

1. TOWNSHIP LINES—VILLAGE BY RESOLUTION REQUESTED COUNTY COMMISSIONERS TO REDUCE TOWNSHIP LINES OF TOWNSHIP—LINES TO BE CO-EXTENSIVE AND COTERMINOUS WITH VILLAGE LINES—COMMISSIONERS TO GRANT REQUEST MUST EITHER ANNEX REMAINING TERRITORY OF ORIGINAL TOWNSHIP TO CONTIGUOUS TOWNSHIP OR TOWNSHIPS OR CREATE REMAINING TERRITORY INTO NEW TOWNSHIP—MAY OR MAY NOT INCLUDE TERRITORY ANNEXED FROM CONTIGUOUS TOWNSHIP OR TOWNSHIPS.
2. WHERE BOUNDARIES OF TOWNSHIP REDUCED, VILLAGE BECOMES SUCCESSOR TO ORIGINAL TOWNSHIP—PROPERTY, MONEYS, CREDITS, BOOKS, RECORDS AND DOCUMENTS, WITH DESIGNATED EXCEPTIONS, PROPERTY OF VILLAGE.
3. WHERE TOWNSHIP BOUNDARIES REDUCED, DUTY OF COUNTY COMMISSIONERS TO APPORTION FUND IN TREASURY OF ORIGINAL TOWNSHIP BETWEEN VILLAGE AND TOWNSHIP OR TOWNSHIPS—MERGER—APPORTIONMENT OF MONEY THEREAFTER COMING INTO VILLAGE TREASURY—TAX LEVIES—EMBEZZLEMENT FUNDS.

SYLLABUS:

1. Where a village by resolution requests the county commissioners to reduce the township lines of the township in which it is situated so that they will be coextensive and coterminous with those of the village, such commissioners may not grant such request without at the same time either annexing the remaining territory of the original township to a contiguous township or townships or creating such remaining territory into a new township which may or may not include territory annexed thereto from a contiguous township or townships.

2. In granting a request of a village to reduce the boundaries of a township so that they will be coextensive and coterminous with those of the village, the village becomes the successor to the original township and all property, moneys, credits, books, records and documents, except such proportion of the moneys and credits as are apportioned to the township or townships into which the remaining territory of the township is merged and such property of the original township as may be situated in the remaining territory.

3. At the time of the granting of a request of a village to reduce the boundaries of a township so that they will be coextensive and coterminous with those of the village it is the duty of the county commissioners to apportion the funds then in the treasury of the original township between the village and the township or townships into which the remaining territory of the original township is merged and to apportion a proper portion of money thereafter coming into the treasury of the village as a result of tax levies for the original township made prior to that time, including delinquent taxes subsequently collected, and funds thereafter recovered by reason of previous embezzlements of original township funds, if any, to the extent any of said funds then in the treasury or thereafter collected were collected from such remaining territory.

Columbus, Ohio, June 30, 1949

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

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

"Sometime ago the Council of the Village of Chagrin Falls in Cuyahoga County, Ohio, adopted a resolution pursuant to General Code Section 3249 reciting therein that the Township of Chagrin Falls includes all the territory within the corporate limits of the Village of Chagrin Falls and also territory outside the village and not lying within the corporate limits of any other municipality. Such resolution requested the County Commissioners of Cuyahoga County to change the lines of Chagrin Falls Township so as to make them wholly identical with the existing corporate limits of Chagrin Falls.

"In these circumstances, several questions arise with respect to which your opinion is respectfully requested as follows:

"*First*: If the petition is granted and thereby the boundaries of the township are reduced so as to coincide with the present corporate limits of the village, what is the status of that portion of the present township which remains outside the corporate limits of the village and, of course, outside the limits of the township as thus reduced?

"*Second*: Does the granting of such petition operate to transfer to the village the property and funds of the township, including motor vehicles and gas tax funds?

"*Third*: May such petition be granted by the Board of County Commissioners without at the same time doing one of the following things:

“(a) Create a new township either of the territory outside the corporate limits of the village or of the territory within such corporate limits?”

“(b) Attach the township territory remaining outside the corporate limits to a contiguous township, if there be any such?”

By the provisions of Section 3245 of the General Code county commissioners are granted general powers, upon petition signed by a majority of the householders resident within a township or townships, to alter or change the boundaries of any civil township or townships and to partition any existing township or townships among other townships within their county by attaching a part of one township to another, or by dividing one township and attaching the parts to other townships, or by laying off and designating a new township from the territory of one or more townships of the same county or from territory not before included in a civil township. This power is limited by the provisions of Section 3246 of the General Code which reads as follows :

“No township shall be laid off having less than twenty-two square miles, or have its boundaries so changed as to reduce its territory below that quantity, unless it includes a city or village corporation, except as hereinafter provided. In case of division or partition of a township, the funds in the treasury thereof shall be apportioned to the township or townships to which portions thereof may be attached, or to the new township or townships established, to the extent they are collected from such territory.”

Section 3249 of the General Code, to which you refer in your letter of inquiry, provides for the change of township boundaries in special cases and reads as follows :

“If the limits of a municipal corporation do not comprise the whole of the established township or townships in which it is situated, or if by change of the limits of such corporation, or otherwise, they include territory lying in more than one township, and the council of such corporation shall in either case, by a vote of the majority of the members thereof, petition the commissioners of the proper county for a change of township lines so as to make them identical in whole or in part with the limits of the corporation, or to erect a new township out of the portion of such township or townships included within the limits of such municipal corporation, the commissioners on presentation of such petition, with the proceedings of the council duly authenticated, at a regular or adjourned session, may change the boundaries, of

the township or townships, or erect such new township accordingly.”

Provision is then made by Section 3250 of the General Code for the disposition of that part of the original township remaining after making the changes provided for in the foregoing section. This section reads as follows:

“In making such change, if any township not having within its limits a city or village, is reduced in territory to less than twenty-two square miles, it may be by the commissioners thereupon annexed to any contiguous township or townships, or the commissioners may annex thereto territory from any contiguous township or townships, and erect a new township, as in their opinion will best promote justice and public convenience. If a majority of the householders of such reduced township outside the limits of such municipal corporation petition therefor, the commissioners may erect such reduced township into a new township.”

The language used in the foregoing Section 3250, if read without consideration of Section 3249, would appear not to apply to situations where the boundaries of an existing township are reduced to coincide with the limits of a corporation existing within such township. I am of the opinion, however, since the section begins with the words “In making such change” and thereby refers directly to the previous section, that the legislature had in mind all the methods of altering township boundaries authorized by said section. Being of this opinion I conclude that Section 3250 authorizes county commissioners to annex the remaining territory of an original township, after reduction of the original township lines to coincide with a municipal corporation, to any contiguous township or townships or to annex to such remaining territory parts of any contiguous township or townships and create a new township therefrom, provided the remaining territory of the original township does not have within its limits a city or village, and provided any territory annexed thereto from contiguous townships will not reduce such contiguous townships to less than twenty-two square miles. If the remaining territory of an original township after the reduction of township boundaries is greater than twenty-two square miles the commissioners may erect a new township therefrom. If such remaining territory contains less than twenty-two square miles but has within its limits a municipal corporation it is my opinion that it is the duty of the commissioners to create a new township which shall include such remain-

ing territory and may include additional territory from contiguous townships if deemed to best promote justice and public convenience.

Since your inquiry does not contain specific information as to the size of the territory of the original township remaining outside of the new township as reduced to the corporate limits of the village or whether or not a city or village is contained in said remaining territory, I shall assume that the remaining territory contains less than twenty-two square miles and has no city or village within its confines. In direct answer to your first question you are advised, therefore, that the county commissioners may annex the remaining territory outside of the new township of Chagrin Falls to that of any contiguous township or townships within the county, or may annex territory from any contiguous township or townships to such remaining territory and create a new township therefrom.

Since your third question is closely allied to and dependent upon the answer to your first, I prefer to dispose of it before discussing your second question. Having discussed the alternatives available to the county commissioners for disposition of territory remaining after the reduction of original township lines, your third question resolves itself into the problem of whether or not the county commissioners may grant the petition and allow the reduction of township lines without making any disposition of the remaining territory of the original township.

In the wording of Section 3250, the legislature has used the word "may" in granting the authority to annex remaining territory to contiguous townships and in granting the authority to create a new township, which in the ordinarily accepted use of the word would lead one to the conclusion that the action therein authorized was permissive rather than mandatory. I am of the opinion, however, that such was not the intended meaning or intent of the legislature in this case. I take the view that the words were used with a permissive meaning only in so far as they pertained to the alternative methods of disposition of the remaining territory and that the statute as a whole is mandatory in imposing a duty upon the county commissioners to effect one or the other of the alternative methods of disposition at the time of granting permission for the creation of a new township or for reduction of existing township lines.

In reaching this interpretation I am assisted by considerations of public policy and by the innumerable absurd problems which would naturally arise as a result of an opposite conclusion. A few of the more serious ones which come to immediate notice are:

(a) What remedy would residents of such area have and to what judicial authority would they have access on rights and claims of insufficient size or import to be within the jurisdiction of the courts of common pleas?

(b) Who would assume the responsibility for the maintenance and repair of roads and highways within the area theretofore under the jurisdiction of township officials?

(c) Who would assume the responsibility for fire protection within the area?

It may thus be seen that if islands of territory were permitted to exist without an organized local government the people residing therein would be deprived of certain rights, privileges and benefits that are inherent in citizenship.

In answer to your third question you are advised that the petition for reduction of the township lines may not be granted by the county commissioners without, at the same time, making provision for the disposition of the remaining territory by one of the alternative methods authorized by statute.

As to your second question, it may be stated that no division of funds or property of a township can be made in cases of a division, partition or other alteration of existing townships in the absence of statutory authority therefor. In *Cooley v. State, ex rel. Village of Bay*, 74 O.S. 252, 78 N.E. 369, wherein the Village of Bay, by ordinance of its council, petitioned the county commissioners to establish a new township of Bay, with boundaries coterminous with those of the village, which petition was thereafter granted, it was held that where a township is divided by the establishment of a new township, such new township, under Section 1377 Revised Statutes (now Section 3246, General Code,) is entitled not only to its portion of the money in the treasury of the original township, at the time the new township is established, but also to money thereafter in the treasury, to the extent the same was collected from the territory established into the new township. This case was considered and followed in *In re Lemon Twp. Trustees*, 60 O.App. 1, 19 N.E. (2d) 277, wherein the question of the authority of county commissioners to apportion the funds between a new township created coextensive and coterminous with the boundaries of a city and that of the township in which the city had been located was considered and it was held that a division of the taxes levied

and on hand must be apportioned by the county commissioners as authorized by Sections 3246 and 3250-2 of the General Code.

The question was further discussed in the case of *In re Village of Rossford*, 67 O.App. 148, 21 O.O. 152, 36 N.E. (2d) 36, wherein the court say in the syllabus:

“Where a village is incorporated and a new township created by the county commissioners, coextensive and coterminous with the boundaries of the village, the division of township funds, between the newly created township and the remaining portion of the old, is to be made under Sections 3244 to 3250, General Code, by the Probate Court of the county in which the township is situated, and not under Sections 3250-1 to 3250-5, General Code, by the county commissioners.”

In each of the above cited cases the question arose where a new township was created out of a portion of the old township. In the situation you present the existing township lines are being altered so as to reduce the size of the township leaving territory to be annexed to contiguous townships or to be created into a new township. I fail to see any distinction between these two situations as to the ultimate result and effect on the original township. In either case the result reached is a division or partition of the original township.

In view of the foregoing, I am of the opinion that there is statutory authority for apportioning the funds of the original township between the township as reduced and the township or townships to which the remaining territory may be annexed or to a newly created township if such remaining territory be included therein.

Two questions then arise. First, who is to make such apportionment, and second, what property and funds shall be included therein. As to who shall make the apportionment, it is to be noted that the *Lemon Township* case held it to be the duty of the county commissioners on the basis of Sections 3246 and 3250-2. In the *Rossford* case it was held to be the duty of the probate court of the county under Section 3544 and the *Lemon Township* case was distinguished in that the new township there created was coextensive with a city and not a village. It is to be noted further that the village in the *Rossford* case was newly incorporated as a municipality and had not previously applied for a division of funds between it and the township in which it was located. I am of the opinion that the section relied on in that case applies only to newly created villages and not to villages

which have previously been functioning and applies irrespective of whether or not the village territory is created into a new township. In the situation you present the village is not newly created and it is, therefore, my opinion that Section 3544 would have no application. The apportionment, therefore, would be governed exclusively by Section 3246, and would be made thereunder by the county commissioners at the time of the granting of the application of the village.

As to what funds shall be apportioned, it seems to have been a well settled principle of common law that when a transfer of territory took place between two public corporations or a new public corporation comprising a portion of the territory of another, was created by authority of statute and the statute was silent on the subject of what should be done with the funds then existing, the old corporation was liable for the debts and retained all the funds. In the light of this rule, Section 3246 must be regarded as being in derogation of the common law, and is therefore strictly construed. Under the statute only the funds in the treasury of the original township are apportioned to the new township or townships that are established to the extent they are collected from such territory. A different rule prevails as to public property. This is set forth in the syllabus of the case of *Village of Dover v. Village of Bay*, 19 O. App. 60, 2 O. L. Abs. 636, as follows:

“Where a political unit, such as a township, is completely divided, the new unit in which public property is located will as a rule take the legal title to such property.”

In 1932 Opinions of the Attorney General, Vol. III, at page 1430, the then Attorney General had under discussion questions of the extent to which funds of an original township were to be apportioned between a newly created township therein and the original township. His opinion as disclosed by the syllabus thereof and in which I concur, was as follows:

“1. In case of the division of a township and the establishment of a new township from a portion of the territory of the original township, the new township, under Section 3246, General Code, is entitled not only to its proper portion of the money in the treasury of the original township, at the time the new township is established, but also to its proper portion of money thereafter coming into the said treasury as a result of tax levies for said township made prior to the time, to the extent the same was collected from the territory established into the new township.

"2. When such a division is made, and there exist taxes due said original township which are delinquent, the new township is entitled to its proportionate share of the proceeds of said delinquent taxes as they are collected.

"3. Where it appears, upon the establishment of a new township from a portion of the territory of an existing township, by force of Section 3249, General Code, that previous to that time township funds had been embezzled and the same were recovered after the creation of the new township, the said new township is entitled to its portion of embezzled funds which are recovered, to the extent they had originally been collected from the territory established into the new township.

"4. No authority exists for the apportionment of funds to a new township established from a portion of an existing township by authority of Section 3249, General Code, or, to a township or townships to which a portion of a township may be attached by authority of Section 3245, General Code, except of funds only that have been collected from the territory established into the new township or from the territory attached to another township.

"5. Any funds in the treasury of a township which have not been collected from the territory detached from said township, upon a division or partition thereof, remain the property of the original township after said division or partition."

Again it is conceded that the fact situation presented for the foregoing opinion was not identical with that presented here. That, too, was a problem with reference to a newly created township within the original township. Here, again, I am compelled to the opinion that these principals of law would apply equally to the situation which you present for the result of the action here presented is a division and partition of the original township which is within the contemplation of Section 3246 of the General Code. The difficult question involved is which is to be considered the successor to the original township, the part containing the municipality or the remaining portion after the reduction of township lines to the corporate limits. I am inclined to the view that the portion coinciding with the boundaries of the municipality in such case must be considered to be the successor to the original township or by the operation of Section 3250, as heretofore interpreted, the portion remaining must either be annexed to a contiguous township or townships or erected into a new township, which, in either event, would result in such territory's loss of all identity with the original township.

Having concluded that the territory contained within the municipality is to be considered the successor to the original township it follows in view of Section 3512, General Code, which reads:

“When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such a city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation.”

that all property, moneys, credits, books, records and documents of such successor township become the property of such village.

That part of your second question pertaining to the disposition of the motor vehicles of the township appears not to have been heretofore directly considered in any previous consideration of the question of apportionment of funds. However, in view of the limited application of the statute as indicated in the 1932 Opinions of the Attorney General it appears not to be subject to such division. It is observed, too, that such vehicles would be public property and as such would, under the rule laid down in the Village of Dover case (*supra*), belong to the political unit in which it was located or had its situs.

In direct answer to your second question you are advised that in granting the petition of the village the funds at that time in the treasury of the original township would be apportioned between the village and the township or townships to which the remaining territory was annexed or the newly created township into which said territory was incorporated, and a proper portion of money thereafter coming into the treasury of the village as a result of tax levies for said township made prior to that time, including delinquent taxes subsequently collected, and funds thereafter recovered by reason of previous embezzlements of original township funds, if any, to the extent the same was collected from the remaining territory; that all credits, books, records and documents of the original township would be transferred to the village and that all property of the original

township, including motor vehicles, located in or having a situs in the village would also be transferred to the village.

Respectfully,

HERBERT S. DUFFY,
Attorney General.