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VILLAGE — INCORPORATION — ORDERED BY TOWNSHIP TRUSTEES—SECTION 3526 ET SEQ., G. C.—PETITION, TRANSCRIPT OF PROCEEDINGS OF TRUSTEES, PLAT OR MAP OF TERRITORY, REQUIRED BY SECTION 3530 G. C. TO BE DELIVERED TO COUNTY RECORDER TO RECORD IN “PUBLIC BOOK OF RECORDS”—SUFFICIENT COMPLIANCE IF INSTRUMENTS RECORDED IN COUNTY RECORD OF PLATS OR IN SPECIAL BOOK OR THAT PLAT BE RECORDED IN PLAT RECORD WITH MARGINAL REFERENCE TO SEPARATE BOOK IN WHICH PETITION AND TRANSCRIPT RECORDED.

SYLLABUS:

Where township trustees have duly ordered the incorporation of a village pursuant to Section 3526, et seq. of the General Code, the petition, transcript of the proceedings of the trustees and plat or map of the territory embraced in the incorporation are required by Section 3530, General Code, to be delivered to the county recorder who shall forthwith make a record of such petition, transcript and plat or map in the “public book of records”; and it is a sufficient compliance with said statute as to record, that the same be recorded either in the record of plats of said county, or in a book especially devoted to such proceedings, or that the plat be recorded in the record of plats, with a marginal reference thereon to a separate book in which such petition and transcript are recorded.

Columbus, Ohio, November 27, 1943.

Hon. James W. Williamson, Prosecuting Attorney,
Wauseon, Ohio.

Dear Sir :

I acknowledge receipt of your communication requesting my opinion, reading as follows :

“Your opinion is desired on the question of the particular record referred to by the words ‘the public book of records’ in Section 3530 of the Ohio General Code.”

Your inquiry raises the question as to the interpretation not only of Section 3530, General Code, but of several other quite similar provisions found in the statutes relating to incorporation of villages and annexation of territory to municipal corporations.

Section 3523, General Code, which has reference to proceedings before the county commissioners for the incorporation of a village, requires the commissioners, in case they approve the petition for incorporation, to cause a certified transcript of their proceedings to be delivered, together with the petition, map and all other papers on file relating to the matter, to the recorder of the county.

Section 3524, General Code, provides as follows :

“The recorder shall file the transcript and other papers in his office, and at the expiration of sixty days thereafter, unless enjoined as hereinafter provided, he shall make a record of the petition, transcript, and map *in the proper book of records* and preserve in his office the original papers delivered to him by the commissioners, certifying thereon that the transcript, petition and map are properly recorded.” (Emphasis mine.)

Section 3530, which is a part of the proceedings for incorporation of a village by action of the township trustees, provides in part as follows :

“The trustees shall make a certified transcript of the journal entries of all their proceedings and a majority of them having signed it, with the original petition and plat, they shall deliver it to the county recorder, who shall forthwith make a record of the petition, transcript and plat or map, *in the public book of records*, and preserve in his office the original papers delivered to him by the trustees, and certify thereon that the transcribed petition and map are properly recorded. * * *” (Emphasis mine.)

Again, in Section 3552, General Code, which relates to the proceedings of the county commissioners for the annexation of territory to a municipal corporation on application of citizens, I find that the auditor or clerk of the municipality, upon the completion of such annexation proceedings, is required to deliver the complete transcript of the proceedings of the commissioners, together with the petition, map or plat to the county recorder who is required to make a record thereof "*in the proper book of records.*"

A like requirement is apparently contemplated by Section 3572, which relates to proceedings whereby two municipal corporations have agreed upon an annexation of one to the other. It is here provided that the auditor or clerk of the municipality to which the annexation has been made, shall make a transcript of the entire proceeding which is to be filed in the office of the recorder "who having made a record thereof shall file and preserve it". Here the statute is silent as to the book in which the transcript is to be recorded, but it may be assumed that the Legislature contemplated the same kind of record as in the case of other annexations.

In all of these statutory provisions there is an entire absence of any indication as to what the Legislature meant by the expression "proper book of records" or "public book of records", and although these provisions have been in the statutes practically without change since 1869, there have not been, so far as I have been able to find, any adjudications explanatory of the meaning of these provisions as to record books.

It is worthy of note that the statutes prescribing the duties of the county recorder make specific provision for certain records. Section 2757, General Code, provides in part as follows:

"The recorder shall keep four separate sets of records, namely: First, a record of deeds, * * * Second, a record of mortgages, * * * Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the sub-divisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases * * *."

It is quite plain that a record such as is under consideration would be wholly out of place in either the first, second or fourth of the above mentioned books. The description given of the "record of plats" provides that there shall be recorded therein all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands. It says nothing about recording maps or plats of newly incorporated villages or of lands annexed to a municipality, and since the proceedings for incorporation or annexation may be very lengthy, it would not appear

practicable to copy the entire transcript in the plat record. There is a fair inference, though not conclusive, that the Legislature intended the entire proceeding, including the map, to be recorded together. There is, however, nothing in the statute that would forbid the recording of these last mentioned maps or plats in the "record of plats" referred to in the section, and it would appear that that would be a most reasonable and logical place in which to record such maps or plats.

There is nothing in Section 2757 that makes the records there specified the exclusive records of the recorder. The Legislature has made other provisions for separate records to be kept by him, for example, the record of affidavits for mechanics' liens required by Section 8314, General Code, which the statute requires the county recorder to "record * * * in a separate book to be kept therefor".

In view, therefore, of the several provisions above noted, requiring the county recorder to record the petition, transcript and map relative to incorporation or annexation "in the public book of records" or "in the proper book of records", and in the absence of any restriction or specific direction as to the book in which such proceedings are to be recorded, it is my opinion that the county recorder is privileged to record the same in any book which he may provide, which, when properly entitled and indexed, would give persons interested an opportunity for examination of the proceeding.

I find upon inquiry that the practice adopted and adhered to for a very long time by some county recorders is to record the map or plat in the regular record of plats with a marginal notation referring to the book in which is recorded the petition and transcript. This in my opinion would be a full compliance with the law.

Respectfully,

THOMAS J. HERBERT,
Attorney General.