

OPINION NO. 66-061**Syllabus:**

1. A board of township trustees are not, in their official capacity, interested parties in annexation or incorporation for the reason that such activities are not enumerated in Chapter 5, Revised Code.

2. A board of township trustees may not employ special counsel and expend public funds to pay for his services to oppose a proposed annexation of territory from the township because such activity is not within the statutory authority of the trustees themselves.

3. A board of township trustees may not employ special counsel and expend public funds to pay for such services in doing the legal work in connection with a proposed incorporation because such activity is also not within the statutory authority of the township trustees.

To: George Martin, Portage County Pros. Atty., Ravenna, Ohio
By: William B. Saxbe, Attorney General, March 23, 1966

In your request for my opinion you pose the following question:

"1. Are the township trustees, in their official capacity, interested parties in either annexation or incorporation?

"2. May a township trustee employ special

counsel and expend public funds to pay for his services to oppose the proposed annexation of territory from the township?

"3. May the township trustees employ special counsel and expend public funds to pay him for his services in doing the legal work in connection with the proposed incorporation?

Section 309.09, Revised Code, provides in part as follows:

"* * *When the board of township trustees deems it advisable or necessary to have additional legal counsel it may employ an attorney of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters.
* * *"

(Emphasis added)

From the above cited section of the code it appears that special counsel may be employed by the township trustees only when those services are to be utilized to aid the township or its officers in their official capacities.

The Supreme Court of Ohio in the case Trustees of New London Twp. v. Miner, et al., 26 Ohio St., 452, used the following language which appears at page 456:

"It is settled that neither the township nor its trustees are invested with the general powers of a corporation; and hence the trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them."

The above cited case indicates that in order for the trustees to act in any instance, such official action must fall within the scope of powers and duties of township trustees enumerated in or necessarily implied from statute. It follows that the trustees must have a duty to act themselves before they can properly retain special counsel to perform services relative to a controversy. In other words, in order for special counsel properly to be employed pursuant to Section 309.09, supra, his duties on behalf of the trustees directly must be related to and within the scope of "official capacity" of the board of trustees as contemplated by that section. The Miner case, supra, limits such activities to those specifically granted those necessarily implied from statute.

After a thorough examination of Chapter 5, Revised Code, which defines the functions, powers, and duties of townships, township officers, and township trustees, I am unable to locate any authority which permits a township or its trustees to enter a controversy involving annexation or incorporation from the standpoint of desirability. Such activity is not authorized by statute as a function within the "official capacity" of the township trustees. Of course, if incidental to annexation or incorporation, it is quite

possible that situations may arise where an interest of the township may cause legal controversy. However, such an interest would be a manifestation of a right-duty relationship established by law, rather than mere opposition or support on such proposals.

It is therefore my opinion and you are hereby advised that:

1. A board of township trustees are not, in their official capacity, interested parties in annexation or incorporation for the reason that such activities are not enumerated in Chapter 5, Revised Code.

2. A board of township trustees may not employ special counsel and expend public funds to pay for his services to oppose a proposed annexation of territory from the township because such activity is not within the statutory authority of the trustees themselves.

3. A board of township trustees may not employ special counsel and expend public funds to pay for such services in doing the legal work in connection with a proposed incorporation because such activity is also not within the statutory authority of the township trustees.