

Note from the Attorney General's Office:

1950 Op. Att'y Gen. No. 50-1784 was overruled by 1956 Op. Att'y Gen. No. 1956-6223.

1784

MUNICIPALITY — PRIVATE CORPORATION — OWNER OF LAND ADJACENT TO MUNICIPAL CORPORATION—CAN QUALIFY TO PETITION FOR ANNEXATION OF THE TERRITORY TO MUNICIPAL CORPORATION—SECTION 3548 ET SEQ., G. C.

SYLLABUS:

A private corporation which owns land adjacent to a municipal corporation can qualify to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548 et seq., General Code.

Columbus, Ohio, May 24, 1950

Hon. James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir :

Your request for my opinion is as follows :

“May a private corporation which owns land adjacent to a municipal corporation qualify to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548 et seq. of the General Code, where the only property to be annexed is that owned solely by the private corporation? Reference is made to Opinion No. 1399—1946.”

Section 3548, General Code, referred to in your request reads as follows :

“The inhabitants residing on territory adjacent to a municipality may, at their own option, cause such territory to be annexed thereto, in the manner hereinafter provided. Application shall be by petition, addressed to the commissioners of the county in which the territory is located, signed by a majority of the adult freeholders residing on such territory, and shall contain the name of a person authorized to act as the agent of the petitioners in securing such annexation, and a full description of the territory, and be accompanied by an accurate map or plat thereof.”

The fundamental question to be determined in your request is whether a private corporation is an inhabitant residing on territory adjacent to a municipality and whether such corporation may be considered an adult freeholder.

As a general rule, a corporation is included within the term “Person”, as that term is used in the General Code, unless the context shows that another sense was intended. See 10 Ohio Jurisprudence, 50. It is also true that the domicile of a corporation is the state of the corporation’s organization and that a corporation created and existing under the laws of Ohio, is a resident of Ohio. See *Kroger Grocery & Baking Company v. Evatt*, 149 O. S. 448, 79 N. E. 2d, 228; *Western Exp. Co. v. Wallace*, 144 O. S. 612, 60 N. E. 2d, 312. In the *Wallace* case, the court cites with approval, *Fletcher Encyclopedia of Corporations*, Permanent Edition, Vol. 8, page 433, which states in effect that a corporation may be, and is, an inhabitant of a state.

In general, it may be stated that a corporation may be an inhabitant, a resident, or a person, according to the sense in which that particular term is used in the statute. See, generally, Words and Phrases, Permanent Edition, Vol. 37, pages 286 et seq.

I can see nothing in Section 3548, General Code, which would preclude a private corporation being an inhabitant residing on territory adjacent to a municipality.

The next question to be considered is whether a private corporation is an adult freeholder residing on such territory. As stated above, a corporation is generally included within the term "person", and if a corporation owns an estate in land it must certainly be a freeholder, since it is given the power by statute to own and hold property, and as a result, if such corporation owns a fee simple estate or other estate of freehold, it is a freeholder under Ohio law.

I have examined the 1946 opinion referred to in your letter, and do not believe it is applicable. By using the term "adult", I believe that the legislature was merely distinguishing between an adult and a minor and that the term was used to protect a minor's interest in land and not to prevent a private corporation from signing a petition.

From a purely practical standpoint, I believe that a private corporation was intended by the legislature to be included within the definitions of the terms used in Section 3548, General Code. Certainly, if the citizens of a municipal corporation object to such annexation they may file a petition to enjoin the proceedings under Section 3553, General Code.

In view of the above, it is my opinion that a private corporation which owns land adjacent to a municipal corporation can qualify to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548 et seq., General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.