

**OPINION NO. 71-091****Syllabus:**

When a petition for annexation of an area adjacent to a municipality is presented to a board of county commissioners for consideration and the board finds after investigation that the petition does not contain the signatures of a majority of the landowners in the area proposed to be annexed, the board has the authority to grant a 30-day extension to the agent for the petitioners within which to amend the petition by deleting some of the area involved so that, when amended, it will contain the signatures of a majority of landowners in the remaining area.

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**To: Edward D. Mosser, Harrison County Pros. Atty., Cadiz, Ohio**  
**By: William J. Brown, Attorney General, December 20, 1971**

Your request for my opinion may be summarized as follows:

When a petition for annexation of an area adjacent to a municipality is presented to the board of county commissioners for consideration and the board finds after investigation that the petition does not contain the signatures of a majority of the landowners in the area proposed to be annexed, does the board then have the authority to grant an extension of time of thirty days to the agent for the petitioners, to amend the petition by deleting some of the area involved so that the petition, when amended, will contain the signatures of a majority of landowners in the remaining area?

The annexation of territory to municipal corporations is controlled by Chapter 709, Revised Code, and Section 709.032, Revised Code, reads in pertinent part as follows:

"The petition may be amended without further notice by leave of the county commissioners with the consent of the agent for the petitioners where such amendment does not add to the territory embraced in the original petition. If any amendment is permitted, whereby territory not before embraced is added, the board shall appoint another time for the hearing of which notice shall be given as specified in section 709.031 of the Revised Code."

While neither the courts nor my predecessors have been asked to interpret this particular Section, it would appear on its face to provide the answer to your question. It gives the board of county commissioners power to grant leave to amend a citizens'

petition for annexation without further notice and hearing, except where the amendment is designed to add to the territory embraced in the original petition. It follows that the board has the power to grant an amendment which is designed simply to subtract from the original territory.

The general question of amendment to petitions for annexation has been considered in two cases. In Shugars v. Williams, 50 Ohio St. 297 (1893), the Court upheld an order of a board of commissioners granting leave to amend an annexation petition filed by a municipality. In that case, as here, the petition to amend sought to subtract from, rather than add to, the territory described in the original petition. 50 Ohio St. at pages 298, 304. And in that case, as here, the controlling statute required a further hearing on a petition to amend only when leave was sought to include additional territory. 50 Ohio St. at page 302. And in Dabkowski v. Baumann, 175 Ohio St. 89, at pages 90, 94-96 (1963), the Court again upheld the power of the board to permit an amendment which excluded a part of the territory originally sought to be annexed by the petition.

Since both the case law and Section 709.032, supra, recognize the authority of the board of county commissioners to grant, without further notice, an amendment which deletes territory from the original petition, I must conclude that in this case the board has the authority to grant leave to amend the petition for annexation. It may be contended that there will be instances in which this will defeat the intent of the original signers of the petition, since their signatures were obtained on the understanding that a larger area was to be annexed. But the rights of such signers are protected by the fact that the statute requires the consent of their authorized agent before the board of county commissioners may allow an amendment deleting territory from the original petition. I conclude that the statute specifically requires notice and a further hearing only in the case of amendments which add territory to that described in the original petition.

In specific answer to your question it is my opinion, and you are so advised, that when a petition for annexation of an area adjacent to a municipality is presented to a board of county commissioners for consideration and the board finds after investigation that the petition does not contain the signatures of a majority of the landowners in the area proposed to be annexed, the board has the authority to grant a 30-day extension to the agent for the petitioners within which to amend the petition by deleting some of the area involved so that, when amended, it will contain the signatures of a majority of the landowners in the remaining area.