control. Perkins strengthened his monopoly on liquor sale by building on his land and leasing these structures to liquor store owners and levying a gross sales receipts tax on liquor. Tom (Pinkey)

Roden, a prominent West Texas liquor dealer, removed many of Perkins's profits when the Impact city council allowed him to buy land for his liquor store through a special change in the city's zoning code. Roden's part in the arrangement seems to indicate possible pay-offs, although no such case has been proven.

Other liquor dealers did not fare as well. Perkins blocked efforts to establish competing liquor stores with a strict zoning ordinance. Liquor interests made several unsuccessful attempts to take control of the city government from Perkins, to vote the city "dry," to open a liquor store after a possible loophole in the zoning ordinance had been found, and to contest the legality of that requirement in court.

Intense community pressures during the controversy caused the introduction of bills in the state legislature which would destroy the town, and brought about a political campaign with Impact as its major issue. The reality of alcoholic beverage sale in the formerly liquorless section of Texas shows a general tolerance by the population, particularly after a marked decline in illegal liquor traffic resulted.

This investigation into local government and politics surrounding the liquor question significantly unveils the

turmoil within a community over an issue of intense interest. It illustrates how a gap in legislation enabled subversion of incorporation laws and violation of the majority will by a small but determined group. The pressures and tactics used by both opposing interests in this crisis reveal misuse of the law, possible pay-offs, secret meetings of public bodies, and other illicit occurrences. More importantly, it demonstrates the respect well-meaning citizens have for established law and order. Both sides fought hard for their interests and beliefs, but when appeals had been made to the highest authority, and the ultimate decision had been rendered, then all adherents accepted the reality of the situation, and co-exist on increasingly friendly terms.

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