

1266.

ANNEXATION—ADJACENT OR CONTIGUOUS TERRITORY TO MUNICIPAL CORPORATION—WHERE PROCEEDINGS INSTITUTED BY MUNICIPALITY, APPROVED BY COUNTY COMMISSIONERS—UNNECESSARY FOR COUNCIL TO PASS ACCEPTING ORDINANCE AS PROVIDED IN SECTION 3550 G. C.—STATUS WHERE PROCEEDINGS HAD—DUTY COUNTY AUDITOR TO ALLOCATE FUNDS—SECTION 3557-1 G. C.—DUTY TO ACT WITHOUT PROCEEDINGS IN PROBATE COURT—COUNCIL TO MAKE ANNEXATION VALID SHALL PASS RESOLUTION OR ORDINANCE ACCEPTING APPORTIONMENT AND DIVISION.

*SYLLABUS:*

1. *Where proceedings for the annexation of adjacent or contiguous territory to a municipal corporation are instituted by the municipal corporation and the board of county commissioners approve such annexation, it is unnecessary for council to pass an ordinance accepting such annexation as provided in Section 3550, General Code, in order to make same effective.*

2. *Where proceedings for the annexation of territory adjacent or contiguous to a municipal corporation are had, it is the duty of the county auditor to apportion the indebtedness of the township of which such annexed territory is a part between the township and municipal corporation and also to divide the funds of such township between it and the municipal corporation as provided in Section 3557-1, General Code. It is the duty of the auditor to make such apportionment and division without any proceedings in the probate court.*

3. *It is necessary for the council of the municipal corporation to pass a resolution or ordinance accepting such apportionment and division in order to make the annexation valid.*

COLUMBUS, OHIO, October 4, 1939.

HON. KARL T. STOFFER, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: In your recent request for my opinion you state that pursuant to Section 3559, General Code, the Council of the Village of Columbiana passed an ordinance authorizing the annexation of certain territory contiguous to said village. You further state that a petition was duly filed with the County Commissioners and that due notice was given and proper maps prepared and filed and that the Commissioners upon hearing of said matter passed a resolution authorizing the annexation. You ask my opinion as to whether or not it is now necessary for the Council to

pass an ordinance accepting such annexation and also whether the Auditor of Columbiana County may apportion the funds belonging to the township in which the annexed territory is situated and transfer the property so annexed from the township to the village without an order of the Probate Court pursuant to Section 3544, General Code.

The statutes of this State provide two methods of annexation to a municipal corporation of territory contiguous thereto. Where the inhabitants of territory adjacent to a municipal corporation desire to have same annexed therto, it is provided that a petition signed by a majority of the adult freeholders residing in such territory may be presented to the county commissioners asking to have such territory annexed to a municipality. If the commissioners grant the prayer of the petition, it is then presented to the auditor or clerk of the municipality and the council shall accept or reject the application for annexation.

The other method of annexation applies where the inhabitants of a municipal corporation desire to annex adjacent territory and is the method with which we are now concerned. Sections 3559 and 3560, General Code, provide as follows :

Sec. 3559, G. C.

“The council of the corporation, by a vote of not less than a majority of the members elected, shall pass an ordinance authorizing such annexation to be made, and directing the solicitor of the corporation, or some one to be named in the ordinance, to prosecute the proceedings necessary to effect it.”

Sec. 3560, G. C.

“The application of the corporation to the county commissioners for such purpose shall be by petition, setting forth that, under an ordinance of the council the territory therein described was authorized to be annexed to the corporation. The petition shall contain an accurate description of the territory, and be accompanied by an accurate map or plat thereof.”

It appears from your letter that the steps contemplated by these statutes were duly taken and that the Commissioners passed a resolution granting the prayer of the petition. You ask whether it is now necessary for the Council of the Village to pass an ordinance accepting such annexation in order properly to complete the proceeding. Section 3550, General Code, provides for such action on the part of council, but I am of the opinion that this section is applicable only when the annexation proceedings are conducted pursuant to the first method above set forth. Where the council itself initiates a proceeding for annexation it would seem useless and absurd to require it to pass an ordinance accepting the

very annexation which it petitioned, and Section 3550, General Code, therefore does not apply to the proceeding in question.

However, I direct your attention to Section 3557-1, General Code, which reads as follows:

“When proceedings have been commenced to annex a portion of a township, or portions of more than one township, to a municipal corporation upon which the tax levies made by the trustees of such township or townships for the payment of the township debt do not apply, the auditor of the county in which said territory is located shall ascertain and apportion the amount of existing net indebtedness of the township which shall be assumed and paid by the municipal corporation. The apportionment shall be made in the proportion of the total duplicate for the annexed territory transferred to the municipal corporation to the total tax duplicate remaining in and for the unannexed portion of the township or townships. He shall ascertain, adjust and divide between the municipal corporation and the unannexed portion of the township or townships any unencumbered balance on hand to the credit of any fund of such township, in the same proportion as is herein provided for division and apportionment of indebtedness. Provided, however, that no division shall be made of a balance in any fund of a township that is required by law for the retirement of its indebtedness. In case any net indebtedness is assumed by the municipal corporation as herein provided, the council or other legislative authority of such municipal corporation shall provide for the payment of the same by the levy of taxes therefor, or by the appropriation from an appropriate fund; and the proceeds of such tax levies or appropriation shall be transferred to the proper authorities of the township for the final redemption of its indebtedness. The apportionment provided in this section shall not be in effect until it is accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation. The passage of such resolution or ordinance shall be necessary to the validity of the annexation.”

You will note that it is necessary for the Council to pass a resolution or ordinance accepting the apportionment of the funds and indebtedness mentioned in the section before the annexation can become valid. Section 3544, General Code, which is mentioned in your letter, applies when villages are originally incorporated or created but does not govern the division of funds in the present case. Section 3557-1, *supra*, is the statute which controls as to the division of funds and apportionment of indebtedness where territory is annexed to a municipal corporation.

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

1. Where proceedings for the annexation of adjacent or contiguous territory to a municipal corporation are instituted by the municipal corporation and the board of county commissioners approve such annexation, it is unnecessary for council to pass an ordinance accepting such annexation as provided in Section 3550, General Code, in order to make same effective.

2. Where proceedings for the annexation of territory adjacent or contiguous to a municipal corporation are had, it is the duty of the county auditor to apportion the indebtedness of the township of which such annexed territory is a part between the township and municipal corporation and also to divide the funds of such township between it and the municipal corporation as provided in Section 3557-1, General Code. It is the duty of the auditor to make such apportionment and division without any proceedings in the probate court.

3. It is necessary for the council of the municipal corporation to pass a resolution or ordinance accepting such apportionment and division in order to make the annexation valid.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

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1267.

BOARD OF EDUCATION—MAY NOT PURCHASE SITE FOR SCHOOL BUILDINGS OR OTHER SCHOOL PURPOSES UNDER INSTALLMENT AGREEMENT—NO AUTHORITY TO MORTGAGE PROPERTY OR PURCHASE MORTGAGED PROPERTY, ASSUME THE MORTGAGE AND AGREE TO MAKE FUTURE PAYMENTS—MAY NOT LEASE PROPERTY, WHICH IS IN FACT A PURCHASE, UNDER GUISE OF A LEASE.

**SYLLABUS:**

1. *Whatever is prohibited by law to be done directly can not legally be effected by an attempt to accomplish the desired purpose indirectly.*

2. *A board of education may not lawfully purchase a site for school buildings or other school purposes upon an agreement to pay for the property in installments payable over a period of years.*

3. *No authority exists for a board of education to encumber property which it owns by a mortgage or to purchase property encumbered by a mortgage by the terms of which agreement of purchase the board of education assumes the mortgage and agrees to pay the same in the future as payments thereon become due.*

4. *A board of education may not lawfully lease property for any purpose in such manner and upon such terms that the transaction when*