

**Note from the Attorney General's Office:**

1954 Op. Att'y Gen. No. 54-4642 was overruled by 1959  
Op. Att'y Gen. No. 59-91.

4642

1. ANNEXATION OF TERRITORY IN ADJACENT TOWNSHIP—EXTENSION, LIMITS OF MUNICIPALITY—DOES NOT PER SE AFFECT LIMITS OR POLITICAL EXISTENCE OF TOWNSHIP—AUTHORITY TO INITIATE PROCEEDINGS TO ADJUST TOWNSHIP LIMITS—MUNICIPAL LIMITS—ABOLITION OF TOWNSHIP OFFICES—SECTIONS 503.07, 703.22 RC.
2. MUNICIPAL CORPORATION—LEGISLATIVE AUTHORITY—PETITION TO COUNTY COMMISSIONERS FOR CHANGE IN TOWNSHIP LIMITS—ERECTION OF NEW TOWNSHIP—PROCEDURE BY COMMISSIONERS—SECTIONS 503.07, 503.14 RC.
3. TOWNSHIP COMPLETELY WITHIN LIMITS OF MUNICIPALITY—SECTION 703.22 RC OPERATIVE—ALL TOWNSHIP OFFICES ABOLISHED—EXCEPTION, JUSTICES OF PEACE AND CONSTABLES—CONTINUE TO EXERCISE FUNCTIONS—THEY ARE ELECTED AT REGULAR MUNICIPAL ELECTIONS.
4. LIMITS OF MUNICIPALITY—EXTENDED OVER TO LIMITS OF TOWNSHIP—POLITICAL EXISTENCE OF TOWNSHIP—NOT AFFECTED—ELECTORS OF MUNICIPALITY RESIDING WITHIN OVERLAPPING PORTION OF TOWNSHIP—MAY VOTE FOR TOWNSHIP TRUSTEE, TOWNSHIP CLERK, JUSTICES OF PEACE AND CONSTABLES TO BE ELECTED IN TOWNSHIP.
5. TOWNSHIP COMPLETELY WITHIN LIMITS OF MUNICIPALITY—WHEN SECTION 703.22 RC BECOMES OPERATIVE—RESIDENTS OF TOWNSHIP—ELECTORS OF CITY—VOTING PRIVILEGES—SECTION 503.07 RC.

## SYLLABUS:

1. The extension of the limits of a municipality by the annexation of territory in an adjacent township does not per se affect the limits or political existence of such township. The municipal authorities may, however, initiate proceedings under the provisions of Section 503.07, Revised Code, to adjust the township limits to make them identical in whole or in part with the municipal limits so as to accomplish the abolition of certain township offices under the provisions of Section 703.22, Revised Code.

2. Section 503.07, Revised Code, is mandatory to the extent that where the legislative authority of a municipal corporation properly petitions the board of county commissioners for a change in township limits, in order to make them identical, in whole or in part, with the limits of a municipal corporation, or to erect a new township out of the portion of the township included within the limits of the municipal corporation, said board must, upon the presentation of such petition and in regular or adjourned session, change the limits of the township or erect a new township as provided by Section 503.14, Revised Code.

3. Where a township is completely within the limits of a municipality and there is an identity in whole or in part of township and municipal limits, Section 703.22, Revised Code, becomes operative and all township offices are abolished, except that justices of the peace and constables continue to exercise their function and are elected at regular municipal elections as provided by said section.

4. Where the limits of a municipality extend over into the territory of a township, the political existence of a township is not affected and electors of the municipality residing within the overlapping portion of the township may vote for a township trustee, township clerk, justices of the peace and constables to be elected in such township.

5. Where a township is completely within the limits of a municipality but no part of the township and municipal limits are or have ever been identical or coterminous, Section 703.22, Revised Code, does not become operative unless and until there has been an appropriate petition to the board of county commissioners pursuant to the provisions of Section 503.07, Revised Code, and residents of said township, notwithstanding they are also electors of the city, may vote for township trustees, township Clerks, justices of the peace, and constables to be elected in such township.

Columbus, Ohio, December 15, 1954

Hon. Ted W. Brown, Secretary of State  
Columbus, Ohio

Dear Sir:

Your request for my opinion contains the following questions:

"1. Where a municipal corporation extends into one or more townships, do electors of that portion of a city which extends into a township, vote for township trustees, township clerk, justice of the peace, and constable, there being no municipal court in such city?"

"2. Where a municipal corporation is formed from three different townships and no part of any of the townships is outside of the boundaries of the municipality, does Section 703.22 of the Revised Code apply, and are such officers elected in such townships where there is no municipal court in such city?"

Your questions relate to a situation where no municipal court existed, and will be so considered, since municipal courts have jurisdiction within the corporate limits of their respective municipal corporation and within the townships specifically designated by the municipal court act, the statute providing that, "upon the institution of a municipal court, the jurisdiction of justices of the peace and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory and in that part of any township which is included within the territory." See Sections 1901.02 and 1901.04, Revised Code.

With respect to your first inquiry, it has been held that upon the organization of a city the limits of which are not coterminous with those of any township, the territory within such city does not cease to be a component part of the township or townships within the limits of which it is situated; that "in the offices of township trustee, clerk, treasurer, justice of the peace and constable, electors and taxpayers of the city have in some or in all respects, a like interest with the electors of the townships outside the city limits, and are entitled to vote in the choice of them." *Halsey v. Ward*, 17 Ohio St., 543; 28 Ohio Jurisprudence, p. 1079, Sec. 670.

The court in its opinion at page 546, said :

"Neither as a matter of theory or practice, is there any necessary difficulty in the existence and harmonious working of a civil township organization, and, at the same time, of a city organization within the limits of such township, or within the limits of more than one township; and the statutes nowhere provide, either expressly or by just implication, that, on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken. But there are clear indications of a contrary legislative intent."

The *Halsey* case was followed in Opinion 1213, Opinions of the Attorney General for 1924, page 82, where it was said :

"Because some **part** of the territory of a township becomes a village does not **seem to operate** to take the area within the village

out of the township for voting or taxing purposes. Village electors vote for township officers and are often elected as such officers."

The political existence of the township in such case was also upheld in Opinion No. 198, Opinions of the Attorney General for 1939, p. 249, involving a vote on a tax levy for the establishment of a firemen's indemnity fund. It was there held that a township could levy such tax on all taxable property lying in the township, including the property in a village located in the township.

Opinion No. 7038, Opinions of the Attorney General for 1944, page 406, went even further. It sustained a township levy for maintaining a township park, despite the total absorption of the township by the incorporation of two municipalities. It was stated in the syllabus:

"The fact that all the area of a township has been incorporated into two municipalities does not in any way affect the existence or official organization of the township, and taxes levied or to be levied for township purposes will be collected and paid into the township treasury as provided by law."

The Attorney General thus gave his reasons, at page 409, for not applying Section 703.22, Revised Code, 3512, G. C.:

"It will be observed from an examination of the above quoted section, that it applies only when the corporate limits of a *city or village* become identical with those of a township. It is obvious that the legislature enacted that statute in recognition of the fact that where the territory of a township was identical with that of a municipal corporation there could be no purpose in having two sets of officers administering the affairs of the subdivision and therefore all township offices excepting those of justices and constables were abolished and their duties are to be performed by municipal officers. Plainly, that reason does not exist where the entire territory of a township becomes incorporated into two or more municipal corporations and obviously it would not be practicable for the officers and council or either one of such municipalities to take over the government of the entire township. Accordingly, it seems clear to me that the existence of Conneaut Township has been in no wise affected, and the entire township, including the city of Conneaut and the village of Lakeville, is still subject to control as a township by the officers who are provided by law for all townships of the state. \* \* \*"  
(Emphasis added.)

It is, therefore, apparent that as a general rule a township retains its existence as a political entity, notwithstanding the inclusion of some

or all of its territory within the municipal limits. In arriving at this conclusion I am, moreover, aware of the provisions of Section 703.22, Revised Code, which provides in substance that upon identity of municipal and township limits township offices generally cease and the duties thereof are assumed by the corresponding offices of the municipal corporation. The section, however, does not purport to abolish the township, but merely the offices thereof.

It is, of course, readily foreseeable that where a municipal and a township boundary overlap, in part, inequitable situations may arise both with respect to the citizens of a municipality within the township as well as with respect to citizens of the township without the boundaries of the municipality. For example, the citizens of the municipality might well find themselves subject to taxation both by the township as well as the municipality within which they reside. Opinion No. 1213, supra. At the same time, assuming a situation where that portion of a township lying within the limits of the municipality was more densely populated in comparison to the rest of the township, the residents of the township without the boundaries of the municipal corporation might well find that their township affairs are virtually controlled by the urban residents who might conceivably have little or no appreciation of the problems peculiar to the non-urban territory. It should be noted, however, that neither the urban residents of the township nor the residents of the township without the boundaries of the municipality are without a statutory remedy in such case. With respect to the remedies of the residents of the municipal corporation, Section 503.07, Revised Code, provides as follows:

“If 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, and the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, petitions 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, may change the boundaries of the township or erect such new township.”

Insofar as the residents of the township outside the municipal boundaries are concerned, Section 503.09, Revised Code, likewise provides:

“Where a township contains a city, if a majority of the freehold electors owning land in the portion of such a township outside such city limits, petitions, with a map accurately setting forth such territory, praying to have such territory erected into a new township, and excluding the territory within the city, the board of county commissioners shall enter an order erecting such territory into a new township, the boundaries of which need not include twenty-two square miles of territory. Upon the erection of such new township, the territory lying within the limits of the city in the original township shall be considered as not being located in any township.”

For the purpose of avoiding some of the situations which I have heretofore outlined, it would undoubtedly be advisable in those cases where a municipality annexes a part of a township, that the provisions of Section 503.07, supra, be followed as a matter of course and as an incident to the annexation proceedings. Although Section 503.07, supra, uses the permissive “may” with respect to the change of the boundaries of the township upon the petition of the legislative authority of the municipality I am nevertheless of the opinion that such a boundary change is mandatory upon the board of county commissioners if as and when a proper petition is presented by the municipal corporation. My conclusion in this respect is based largely on the provisions of Section 503.14, Revised Code, which provides as follows :

“When the change of boundaries of townships is required by reason of the extension of the limits of a municipal corporation, such change shall be made by annexation to the township in which the municipal corporation or the greater part of it was previously situated, of such parts of other townships as are covered by such extension.”

The section above quoted was originally enacted as section 482 of the Municipal Code in 70 Ohio Laws, 4. As originally enacted it provided substantially the same as present Section 503.14, Revised Code, except that after the word “required” the words “under Section 480” appeared. Section 480 of the former Municipal Code is now substantially Section 503.07, Revised Code. Notwithstanding that this section reference was eliminated upon the incorporation of the Municipal Code into the General Code and subsequently upon the incorporation of the General Code into the present Revised Code, I am nevertheless convinced that no substantial change was intended and that the use of the word “required” was intentional and not accidental, and indicated a legislative understand-

ing that when a petition was duly presented to the Board of County Commissioners for an appropriate change in the township boundaries, that such change was then a "required" one and was therefore mandatory.

Considering now the second aspect of your inquiry, it would appear that it resolves itself into a determination as to whether under the circumstances disclosed, Section 703.22, Revised Code, to which I have referred earlier in this opinion, applies. Said section provides as follows:

"When the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employees. Such justice and constables shall be elected at regular municipal elections. All property, moneys, credits, books, records, and documents of such township shall be delivered to the legislative authority of such municipal corporation. All rights, interests, or claims in favor of or against the township may be enforced by or against such municipal corporation."

A diagram which you have enclosed for the purpose of clarifying the problem presented by your second inquiry discloses a municipal corporation composed of three adjacent townships. No portion of any of the townships is without the limits of the municipal corporation. Each of the townships has at least one common limit with the municipal corporation. Obviously, no one of the townships has a limit which is completely coterminous with the municipality, since, perforce it enjoys a common limit with one or more adjacent townships. The question then presented is whether any of the limits of any of the townships within the municipal corporation are identical within the purview of Section 703.22, *supra*, so as to abolish the existence of certain township offices as enumerated by that section. It is apparent, of course, that there is no complete and absolute identity of any one of the limits of the township with the limits of the municipal corporation, under the facts as stated in your inquiry. Such a situation could only arise where the municipality was composed of a single township or where having been formed from several townships the municipality had the limits of the several townships changed under Section 503.07, Revised Code, into a single township. I think it clear that the legislature intended no such restrictive application of Sec-



tion 703.22, supra. On the contrary, it would appear to have been the legislative notion to avoid a duplication of governmental functions where a township had been completely absorbed within the limits of the municipal corporation. Thus, in the question you have presented, it would appear that the partial identity of the township limits with those of the municipality, providing the township is completely within municipal limits, is sufficient to bring into operation Section 703.22, supra. Construing Section 703.22, supra, and Section 503.07, supra, in *pari materia*, it would appear that this is what the legislature had in mind in providing for a petition to change township lines in order to make them identical in whole or "in part" as provided by the latter section.

What has been said, however, does not answer the question which although not directly asked by you is nevertheless implicit in the foregoing discussion; that is to say, that circumstance in which a township is completely within municipal limits but no portion of the township limit is coterminous with any part of the municipal limit. Despite the legislative intent in this regard to avoid the duplication of governmental functions to which I have previously referred, there is no identity of limits, whole or partial, within the plain meaning of that word as employed in Section 703.22, supra. In such a case construction cannot supply what plain language has failed to indicate; and the interpretation of the statute must be made in the light of the expressed intention thereof, notwithstanding the expressed intention might differ from the intended legislative expression. *Slingluff v. Weaver*, 66 Ohio St., 621. It follows, therefore, that in the case of a township which is completely within the limits of a municipal corporation, which does not share and has never shared any common limit with the municipal corporation, Section 703.22, supra, cannot come into operation and township offices are not abolished under and pursuant to that Section until and unless the legislative authority of the municipal corporation makes an appropriate petition to the board of county commissioners under Section 503.07, supra, in order to achieve such identity in whole or in part.

In specific answer to your questions, it is my opinion that:

1. The extension of the limit of a municipality by the annexation of territory in an adjacent township does not per se affect the limits or political existence of such township. The municipal authorities may, however, initiate proceedings under the provisions of Section 503.07, Revised Code,

to adjust the township limits to make them identical in whole or in part with the municipal limits so as to accomplish the abolition of certain township offices under the provisions of Section 703.22, Revised Code.

2. Section 503.07, Revised Code, is mandatory to the extent that where the legislative authority of a municipal corporation properly petitions the board of county commissioners for a change in township limits, in order to make them identical, in whole or in part, with the limits of a municipal corporation, or to erect a new township out of the portion of the township included within the limits of the municipal corporation, said board must, upon the presentation of such petition and in regular or adjourned session, change the limits of the township or erect a new township as provided by Section 503.14, Revised Code.

3. Where a township is completely within the limits of a municipality and there is an identity in whole or in part of township and municipal limits, Section 703.22, Revised Code, becomes operative and all township offices are abolished, except that justices of the peace and constables continue to exercise their function and are elected at regular municipal elections as provided by said section.

4. Where the limits of a municipality extend over into the territory of a township, the political existence of a township is not affected and electors of the municipality residing within the overlapping portion of the township may vote for a township trustee, township clerk, justices of the peace and constables to be elected in such township.

5. Where a township is completely within the limits of a municipality but no part of the township and municipal limits are or have ever been identical or coterminous, Section 703.22, Revised Code, does not become operative unless and until there has been an appropriate petition to the board of county commissioners pursuant to the provisions of Section 503.07, Revised Code, and residents of said township, notwithstanding they are also electors of the city, may vote for township trustees, township clerks, justices of the peace, and constables to be elected in such township.

Respectfully,

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Attorney General