

OPINION NO. 68-091**Syllabus:**

The provision of Section 709.03, Revised Code, concerning the removal of a signature of a person from an annexation petition, does not demand that the person wishing to withdraw his signature, by the filing of a written notice of withdrawal, personally appear before the clerk of the board of county commissioners to accomplish such filing.

To: Rex Larson, Richland County Pros. Atty., Mansfield, Ohio
By: William B. Saxbe, Attorney General, June 7, 1968

I have your request for my opinion wherein you inquire whether Section 709.03, Revised Code, as effective December 1, 1967, requires personal filing with the clerk of the board of county commissioners of a written notice of withdrawal of his signature by the person requesting such withdrawal.

The entire text of Section 709.03, Revised Code, as effective December 1, 1967, 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 Thereafter signatures may be withdrawn or removed only in the manner authorized by section 709.032 / 709.03.2 / of the Revised Code."

(New material underlined)

In order to answer your specific question, it will be necessary to review the definition of "file" and to discern the legislative intent which generated the changes in this section of the statute.

Bouvier's Law Dictionary, Baldwin's Century Edition (1946), defines "file" as follows:

"In the sense of a statute requiring the filing of a paper or document, it is filed when it is delivered to and received by the proper officer to be kept on file."

Webster's Third New International Dictionary defines "file" as follows:

"to deliver (as a legal paper or instrument) after complying with any condition precedent (as the payment of a fee) to the proper officer for keeping on file or among the records of his office."

A review of these and several other dictionary definitions of the word, "file", indicates that the main meaning which is intended to be conveyed by the word is that the filing of a document is accomplished when the document is placed in the official custody of the proper officer.

It is often a practice in legal matters that persons present documents for filing by mail, by counsel or by other representative. A review of the case law concerning the filing of documents indicates that this practice is acceptable. The timeliness of the filing is usually the issue. It is taken for granted that persons often utilize their attorneys or the mail in order to present for filing various documents which are required by law to be filed. In the case of Frank Dillon v. The Superior Court of Nevada County, 24 Cal. App. 760, 766 (1914), the court openly

commented that a person can comply with a statutory filing requirement by allowing his attorney to mail the document to the proper officer.

Thus, the gist of the legal definitions and the case law concerning filing is that a person has filed a paper when the paper is physically lodged, by some means, in the official custody of the proper officer. Given this background, the fact that the legislature used the word, "filing," in Section 709.03, Revised Code, *supra*, does not necessarily mean that a person wishing to withdraw his signature must personally hand his written notice to the clerk of the board of county commissioners.

In attempting to perceive the legislative intent which generated the changes in this section of the statute, it is important to note that the earlier version of the statute did not mention what rights a signer of an annexation petition had if he wanted to withdraw his signature. This silence of the earlier version of the statute led to uncertainty concerning the rights of a signer to withdraw his signature. In the case of Chadwell v. Cain, 169 Ohio St. 425, 438 (1959), the court held that in the absence of statutory provisions to the contrary, a signer of a petition for annexation of territory to a city or village has a right to withdraw his name from such petition at any time before official action has been taken thereon. By "official action", the court explained that it meant some "affirmative administrative action."

The new material in Section 709.03, Revised Code, *supra*, appears to be intended to clear up the uncertainty in this area concerning a signer's right to withdraw his signature. This new material makes it clear that the first official act of the board shall be the entry of the petition upon the record of proceedings of the board. In addition, this new material makes it clear that the legislature wished to allow the withdrawal of signatures from the petition if the signer acts within twenty days from the date when the clerk of the township where he resides is notified of the filing of the petition with the clerk of the board of county commissioners.

It is quite conceivable that the first official action of the board (i.e., the entry of the petition upon the record of proceedings of the board) might have already taken place when a signer, acting within the twenty-day period, withdraws his name from the petition. Thus, the legislature has allowed a possible extension of the common-law right of a signer to withdraw his name from an annexation petition by allowing such right of withdrawal to be exercised after the first official action of the board.

In any event, the main purpose of the change in this section of the statute appears to have been to make clear the time limits within which a person can easily withdraw his name from an annexation petition. As explained above, the legislature may well have liberalized the common-law right regarding such withdrawal. It is, therefore, not likely that the legislature intended to put a strained connotation on the word, "filing", by requiring the signer to walk in and personally hand his written notice to the clerk of the board of county commissioners.

Therefore, it is my opinion, and you are hereby advised that the provision of Section 709.03, Revised Code, concerning the re-

removal of a signature of a person from an annexation petition, does not demand that the person wishing to withdraw his signature, by the filing of a written notice of withdrawal, personally appear before the clerk of the board of county commissioners to accomplish such filing.