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ANNEXATION—SUBMISSION OF PROPOSITION TO VOTERS —VILLAGE MAY NOT LAWFULLY ANNEX ALL CONTIGUOUS TERRITORY SURROUNDING BUT NOT INCLUDING PROPERTY WHERE LIQUOR, BEER AND WINE PERMITS ARE EFFECTIVE—ISOLATION OF TERRITORY FROM PHYSICAL CONTACT WITH OTHER TOWNSHIP LANDS—VILLAGE MAY NOT IN ORDINANCE FOR ANNEXATION PROVIDE ALL PROPERTY LOCATED WITHIN OR ALONG TERRITORY TO BE ANNEXED BE EXCLUDED FROM ORDINANCE—TERRITORY PRESENTLY USED AS ESTABLISHED PLACE TO SELL LIQUOR, BEER AND WINE UNDER PERMITS ISSUED BY BOARD OF LIQUOR CONTROL.

SYLLABUS:

A village may not lawfully annex, after the submission of said proposition to the voters residing in the territory to be annexed has been had, all contiguous territory surrounding but not including the property where liquor, beer and wine permits are now effective, thus isolating such territory from physical contact with other townships lands, and may not in the making up of the ordinance for said annexation provide that all of the property located within or along the territory to be annexed, which is now used as an established place to sell liquor, beer and wine, under and by virtue of permits issued by the Board of Liquor Control, be excluded from said ordinance.

Columbus, Ohio, May 24, 1949

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion is as follows:

"The Village of Amelia anticipated the passage of an ordinance to annex territory contiguous to the present village limits on both sides of the Ohio Pike, State Route 125, said territory lying in Batavia and Pierce Townships. Both Batavia and Pierce Townships are now wet territories, and in both townships there are holders of liquor, beer and wine permits issued by the Ohio Board of Liquor Control. Said establishments are so situated that the territory which the Village of Amelia desires to annex, would entirely surround the property where said permits are now in force.

"Could you please give me your opinion as to whether or not the village can lawfully annex after a submission of said proposition to the voters residing in the territory to be annexed has been had, all contiguous territory surrounding, but not including the property where liquor, beer and wine permits are now effective, thus isolating from physical contact with other township land, said properties; and whether or not in making up the ordinance for said annexation that all the properties located within or along the territory to be annexed, which is now used as an established place to sell liquor, beer and wine under and by virtue of permits issued by the Board of Liquor Control of the State of Ohio, should not be excluded from said ordinance."

Section 3547 et seq. of the General Code are the sections applicable to annexation. I shall assume that all other prerequisites necessary for annexation have or will be complied with and that the only question involved is relative to the type of territory that may be annexed.

Section 3558 of the General Code reads as follows:

"When the inhabitants generally of a municipal corporation desire to enlarge its corporate limits by the annexation of contiguous territory, it shall be done in the manner hereinafter specified."

It is called to your attention that the territory to be annexed is required to be contiguous to the annexing territory. This requirement is necessary in the majority of state laws permitting annexation. It is the only express requirement as to the type of territory that may be annexed under the Ohio law.

The Ohio Liquor Control Act begins with Section 6064-1, General Code, and ends with Section 6212-62a, General Code. Nothing contained therein would expressly forbid the type of annexation you desire, unless it be Section 6064-31, which reads as follows:

"The privilege of local option as to the sale of intoxicating liquors is hereby conferred upon the electors of the following districts, to-wit:

"1. A municipal corporation.

"2. A residence district in a municipal corporation consisting of two or more contiguous election precincts therein, as defined by the petition hereinafter authorized.

"3. A township, exclusive of any municipal corporation or part thereof therein located."

However, it is my opinion that it is not necessary to look to statutory construction to solve your problem. The answer to your question is one of public policy, and I am of the opinion that public policy forbids the type of annexation proposed. Not only would public policy prevent such action, but as a mere practical matter it should be forbidden. The problems resulting if such annexation were permitted would be numerous and it is necessary to mention only a few. Suppose there was a fire in the proposed isolated area? Suppose the Board of Liquor Control revoked the permit of one of the establishments therein? Suppose the Village of Amelia were to become wet territory? What about the administrative difficulties that would result, especially in relation to police enforcement and regulations?

The problems enumerated above are only a few that would require an answer should this type of annexation be permitted. To prevent them from arising, I am of the opinion that the proposed annexation should not be permitted.

In 37 Am. Jur. 644, the requirement of contiguity is discussed. Since the Ohio statute requires contiguity the discussion is directly in point:

> "The annexation of outlying territory to a municipality is commonly conditioned by the statute authorizing the proceeding on the situation of the territory to be annexed, it being required to be adjacent or contiguous to the municipality. Under such statutes if the territory sought to be annexed is not contiguous to the municipality, the proceedings are without legal effect. While the legislature has the power, in the absence of constitutional restraint to provide for the annexation of outlying territory or combining of two municipalities without regard to the distance between them, absorbing the intervening space into the corporation, there are obvious objections to the annexation of land to a municipality which is not contiguous thereto but is separated by land constituting some other territorial unit. The legal as well as the popular idea of a municipal corporation in this country, both by name and use, is that of oneness, community, locality, vicinity; a collective body, not several bodies; a collective body of inhabitants—that is, a body of people collected or gathered together in one mass, not separated into distinct masses, and having a community of interests because residents of the same place not different places. *So, as to territorial extent, the idea of a city is one of unity, not of plurality; of compactness or contiguity, not separation or segregation.*" (Emphasis mine.)

From the above quotation it would seem that the word "contiguous" as used in the statute means not only next to or adjoining but continuous annexing or adjoining. The word seems to imply unity and compactness, not separation of the territory to be annexed. If separate, isolated islands were permitted, this requirement could not be met; there would be no contiguity.

Webster's dictionary defines the word as:

> "Contiguity: (1) state of being contiguous; proximity; (2) *a continuous mass or series.*" (Emphasis mine.)

43 O. J. 117 reports the following:

> "It is sufficient if the territory annexed constitutes one body of land which as a *whole* is adjacent or contiguous to the municipality, even though it is composed of different tracts owned by different persons and some of such tracts may not themselves be contiguous to the city. In other words it is sufficient if all of the tracts are contiguous to each other and one of them adjoins or is contiguous to the city." (Emphasis mine.)

Section 3577, General Code, relative to detachment of lands, requires that:

> "* * * shall detach such portion of the territory therefrom and attach it to any township *contiguous* thereto." (Emphasis mine.)

Thus, the requirement is present in detachment as well as attachment. The question is posed: How could these isolated islands be detached from the townships of Batavia and Pierce without contravening the requirement of contiguity in Section 3577, General Code?

In 62 A. L. R. 1015, it is said:

> "In the case of Chicago & N. W. R. Co. v. Oconto (1880), 50 Wis. 189, 36 Am. Rep. 840, 6 N. W. 607, the court was called on to consider whether a town could be composed of two separate and noncontiguous tracts of territory. It was held that a town must consist of contiguous territory, and that the order of the board of supervisors of the town, changing the boundaries of the town so as to make it consist of two separate and detached tracts, was void and of no effect."
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> "In Wild v. People (1907), 227 Ill. 556, 81 N. E. 707, it was held, where two tracts of land sought to be annexed by a town touched each other only at the corners, and a person could

not pass from one tract to the other without passing over territory not within the annexing town, that the two tracts were not contiguous within the statute for annexation of territory."

"In Denver v. Coulehan (Colo.) *** (1894) 20 Colo. 471, 27 L. R. A. 751, an action to enjoin the assessment, levy, and collection of taxes on property annexed by the city of Denver, it was alleged that the land annexed was used for agricultural purposes; that it never had been divided nor did the owner intend to divide it, into streets, alleys, lots, blocks, or out lots; that no public buildings or other public improvements had ever been erected or made by the city on or within 3 miles of the land in question; and that neither light, heat, police protection, water, or other conveniences, nor public service, had ever been furnished by the city, nor was the land necessary to be added to the city; and that the whole purpose of the city in annexing the land was that of taxation."

In McQuillin on Municipal Corporations (2d Ed.), Vol. 1, 1940, p. 812, it is stated:

"Laws usually require in express terms, that, to authorize annexation the territory must be contiguous or adjacent to the municipal corporation that desires to include it. Contiguous lands are such as are not separated from the corporation by outside land; such as are so situated with refrence to the corporation that it may reasonably be expected that after annexation they will unite with the corporation in making a homogeneous city, which will afford to its several parts the ordinary benefits of local government. But however near they are to the petitioning corporation, if the circumstances are such that it could not reasonably be expected that the parts would amalgamate and form a municipal unit which would afford to each the ordinary benefits of local government it would not be proper to annex them. When actual unity is impracticable, legal unity should not be attempted. Several tracts may be annexed as being contiguous if one tract is contiguous to the municipality and the other tracts are contiguous to each other. Tracts of land are not contiguous where the only place they join each other is at a point at the corner of the two."

For these reasons and primarily for those of public policy, I am of the opinion that the Village of Amelia may not lawfully annex after a submission of said proposition to the voters residing in the territory to be annexed has been had, all contiguous territory surrounding but not including the property where liquor, beer and wine permits are now effective, thus isolating such territory from physical contact with other township lands, and may not in the making up of the ordinance for said annexation

provide that all of the property located within or along the territory to be annexed, which is now used as an established place to sell liquor, beer and wine under and by virtue of permits issued by the Board of Liquor Control, be excluded from said ordinance.

Respectfully,

HERBERT S. DUFFY,
Attorney General.