

**OPINION NO. 71-004****Syllabus:**

In determining the number of landowners in the area to be annexed, a person who owns more than one lot or parcel of land is to be counted only once in the annexation petition and where one lot or parcel of land is held by two or more persons, each having an undivided fractional interest in the whole, all such cotenants should be counted. Further, the burden of showing that the petition is complete rests upon the petitioners or their agent and it is not incumbent upon the commissioners to take affirmative steps on their own to determine its sufficiency.

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**To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio**  
**By: Paul W. Brown, Attorney General, January 6, 1971**

I have before me your request for an opinion which reads as follows:

"1. In determining whether or not a majority of the 'owners' in a specified area proposed to be annexed have signed the annexation petition, if the same individual owns more than one lot or parcel of land, is he counted with respect to each parcel or only as one owner?

"2. Conversely, if a single parcel of land or lot is owned by several individuals (each having an undivided fractional interest) are each of these individuals to be counted as an 'owner' in the meaning of Section 709.02.

"3. Is the burden upon the petitioners for annexation to present to the Board of County Commissioners evidence by which they

will be enabled to determine if a petition meets all of the necessary qualifications as set forth in R. C. 709.02 and also that a petition contains a sufficient number of signatures. The Board of County Commissioners is required to make the findings as set forth in R. C. 709.033 before they may properly enter an order allowing the annexation and our question is whether or not it is incumbent upon the petitioners to provide evidence that all legal requirements are met or whether it is incumbent upon the Commissioners to take affirmative steps to determine this for themselves."

Section 709.02, Revised Code, which pertains to the annexation of adjacent property to a municipality, reads as follows:

"The owners of real estate adjacent to a municipal corporation may, at their option, cause such territory to be annexed thereto, in the manner provided by sections 709.03 to 709.11, inclusive, of the Revised Code. Application for such annexation shall be by petition, addressed to the board of county commissioners of the county in which the territory is located, signed by a majority of the owners of real estate in such territory. Such petition shall 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.

"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 effect the number of owners required to sign an annexation petition is included within such meanings."

The above quoted statute was amended by the General Assembly effective November 21, 1969. The amended statute provides a new description of those persons whose signatures are required on the annexation petition. The effect of the statute is to allow all owners of real estate, both corporate owners and individual owners, to sign the annexation petition and to be counted in determining whether or not a majority has signed. It cannot be inferred from this amended statute

that the General Assembly intended each lot or parcel of land be counted in determining the total number of owners in the area. Therefore, in determining the number of owners of real estate in the area to be annexed, an individual or corporate owner is to be counted only once regardless of the number of lots he or it owns.

In regard to your second question, Section 709.02, supra, defines "owner" for the purposes of this statute. "Owner" is defined as any adult freeholder seized of a freehold estate in land. The Ohio courts have adopted the common law definition of a freehold estate, which is an estate for life or in fee simple. Morrow v. Wittler, 25 Ohio N.P. 85, 88. The concept of cotenancy permits two or more persons to hold a freehold estate in the same parcel of land. As tenants in common, each is entitled to certain property in such manner that they have an undivided possession, but several and distinct titles. 14 O. Jur. 2d, Cotenancy § 5. Since each tenant in common owns an undivided fractional interest in the whole, all tenants in common would be directly affected by the proposed annexation and each should be entitled to be counted as an owner pursuant to Section 709.02, supra. To conclude otherwise would be to give one cotenant a greater right in the land, which would be repugnant, to the definition of tenancy in common. This conclusion is also consistent with my view in regard to your first question. Therefore, each owner, including owners of undivided fractional interests, should be counted in determining the number of owners in the area to be annexed.

In regard to your third question, Section 709.03, Revised Code, prescribes the duty of the county commissioners which reads as follows:

"The petition required by section 709.02 of the Revised Code shall be filed in the office of the board of county commissioners and the clerk shall cause the petition to be entered upon the record of proceedings of the board, which entry shall be the first official act of the board on the annexation petition, and shall cause the petition to be filed in the office of the county auditor, where it shall be subject to the inspection of any interested person. The agent for the petitioners shall cause written notice of the filing of the petition with the board of county commissioners and the date of such filing to be delivered to the clerk of the legislative authority of the municipal corporation to which annexation is proposed and to the clerk of each township any portion of which is included within the territory sought to be annexed. Any person who signed the petition for annexation may remove his signature by filing with the clerk of the board of county commissioners a written notice of withdrawal of his signature within twenty days after such a notice of filing is delivered to the clerk of the township in which he resides. Thereafter signatures may be withdrawn or removed only in the manner authorized by section 709.032 [709.03.2] of the Revised Code."

In addition, Section 709.032, Revised Code, requires the county commissioners to hold a hearing but there is no duty upon the county commissioners to take affirmative action to determine whether or not the petition is complete, but rather their sole duty is to make findings pursuant to Section 709.033, Revised Code. Thus, while acting in this quasi-judicial capacity, if the commissioners feel that the petition, as submitted, does not fulfill the statutory requirement they then may either deny the application or request the petitioners to supply additional information to substantiate their petition. Accordingly, it is my opinion that it is incumbent upon the petitioners to supply evidence that all legal requirements are met and it is not incumbent upon the commissioners to take affirmative steps to determine this on their own.

Therefore, it is my opinion and you are so advised that in determining the number of landowners in the area to be annexed, a person who owns more than one lot or parcel of land is to be counted only once in the annexation petition and where one lot or parcel of land is held by two or more persons, each having an undivided fractional interest in the whole, all such cotenants should be counted. Further, the burden of showing that the petition is complete rests upon the petitioners or their agent and it is not incumbent upon the commissioners to take affirmative steps on their own to determine its sufficiency.