

OPINION NO. 79-043**Syllabus:**

A board of education of a local school district may file a petition for the annexation of property owned by the school district to an adjacent village pursuant to R.C. 709.02.

To: James R. Unger, Stark County Pros. Atty., Canton, Ohio

By: William J. Brown, Attorney General, July 31, 1979

I have before me your request for my opinion upon the following question:

May a board of education of a local school district, proceeding under R.C. 709.02, file a petition for annexation to a village of property which is solely owned by the school district?

R.C. 709.02 provides that "owners" of realty adjacent to a municipal corporation may petition the board of county commissioners for annexation of such territory to the municipality. Thus, your question is whether a board of education is an "owner" as that term is defined in R.C. 709.02 as follows:

As used in sections 709.02 to 709.21, and 709.38 and 709.39 of the Revised Code, "owner" or "owners" means any adult individual seized of a freehold estate in land who is legally competent and any firm, trustee, or private corporation that is seized of a freehold in land; except that individuals, firms, and corporations holding easements are not included within such meanings; . . .

Prior to 1969, several cases and opinions of this office had construed R.C. 709.02 to authorize only a resident adult freeholder to petition for annexation. In that year, the General Assembly amended that statute to its present form to allow all owners of real estate, corporate and individual, to sign an annexation petition whether or not residents of the territory. See 1971 Op. Att'y Gen. No. 71-004. For this reason, I stated in 1973 Op. Att'y Gen. No. 73-048 that a board of county commissioners would be an "owner" of real property within the purview of R.C. 709.02. This rationale applies with equal force to a board of education which owns property for school purposes.

However, you state in your letter that the land in question is owned by the school district, and, as such, you question whether the board of education of that district could be a petitioner for the purposes of R.C. 709.02.

A local school district can act only through its board of education. R.C. 3313.17 invests the board with the power to acquire, hold, possess, and dispose of real property as a body politic and corporate. Thus, a board of education owns the property of its school district in a trust capacity for the school district. Board of Education of Cincinnati v. Volk, 72 Ohio St. 469 (1905) and Weir v. Day, 35 Ohio St. 143 (1878). As such, a board of education is the "owner" of school property for the purposes of R.C. 709.02, and in that capacity may petition for its annexation to an adjacent municipal corporation.

Accordingly, it is my opinion, and you are so advised, that a board of education of a local school district may file a petition for the annexation of property owned by the school district to an adjacent village pursuant to R.C. 709.02.