

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-034 was expanded by
1986 Op. Att'y Gen. No. 86-008.

OPINION NO. 85-034**Syllabus:**

A municipal corporation may not retain private counsel in order to assist residents of adjacent townships in proceeding with an application for annexation under R.C. 709.02.

To: Steve C. Shuff, Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 28, 1985

I have before me your opinion request concerning the authority of a municipal corporation to retain private counsel in order to assist residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02. You have indicated that the board of trustees of one of the adjacent townships is interested in having this question resolved. See R.C. 709.032 (any person may appear before the board of county commissioners at the hearing provided for by R.C. 709.031 to support or contest the petition for annexation); R.C. 709.07 (any interested person or any person who appeared in the hearing provided for by R.C. 709.031 may seek an injunction against further action being taken upon the board of county commissioners' decision to grant the petition for annexation). See also R.C. 505.62 (a board of township trustees of a township which includes territory that is proposed to be annexed has standing to appeal the board of county commissioners' decision on the annexation pursuant to R.C. 709.07 or R.C. Chapter 2506 if the township trustees were represented at the annexation hearing held before the county commissioners).

Municipal authority is conferred by Ohio Const. art. XVIII, §§2, 3 and 7, which provide as follows:

Section 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

Section 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Section 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Generally, in matters of local self-government, chartered municipalities may vary the provisions of state statutes by charter or by legislative enactment; however, police, sanitary, and similar regulations must be consistent with state laws, and

issues which are of statewide concern, as well as local concern, are, in case of conflict between state statute and municipal regulation, governed by state statute. See State ex rel. Evans v. Moore, 69 Ohio St. 2d 88, 431 N.E.2d 311 (1982); Northern Ohio Patrolmen's Benevolent Association v. City of Parma, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). Nonchartered municipalities enjoy the same power as chartered municipalities, except that nonchartered municipalities are bound by state statute with regard to procedural and organizational, as opposed to substantive, matters of local self-government. See Northern Ohio Patrolmen's Benevolent Association v. City of Parma. In addition to the limitations described above, the powers of local self-government are limited to the territory within the municipality. See Ohio Const. art. XVIII, §3; Village of Beachwood v. Board of Elections, 167 Ohio St. 369, 148 N.E.2d 921 (1958); City of Cincinnati v. Rost, 92 Ohio App. 8, 109 N.E.2d 290 (Hamilton County 1952).

Your question concerns an exercise of municipal authority in the context of annexation proceedings. The Ohio Revised Code sets forth two methods by which territory adjacent to a municipal corporation may be annexed thereto. R.C. 709.02 through 709.12 provide a method for annexation whereby the property owners of the land to be annexed present a petition for annexation to the county commissioners. Alternatively, R.C. 709.13 through 709.21 provide that territory contiguous to a municipality may be annexed thereto upon the application of the municipal corporation to the board of county commissioners. Your request is concerned with the former procedure for annexation.

Pursuant to R.C. 709.02, the owners of real estate adjacent to a municipal corporation may, by means of a petition addressed to the board of county commissioners, cause such territory to be annexed to the municipal corporation. The petition must be signed by a majority of the owners of real estate in the territory and must contain: "(A) A full description and accurate map or plat of the territory sought to be annexed; (B) A statement of the number of owners of real estate in the territory sought to be annexed; (C) The name of a person or persons to act as agent for the petitioners." After a public hearing, see R.C. 709.032, the board of county commissioners must grant or deny the petition within ninety days. R.C. 709.033. If the board of county commissioners grants the petition and enters an order allowing the annexation under R.C. 709.033, the question of annexation is presented to the legislative authority of the municipal corporation which may, by resolution or ordinance, accept or reject the application for annexation. R.C. 709.04. Under this statutory scheme, the question of annexation is first decided by the board of county commissioners and subsequently by the municipal legislative authority; there is no vote of the electorate. Cf. R.C. 709.17 (when property is to be annexed pursuant to petition by a municipal corporation, the question of annexation is put to a vote of the electors of the unincorporated area of the township).¹

There is no state statute which authorizes a municipal corporation to retain private counsel in order to assist residents of adjacent townships in proceeding with a petition for annexation pursuant to R.C. 709.02. The question arises, however, whether a municipality may, under its home rule powers, enact a charter or ordinance, which authorizes the municipality to employ private counsel in order to assist residents of adjacent townships in proceeding with an application for annexation pursuant to R.C. 709.02. It is my judgment that a municipality does not have the power to enact such a provision.

As mentioned above, "[t]he power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of a statute conferring a broader power, municipal legislation must be confined to that area." Village of Beachwood v. Board of Elections (syllabus,

¹ If, however, the only territory to be annexed is territory owned by the municipal corporation or by the county, annexation is not put to a vote of the electorate, but is complete upon the journal entry of the board of county commissioners authorizing such annexation. See R.C. 709.16.

paragraph 1). The powers of home rule do not enable a municipal corporation to act beyond its borders and interfere with or control the electors in another political subdivision. Matters involving annexation of territory to a municipal corporation are outside the sphere of local self-government because, by definition, annexation contemplates extraterritorial consequences and does not relate solely to the internal affairs of a municipal corporation. See City of Cincinnati v. Rost; Schultz v. City of Upper Arlington, 88 Ohio App. 281, 97 N.E.2d 218 (Franklin County 1950).

Annexation proceedings are purely statutory in nature. See Weber v. Williams, 32 Ohio App. 2d 65, 288 N.E.2d 322 (Defiance County 1972), overruled on other grounds, In re Appeal of Bass Lake Community, 5 Ohio St. 3d 141, 449 N.E.2d 771 (1983); Village of Lakeville v. Palmer, 74 Ohio L. Abs. 45, 136 N.E.2d 171 (C.P. Ashtabula County 1955). A municipal corporation may undertake annexation proceedings only if the action is pursuant to a specific grant of statutory authority. Cf. Village of Beachwood v. Board of Elections (holding that the proceeding whereby territory is detached from a municipal corporation extends beyond municipal boundaries and affects the structures of other political subdivisions and thus, is a matter exclusively within the control of the General Assembly). As the Ohio Supreme Court indicated in Village of Beachwood v. Board of Elections, 167 Ohio St. at 371-372, 148 N.E.2d at 923, the determination of municipal boundaries is a matter which requires the establishment of a uniform procedure throughout the state, and is within the exclusive control of the General Assembly.

As established by the General Assembly, annexation may be achieved by either of two distinct, exclusive methods. The statutory scheme contained within R.C. 709.13 through R.C. 709.21 is an express grant of authority which enables a municipal corporation, at its own initiative, to seek the annexation of contiguous territory. R.C. 709.14 authorizes the legislative authority of a municipal corporation to name an attorney to prosecute necessary proceedings for effecting an annexation pursuant to that method. There is, however, no statutory authority for a municipal corporation to employ an attorney to assist township residents in seeking annexation pursuant to R.C. 709.02 through R.C. 709.12. Cf. R.C. 709.02(C) (authorizing township landowners to name a person to act as their agent in seeking annexation). A municipal corporation may, under its general home rule powers, hire persons to carry out its municipal purposes. See generally Northern Ohio Patrolmen's Benevolent Association v. City of Parma; 1983 Op. Att'y Gen. No. 83-042. This power to hire does not, however, extend to the employment of an individual to carry out functions which exceed the statutory powers and home rule powers of the municipality. While a municipal corporation has a legitimate interest in its boundaries and may, pursuant to R.C. 709.13 through R.C. 709.21, seek to annex land, it has no statutory power to designate an attorney to assist nonresidents who seek annexation, and its home rule powers do not extend to the employment of an individual to carry out such extraterritorial activity.

Therefore, it is my opinion, and you are hereby advised, that a municipal corporation may not retain private counsel in order to assist residents of adjacent townships in proceeding with an application for annexation under R.C. 709.02.