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COUNTY COMMISSIONERS GIVING NOTICE OF CHANGE IN TOWNSHIP BOUNDARIES—VACANCY CREATED IN A TOWNSHIP OFFICE BY A SHIFT OF BOUNDARIES—VACANCY FILLED BY APPOINTING A PERSON WITH THE QUALIFICATIONS OF AN ELECTOR—§§503.04, R.C., 503.07, R.C., OPINION 2686, OAG, 1958, CURWINS REVISED STATUTES OF OHIO, VOLUME 4, AT 2864.

SYLLABUS:

1. A board of county commissioners proceeding with a change of township boundaries under Section 503.07, Revised Code, is not required to give public notice in the manner set forth in Section 503.04, Revised Code. (Third paragraph of the syllabus in Opinion No. 2686, Opinions of the Attorney General for 1958, page 542, overruled.)

2. In a proceeding under Section 503.07, Revised Code, where the boundaries of a township are changed, or a new township is created by the board of county commissioners in such a manner so that any township officer no longer resides within the township, under Section 503.241, Revised Code, such township office should be deemed vacant and the board of township trustees should declare a vacancy to exist under the authority of Section 503.241, Revised Code.

3. Under Section 503.24, Revised Code, when a vacancy is found to exist under Section 503.241, Revised Code, the board of township trustees, if such board exists, must appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term within thirty days from time such vacancy actually occurs.

Columbus, Ohio, September 28, 1962

Hon. George Cleveland Smythe, Prosecuting Attorney
Delaware County, Delaware, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Delaware City has been a part of Delaware Township. On June 11, 1962, the City Council passed a resolution petitioning for a ‘change of township lines in order to erect a new township out of the portion of the Township of Delaware included within the limits of the City of Delaware, Ohio.’

“This action was under Sec. 503.07, R.C., which apparently now makes such action mandatory.

“The County Commissioners by action on July 23, 1962, granted said petition.

“There is considerable remaining land still in Delaware Township outside of the City limits.

“No notice was given as required by Section 503.04, R.C. Is notice necessary since Section 503.07, R.C., as amended is now mandatory? If notice is required should their action of July 23 be vacated and notice now given?

“Before said action was taken one of the Trustees and the Township Clerk resided within the City limits. What is their status now since they no longer reside in the Township?

“If their offices are now vacant do the remaining trustees have only 30 days from July 23 to fill said vacancies?”

Section 503.04, Revised Code, reads as follows :

“Before action is taken on an application for partition, alteration, change, or laying off of the boundaries of a township by the board of county commissioners, at least thirty days' notice of the time for the hearing on such application or petition shall be given by advertisement, at three public places within the bounds of the territory proposed to be partitioned, altered, changed, or laid off. The board shall cause the boundaries of such township, so changed or altered, or new township laid off, to be recorded in a book to be kept for that purpose, and shall give each new township, so laid off, an appropriate name. No two townships in any county shall be incorporated by the same name.”

Section 503.07, Revised Code, reads as follows :

“When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township.”

In your request for my opinion you ask whether a board of county commissioners, when proceeding under Section 503.07, *supra*, is required to give public notice as specified in Section 503.04, *supra*. My predecessor in office in Opinion No. 2686, Opinions of the Attorney General for 1958, page 542, had occasion to answer the same question. The portion of that opinion dealing with Section 503.04, *supra*, reads, starting at page 546:

“I shall discuss next your inquiry concerning the application of Section 503.04, Revised Code, to the situation you have presented. * * *

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“It may, at first, seem that the first sentence of Section 503.04, Revised Code, could have no application in a situation where there is a mandatory duty upon the board of county commissioners to act in compliance with a proper petition. Further reflection, however, leads me to conclude that this procedure must be followed where the legislative authority of a municipality is proceeding under Section 503.07, Revised Code. The language of Section 503.08, Revised Code, is indicative of legislative intention that the householders of the unincorporated area of a township which is reduced to less than the required area shall have an opportunity to initiate appropriate proceedings for the erection of a new township. Section 503.04, Revised Code, provides the method by which such householders may be informed that a petition presented by the legislative authority of a municipal corporation will effect some change in the former township boundaries and that such a petition as is authorized by Section 503.08, Revised Code, may be prepared and presented to the board of county commissioners. Furthermore, that section imposes upon the said board the duty to record the boundaries as changed.”

An extensive inquiry into the legislative history of Sections 503.02, 503.03, 503.04, 503.07, and 503.08, Revised Code, leads me to the conclusion, however, that notice is not required when a board proceeds under Section 503.07, *supra*. The provisions of present Sections 503.02, 503.03 and 503.04, Revised Code, were originally enacted by the legislature on March 14, 1853, 51 Ohio Laws, 489, as part of an act for the incorporation of townships. Said provisions were amended on February 10, 1857, 54 Ohio Laws, 12. As amended, Section 1 of the township act, as found in Curwin's Revised Statutes of Ohio, Vol. 4, at 2864, read as follows:

“Sec. 1. *New townships created; boundaries changed. Be. & c.*, That it shall be lawful for the boards of commissioners of the several counties within this state to alter or change the boundaries of any township or townships within their respective

counties by attaching a part of one township to another, or by laying off and designating a new township from the territory of one or more townships of the same county, whenever it shall be made to appear necessary or expedient, by a petition for that purpose, signed by a majority of the householders residing within the bounds of the part proposed to be attached, or of the proposed new township, as the case may be, and a majority of the trustees in the town or townships changed or altered by the creation of, or alteration of such township: Provided, that at least thirty days' previous notice of such intended application shall be first given by advertisement at three public places within the bounds of the territory proposed to be altered or changed, and the commissioners shall cause the boundaries of such township or townships, so changed or altered, to be recorded in a book to be kept for that purpose, and shall give to every new township so laid off, such appropriate name as they may think proper: Provided, that no two townships in any one county shall be set off and incorporated by the same name."

I quote the statute as it read in 1857 to point out that the legislative intention was that thirty day notice be given by the board only when a petition was forthcoming from a majority of the householders residing within the townships to be affected by the proposed boundary change. Present Section 503.07, *supra*, dealing with a petition from a city, was not originally enacted as part of the Township Incorporation Act, but as a part of the Municipal Corporation Act of 1869, 66 Ohio Laws, 230, and was codified in *Swan and Critchfield's Revised Statutes of Ohio* in the Towns and Cities chapter at page 1548. Under this provision, no notice by the board was required when such board was petitioned by the city to change township boundaries.

Apart from several minor amendments throughout the years, all these provisions have remained relatively unchanged. On March 27, 1875, a bill was passed, 72 Ohio Laws, 87, to provide for a revision and consolidation of the general statutes of the state, and, as a result, the provision dealing with a petition from a city was placed in Chapter 2, Civil Township, of Title X, Townships, and was codified as Section 1379 of the Revised Statutes. At the same time, what had been Section 1 of the township act, *supra*, was divided into two sections; Sections 1377 and 1378 of the Revised Statutes. After the 1875 revision it was still clear that public notice was required only when the board was petitioned by householders under Section 1377, Revised Statutes. Section 1378, the notice provision (present Section 503.04, *supra*), then read in part:

“Before any action is taken by the board of commissioners on *such* application, at least thirty days’ notice of the time for the hearing of *such* application shall be first given by advertisement,
* * *”
(Emphasis added)

It seems apparent that the words “such application” had reference to the application referred to in Section 1377, Revised Statutes, the immediately preceding provision, and had no reference at all to the subsequent Section 1379, Revised Statutes, which dealt with an application from a city. In any event, however, it is a settled rule of construction that where the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification, the revised sections will be presumed to bear the same meaning as the original sections, and will be so construed. 50 Ohio Jurisprudence 2d, 285, Section 301.

Sections 1377, 1378 and 1379, Revised Statutes, retained approximately the same wording under the statutory revision of 1910, under which said sections became Sections 3245, 3247 and 3249, General Code, respectively. It was not, in fact, until after the code revision of 1953 that there could have been any question as to the proper application of the notice provision. In the 1953 code revision bill (House Bill No. 1 of the 100th General Assembly), Section 1378, Revised Statutes, was recodified as Section 503.04, Revised Code, and the words “such application” were changed to “an application.” This change would appear to give Section 503.04, *supra*, a broader scope in that, on its face, it applies to all applications rather than to only those made by householders. Again, however, the change was made by a revision and codification which should not be construed to change the existing law. 50 Ohio Jurisprudence, Section 301, *supra*. And in this regard, Section 1.24, Revised Code, a part of House Bill No. 1 of the 100th General Assembly, reads:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.”

In view of the foregoing, therefore, I am constrained to conclude that the notice provisions of Section 503.04, Revised Code, are not ap-

plicable to proceedings under Section 503.07, Revised Code, and in that regard I am not in accord with the 1958 ruling of my predecessor.

It is apparent that under Section 503.07, *supra*, it is mandatory that the board of county commissioners change the boundaries of a township and erect a new township when petition is made by a city. Accordingly, as of July 23, 1962, the new township, in the instant case, was established and the boundaries of the old township were changed.

You state that because of the boundary change two township officers no longer reside in the township in which they were elected to serve as officeholders.

Section 503.241, Revised Code, reads in pertinent part:

“Whenever any township officer ceases to reside in the township, or is absent from the township for ninety consecutive days, except in case of sickness or injury as provided in this section, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office.

“Such vacancy shall be filled in the manner provided by section 503.24 of the Revised Code. * * *

“* * * * * * * * * *”

As specified in the above statute, such vacancies are filled under the procedure established under Section 503.24, Revised Code, and under that section the board of township trustees, if there is a board, has thirty days from the occurrence of the vacancy to make the appointment. If the board of township trustees fails to act within thirty days, the county court, or the municipal judge (or presiding judge), or the probate judge, depending upon the establishment of courts in that county, shall make the appointment to fill the vacancy, under the authority of Section 503.24, *supra*. See Opinion No. 1285, Opinions of the Attorney General for 1960, page 289, and Opinion No. 2063, Opinions of the Attorney General for 1961, issued on March 16, 1961.

The question arises whether, under Section 503.24, *supra*, the thirty day period in which a board of township trustees must appoint a new trustee begins to run from the actual time the township officer ceases to reside in the township, or from the time the trustees, under Section 503.241, *supra*, declare a vacancy to exist in such office? Section 503.241, *supra*, states that when a township officer ceases to reside in the township such office shall be *deemed* vacant and the board of trustees shall *declare*

a vacancy to exist in such office. However, the second paragraph of Section 503.24, *supra*, reads:

“* * * * * * * * *”

“If a township is without a board or if no appointment is made within thirty days *after the occurrence of a vacancy on the board*, the county court of such county shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term.

“* * * * * * * * *”

(Emphasis added)

If it could be said that the thirty day period of Section 503.24, *supra*, begins to run only after the board declares the office vacant under Section 503.241, *supra*, such an interpretation would place in the control of the board the power to hold the office open indefinitely, for all the board would have to do to accomplish this result would be to refuse to declare the office vacant. To avoid such a result, Section 503.24, *supra*, authorizes the county court to make the appointment when the board fails to act within the prescribed period after the occurrence of the vacancy. Thus it is my opinion that the board of trustees has thirty days from the time the township officer actually ceases to reside in the township to declare a vacancy and appoint an elector to the office. In the case you present, therefore, the board had thirty days from July 23, 1962, to declare a vacancy and appoint new officers, if, after the boundary change, such officers were found to reside outside the township.

While township officers may thus be summarily “legislated” out of office, once they are found to reside outside the township, the only remedy under the present law would seem to be a change of residence prior to the time the boundary is changed. Such was the conclusion reached in my Informal Opinion No. 425, issued on January 18, 1962.

In conclusion, it is my opinion, and you are advised:

1. A board of county commissioners proceeding with a change of township boundaries under Section 503.07, Revised Code, is not required to give public notice in the manner set forth in Section 503.04, Revised Code. (Third paragraph of the syllabus in Opinion No. 2686, Opinions of the Attorney General for 1958, page 542, overruled)

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board of county commissioners in such a manner so that any township officer no longer resides within the township, under Section 503.241, Revised Code, such township office should be deemed vacant and the board of township trustees should declare a vacancy to exist under the authority of Section 503.241, Revised Code.

3. Under Section 503.24, Revised Code, when a vacancy is found to exist under Section 503.241, Revised Code, the board of township trustees, if such board exists, must appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term within thirty days from time such vacancy actually occurs.

Respectfully,

MARK McELROY

Attorney General