

OPINION NO. 2006-021**Syllabus:**

1. Neither the Ohio Constitution nor current provisions of R.C. 301.01-.04 require that a petition submitted to the General Assembly for the relocation of a county seat include a minimum number of signatures.
2. Legislation enacted by the General Assembly pursuant to Ohio Const. art. II, § 30, which presents to the electorate of a county the question whether the county seat should be relocated, may require that bond be given if the vote is in favor of relocation, and specify the amount of the bond, and by whom it must be executed.

To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Jim Petro, Attorney General, May 5, 2006

You have stated that the Geauga County commissioners are considering whether the county seat should be moved from the city of Chardon to Claridon township, which is closer to the geographic center of Geauga County, and you have asked about the procedure for doing so. Specifically, you inquire how many signatures must be on a petition to relocate the county seat. You also ask if any type of bond or guaranty would be required if a law is passed by the General Assembly submitting the question to the voters; and, if so, by whom the bond must be executed, and for how much.

We begin with Ohio Const. art. II, § 30, which states, in pertinent part: “all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties.” In pursuance of Ohio Const. art. II, § 30, the General Assembly has enacted legislation governing the manner in which county residents may, by petitioning the General Assembly, initiate the creation of a new county or location or relocation of a county seat. A “petition, memorial, or remonstrance” that is presented to the General Assembly for the location or relocation of a county seat must be signed by resident taxpayers or voters of the county who are at least eighteen years old. R.C. 301.01. Compliance must be certified by a township fiscal officer or “by the oath of a respectable freeholder or voter, certified by a person authorized to administer oaths.” *Id.* The certificate or oath must specify on the petition the number of signers to the petition at the time of certification or oath. *Id.* However, R.C. 301.01 establishes no minimum number of signers.

After signatures are gathered and the proper notice requirements are met,¹ the petition is presented to the General Assembly. R.C. 301.02; R.C. 301.03; R.C. 301.04. No petition that has been in circulation for longer than six months before the beginning of the legislative session may be received by the General Assembly, “nor shall any names of petitioners be written on a separate paper or sheet and attached to such petition, memorial, or remonstrance.” R.C. 301.03. When a petition is presented to the General Assembly, the speaker of the house or president of the senate must determine whether the notice requirement and six-month limitation have been met, and “[i]f satisfactory proof of such requirements is produced, the petition or memorial shall be received, and not otherwise.” *Id.*

Petition Signatures

Your first question is how many signatures must be on a petition to relocate the county seat that is submitted to the General Assembly. As mentioned above, the General Assembly has established no minimum number of eligible county residents who must sign a petition in order for it to be received by that body. *Cf., e.g.*, Ohio Const. art. II, § 1b (three per centum of the electors of the state must sign an initiative petition proposing a state law); Ohio Const. art. II, § 1c (the signatures of six per centum of the electors are required on a referendum petition). And, as an executive officer, the Attorney General has no authority, through the opinions process or otherwise, to legislate a minimum number. *See generally* 1980 Op. Att’y Gen. No. 80-011. We note that the process whereby county electors submit a petition to the General Assembly is not constitutionally required, but appears only in statute. Thus, it is wholly within the authority of the General Assembly to establish a minimum number of signers.

Although no minimum is set forth in statute, logic tells us that, the more signatures that are on a petition, the more persuasive the supporters of relocation will be, and the more likely the General Assembly will act. It obviously behooves the supporters of relocation to obtain as many signatures as possible.

Bond

Your second question is whether any type of bond or guaranty is required if legislation is enacted by the General Assembly submitting the question of relocation to the county electors, and, if so, by whom it must be executed, and for how much. Again, nothing in the constitution or R.C. 301.01-.04 speaks to a bond. In the past, however, the General Assembly typically has included a provision in the specific legislation proposing relocation of a particular county seat that, if the vote is in favor of relocation, certain commitments of resources must be made before the county seat can be moved. These conditions have been upheld by the Ohio Supreme

¹ Notice of the intent to present a petition to the General Assembly must be given at least thirty days before the legislative session at which the question will be considered. R.C. 301.02. Notice must be given by advertisement in a county newspaper and set forth the place of the proposed county seat. R.C. 301.02; R.C. 301.04.

Court.² See, e.g., *Peck v. Weddell*, 17 Ohio St. 271, 288 (1867) (regarding legislation to move the county seat of Wood County from Perrysburg to Bowling Green, “[w]e think it is clearly competent for the legislature to provide that a county-seat shall not be removed till suitable buildings shall have been provided for the public offices at the new county-seat”).³

In *Newton v. Board of Commissioners*, 26 Ohio St. 618 (1875), the court reviewed the “Act of February 16, 1846,” that created Mahoning County and established the county seat at Canfield. The act stated, however: “before the seat of justice shall be considered permanently established at Canfield *the proprietors or citizens thereof shall give bond, with good and sufficient security, payable to the commissioners of said county, hereafter to be elected, for the sum of five thousand dollars, to be applied in erecting public buildings for said county; and that the citizens of Canfield shall also donate a suitable lot of land on which to erect public buildings*” (emphasis added). *Id.*, 26 Ohio St. at 619-20. Canfield citizens executed the required bond for five thousand dollars to the board of commissioners, and erected a courthouse on a parcel of land donated for that purpose. The commissioners accepted conveyance of the courthouse and land in full satisfaction of the bond. Although *Newton* involved legislation locating a county seat rather than relocating one,⁴ the General Assembly could similarly require a bond in any legislation it presents to the electors to move the county seat of Geauga County to Claridon

² *State ex rel. Huston v. Commissioners*, 5 Ohio St. 497 (1856) stands as an exception. Legislation referred to the voters the question of moving the county seat of Perry County back from New Lexington to Somerset (previously having been moved from Somerset to New Lexington). The legislation provided that, if the vote was *against* removal back to Somerset, Perry County would be required to forgo the remaining amount of money it was entitled to receive under the original legislation for the construction of suitable buildings in New Lexington. The county commissioners would also be required, if removal were defeated, to levy a tax “sufficient to erect a court house, jail, and offices for said county, in the town of New Lexington, which court house, jail, and offices, shall, in the aggregate, cost not less than sixteen thousand dollars.”

The court struck down the legislation, saying that the voters of a county could not be “dragooned” into voting for relocation by the imposition of penalties and forfeitures. *Id.*, 5 Ohio St. at 506. Cf. *Noble v. Baker*, 5 Ohio St. 524, 528 (1856) (distinguishing *Houston*, because, in legislation to move Noble County’s county seat from Sarahsville to Olive township, the “same provision is made for the erection of the necessary public buildings, whether the one or the other site may be selected by the majority of the electors”).

³ *Peck v. Weddell* was later approved by *Powers v. Reed*, 19 Ohio St. 189 (1869).

⁴ The issue addressed in *Newton* involved subsequent legislation that proposed to move the Mahoning County seat of justice from Canfield to Youngstown. Canfield residents argued that, the original legislation requiring Canfield to provide public buildings for county government constituted a contract between the General Assembly and the “proprietors and citizens” of Canfield, such that the State could not

township. The legislation could include pertinent details, such as the amount of the bond and by whom it must be given.

In conclusion, it is my opinion, and you are advised that:

1. Neither the Ohio Constitution nor current provisions of R.C. 301.01-.04 require that a petition submitted to the General Assembly for the relocation of a county seat include a minimum number of signatures.

2. Legislation enacted by the General Assembly pursuant to Ohio Const. art. II, § 30, which presents to the electorate of a county the question whether the county seat should be relocated, may require that bond be given if the vote is in favor of relocation, and specify the amount of the bond, and by whom it must be executed.

remove the county seat from Canfield without making appropriate compensation to those citizens who donated resources for the county buildings. The court held that the legislation created no contract, and that there was no “taking” of private property in violation of Ohio Const. art. I, § 19. The United States Supreme Court affirmed this decision in *Newton v. Commissioners*, 100 U.S. 548 (1880), holding that the legislation was not a contract, and removal of the county seat from Canfield did not violate U.S. Const. art. I, § 10, which prohibits any State from passing a law impairing the obligation of contracts.

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