

1901

ANNEXATION OF TERRITORY TO A MUNICIPAL CORPORATION—PROPERTY SHOULD BE LISTED ON TAX DUPLICATE OF SUCH MUNICIPAL CORPORATION—Chapter 709., 709.17 R.C.

SYLLABUS:

Where proceedings for the annexation of territory to a municipal corporation under Chapter 709., Revised Code, have been completed by the adoption of an ordinance accepting such territory prior to the first day of October, property in such territory should be listed on the tax duplicate of such municipal corporation.

Columbus, Ohio, December 14, 1960

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The County Commissioners of Ashtabula County, have authorized the transfer of a portion of Saybrook Township in said County to the City of Ashtabula. This transfer has been accepted by City Ordinance.

"I would like to direct your attention to the last paragraph of Section 709.17 of the Revised Code. I assume that the second Monday in April is referred to in this section because prior to the effective date of Section 5719.01, the lien for taxes attached on that day. As you know, under the provisions of Section 5719.01, taxes become a lien on the first day of January.

"Will you please advise whether or not property so annexed should remain on the tax duplicate of Saybrook Township for the tax year 1960. If it is included on the Saybrook Tax Duplicate, should the amount of taxes received thereupon for the tax year 1960 be paid by the Township of Saybrook to the City of Ashtabula, as a part of the accounting required in Sec. 709.12.

"If such payment is to be made by Saybrook to the City of Ashtabula, should the tax for the full year 1960 be paid to the City or should it be pro-rated to the date when transfer became effective."

The last paragraph of Section 709.17, Revised Code, provides as follows:

"If such territory is annexed subsequent to the day upon which taxes become a lien, the new municipal corporation tax rate shall not apply until the day preceding the second Monday of April next following when the lien of the state for taxes levied attaches. In the meantime the old township tax rate shall apply."

Opinion No. 1452, Opinions of the Attorney General for 1957, page 774, involved the effect of the transfer of school district territory after tax lien date on the authority of the receiving school district to levy a tax on the real property in such territory for the current year. My predecessor, after quoting the last paragraph of Section 709.17, *supra*, said:

“This, it is suggested, is an indication of legislative policy that a receiving subdivision is not to impose a tax on property not within its limits on tax lien date.”

My predecessor did not consider as persuasive the suggestion noted above that the last paragraph of Section 709.17, *supra*, indicates a legislative policy, although he conceded the question is honestly debatable. He concluded that a receiving subdivision could impose a tax on property not within its limits on tax lien date. I have been unable to find any change in either the statutory or case law on this subject since Opinion No. 1452, *supra*, was written, and the law in effect prior thereto supports the conclusion reached in such opinion.

In Opinion No. 2358, Opinions of the Attorney General for 1928, page 1745, the then Attorney General answered a request similar to the instant one holding in the syllabus as follows:

“Where proceedings for the annexation of territory to a municipal corporation are completed by the adoption of a resolution or ordinance accepting the application for such annexation and its legal publication, tax levies thereafter authorized by the council of the municipal corporation to meet its annual budget under the provisions of Section 5625-25, General Code, and certified to the county auditor before the first day of October, should be extended for collection on all the taxable property in said municipal corporation including that in the territory annexed.”

In the course of the opinion, it was said:

“* * * It may be proper to add that this conclusion is in no wise affected by the fact that the lien of the state for taxes for all purposes attaches to all real property subject to taxes on the day preceding the second Monday of April. *State ex rel. vs. Craig, Auditor*, *supra*; *State ex rel. vs. Roose, Auditor*, 90 O.S. 345, 351.”

The 1928 opinion finds support in the 1931 case of *City of Cincinnati v. Roettker*, 41 Ohio App., 269, the headnote of which reads as follows:

“1. Though tax lien on property annexed to city attaches on day before second Monday of April, amount of tax later ascertained according to municipal rate is collectable (Sections 5625-20 and 5625-25, General Code).

“2. Levy of tax at municipal rate on property annexed to city after lien attached *held* not denial of due process or equal protection (Article XIV, Section 1, Amendments U.S. Constitution; Sections 5625-20 and 5625-25, General Code).

There has been no change in the law since Opinion No. 2358, *supra*, was written except that taxes now become a lien on the first day of January. Section 5719.01, Revised Code; see Opinion No. 4653, Opinions of the Attorney General for 1954, page 677. I am constrained, therefore, to follow my predecessor's views.

In addition to the information contained in the above request, you have informed me over the telephone in response to my inquiry that the annexation was completed and became effective as of September 7, 1960.

Under the provisions of Section 319.28, Revised Code, the county auditor is required to certify, and on the first day of October deliver, the tax duplicate to the county treasurer. The delivery of the duplicate to the treasurer corresponds to issuing an execution upon a judgment to the sheriff. *Thompson v. Kelly*, 2 Ohio St., 647. It follows, therefore, that the duplicate should be as accurate as possible when it is delivered to the treasurer. Obviously, if part of the territory of Saybrook Township was annexed to the city of Ashtabula effective September 7, then the duplicate on October 1, in order to be accurate, should show such territory as part of the city of Ashtabula.

In view of the foregoing conclusion, it will not be necessary to answer the second part of your question. Your attention, nevertheless, is directed to paragraph 3 of the syllabus in Opinion No. 6475, Opinions of the Attorney General for 1943, reading as follows:

“3. In the division of funds contemplated by Section 3557-1 General Code, only the unencumbered balances of funds actually on hand can be considered, and moneys in process of collection are not included in the division required by said section.”

Accordingly, it is my opinion and you are advised that where proceedings for the annexation of territory to a municipal corporation under Chapter 709., Revised Code, have been completed by the adoption of an ordinance accepting such territory prior to the first day of October, property in such territory should be listed on the tax duplicate of such municipal corporation.

Respectfully,

MARK McELROY

Attorney General