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1. ANNEXATION — PROPERTY, REAL — INDIVIDUAL OR MEMBER OF PARTNERSHIP—OWNERS OF REAL PROPERTY WITHIN TERRITORY TO BE ANNEXED TO ADJACENT MUNICIPALITY—NOT QUALIFIED TO SIGN PETITION FOR ANNEXATION UNLESS HE IS AN ADULT AND RESIDES ON TERRITORY SOUGHT TO BE ANNEXED—SECTION 709.02 ET SEQ., RC.
2. CORPORATION—OWNER OF REAL PROPERTY ADJACENT TO MUNICIPAL CORPORATION—PROPERTY USED FOR BUSINESS PURPOSES—CORPORATION NOT QUALIFIED TO PETITION FOR ANNEXATION OF TERRITORY TO MUNICIPAL CORPORATION—RIGHT OF PETITION LIMITED TO ADULT FREEHOLDERS RESIDING ON TERRITORY.

## SYLLABUS:

1. An individual or a member of a partnership owning real property within a territory sought to be annexed to an adjacent municipality under the provisions of Section 709.02, et seq., Revised Code, is not qualified to sign a petition for such annexation unless he is an adult and resides on the territory sought to be annexed. Opinion No. 795, Opinions of the Attorney General for 1951, page 547, approved and followed.

2. A corporation owning real property adjacent to a municipal corporation and using the same for business purposes, is not qualified to petition for annexation of such territory to the municipal corporation as provided in Section 709.02, et seq. Revised Code; such right of petition is limited to adult freeholders residing on such territory. Opinion No. 1784, Opinions of the Attorney General for 1950, page 283, overruled.

Columbus, Ohio, February 4, 1956

Hon. Robert A. Fries, Prosecuting Attorney  
Wood County, Bowling Green, Ohio

Dear Sir:

I have before me your inquiry which reads as follows:

“I have a question relating to the annexation of territory adjacent to a municipal corporation. I refer particularly to section

709.02 of the Revised Code of Ohio. This section calls for an application signed by a majority of the adult free-holders residing in such territory.

"The real estate that I am now referring to is a shopping center. The real estate is owned by corporations, individuals and partnerships, however, there are no residents in this territory.

"May this real estate be annexed to a municipal corporation in the manner provided by sections 709.03 to 709.11, inclusive, of the Revised Code of Ohio."

Section 709.02, Revised Code, pertaining to a procedure for the annexation of adjacent territory to a municipality, reads as follows:

"The inhabitants residing on territory adjacent to a municipal corporation may, at their option, cause such territory to be annexed thereto, in the manner provided by sections 709.03 to 709.11, inclusive, of the Revised Code. Application for such annexation shall be by petition, addressed to the board of county commissioners of the county in which the territory is located, signed by a majority of the adult freeholders residing in such territory. Such petition shall contain the name of a person authorized to act as the agent of the petitioners in securing such annexation, a full description of the territory, and shall be accompanied by an accurate map or plat of the territory sought to be annexed."

The capacity of persons owning real property within the territory to be annexed under Section 709.02, supra, to sign an annexation petition was under consideration in Opinion No. 795, Opinions of the Attorney General for 1951, at page 547. The syllabus reads as follows:

"A person owning land within a territory sought to be annexed to a municipality under the provisions of Section 3548, General Code (now Section 709.02, Revised Code), is not qualified to sign a petition for such annexation unless he is an adult and resides within the territory sought to be annexed."

(Parenthetical matter added.)

It is thus apparent that individuals and partnerships owning real property within such a territory and using the same for business purposes only are not inhabitants residing on the territory or adult freeholders residing in the territory within the meaning of those terms. Such persons not actually residing in the territory, are not qualified to sign such petitions for annexations.

The question of the capacity of a corporation to sign a petition for the annexation of land under Section 709.02, Revised Code, *supra*, owned by the corporation and used thereby for business purposes is also presented by your inquiry. Section 1.02, Revised Code, referring to definitions and rules of construction, provides that a corporation is included within the meaning of the term "person" unless the context otherwise requires. It has also been held that the domicile of a corporation is the state in which the corporation is organized, and that a corporation created and existing under the law of Ohio is a resident of this state. The statement of this general proposition is not, however, dispositive of the question at hand in view of the particularity in which Section 709.02, *supra*, is drawn.

The persons qualified to participate in the petition for annexation are specifically designated as "inhabitants residing on territory" and "adult freeholders." Although under certain circumstances a corporation might be included within the term "inhabitants residing on territory," I am of the opinion that a corporation is not within the term "adult freeholder."

The term "freeholder," referring generally to those holding a fee simple title or a freehold in land, has in most instances been limited to natural persons, and has not included corporations. See 17 Words and Phrases, 661; 37 Words and Phrases, 436; Black's Law Dictionary, Fourth Edition. The phrase "adult freeholder" is clearly restricted to a natural person, for the use of "adult" as a further qualification of a freeholder can have no meaning in regard to corporations. In this respect, it was held in Opinion No. 1399, Opinions of the Attorney General for 1946, page 795, that a county was not an adult freeholder within then Section 3548, General Code. The General Assembly, in providing this method of annexation of territory, has recognized that such annexation affects not only property rights, but also the personal rights of the persons involved. This legislative intent, so clearly expressed by the statute, cannot be disregarded.

I am not unmindful of an opinion of my predecessor, Opinion No. 1784, Opinions of the Attorney General for 1950, page 284, which is directly to the contrary. The writer of that opinion places emphasis on the fact that a corporation is generally considered to be a "person" as used in the Revised Code, although that term is not used in Section 709.02, *supra*, and apparently concludes that with respect to ownership of realty a cor-

poration enjoys all of the rights of a natural person so as to qualify as an adult freeholder within Section 709.02, *supra*. I am unable to adopt this reasoning which disregards the use of the different terminology found in the plain and unequivocal language of the section referring to the qualification of petitioners. And I cannot disregard the obvious legislative intent manifested therein to limit the right of petition to natural persons.

The precise question presented by this inquiry was at issue in *Murdock v. Lauderbaugh, et al.*, 52 Ohio Opinions, 135, 67 Ohio Law Abs., 309 (1953), decided by a branch of the Court of Common Pleas of Franklin County. The court held that the term "adult" could not, in the very nature of the situation, apply to a private corporation, and therefore a private corporation should not be counted in determining a majority of the adult freeholders under then Section 3548, General Code, now Section 709.02, Revised Code, *supra*, for the purpose of annexing territory adjacent to a municipal corporation. In the course of the opinion, the court expressly approved the reasoning contained in Opinion No. 1399, Opinions of the Attorney General for 1946, and Opinion No. 795, Opinions of the Attorney General for 1951, *supra*. The court specifically rejected Opinion No. 1784, Opinions of the Attorney General for 1950, which had held to the contrary.

For these reasons, therefore, and in specific answer to your inquiry, I am of the opinion that:

1. An individual or a member of a partnership owning real property within a territory sought to be annexed to an adjacent municipality under the provisions of Section 709.02, *et seq.*, Revised Code, is not qualified to sign a petition for such annexation unless he is an adult and resides on the territory sought to be annexed. Opinion No. 795, Opinions of the Attorney General for 1951, page 547, approved and followed.

2. A corporation owning real property adjacent to a municipal corporation and using the same for business purposes, is not qualified to petition for annexation of such territory to the municipal corporation as provided in Section 709.02, *et seq.*, Revised Code; such right of petition is limited to adult freeholders residing on such territory. Opinion No. 1784, Opinions of the Attorney General for 1950, page 283, overruled.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General