

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-048 was clarified by
1980 Op. Att'y Gen. No. 80-034.

OPINION NO. 73-048

Syllabus:

A board of county commissioners, which holds title to land adjoining a municipality, may, under R.C. 709.02, file a petition with itself for annexation of the territory to the municipality, and may then proceed to act on the petition.

To: Carl William Hinton, Hancock County Pros. Atty., Findlay, Ohio
By: William J. Brown, Attorney General, May 15, 1973

Your predecessor's request for my opinion reads as follows:

Please advise as to the procedure to be followed relative to the annexation of property adjacent to a municipal corporation under the following circumstances. The Board of Commissioners of Hancock County are the record title owners of certain land adjacent to the City of Findlay, Ohio, on which is located Blanchard Valley School, which school is operated by the Hancock County Board of Mental Retardation.

It appears advisable to annex this property to the City of Findlay, Ohio, which will afford the facility better fire and police protection and also since said facility is in the process of constructing a residential care facility.

The question which arises is whether or not the Board, proceeding under Ohio Revised Code Section 709.02, can file a petition with themselves for annexation and then proceed to hear the same.

We, accordingly, will await with interest your opinion as to how the foregoing problem should be handled.

R.C. 709.02 formerly provided 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.

This Section delineated those persons who could petition a board of county commissioners to annex territory adjacent to a municipal corporation, specifically limiting such action to "the inhabitants residing on territory adjacent to a municipal corporation" and stating that the petition must be "signed by a majority of the adult freeholders residing in such territory."

This clearly limited initiation of such proceeding to adult resident freeholders residing in the territory sought to be annexed.

Various Opinions were written by my predecessors interpreting the provisions of former R.C. 709.02. Opinion No. 1399, Opinions of the Attorney General for 1946, was written in response to a request similar to yours. Syllabus No. 2 of that Opinion reads as follows:

2. 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, such right of petition being limited to adult freeholders residing on such territory.

The above Opinion was approved in Opinion No. 6223, Opinions of the Attorney General for 1956, and Opinion No. 795, Opinions of the Attorney General for 1951.

The question of whether a private corporation could petition for annexation of property which they owned was at issue in Murdock v. Lauderbaugh, 52 Ohio Op. 135, 67 Ohio L. Abs. 309 (1953), decided by a branch of the Court of Common Pleas of Franklin County. The Court held, in interpreting G.C. 3548, the former R.C. 709.02, that the term, "adult", could not apply to a private corporation and that a private corporation should not be counted in determining a majority of adult freeholders for the purpose of annexing territory adjacent to a municipal corporation. That court approved the reasoning contained in Opinion No. 1399, supra, and Opinion No. 795, supra.

However, on November 21, 1969, amended R.C. 709.02 was enacted and is presently the provision with which we must deal. It reads as follows:

The owners of real estate 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 owners of real estate in such territory. Such petition shall contain:

(A) A full description and accurate map or plat of the territory sought to be annexed;

(B) A statement of the number of owners of real estate in the territory sought to be annexed;

(C) The name of a person or persons to act as agent for the petitioners.

As used in sections 709.02 to 709.21, inclusive, of the Revised Code, "owner" or "owners" means any adult individual seized of a freehold estate in land who is legally competent and any firm, trustee, or private corporation that is seized of a freehold estate in land; except that individuals, firms, and corporations holding easements are not included within such meanings; and no person, firm, trustee, or private corporation that has become an owner of real estate by a conveyance the primary purpose of which is to affect the number of owners required to sign an annexation petition is included within such meanings.

The enactment of this amendment changes the class of persons who may petition a board of county commissioners to annex territory adjacent to a municipal corporation from resident freeholders in the territory to "owners of real estate adjacent to a municipal corporation." There is no longer, therefore, a restriction that the petitioners must be adult resident freeholders of the territory to be annexed.

My immediate predecessor stated in Opinion No. 71-004, Opinions of the Attorney General for 1971, in dealing with R.C. 709.02, as amended, that:

The above quoted statute was amended by the General Assembly effective November 21, 1969. The amended statute provides a new description of those persons whose signatures are required on the annexation petition. The effect of the statute is to allow all owners of real estate, both corporate owners and individual owners, to sign the annexation petition and to be counted in determining whether or not a majority has signed. * * *

The term, "owner", as used in R.C. 709.02, as amended, means any adult individual seized of a freehold estate in land who is legally competent, and any firm, trustee, or private corporation

that is seized of a freehold estate in land.

Your predecessor stated that the board of county commissioners is the record title owner of the territory proposed to be annexed. Surely, the board of county commissioners is an owner of real estate adjacent to a municipal corporation within the purview of R.C. 709.02, as amended. In fact, the purpose of the amendment was to allow nonresident owners of real estate adjacent to a municipal corporation to petition for annexation and not preclude them simply because they did not reside on the territory sought to be annexed.

A further question is whether a board can petition itself and then proceed to hear the same. I see no direct prohibition against this specific action provided all provisions contained in R.C. 709.01 to R.C. 709.12, inclusive, are followed strictly.

Even though the above action is sanctioned by R.C. 709.02, your problem can also be solved by following the procedures set out in R.C. 709.13 et seq., and, specifically, R.C. 709.16. This particular section allows the municipal corporation to initiate proceedings for annexation. If the only area to be annexed is owned by the county, as is the case here, the annexation proceedings are much simpler.

In specific answer to your question it is my opinion, and you are so advised, that a board of county commissioners, which holds title to land adjoining a municipality, may, under R.C. 709.02, file a petition with itself for annexation of the territory to the municipality, and may then proceed to act on the petition.