

November 18, 2022

The Honorable J.D. Tomlinson
Lorain County Prosecuting Attorney
225 Court Street, 3rd Floor
Elyria, Ohio 44035

SYLLABUS:

2022-016

If a municipal corporation annexes township territory pursuant to R.C. 709.16, R.C. 709.16(H) prevents the later use of R.C. 503.07 to make the boundary lines of the township and municipal corporation identical.



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OPINION NO. 2022-016

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Dear Prosecutor Tomlinson:

You have requested an opinion regarding R.C. 503.07 and R.C. 709.16. I have framed your question as follows:

May a board of county commissioners approve a municipal corporation's petition to make township boundary lines identical to those of the municipal corporation pursuant to R.C. 503.07 when any of the territory subject to the petition was previously annexed into the municipal corporation pursuant to R.C. 709.16?

For the reasons that follow, I answer your question in the negative.

I

I begin with the governing law.

A

The first statute relevant to your question is R.C. 709.16, which I will call the “Annexation Statute.” The Annexation Statute “applies specifically to situations in which a municipal corporation petitions the board of county commissioners to annex contiguous territory owned only by the municipal corporation, a county, or the state.” 2005 Op. Att’y Gen. No. 2005-024, at 2-241.

The first of the Statute’s subsections addresses the process for petitioning for annexation. It states:

A municipal corporation may petition the board of county commissioners to annex contiguous territory owned only by the municipal corporation, a county, or the state. The clerk of the board shall cause the petition to be entered upon the board’s journal at its next regular session. This entry shall be the first official act of the board upon the petition. Proceedings on the petition shall be conducted under this section to the exclusion of any other provisions of this chapter except for sections 709.014, 709.14, 709.15, 709.20, and 709.21 of the Revised Code.

Subsections (B)–(D) elaborate on the procedure for the type of territory annexed. But subsection (H) is especially significant to your question. It states:

“Territory annexed under this section *shall not be excluded* from the township

under section 503.07 of the Revised Code.” (Emphasis added).

All told, the Annexation Statute permits annexation but *forbids* using R.C. 503.07 to exclude annexed territory from the township in which it existed prior to annexation.

The meaning of this prohibition on excluding territory depends on the meaning of R.C. 503.07—subsection (H) prohibits excluding annexed territory from its township *only* through R.C. 503.07. I turn to the meaning of that statute next.

B

R.C. 503.07—call it the “Territorial Exclusion Statute”—“establishes a procedure for making township boundaries identical to, in whole or in part, with the boundaries of a municipal corporation.” 2005 Op. Att’y Gen. No. 2005-024, at 2-240. It states:

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of limits of the corporation include territory lying in more than one township, the legislative authority of the municipal corporation, by an affirmative majority vote of its members, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal

corporation, or to erect a new township out of the portion of such township included within the limits of the municipal corporation.

C

Now combine the two statutes. Subsection (H) of the Annexation Statute specifically prohibits using the Territorial Exclusion Statute to exclude annexed territory from the township in which it previously existed. Thus, once territory is annexed pursuant to the Annexation Statute, the annexing municipal corporation cannot later use the Territorial Exclusion Statute so as to remove the annexed land from the township in which the annexed territory initially sat. Put differently, once land is annexed through the Annexation Statute, subsection (H) *requires* that the annexed territory remain part of both the township from which it is annexed and the municipal corporation that annexes it. *See* 2005 Op. Att’y Gen. No. 2005-024, at 2-247 (if no action is taken pursuant to R.C. 503.07, “the annexed territory becomes part of the municipal corporation and also remains part of the township”); 1984 Op. Att’y Gen. No. 84-051, at syllabus; *Sugarcreek Twp. v. City. of Centerville*, 184 Ohio App.3d 480, 2009-Ohio-4784, 921 N.E.2d 655, ¶¶ 106, 125

Prior Attorney General Opinions support this conclusion. *See* 2018 Op. Att’y Gen. No. 2018-002, Slip Op. at 2-3, fn.3; 2-11, fn.3 (“The annexation of territory by a municipal corporation prior to the filing of a petition under R.C. 503.07 may affect whether the township

boundaries may ever be drawn so as to exclude the territory of the municipal corporation from the township”); 2005 Op. Att’y Gen. No. 2005-043, at 2-449 (“the applicability of R.C. 503.07 is restricted in some instances, and there are circumstances in which land annexed to a municipality cannot be excluded from a township”); 2005 Op. Att’y Gen. No. 2005-024, at 2-242 (“Some of the procedures specify that land annexed in a certain manner may never be the subject of a boundary adjustment under R.C. 503.07”); 2002 Op. Att’y Gen. No. 2002-023, at 2-150, fn.4 (“there are certain types of proceedings for annexing territory into municipal corporations that specify that the territory sought to be annexed cannot be excluded from the township under R.C. 503.07”).

II

Now I turn to your question. Three background facts prove decisive. First, the municipal corporation hoping to use the Territorial Exclusion Statute is a village. Second, some of the township territory at issue was previously annexed to the village pursuant to the Annexation Statute. Third, applying the Territorial Exclusion Statute now would result in the township shrinking in size in order to make its boundaries identical to the boundaries of the village.

In sum, the village wishes to use the Territorial Exclusion Statute to *exclude* from its township land annexed under the Annexation Statute. That is precisely what subsection (H) of the Annexation Statute prohibits. So the answer to the question whether the village can do this is “no.”

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

If a municipal corporation annexes township territory pursuant to R.C. 709.16, R.C. 709.16(H) prevents the later use of R.C. 503.07 to make the boundary lines of the township and municipal corporation identical.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "y".

DAVE YOST
Ohio Attorney General