

**OPINION NO. 86-008****Syllabus:**

A municipal corporation may not expend municipal funds, offer the services of municipal employees, or offer the services of a firm or individual with which the municipality has contracted, in order to assist the residents of an adjacent township in proceeding with an application for annexation under R.C. 709.02. (1985 Op. Att'y Gen. No. 85-034, approved and expanded.)

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**To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, February 20, 1986**

I have before me your letter requesting clarification of 1985 Op. Att'y Gen. No. 85-034, the syllabus of which states that, "[a] municipal corporation may not retain private counsel in order to assist residents of adjacent townships in proceeding with an application for annexation under R.C. 709.02." Specifically, you ask the following questions:

1. May a municipal corporation expend municipal funds, or offer the services of municipal employees, to assist residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02?
2. May a municipal corporation contract with private firms or individuals, and then offer the services of these firms...or individuals to [assist] residents of adjacent townships...in proceeding with an application for annexation under R.C. 709.02?

You indicate that your questions have been prompted by the board of township trustees of Harrison Township. See Op. No. 85-034 at 2-119 (addressing the interest of a board of township trustees of a township which includes territory that is proposed to be annexed).

As I noted in Op. No. 85-034, the Ohio Revised Code establishes two methods by which territory adjacent to a municipal corporation may be annexed thereto. R.C. 709.02 through 709.12 provide for annexation initiated by owners of real estate adjacent to the municipal corporation. R.C. 709.13 through 709.21 provide for annexation of contiguous territory upon the application of the municipal corporation. Your request is concerned with the former procedure for annexation.

There is no state statute which expressly authorizes a municipal corporation to assist residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02 through the provision of municipal funds, services of municipal employees, or services of a private firm or individual with which the municipal corporation has contracted. Thus, the question arises whether a municipal corporation may utilize its home rule powers and adopt a charter provision or ordinance under which the municipality may assist residents of adjacent townships by the methods which you have proposed.

Municipal authority is conferred by Ohio Const. art. XVIII, §§2, 3 and 7. The scope of municipal home rule was summarized in Op. No. 85-034 at 2-119 through 2-120 as follows:

Generally, in matters of local self-government, chartered municipalities may vary the provisions of state statutes by charter or by legislative enactment; however, police, sanitary, and similar regulations must be consistent with state laws, and issues which are of statewide concern, as well as local concern, are, in case of conflict between state statute and municipal regulation, governed by state statute. See State ex rel. Evans v. Moore, 69 Ohio St. 2d 88, 431 N.E.2d 311 (1982); Northern Ohio Patrolmen's Benevolent Association v. City of Parma, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). Nonchartered municipalities enjoy the same power as chartered municipalities, except that nonchartered municipalities are bound by state statute with regard to procedural and organizational, as opposed to substantive, matters of local self-government. See Northern Ohio Patrolmen's Benevolent Association v. City of Parma. In addition to the limitations described above, the powers of local self-government are limited to the territory within the municipality. See Ohio Const. art. XVIII, §3; Village of Beachwood v. Board of Elections, 167 Ohio St. 369, 148 N.E.2d 921 (1958); City of Cincinnati v. Rost, 92 Ohio App. 8, 109 N.E.2d 290 (Hamilton County 1952).

In Op. No. 85-034 at 2-121 I concluded that a municipality may not employ its home rule powers outside its own borders to interfere with or control the electors in another political subdivision. See Village of Beachwood v. Board of Elections, 167 Ohio St. 369, 148 N.E.2d 921 (1958). Absent a statutory grant of authority, municipal legislation must be confined to the sphere of local self-government and the internal affairs of the municipal corporation. See City of Cincinnati v. Rost, 92 Ohio App. 8, 109 N.E.2d 290 (Hamilton County 1952); Schultz v. City of Upper Arlington, 88 Ohio App. 281, 97 N.E.2d 218 (Franklin County 1950). Matters affecting municipal boundaries are within the exclusive control of the General Assembly. Village of Beachwood v. Board of Elections, 167 Ohio St. at

371-372, 148 N.E.2d at 923. Thus, as I stated in Op. No. 85-034 at 2-121:

Matters involving annexation of territory to a municipal corporation are outside the sphere of local self-government because, by definition, annexation contemplates extraterritorial consequences and does not relate solely to the internal affairs of a municipal corporation....Annexation proceedings are purely statutory in nature....A municipal corporation may undertake annexation proceedings only if the action is pursuant to a specific grant of statutory authority. (Citations omitted.)

I turn now to application of the principles discussed in Op. No. 85-034 to the questions which you have raised. You have asked whether a municipal corporation may assist residents of an adjacent township in proceeding with an application for annexation pursuant to R.C. 709.02 through the expenditure of municipal funds, the offer of services of municipal employees, or the offer of services of a private firm or individual with which the municipality has contracted. In Op. No. 85-034 I concluded that a municipality has no authority to hire a private attorney in order to assist township residents in proceeding pursuant to R.C. 709.02. I reasoned that,

[a] municipal corporation may, under its general home rule powers, hire persons to carry out its municipal purposes. See generally Northern Ohio Patrolmen's Benevolent Association v. City of Parma; 1983 Op. Att'y Gen. No. 83-042. This power to hire does not, however, extend to the employment of an individual to carry out functions which exceed the statutory powers and home rule powers of the municipality.

Op. No. 85-034 at 2-121.

As discussed above, the authority of a municipality in annexation proceedings is purely statutory in nature. There is no statutory authority for a municipal corporation to offer the services of municipal employees, or of private firms or individuals with which the municipality has contracted, in order to assist township residents in seeking annexation pursuant to R.C. 709.02. Therefore, a municipality may not offer such services. The use of municipal employees or, the employment of a firm or individual by a municipality, for the purpose of assisting residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02 would exceed both the statutory and home rule powers of the municipality. Therefore, I conclude that a municipality may not offer the services of municipal employees, or of a private firm or individual with which the municipality has contracted, in order to assist township residents in seeking annexation pursuant to R.C. 709.02.

Similarly, there is no express statutory authorization for a municipal corporation to expend municipal funds to assist township residents in seeking annexation pursuant to R.C. 709.02. In general, a municipal corporation may expend public funds only for public purposes. See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951); 1983 Op. Att'y Gen. No. 83-042; 1982 Op. Att'y Gen. No. 82-006. Although a municipal corporation has a legitimate interest in its boundaries, municipal funds may not be expended

to attain purposes which exceed the statutory powers and home rule powers of the municipality. The expenditure of municipal funds in order to assist residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02 is not authorized by statute and would exceed the scope of the home rule powers of the municipality, which must be confined to the territory of the municipality. Therefore, a municipality may not expend municipal funds for the purpose of assisting township residents in seeking annexation pursuant to R.C. 709.02.

In conclusion, it is my opinion, and you are advised, that a municipal corporation may not expend municipal funds, offer the services of municipal employees, or offer the services of a firm or individual with which the municipality has contracted, in order to assist the residents of an adjacent township in proceeding with an application for annexation under R.C. 709.02. (1985 Op. Att'y Gen. No. 85-034, approved and expanded.)