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TOWNSHIP—NO MUNICIPAL CORPORATION WITHIN ITS LIMITS—REDUCED IN TERRITORY TO LESS THAN TWENTY-TWO SQUARE MILES—CHANGE IN BOUNDARIES EFFECTED UNDER SECTION 503.07 RC—BOARD OF COUNTY COMMISSIONERS—UPON PETITION OF MAJORITY OF HOUSEHOLDERS IN TERRITORY MAY ERECT REDUCED TOWNSHIP INTO NEW TOWNSHIP WITHOUT ADDITION OF ANY TERRITORY FROM CONTIGUOUS TOWNSHIPS—SECTION 503.08 RC.

SYLLABUS:

Where a township not having a municipal corporation within its limits is reduced in territory to less than twenty-two square miles by a change in boundaries effected under the provisions of Section 503.07, Revised Code, the board of county commissioners may, upon the petition of a majority of the householders in such territory, erect such reduced township into a new township as authorized in Section 503.08, Revised Code, without the addition of any territory from contiguous townships.

Columbus, Ohio, June 30, 1955

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The City Council for the City of Mount Vernon, Ohio, under Section 503.07 of the Revised Code of the State of Ohio has petitioned the Board of County Commissioners for Knox County, Ohio, for a change in the township lines of Clinton Township, Pleasant Township, Morris Township and Monroe Township in order to make such township lines identical with the corporate limits of the City of Mount Vernon, Ohio.

“Only a very small portion of Pleasant, Morris and Monroe Townships are involved but a large portion of Clinton Township lies within the corporate limits of the City of Mount Vernon, Ohio. It is my opinion that there would be less than twenty-two square miles in Clinton Township outside the corporate limits of the City of Mount Vernon, Ohio, after such change in township lines. The inhabitants of Clinton Township outside the corporate limits of the City of Mount Vernon, Ohio, I am advised by the Commissioners, want to remain in Clinton Township.

“Therefore, your opinion is respectfully requested in response to the following question.

“As a part of granting the request of the City Council of the City of Mount Vernon, Ohio, to change the township lines of the four previously named townships to make them identical with the corporate limits of the City of Mount Vernon, Ohio, can the territory outside the City of Mount Vernon, Ohio, which was formerly in Clinton Township continue to be a part and parcel of Clinton Township even though it contains less than twenty-two square miles?

“I refer you to 1949 O.A.G. 687 in your reply to my question.”

Section 503.07, Revised Code, referred to in your inquiry, reads as follows:

“If the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, and the legislative authority of such municipal

corporation, by a vote of the majority of the members of such legislative authority, petitions the board of county commissioners for a change of township lines in order to make them identical, in whole or in part with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation, the board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, may change the boundaries of the township or erect such new township."

The disposition of township territory remaining after a change in boundaries as thus authorized is provided for in Section 503.08, Revised Code, which reads :

"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 an (sic) 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 provisions of this section very clearly authorize at least two alternative courses where no municipal corporation is situated within the remaining territory and where such territory is less than twenty-two square miles in area. These courses are, first, annexation of such reduced territory to a contiguous township, and, second, erection of a new township by the annexation to such reduced territory of portions of contiguous townships. Presumably, the objective in either case is to make any resulting township at least twenty-two square miles in area.

That these two courses were the only possible alternatives was seemingly the view of the writer of Opinion No. 687, Opinions of the Attorney General for 1949, page 33, mentioned in your inquiry. In this opinion the following statement is found :

"* * * I shall assume that the remaining territory contains less than twenty-two square miles and has no city or village within its confines. In direct answer to your first question you are advised, therefore, that the county commissioners may annex the remaining territory outside of the new township of Chagrin Falls to that of any contiguous township or townships within the

county, or may annex territory from any contiguous township or townships to such remaining territory and create a new township therefrom.”

This statement fails, of course, to give any separate significance to the final sentence in Section 503.08, *supra*. As this sentence is phrased in the Revised Code, it offers some difficulty in interpretation for the reason that the words “such annexation” would appear to refer back to one of the two alternative actions noted above rather than to a third possible course of action. These words were inserted in this sentence, however, in the recodification of 1953, the prior analagous language in Section 3250, General Code, reading as follows :

“* * * If a majority of the householders of such reduced township outside the limites (limits) of such municipal corporation petition *therefor*, the commissioners may erect such reduced township into a new township.” (Emphasis added.)

By reason of the provisions of Section 1.24, Revised Code, we may disregard the ambiguity seemingly wrought by the change in this language through recodification; and since the term “*therefor*,” as used in former Section 3250, General Code, very clearly refers, not to one of the two alternatives authorized earlier in the section, but to the erection of “such reduced township into a new township,” it would appear that a third alternative is contemplated.

The precise question at this point is whether such third alternative may involve the erection of a new township having an area of less than twenty-two square miles or whether the general prohibition in this regard as set out in Section 503.03, Revised Code, is applicable. This section 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 or 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.”

This general prohibition was first enacted in 1865, 62 Ohio Laws 172, as a part of an act relating to the incorporation of townships. The pro-

vision now found in Section 503.08, *supra*, former Section 3250, General Code, was first enacted in 1873, 70 Ohio Laws 4, as a part of an act relating to the adjustment of township lines following the annexation of territory by a municipal corporation. As originally enacted, it plainly contemplated only the first two alternative courses hereinbefore referred to, but by an amendment in 1892, 89 Ohio Laws 64, this provision was set out in Section 1381, Revised Statutes, as follows:

“If, in making such change, any township not having within its limits a city or village is reduced in territory to less than twenty-two square miles, such township may be by the commissioners thereupon annexed to any contiguous township or townships, or the commissioners may annex thereto territory from any contiguous township or townships, and erect a new township, as in their opinion will best promote justice and public convenience; *but if the 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.)

The language emphasized above is clearly such as to indicate that a proviso was intended and an alternative course authorized in which no action would be taken to increase the area of the territory involved to a point where it was equal to or greater than twenty-two square miles. Although this language underwent some slight changes in the recodification of 1910, I perceive no evidence of intent to effect a substantive change, the presumption being, of course, to the contrary. Crawford on Statutory Construction, 663 et seq., Section 324.

Accordingly, since the term “such reduced township,” as used in Section 503.08, *supra*, clearly refers to the territory remaining after a change in boundaries as authorized in Section 503.07, Revised Code, which remaining territory (1) contains no municipal corporation and (2) is *less* than twenty-two square miles in area, it becomes quite clear that a third alternative course is authorized in cases *where the householders concerned petition for it*; and I conclude that Opinion No. 687, *supra*, to the extent that it suggests the existence of only two alternative courses of action, should be and is hereby modified.

In reaching this conclusion I am not unmindful of the seeming conflict between the language just examined in Section 503.08, Revised Code, and that in Section 503.03, Revised Code, which prohibits in general terms the reduction of a township to an area of less than twenty-two square

miles "except as provided by sections 503.09 to 509.13." It will be noted that this language was inserted in this section in the 1953 recodification, the analogous expression in former section 3246, General Code, being "except as hereinafter provided." This language was added to this section in 1935 with the enactment of House Bill No. 130, 116 Ohio Laws 197, by which enactment Section 3246, General Code, was amended and Sections 3250-1 3250-2, 3250-3, 3250-4, and 3250-5, General Code, were enacted. This presents the question, then, whether the term "hereinafter provided" refers solely to House Bill No. 130, *supra*, or to the chapter in the General Code relating to the organization of townships in which both Section 3246 and Section 3250, General Code, now Section 503.08, Revised Code, were placed at the time of this enactment. See Section 3244 *et seq.*, General Code. It is to be presumed that the legislature was aware, at the time of this enactment, of the plain provision in Section 3250, General Code, for a third course of action whereby a township with an area less than twenty-two square miles in extent could be erected. From this one might infer that the reference in question was designed to include that provision among the exceptions thus provided. Certainly there is a presumption against implied repeals or amendment by indirection, and for these reasons I am impelled to the conclusion that it was not the legislative intent, by the 1935 enactment above noted, to effect any change in the plain meaning of the provisions of Section 3250, General Code. In this connection we may, of course, regard as controlling the language actually used in House Bill No. 130 in stating the exception rather than the analogous language in Section 503.03, Revised Code, this in view of the legislative disclaimer of intent to effect substantive changes in the recodification process. See Section 1.24, Revised Code.

Accordingly, it is my opinion, in specific answer to your inquiry, that where a township not having a municipal corporation within its limits is reduced in territory to less than twenty-two square miles by a change in boundaries effected under the provisions of Section 503.07, Revised Code, the board of county commissioners may, upon the petition of a majority of the householders in such territory, erect such reduced township into a new township as authorized in Section 503.08, Revised Code, without the addition of any territory from contiguous townships.

Respectfully,

C. WILLIAM O'NEILL

Attorney General