

By reference to Sections 4692 and 4736, General Code, it will be observed that when territory is transferred from one district to another, by authority of said Section 4692, General Code, and when new school districts are created from parts of other districts by authority of Section 4736, General Code, the county board of education so acting, shall equitably apportion the funds and indebtedness among the districts involved in the said rearrangement of school district boundaries.

It therefore became the duty of the County Board of Education of Auglaize County School District to apportion the funds and indebtedness of Uniopolis School District as they existed on May 31, 1930, among the several school districts which now contain any portion of the territory which was formerly Uniopolis School District. If the county board of education did not and has not made this apportionment it is not too late to do so.

When this apportionment is made, the bank holding deposits of the former Uniopolis School District should pay those deposits, upon the order of the county board of education, to the districts to which the moneys are allotted by the county board of education.

When these funds are properly apportioned and the obligations of the former district are also properly apportioned there will be no difficulty about who is authorized to pay the bills.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2095.

INCORPORATION—TERRITORY SURROUNDING SUMMER RESORT,
ETC.—REQUIRED NUMBER OF PERSONS NEED NOT ALL BE ELEC-
TORS—INCORPORATED TERRITORY BECOMES REGULAR VILLAGE.

SYLLABUS:

1. *In determining the number of inhabitants contained within territory immediately surrounding a summer resort, park, lake or picnic grounds, for purposes of incorporation of such territory in accordance with the provisions of Section 3545, General Code, all persons residing in such territory should be counted, regardless of whether or not they are electors.*

2. *When territory is incorporated, by authority of Sections 3545 and 3546, General Code, the purport of such incorporation is to give to the territory so incorporated the status of a village as the same is defined by the Constitution and laws of Ohio, and for the purpose of the government of such territory as such village and of providing for such territory the required police protection, it is necessary to set up within the said territory the machinery of government as provided by the laws of Ohio for the government of a village.*

COLUMBUS, OHIO, July 16, 1930.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“There are a few questions relative to the interpretation of Sections 3545 and 3546, General Code, which are not answered by Attorney General’s opinion

number 1476, rendered in 1927, which are pertinent to a situation we have in our county, namely:

(1) Do the fifty or more persons mentioned in Section 3545, General Code, have to be electors?

(2) Do the provisions of Sections 3545 and 3546 provide for the incorporation of a duly constituted village, covering the election of municipal officers, such as mayor, council, etc., or do they merely provide a method of securing police protection?"

Sections 3545 and 3546, General Code, read as follows:

Sec. 3545. "Any territory requiring police protection and containing a population of not less than fifty persons and immediately surrounding a summer resort, park, lake or picnic ground, kept regularly for such outing and pleasure, may incorporate by setting up notices of an election in three of the most public places in the territory proposed to be included in the corporation signed by five citizens and electors of the territory. Such notices shall be posted at least ten days before the election, stating time and place where the election shall be held, and shall contain an accurate description of the territory proposed to be taken into the corporation."

Sec. 3546. "The election shall be as far as practicable be conducted in the manner prescribed for the election of township officers. The electors present shall choose three judges and two clerks from the electors present to act as judges and clerks of such election, and the ballot shall contain the words: 'For incorporation' and 'Against incorporation.' If the majority of the ballots cast at such election contains the words 'For incorporation,' it shall be deemed that the citizens of such designated territory have assented to such incorporation. If the majority of the ballots cast at such election contain the words 'Against incorporation,' it shall be deemed that the people of such designated territory have not assented to the incorporation thereof. All laws governing the creation and regulation of incorporated villages shall have full force and effect insofar as they are not inconsistent and do not conflict with the provisions of this chapter."

From the foregoing statutes it clearly appears that unincorporated territory immediately surrounding a summer resort, park, lake or picnic ground kept regularly for such outing and pleasure, may incorporate when it is made to appear that such territory requires police protection and contains a population of not less than fifty persons.

To incorporate, means to become a corporation. The term "incorporate" as defined by Webster, means:

"Made one body or united in one body. Intimately united or blended; embodied. Formed into a corporation; incorporated, as an incorporated municipality."

Bouvier's Law Dictionary defines "incorporate" as the act of creating a corporation; a legal or political body formed by the union of individuals, under certain conditions, rules and laws, and having certain privileges and partial or perpetual succession.

The term "incorporate" as used in the foregoing statute could mean nothing else than to form a public corporation as distinguished from a private corporation.

The only classes of public corporations recognized by our Constitution and laws

are counties, townships, school districts and municipal corporations, which latter class is subdivided into cities and villages. It is provided in Article XVIII, Section 1 of the Constitution of Ohio, that all municipal corporations having a population of five thousand or over shall be cities, and all others shall be villages. No other classes of public corporations are recognized either by the Constitution or statutes of Ohio.

From the fact that no other classes of public corporations than those stated above may exist in Ohio, and the further fact that the Legislature in providing for the incorporation of territory surrounding a summer resort, park, lake or picnic ground provided that the laws governing the creation and regulation of incorporated villages should govern in the incorporation of this territory, in so far as those laws were not inconsistent with the special provisions relating to the incorporation of such territory, it clearly follows that the Legislature meant to give to this territory when incorporated the status of a village. It also seems clear that when the Legislature gave to this territory the status of a village, when incorporated in the manner provided for by the statutes, and provided further that all laws governing the creation and *regulation* of incorporated villages should have full force and effect with respect to this territory the provisions of the statutes relating to the organization of a village government, by the election of a council, mayor and other officers should apply to the corporation which the Legislature, by authority of said Sections, authorized to be created.

The recital in the statute that such corporation may only be created when the territory which it is proposed to create into a corporation requires police protection, is merely descriptive of the purpose of the incorporation which, it is provided, is a condition precedent to the right to incorporate. The mere incorporation of such territory would provide no police protection without the providing of some machinery for such police protection, and as the statutes, themselves, Sections 3545 and 3546, General Code, do not specifically provide any such machinery, but on the other hand, by reference authorize the set-up of a village government, that method of providing for police protection for the territory is the method which should be followed.

The right to become incorporated in the manner provided for by the statutes here under consideration is not based on the number of citizens or electors residing in the territory, but on the number of persons residing therein. The expression "a population of not less than fifty persons" as used in Section 3545, *supra*, will bear no other construction than the counting of heads, or the number of persons residing in the territory.

The term "population" is defined by Webster, as: "The whole number of people or inhabitants in a country, section or area." It therefore seems conclusive that the number of persons residing in the territory, regardless of age or sex, is the determining factor so far as inhabitants are concerned, in determining whether or not the territory may be incorporated by authority of Sections 3545 and 3546, General Code, rather than the number of electors residing in the territory.

I am therefore of the opinion, in specific answer to your questions:

1. In determining the number of inhabitants contained within territory immediately surrounding a summer resort, park, lake or picnic grounds, for purposes of incorporation of such territory in accordance with the provisions of Section 3545, General Code, all persons residing in such territory should be counted, regardless of whether or not they are electors.

2. When territory is incorporated, by authority of Sections 3545 and 3546, General Code, the purport of such incorporation is to give to the territory so incorporated the status of a village, as the same is defined by the Constitution and laws of Ohio, and for the purpose of the government of such territory as such village and of providing for such territory the required police protection it is necessary to set up

within the said territory the machinery of government as provided by the laws of Ohio for the government of a village.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2096.

TAX COMMISSION—MAY REQUIRE CORPORATIONS TO FILE BALANCE SHEETS WITH PERSONAL TAX RETURNS.

SYLLABUS:

The Tax Commission of Ohio has authority to prescribe and require the use of supplementary tax forms Nos. 10a and 10b, the same being general balance sheets to be made out by corporations in connection with tax returns made by them under the provisions of Sections 5404 and 5404-1, General Code.

COLUMBUS, OHIO, July 16, 1930.

HON. JOHN E. BAUKNECHT, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you which reads as follows:

“I desire to submit the following proposition to you for an opinion.

Section 5366 provides for the voluntary listing of personal property to be made on blanks to be prepared by the Tax Commission which the county auditor distributes, and Section 5404 provides for the manner in which officers of a corporation shall list all property of the corporation.

In addition to the form of return for incorporated companies, the Tax Commission has prepared a form of general balance sheet to be filed by the corporation. Many of the corporations refused to file the general balance sheet, basing their claim upon the argument that individuals and partnerships are not required to furnish this balance sheet.

I am enclosing a copy of the return and balance sheet which are the forms prescribed by the Tax Commission of Ohio, and desire to have your opinion as to whether or not resident and non-resident corporations can be compelled to file this balance sheet with and as a part of their personal tax return.”

The forms for the listing of personal property for taxation provided for by Section 5366, General Code, referred to in your communication, are those for the listing of the personal property of individuals, firms and unincorporated companies, and no other notice need be taken of the provisions of this section of the General Code in the consideration of the question presented in your communication.

The listing of the personal property of corporations other than banks, public utilities and other corporations the taxation of the property of which is otherwise specifically provided for, is required to be made in the manner provided by Sections 5404 and 5404-1, General Code. Section 5404, General Code, provides that the president, secretary and principal accounting officer of every incorporated company, except those of the kind above noted, for whatever purpose they may have been created, and whether incorporated under the law of this state or not, shall list for taxation, verified