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ANNEXATION—PART OF "DRY" TOWNSHIP ANNEXED TO "WET" MUNICIPALITY; THAT PART OF TOWNSHIP ANNEXED STAYS "DRY"—§709.10 RC—NO APPLICATION FOR LOCAL OPTION—1950 OAG 1882, APPROVED AND FOLLOWED.

SYLLABUS:

When a part of a "dry" township adjacent to a "wet" municipality is annexed to that municipality, the territory so annexed remains "dry", Section 709.10, Revised Code, having no application to local option status as it existed prior to annexation. (Opinion No. 1882, Opinions of the Attorney General for 1950, p. 354, approved and followed).

Columbus, Ohio, June 5, 1957

Hon. Garver Oxley, Prosecuting Attorney
Hancock County, Findlay, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"As prosecuting attorney of Hancock County, Ohio, my opinion has been requested on the following question:

When a part of a dry township, adjacent to a wet municipality, is anexed to that wet municipality, does the annexed territory remain dry or does it become wet?

"In examining the law on this question I have read A.G.O. No. 1882 which seems to answer the question. However, I am unable to reconcile this opinion with former Section 3556 of the General Code of Ohio, now Section 709.10 of the Revised Code of Ohio which reads as follows:

'Sec. 709.10. When the resolution or ordinance accepting an annexation of adjacent territory has been adopted by the legislative authority of a municipal corporation, such territory is deemed a part of the municipal corporation *and the inhabitants residing therein shall have all of the rights and privileges of the inhabitants within the original limits of such municipal corporation.*'

"I realize that your office has recently considered the same question but in view of Section 709.10, it would seem that this opinion is contrary to the statutes of the State of Ohio. If the inhabitants of the annexed territory are entitled to all the rights and privileges of those inhabitants within the original limits of the city, it must follow that the territory becomes wet, otherwise the inhabitants of the annexed territory could not enjoy all of the rights and privileges of the inhabitants within the original limits of the municipal corporation.

"In view of the apparent inconsistency, I respectfully request your reconsideration of A.G.O. No. 1882 in the light of the former and existing statutes of the State of Ohio above quoted."

As you have pointed out, the fundamental problems have been passed upon in Opinion No. 1882, Opinions of the Attorney General for 1950, p. 354, which held that when territory in a township which allows the

sale of intoxicating beverages is annexed to a municipality which has voted to prohibit such sales, the annexed territory will remain wet after the annexation and until such time as the electorate takes further action under the local option statutes. Section 4301.32, *et seq.*, Revised Code. Your inquiry has presented the converse of this problem, but the same principle of law is equally applicable. The rationale of my predecessor's opinion is that the electorate of the township territory which is to be annexed to the municipality have not had the opportunity to be counted in determining the sufficiency of the petition upon which the special election on local option was predicated, nor have they had the opportunity to vote at the ensuing election in which the wet or dry character of the municipality was determined.

The writer of that opinion found precedent for his ruling in the case of In re Davis and Foote Local Option, 4 O.N.P., N.S., 417, in which the precise question here involved was before the court. That case was decided in 1906, by Hadden, J., in which he held at page 421:

> "It is a general rule when territory is annexed to a municipal corporation, that the annexed territory at once becomes subject to the ordinances and regulations of that corporation * * *. By analogy, it is urged that the territory which is annexed to a 'wet' municipal corporation would partake of the status of the corporation to which it is annexed, even if the annexed territory had been voted 'dry' before annexation, and vice versa.
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> "But the status of 'wet' or 'dry' is not created by an ordinance or by a regulation. It is the creature of a state enactment plus the will of the voters. And the condition of a municipal corporation as to local option, after the electors thereof have taken advantage of all of the opportunities which the statutes of this state now offer them, would not always be easy to figure out. * * *"

Your question, directed to the present validity of this decision and the 1950 opinion, *supra,* is founded on Section 709.10, Revised Code. It is noted that Section 709.10 has been carried over from Section 3556, General Code; Section 1597, Revised Statutes; Bates Revised Statutes, Section 1536-39; and 66 Ohio Laws, 266, Section 688. This statute was originally enacted in 1868, and was in effect at the time of Judge Hadden's decision. Even though that section was not specifically mentioned in his opinion it will be noted that Judge Hadden did refer to the claim that annexed territory "would partake of the status of the corporation to which

it was annexed." See also Browning v. Westropp, 12 Ohio C. C., N.S., 456, 31 Ohio C.C., 394. Parenthetically, it might be noted that Section 709.10, Revised Code, gives to the inhabitants of the annexed area all the rights and privileges of the inhabitants within the annexing municipal corporation. One of those rights is to determine by local election the wet-dry issue. Thus it would follow that those inhabitants of the annexed area who have already determined this issue cannot be deprived of it by annexation.

The theory of local option is that the people of a political or governmental unit shall have the right to determine their own status and the correlative right to change it according to the provisions of law. Therefore, a status once achieved is usually considered to attach to the territory which was originally affected by the local option vote, and to remain operative unless lawfully changed, notwithstanding changes for other purposes in the designation, boundaries, or organization of the unit. In view of this it is the general rule that a designation, division, reassignment, reorganization, increase, diminution, or abolition of a political or governmental unit, the people of which by election have adopted a local option status, does not affect such status in any of the *territory* originally bound by the election. 25 A.L.R. 2d, page 864.

Another facet of this problem which was not fully explored by the writers of the 1950 opinion or the Davis and Foote decision, *supra,* because of the conclusion at which they arrived, is the irreconcilable situation which would arise if the territory annexed was contiguous to both "wet" and "dry" areas within the municipality. Under the local option statute, Section 4301.32 (B), Revised Code, any two contiguous election precincts in a municipal corporation may vote upon the wet-dry issue. We often find this resulting in a municipality which has both "wet" and "dry" areas. Should the territory to be annexed be contiguous to both "wet" and "dry" areas it would be impossible to apply any rule other than that stated in the 1950 opinion, *supra.* Furthermore, since it is universally held in statutory construction that every possible effort will be made to save the statute, and where two or more statutes can properly be construed *in pari materia* such will be done, it is my opinion that the settled rules as to local option and annexation should be applied, and that the people of the area annexed have the right to determine their own status.

In specific answer to your inquiry, I am therefore of the opinion that when a part of a "dry" township adjacent to a "wet" municipality is annexed to that municipality, the territory so annexed remains "dry", Section 709.10, Revised Code, having no application to local option status as it existed prior to annexation (Opinion No. 1882, Opinions of the Attorney General for 1950, p. 354, approved and followed).

Respectfully,
WILLIAM SAXBE
Attorney General