

3061.

ANNEXATION OF TERRITORY—ANNEXATION BY VILLAGE OF PART OF CONTIGUOUS VILLAGE UNAUTHORIZED—TRANSFER OF TERRITORY BY DETACHMENT—SPECIFIC CASE REVIEWED.

*SYLLABUS:*

1. *There is no provision in law for the annexation by one village of a portion of a contiguous village.*

2. *In order to detach territory from a municipality under the provisions of Section 3577 of the General Code, the petition for such action must be signed by a majority of the owners of the lands in the portion of the territory of the municipality so proposed to be detached, which owners must also be electors of the municipality involved.*

COLUMBUS, OHIO, December 24, 1928.

HON. SETH PAULIN, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of recent date, as follows:

“One of the villages in this county is endeavoring to annex a small portion of territory from an adjoining village, and as there seems to be some question as to whether this can be done, I would like your opinion upon the following questions:

1. Is there any method whereby one village can directly annex a portion of territory from an adjoining village?

2. If it is necessary, in order to accomplish the above purpose, to first detach the territory from the village of which it is now a part, can such territory be so detached and be regarded as contiguous to the territory in which it is located when such territory is entirely surrounded by the village from which it is proposed to be detached, and by the adjoining village which desires to annex the same upon detachment?

3. Under the provisions of Section 3577 and following, of the General Code, where there is no one residing on the land proposed to be detached, can the owners of such land, who are in fact electors in a different municipality and county, legally petition for such detachment?”

The situation which you present is apparently one which is not covered specifically by any provision of the General Code relative to the annexation of territory by a municipality. Sections 3548 to 3557, inclusive, of the Code, provide the procedure whereby unincorporated territory may be annexed to a municipal corporation on application of the inhabitants residing in such territory. Sections 3558 to 3565 of the Code provide the means whereby unincorporated territory may be annexed to a municipal corporation upon application of the corporation.

Sections 3566 to 3574, inclusive, of the Code, are clearly only applicable when it is proposed to annex one municipal corporation to another. Section 3566 provides:

“When it is proposed to annex territory of a municipal corporation to a contiguous municipality, such annexation shall be effected in the manner hereinafter prescribed.”

Standing alone, this language might indicate that the procedure comprehended not only the annexation of all of a contiguous municipality, but also a part thereof. Upon examination of the other pertinent sections, however, it is found that they are clearly only applicable where *all* of one municipal corporation is to be annexed to another. Decisive of the point here in question is the language of Section 3574, which is as follows:

“When the annexation is completed, the two former corporations shall be governed as one, embracing the territory of both, and the inhabitants of all such territory shall have equal rights and privileges, subject, however, to such terms and conditions of annexation. The annexation shall not affect any rights or liabilities existing at the time of annexation, either in favor of or against the corporations, except such as are affected by such terms and conditions of annexation and suits founded on such rights and privileges may be commenced, and pending suits prosecuted to final judgment and execution, as though the annexation had not taken place.”

Sections 3575 and 3576 of the Code provide the means whereby either all or part of a village which is contiguous to a city may be annexed to the city. In view of the fact that neither of the municipal corporations is a city in the instance you cite, clearly these provisions cannot be utilized for authority for the proposed annexation of the territory in question. The sections of the Code to which I have referred are the only ones authorizing the annexation of territory by a municipality and the conclusion is obvious that there is no direct statutory authority for annexation proceedings under the facts which you present.

In view of the conclusions which I have reached with reference to your third question, I deem it unnecessary specifically to give consideration to your second question.

You further inquire whether proceedings for detachment of this territory may be undertaken in view of the fact that there is no one residing on the land proposed to be detached, the owners being in fact electors residing in a different municipality and county. The portion of Section 3577 of the General Code, quoted above, makes the filing of a petition of a majority of the freehold electors owning lands in the portion of the territory of the municipality a condition precedent to the action of the county commissioners. Consequently, the lack of such a petition would be fatal to the jurisdiction of the commissioners. In the instance you cite apparently the owners of the property are electors but not electors either of the particular municipality in which the lands are now situated or of the county. Of course, these persons are owners of the land in this portion of the territory of the municipality, and the answer to your question depends upon whether they must be electors in the particular municipality, or electors generally, in order to be eligible to sign the petition. It must be confessed that the language of the statute is far from clear on this point. I feel, however, that the word “electors” must be construed to mean electors of the particular municipality whose territory is to be changed by the proposed proceeding. Particularly is this true in view of other provisions of law relating to detachment of territory, which will be hereinafter discussed. If this conclusion be correct, then obviously this procedure is not available in the instance you cite, for the reason there is no one who is eligible to sign a petition, which is a condition precedent to any action by the county commissioners. In reaching this conclusion I am without the benefit of any judicial interpretation of the language involved, nor has there been any opinion of this department directly in point. I call your attention, however, to the fact that in the Annual Report of the Attorney General for 1913, Vol. 2, p. 1604, appears an opinion of which the following is the syllabus:

"The city council of Warren, Ohio, has no right to pass an ordinance permitting a corporation owning a steel mill to detach its territory from the city. A petition for the detachment of property must be filed by a freehold elector under the provisions of Section 3577, G. C. There is no power in the city council under this section to allow the property of a corporation to be detached in this manner."

It is to be noted that Section 3577-1 of the Code, a comparatively recent enactment, provides for the detachment of territory from a village upon petition of "the inhabitants residing within any portion of a village". Apparently, in this instance the Legislature has seen fit to vest the authority to initiate the proceedings in the inhabitants of the particular portion, without any requirement as to actual ownership of the property. A cursory examination of that section is sufficient to establish that it could have no application to the situation concerning which you inquire, but attention is called to it for the purpose of showing that a somewhat different qualification is prescribed as to those having the authority to initiate the proceedings.

Again, Sections 3578 and 3679 of the General Code provide for a further method of detachment. Section 3578 of the Code is as follows:

"The owner or owners of unplatted farm lands annexed to any municipality after the incorporation thereof may file a petition in the court of common pleas of the county in which the lands are situated, in which such owner or owners shall be named as plaintiffs, and the municipality shall be the defendant, setting forth the reasons why the land should be detached, and the relief prayed for. On the petition a summons shall issue as in other actions, and the case proceed as in other causes. Provided, however, that no such action shall be brought, or detachment ordered or decreed within five years from the time that such lands were annexed by any such municipality under the provisions of this or the preceding chapter."

Your attention is called to the fact that in this instance the owners of unplatted farm land may file a petition irrespective of their residence or other qualifications. They need not be electors nor residents of the portion of territory involved. Hence if the land in this instance be actually unplatted farm lands, the authority exists by virtue of this section for the filing of a petition to secure the detachment of the territory, which petition may be filed by the owners irrespective of their residence or voting qualifications. Of course this section only extends the right in the event that the unplatted farm lands were originally annexed to the municipality after incorporation thereof, which annexation must have been had at least five years prior to the filing of the petition. I shall assume, however, that the land in question is not unplatted farm land and accordingly these sections can have no application.

From the foregoing discussion, it becomes apparent that there is no legal way in which this territory may be detached unless it be unplatted farm lands.

Accordingly, by way of specific answer to your last inquiry, you are advised that in proceedings to secure the detachment of a portion of the territory of a municipality, under authority of Section 3577 of the Code, the petition for such action must be signed by a majority of the owners of the land in such portion of the territory of the municipality, and such owners must be electors of the municipality in question.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General,*