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COUNTY HOME AND FARMLAND—NO LEGAL OBSTACLE TO ANNEXATION TO MUNICIPALITY OF SUCH CONTIGUOUS TERRITORY.

SYLLABUS:

There is no legal obstacle to the annexation to a municipality of territory contiguous thereto which includes a county home and the farmland on which it is situated.

Columbus, Ohio, November 12, 1946

Honorable Carl Abaecherli, Prosecuting Attorney
Lebanon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you please advise me regarding the following question which has been asked by our Board of County Commissioners; The Village of Lebanon has filed a petition with our Board of Commissioners requesting the annexation of certain territory surrounding the Village, which includes the present Warren County Home for the Aged.

The question is whether it is legally possible to annex the land, including some farm land, on which the Home is situated.”

The annexation of contiguous territory to a municipal corporation at the instance of the municipality itself is governed by Section 3556, et seq., of the General Code. The proceeding is begun by the passage of an ordinance by the council authorizing such annexation to be made and directing the solicitor of the corporation or someone named in the ordinance to prosecute the proceedings necessary to effect it. The proceeding is by way of an application of the corporation filed with the county commissioners. Section 3560, General Code, provides:

“The application of the corporation to the county commissioners for such purpose shall be by petition, setting forth that, under an ordinance of the council the territory therein described was authorized to be annexed to the corporation. The petition shall contain an accurate description of the territory, and be accompanied by an accurate map or plat thereof.”

Section 3561, General Code, provides that on the filing of such petition with the county commissioners like proceedings shall be had in all respects so far as applicable as are required in the case of annexation on application of citizens.

By a reference to the statutes regulating the proceedings governing annexation of territory on the application of the citizens residing therein, to-wit, Section 3548, et seq., General Code, we find in Section 3549 a provision to the effect that :

“* * * the same proceedings shall be had as far as applicable, and the same duties in respect thereto shall be performed by the commissioners and other officers, as required in case of an application to be organized into a village under the provisions of this division.”

A reference to the proceedings last referred to in the matter of incorporation of a village takes us to Section 3522, General Code, which reads as follows :

“Upon such hearing, if the commissioners find that the petition contains all the matters required, that its statements are true, that the name proposed is appropriate, that the limits of the proposed corporation are accurately described and are not unreasonably large or small, that the map or plat is accurate, that the persons whose names are subscribed to the petition are electors residing on the territory, that notice has been given as required, that there is the requisite population for the proposed corporation, and if it seems to the commissioners right that the prayer of the petition be granted, they shall cause an order to be entered on their journal to the effect that the corporation may be organized.”

It is true by the provisions of Section 3517, General Code, territory proposed to be incorporated as a village may not include a county home. But the general assembly in adopting for annexation purposes the procedure provided for incorporation, has adopted only the procedural provisions, and I find nothing therein, and nothing in the statutes relating directly to annexation which contains any such restriction.

Turning to the statutes relating to the establishment of county homes we find in Section 2419, General Code, general authority conferred upon county commissioners to provide a court house, jail, infirmary and other

public buildings when in their judgment they or any of them are needed. By the provisions of Section 2419-3, General Code, the name of "county infirmary" was changed to "county home."

Section 2433, General Code, also deals with the power of the commissioners to purchase or construct county buildings including a county home and to provide the sites therefor and such real estate adjoining the same as they may deem necessary, and Section 2522, General Code, further deals with the matter of the erection of buildings for a county home and authorizes additions and extensions of the same.

In none of these statutes and nowhere in the General Code, so far as I am able to find, is there any restriction on the location of such county home. So far as the statutes are concerned it would appear that the county commissioners might, if they choose, locate the same within the boundaries of a village or city. The absence of any such restriction appears to me to strengthen the conclusion that the general assembly saw no reason why the land on which a county home is located should not be brought within the bounds of a municipal corporation by annexation.

Attention may properly be called to the provisions of the statute requiring the submission of the proposition to the residents of the territory proposed to be annexed, where the proposition originates with the municipality, as in the case you present. Section 3561-1 provides that after the passage of the ordinance by the council and before any further proceedings can be had the question of annexation must be submitted to a vote of the electors residing in the territory proposed to be annexed, and unless a majority of those voting favor annexation no further proceedings shall be had for annexation for at least five years.

In specific answer to your question it is my opinion that there is no legal obstacle to the annexation to a municipality of territory contiguous thereto which includes a county home and the farmland on which it is situated.

Respectfully,

HUGH S. JENKINS
Attorney General