

OPINION NO. 2002-033**Syllabus:**

When a race meeting permit is sought for a location that is in a city but not in a township and at which a racing meet has not previously been conducted under a permit issued by the State Racing Commission, R.C. 3769.04 does not require the application to be accompanied by a petition described therein.

To: Mathias H. Heck, Jr., Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Betty D. Montgomery, Attorney General, November 22, 2002

You have submitted an opinion request concerning the petition requirements of R.C. 3769.04 with respect to the State Racing Commission's issuance of a racing permit. Your specific questions are, as follows:

1. Are first-time horse-racing permit applicants required to submit a petition with their application in cases where the proposed horse-racing meeting is to be conducted within the corporate limits of a municipality?
2. If yes, is the fifty-one percent signing requirement applicable to the ward or voting district in which the proposed horse-racing meeting is to be held (the City of Trotwood is, by charter, divided into four voting districts), or to the municipality as a whole?

Before examining your specific questions, it may be useful briefly to examine the general permit requirements of R.C. Chapter 3769. We begin with the fundamental prohibition in R.C. 3769.01 against the holding or conducting of any meeting at which horse racing is permitted for any stake, purse, or award unless the person or entity has obtained a permit from the State Racing Commission and complies with the provisions of R.C. 3769.01-.14. Pursuant to R.C. 3769.04, each application for a permit shall specify the name and address of the applicant, as well as the dates, hours, and location of the proposed meet. The State Racing Commission may then issue a permit to the applicant for a racing meet at the dates, hours, and location described in the application. R.C. 3769.06. *See generally* R.C. 3769.07 (permit restrictions); R.C. 3769.14 (limitation on jurisdiction to issue permits in counties where electors have voted to prohibit horse racing). In accordance with R.C. 3769.08(A), "[a]ny person holding a permit to conduct a horse-racing meeting may provide a place in the

race meeting grounds or enclosure at which the permit holder may conduct and supervise the pari-mutuel system of wagering by patrons of legal age on the live racing programs and simulcast racing programs conducted by the permit holder.”

With this general framework in mind, let us now look specifically at the petition requirements of R.C. 3769.04, which states in pertinent part:

If the application requests a permit for a horse-racing meet at a location at which such a meet has not previously been conducted by permission of the commission,¹ then, in addition to the other requirements for the application, there shall accompany the application a petition signed by at least fifty-one per cent of the qualified electors voting for governor at the most recent general election in the *townships* in which the racing meet is proposed to be conducted, together with a certificate of the board of elections of the counties in which such townships are situated that the signatures on the petition are valid and comply with this section. No petition or certificate shall be required for a transfer made under [R.C. 3769.13] if the transfer is to a *county* in which racing has previously been conducted pursuant to a permit issued under [R.C. 3769.06]. (Emphasis and footnote added.)

Let us now consider your first question in which you ask whether R.C. 3769.04 requires an applicant for a permit to conduct a racing meet at a new location that is situated within a city, but not in a township, to submit a petition with the racing permit application. The language of R.C. 3769.04 is somewhat unclear in this regard.

The introductory clause of the first sentence quoted above defines the circumstance in which a petition will be required, *i.e.*, the location; without mention of the political subdivision in which it is situated, for which the permit is sought is one at which a racing meet has not previously been conducted under a permit issued by the State Racing Commission. The final portion of that sentence describes the petition requirement triggered by such circumstance, *i.e.*, a petition signed by a percentage of the “qualified electors voting for governor at the most recent general election in the *townships in which the racing meet is proposed to be conducted*,” R.C. 3769.04 (emphasis added), must accompany the permit application.² It is this final portion of the sentence that is ambiguous. It assumes either that a racing meet inevitably will occur within one or more townships, and that a petition must, therefore, accompany every permit application for a new location, *see generally* note one, *supra*, or that a new location may be situated inside or outside of a township and a petition is required only if the new location for which the permit is sought is situated within one or more townships. For the reasons that follow, we believe that the latter is the correct interpretation of R.C. 3769.04.

First, we note that not all territory within the state is part of townships. As stated in 1990 Op. Att’y Gen. No. 90-042 at 2-174:

¹For ease of discussion, this opinion will refer to a location at which a horse-racing meet has not previously been conducted under authority of the State Racing Commission as a new location.

²*See generally* R.C. 3503.01 (age and residency qualifications); R.C. 3501.01(N) (for purposes of statutes concerning elections and political communications, “[e]lector’ or ‘qualified elector’ means a person having the qualifications provided by law to be entitled to vote”).

The statutory scheme in Ohio provides generally that all territory of the state shall be divided into townships and that each portion of land within the state shall remain part of one of the state's townships (even if it is also located within a municipal corporation) unless, through the inclusion of the land within a municipal corporation, the township government ceases to exist. *See, e.g.*, R.C. 703.22; Op. No. 85-033; 1959 Op. Att'y Gen. No. 888, p. 584.

Thus, while much of the territory of the state is situated within townships, not all territory is so situated.

For example, in accordance with R.C. 503.09, if a township that contains a municipality creates a new township excluding that municipality, "[u]pon the erection of such new township, the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township." This provision was originally enacted as part of G.C. 3250-1, 1935 Ohio Laws 197 (H.B. 130, filed May 20, 1935) (now at R.C. 503.09). Thus, we must assume that at the time the petition requirement was added to G.C.1079-4 (predecessor of R.C. 3769.04) in 1949-1950 Ohio Laws 352 (Am. H.B. 456, filed June 17, 1949), the General Assembly was aware of the possibility that a permit would be sought to conduct a racing meet at a location outside of a township. *See generally Charles v. Fawley*, 71 Ohio St. 50, 72 N.E. 294 (1904) (the General Assembly is presumed to act with knowledge of existing statutes). Because the General Assembly was aware at the time it enacted Am. H.B. 456 that not all territory within the state was located within a township, we must conclude that it intended to require a petition to accompany a permit application for a new location only if that location happened to be situated within one or more townships.

This reading of R.C. 3769.04 is also supported by the well-settled principle of statutory construction that one "should give effect to the words actually employed in a statute, and should not delete words used, or insert words not used, in the guise of interpreting the statute." *State v. Taniguchi*, 74 Ohio St. 3d 154, 156, 656 N.E.2d 1286, 1287 (1995) (citations omitted). Because the General Assembly described the signers of a petition required by R.C. 3769.04 as qualified electors "in the townships in which the racing meet is proposed to be conducted," we must give effect to that phrase. A reading of R.C. 3769.04 that would require a petition to accompany every permit application for a new location, whether or not the proposed location is situated within a township, would require the substitution of a word other than "townships" to describe the location of the proposed facility as well as those who are eligible to sign such petition. In order to give effect to the phrase "in the townships in which the racing meet is proposed to be conducted," as used in R.C. 3769.04, we must read that language as requiring a petition only where the new location for which a permit is sought is situated within one or more townships. *See generally* R.C. 1.43(A) ("[t]he singular includes the plural, and the plural includes the singular").

We also note that within the same paragraph that establishes the petition requirement R.C. 3769.04 further states: "No petition or certificate shall be required for a transfer made under [R.C. 3769.13] if the transfer is to a *county* in which racing has previously been conducted pursuant to a permit issued under [R.C. 3769.06]," (emphasis added). It is well settled that, where the General Assembly uses different terms in a statute, it is presumed that different meanings were intended. *Robert V. Clapp Co. v. Fox*, 124 Ohio St. 331, 178 N.E. 586 (1931). The fact that the General Assembly refers to two different political subdivisions within R.C. 3769.04 indicates that it used the terms advisedly, knowing and intending their different meanings. *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d

370, 374 (1948) ("it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute").

A review of the form of a petition required by R.C. 3769.04 also indicates that a petition is required only if the new location for which a permit is sought is situated within a township. As described in R.C. 3769.04, a petition must contain, among other things, the following language: "We, the undersigned, electors of township, county, Ohio request the granting of the application of for a horse-racing meet to be conducted in whole or in part in township." The signers of any such petition, therefore, must be electors of the township in which the proposed location is situated.

In the situation about which you ask, the new location for which a permit is being sought under R.C. 3769.04 is within a city that previously merged with the unincorporated portion of a township under R.C. 709.43-.48. *See generally* R.C. 709.43 ("[a]s used in [R.C. 709.43-.48], 'merger' means the annexation, one to another, of existing municipal corporations or of the unincorporated area of a township with one or more municipal corporations"). You question whether R.C. 3769.04 requires that a petition be submitted with the permit application in such a situation. In order to address this concern, we must briefly examine the statutory framework established by R.C. 709.43-.48.

The merger of the unincorporated portion of a township with one or more municipalities is authorized by R.C. 709.44. The consequences of such a merger are described in R.C. 709.47, in pertinent part, as follows:

If the conditions of merger are approved by a majority of those voting on them in each political subdivision proposed to be merged and in the municipal corporation with which merger is proposed, the merger is effective on the first day of January of the year following the certification of the results of the election by the board of elections with which the petition is required to be filed, unless the conditions specify a different date, in which case the date specified is the effective date of merger. On and after such effective date the territory of each political subdivision proposed to be merged is annexed to and included in the territory and corporate boundaries of the municipal corporation with which the merger is proposed. The form of government, ordinances, resolutions, and other rules of the municipal corporation with which merger is proposed apply throughout such newly included territories to the extent they are not in conflict with the conditions approved by the electors. The charter, if any, of the municipal corporation with which merger is proposed applies throughout the newly included territories. The *corporate existence* and the offices of the municipal corporations or of the township proposed to be merged *terminate* on such date. The *municipal corporation with which merger is proposed succeeds to the interests of the political subdivision proposed to be merged in:*

(A) All moneys, taxes, and special assessments, whether such moneys, taxes, or special assessments are in the treasury, or in the process of collection;

(B) All property and interests in property, whether real or personal;

(C) All rights and interests in contracts or in securities, bonds, notes, or other instruments;

(D) All accounts receivable and rights of action;

(E) *All other matters* not included in division (A), (B), (C), or (D) of this section.

On and after such date the municipal corporation with which merger is proposed is liable for all outstanding franchises, contracts, debts, and other legal claims, actions, and obligations of the political subdivision proposed to be merged. (Emphasis added.)

Thus, a merger of the unincorporated portion of a township with one or more municipalities under R.C. 709.44 results in the termination of the corporate existence and the offices of the township.³ Moreover, the municipality or municipalities with which the unincorporated portion of the township merged succeed to the interests of the unincorporated portion of the township merged. R.C. 709.47. We conclude, therefore, that upon merger, the unincorporated portion of the township merged ceases to exist as an entity apart from the municipality or municipalities with which it merged. *See Arnett v. Winemiller*, 80 Ohio St. 3d 255, 255, 685 N.E.2d 1219, 1219 (1997) (“Randolph Township will merge with the village of Clayton effective January 1998, and on that date, Randolph Township will cease to exist”); 1990 Op. Att’y Gen. No. 90-042 at 2-174 (“[t]he provisions of R.C. 709.43-709.48 contain no indication that any township territory is to remain following a merger”).

Because we have concluded that R.C. 3769.04 does not require a petition to accompany a permit application for a new location situated within a city but not within a township, R.C. 3769.04 does not require a petition to accompany a permit application for a location situated within a city that has merged with the unincorporated portion of a township under R.C. 709.44.

In light of our answer to your first question, it is not necessary to address your second question concerning the area in which signers of a petition under R.C. 3769.04 must reside.

Based upon the foregoing, it is my opinion, and you are hereby advised that, when a race meeting permit is sought for a location that is in a city but not in a township and at which a racing meet has not previously been conducted under a permit issued by the Ohio State Racing Commission, R.C. 3769.04 does not require the application to be accompanied by a petition described therein.

³*Cf.* 1984 Op. Att’y Gen. No. 84-051 (syllabus) (stating in part “if a municipality does not, after annexing township territory, initiate the procedure set forth in R.C. 503.07, such annexed township territory continues to be a component part of the township in which it was situated prior to municipal annexation”).