

OPINION NO. 80-034**Syllabus:**

A local board of education which owns real estate holds that real estate in a trust capacity for its school district. Accordingly, the board of education is an "owner" as that term is defined in R.C. 709.02, and may petition for annexation of the real estate to an adjacent municipal corporation pursuant to R.C. 709.02. (1979 Op. Att'y Gen. No. 79-043 approved and followed; 1973 Op. Att'y Gen. No. 73-048 clarified.)

To: David E. Lightliser, Licking County Pros. Atty., Newark, Ohio
By: William J. Brown, Attorney General, June 10, 1980

I have before me your request for my opinion on whether the board of education of the Granville Exempted School District is an "owner" of property within the meaning of R.C. 709.02.

Your letter indicates that real estate owned by the Granville Exempted School District is currently located outside the boundaries of the Village of Granville. You state that the board of education of the Granville Exempted School District would like to petition for annexation of this property to the village in order to gain the benefit of certain services, such as police protection.

The rules governing the annexation of real estate to a municipal corporation are contained in R.C. Chapter 709. R.C. 709.02 provides for the annexation of

property adjacent to a municipal corporation upon the petition of the owners of such property. "Owner" is defined in R.C. 709.02 as follows:

As used in sections 709.02 to 709.21, inclusive, 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.)

In 1979 Op. Att'y Gen. No. 79-043, I concluded that a board of education may file a petition for annexation of property owned by the school district it represents. As I stated in Op. No. 79-043, "a board of education owns the property of its school district in a trust capacity for the school district." Weir v. Day, 35 Ohio St. 143 (1878). As a trustee of property, the board of education is considered an owner of property for purposes of R.C. 709.02 and may petition for annexation. I reach the same conclusion in response to your question.

The analysis that a board of education comes within R.C. 709.02 because it holds property in trust for its school district supports the conclusion reached in 1973 Op. Att'y Gen. No. 73-048, wherein I stated that county commissioners who hold title to land are owners of property within the meaning of R.C. 709.02. In First German Reformed Church v. Summit County, 3 Ohio C.C. (n.s.) 303, 311 (Summit County 1902), the court held that county commissioners hold land in trust for the public, stating: "The officers representing the public organization manage it and control it merely as trustees for the public, for whose use it is dedicated." As was previously discussed, a trustee is an owner of property for purposes of annexation under R.C. 709.02. The county commissioners may, therefore, petition for annexation of territory under R.C. 702.02 as trustees of public land.

R.C. 709.02 includes only individuals, firms, trustees, and private corporations within its definition of "owner." Both Op. No. 73-048 and Op. No. 79-043 state that all owners of land may petition for annexation, and include public bodies and public corporations within the concept of "owner." R.C. 709.02 does not expressly define "owner" to include public bodies or public corporations. These entities gain authority to petition for annexation solely from the fact that they hold real estate in trust.

In conclusion, it is my opinion, and you are advised, that a local board of education which owns real estate holds that real estate in a trust capacity for its school district. Accordingly the board of education is an "owner" as that term is defined in R.C. 709.02, and may petition for annexation of the real estate to an adjacent municipal corporation pursuant to R.C. 709.02. (1979 Op. Att'y Gen. No. 79-043 approved and followed; 1973 Op. Att'y Gen. No. 73-048 clarified.)