

**OPINION NO. 82-060****Syllabus:**

A board of park commissioners which is seized of a freehold estate in land as trustee under a trust agreement or as trustee for the general public pursuant to R.C. 1545.11 is an "owner" of such real estate for the purposes of R.C. 709.02 and may petition for annexation of such territory to an adjacent municipal corporation.

**To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio**  
**By: William J. Brown, Attorney General, September 28, 1982**

I have before me your request for an opinion as to whether the Board of Commissioners of the Metropolitan Park District of the Toledo Area is an "owner" within the meaning of R.C. 709.02. This statute authorizes owners of real estate to petition the board of county commissioners for annexation of such territory to an adjacent municipal corporation. R.C. 709.02 defines "owner" by providing as follows:

As used in sections 709.02 to 709.21 and 709.38 and 709.39 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. (Emphasis added.)

I have previously addressed the question of whether public bodies may petition for annexation of land under the terms of R.C. 709.02. In 1973 Op. Att'y Gen. No. 73-048, I stated that a board of county commissioners which holds title to land may petition for the annexation of such territory to an adjacent municipality. Subsequently, I opined that a board of education of a local school district, which is statutorily authorized to acquire, hold, and dispose of real property, holds title to real estate in trust for the benefit of its school district, thereby qualifying as an owner under R.C. 709.02. Such a board of education may, therefore, petition for the annexation to an adjacent municipality of territory to which it holds title. 1979 Op. Att'y Gen. No. 79-043. Thus, public bodies may qualify as owners of real estate for annexation purposes if they fall within the definition of that term as set forth in R.C. 709.02.

A board of park commissioners may acquire lands by gift or devise, purchase, lease, or appropriation. R.C. 1545.11. With respect to lands acquired in trust by gift or devise, a board is specifically authorized pursuant to R.C. 1545.11 to "act as trustees [sic] of land, money, or other property, and use and administer the same as stipulated by the donor, or as provided in the trust agreement." A board expressly meets the statutory definition of an "owner," as set forth in R.C. 709.02, if, as trustee, it is seized of a freehold estate in land pursuant to a trust agreement. A board of park commissioners is, therefore, authorized to petition for annexation of such land.

R.C. 1545.11 further authorizes a board of park commissioners to "create parks, parkways, forest reservations, and other reservations and afforest, develop, improve, protect, and promote the use of the same in such manner as the board deems conducive to the general welfare." This authorization extends to all lands acquired by a board. It is my understanding, based upon a conversation between your office and a member of my staff, that title to such lands is acquired in the name of the Board of Commissioners of the Metropolitan Park District of the Toledo Area. While legal title to lands acquired by gift or devise, purchase, or appropriation is held in the name of the board of park commissioners, the lands are

clearly acquired and held for the benefit and welfare of the general public. R.C. 1545.11; Louisville & Nashville R.R. v. City of Cincinnati, 76 Ohio St. 481, 81 N.E. 983 (1907) (syllabus, paragraph 1) ("Public streets, squares, landings and grounds are held in trust for the public. . . ."). Thus, the board of park commissioners is properly considered a trustee of the real property to which it holds title, regardless of the manner in which the property is acquired. The board, therefore, qualifies as an "owner" within the definition set forth in R.C. 709.02 if it is seized of a freehold estate in the territory for which annexation is sought.

It is, therefore, my opinion, and you are advised, that a board of park commissioners which is seized of a freehold estate in land as trustee under a trust agreement or as trustee for the general public pursuant to R.C. 1545.11 is an "owner" of such real estate for the purposes of R.C. 709.02 and may petition for annexation of such territory to an adjacent municipal corporation.