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TOWNSHIPS—TERRITORY, REDUCTION—§503.03 R.C. FORBIDS REDUCTIONS OF AREA TO LESS THAN TWENTY-TWO SQUARE MILES UNLESS TERRITORY WHOLLY INCLUDES A MUNICIPAL CORPORATION—CREATION OF NEW TOWNSHIP, §503.08 R.C. PERMITTED; SUCH REDUCTION OF TERRITORY SUBJECT TO §503.07 R.C.

SYLLABUS:

Section 503.03, Revised Code, forbids, with certain exceptions, the reduction of the territory of a township to an area less than twenty-two square miles unless such township wholly includes a municipal corporation, but this section does not prevent the creation of a new township of such reduced area as provided in Section 503.08, Revised Code, where such reduction is an incident of changes made in township boundaries effected under the provisions of Section 503.07, Revised Code.

Columbus, Ohio, February 20, 1958

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Revised Code Section 503.03 prohibits the changing of township boundaries as to reduce township territory below twenty-two square miles ‘unless it (the township) includes a municipal corporation.’ May I have your opinion as to whether, in order to apply the exception, the township must include all of a municipal corporation or whether the fact that a portion of the territory of the township lies within the boundaries of a municipality is sufficient to authorize the reduction of the township territory to less than twenty-two square miles.”

Section 503.03, Revised Code, to which you have referred reads as follows:

“No township shall be laid off containing less than twenty-two square miles, or have its boundaries so changed as to reduce its territory below that quantity, unless it includes a municipal corporation, except as provided by sections 503.09 to 503.13, inclusive, of the Revised Code. In case of division or partition of a township, the funds in the treasury thereof shall be apportioned

to the townships to which portions thereof are attached, or to the new townships established, to the extent they are collected from such territory.”

It is obvious that the sole question here involved is that of the meaning of the word “includes.” Webster defines “include” as follows:

“To confine; shut up, enclose; as, the nut shell includes the kernel.”

This language very strongly suggests the idea that the exception provided in this statute is applicable only in those instances in which the municipal corporation is entirely included within the limits of the township.

This notion is supported to some extent by the language of Sections 503.07 and 503.08, Revised Code, in which provision is made for alteration of township boundaries in cases where the limits of a municipal corporation “include territory lying in more than one township.” This use of varying language suggests the description of varying fact situations with respect to the extent of “inclusion” of a municipality within the limits of a township.

The partial inclusion described in Section 503.07, Revised Code, is obviously the situation which is the subject of your inquiry, for you appear to be confronted with a case in which only “a portion of the territory of the township lies within the boundaries of a municipality.”

For a general discussion of statutory proceedings under these two sections to alter township boundaries I invite your attention to Opinion No. 4642, Opinions of the Attorney General for 1954, p. 648.

Section 503.03, Revised Code, must be considered, however, *in pari materia* with Sections 503.07 and 503.08, Revised Code. Particular attention is invited to Section 503.08, Revised Code, which reads as follows:

“In making a change of boundaries as provided by section 503.07 of the Revised Code, if any township not having a municipal corporation within its limits is reduced in territory to less than twenty-two square miles, it may thereupon be annexed by the board of county commissioners to any contiguous township, or the board may annex thereto territory from a contiguous township and erect a new township. If a majority of the householders of such reduced township, outside the limits of a municipal corporation, petition for such annexation, the board may erect such reduced township into a new township.”

The use of the expression "such annexation" in the final sentence in this section appears to be an error which crept into the statute in the process of the recodification of 1953. In Section 3250, General Code, this section, immediately prior to this recodification, read as follows:

"* * * 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." (Emphasis added)

It is clear that under this language the county commissioners may erect such reduced township into a new township if a majority of the householders of the township petition for *that action*; whereas the analogous language now found in Section 503.08, Revised Code, would indicate that the board might erect such reduced township into a new township provided a majority of the householders petitioned for annexation to a contiguous township, or annexation to such reduced township of territory from a contiguous township. In short, reading Section 503.08, Revised Code, literally, we would be faced with the absurd situation in which the householders petition for one action, and that petition then provides the authority for the board of county commissioners to take a wholly different action.

Where a statute is changed during the recodification process, and where, as recodified, it contains an ambiguity, there is a presumption that no substantive change was intended. *State v. Williams*, 104 Ohio St., 232. In the recodification act of 1953 there was enacted Section 1.24, Revised Code, which constitutes an express disclaimer by the legislature of any intent to effect substantive changes. Accordingly, it would appear that if action is taken under Section 503.07, Revised Code, to alter the limits of a particular township to conform with the limits of a municipal corporation, and if in that process a township not having a municipal corporation within its limits is reduced in territory to less than twenty-two square miles, it would be possible for the board of county commissioners, upon the petition of majority of the householders of such reduced township, to erect such reduced township into a new township.

In sum it is my opinion that Section 503.03, Revised Code, forbids, with certain exceptions, the reduction of the territory of a township to an area less than twenty-two square miles unless such township wholly includes a municipal corporation, but this section does not prevent the creation of a new township of such reduced area as provided in Section

503.08, Revised Code, where such reduction is an incident of changes made in township boundaries effected under the provisions of Section 503.07, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General