

795

PETITION—TERRITORY TO BE ANNEXED TO MUNICIPALITY—PERSON WHO OWNS LAND WITHIN TERRITORY NOT QUALIFIED TO SIGN PETITION UNLESS HE IS AN ADULT AND RESIDES WITHIN TERRITORY SOUGHT TO BE ANNEXED—SECTION 3548 G. C.

## SYLLABUS:

A person owning land within a territory sought to be annexed to a municipality under the provisions of Section 3548, General 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.

Columbus, Ohio, October 1, 1951

Hon. Kenneth J. Nordstrom, Prosecuting Attorney  
Ashland County, Ashland, Ohio

Dear Sir:

I am in receipt of your request for my opinion, reading as follows:

“The Ashland County Commissioners have requested an opinion as to an annexation matter which I should like to refer to you.

“My question is whether under Sections 3548 to 3557, inclusive, General Code, non-occupying owners of uninhabited territory adjacent to a municipality may petition for its annexation.

“I am aware of your Opinion No. 1784 of the 1950 Opinions which has reference to a private corporation which owns land adjacent to a municipal corporation. However, I am uncertain as to whether this Opinion is applicable to a situation wherein only privately owned, uninhabited lands are sought to be annexed on petition of the owners thereof.”

In your letter you refer to Opinion No. 1784, Opinions of the Attorney General for 1950, rendered by my immediate predecessor. The syllabus of such opinion reads as follows:

“A private corporation which owns land adjacent to a municipal corporation can qualify to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548, et seq., General Code.”

Section 3548, General Code, referred to in your request, reads:

“The *inhabitants residing* on territory adjacent to a municipality may, at their own option, cause such territory to be annexed thereto, in the manner hereinafter provided. Application shall be by petition, addressed to the commissioners of the county in which the territory is located, signed by a majority of the *adult freeholders residing* on such territory, shall contain the name of a person authorized to act as the agent of the petitioners in securing such annexation, and a full description of the territory, and be accompanied by an accurate map or plat thereof.”

(Emphasis added.)

In Opinion No. 1399, Opinions of the Attorney General for 1946, page 795, it was held that a county which owns land in territory adjacent to a municipal corporation is not qualified to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548, et seq. of the General Code, as such right of petition is limited to adult freeholders residing on such territory. It was pointed out in such opinion that the county could hardly be said to be an *adult* freeholder and certainly it does not *reside* on the territory. It was further stated “that this proceeding is to be started only by reason of the desire of persons living and owning property within the territory, who are desirous of having their lands annexed to the municipality.” I am in complete agreement with the conclusion reached in this 1946 opinion and with the reasoning stated therein.

As I interpret the 1950 opinion of my immediate predecessor, the conclusion was reached (a) that a corporation is a person, (b) that a corporation, being domiciled in its state of incorporation, thus resides and is an inhabitant of such state, (c) that such corporation, therefore, could be said to be an “inhabitant residing” on the territory adjacent to a municipality within the meaning of Section 3548, General Code, (d) that the word “adult” in the statute was only meant “to protect a minor’s interest in land and not to prevent a private corporation from signing a petition,” and (e) that in any event “if the citizens of a municipal corporation object to such annexation they may file a petition to enjoin the proceeding under Section 3553, General Code.”

It would appear to me that the conclusion reached in the 1950 opinion, to say the least, is questionable in view of the requirement that ownership and residence must coincide in an adult person to qualify him to sign a

petition for annexation. In this connection, it would seem that the Legislature recognized that annexation to a municipality affects not only property rights but also personal rights of the individuals concerned. The question of annexation of land owned by a corporation, however, is not presented to me at this time.

Even if, as in the 1950 opinion, it be considered that a corporation is an inhabitant "residing on territory adjacent to a municipality" and that, as such, the corporation may sign a petition for annexation as an adult freeholder residing on such territory, such a conclusion would not, and by the plain terms of the statute, could not mean that a man owning land who is not an inhabitant residing thereon may address a petition for annexation to the county commissioners. The plain, unequivocal language of Section 3548, General Code, requires such petition to be signed by a majority of the "adult freeholders residing on such territory" and such statutory requirement may not be disregarded.

In specific answer to your question, therefore, it is my opinion that a person owning land within a territory sought to be annexed to a municipality under the provisions of Section 3548, General 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.

Respectfully,

C. WILLIAM O'NEILL

Attorney General