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MUNICIPAL CORPORATIONS—ANNEXATION—TERRITORY OF TOWNSHIP INCLUDED WITHIN LIMITS OF AN INCORPORATED VILLAGE OR ANNEXED BY MUNICIPAL CORPORATION IS NOT BY REASON THEREOF DETACHED FROM ORIGINAL TOWNSHIP—CITY OF PORTSMOUTH—VILLAGE OF NEW BOSTON.

1. *Territory of a township included within the limits of an incorporated village, or annexed by a municipal corporation, is not by reason thereof detached from the original township, and the citizens of the unattached portion of such township may not elect township officials and levy taxes independent of such attached portions.*

2. *The separation of a township into two segments, by the intervening boundaries of an extended municipal corporation does not create new townships of such separated portions.*

3. *Boundaries of an original township may be altered or changed, or new townships created by the provisions of sections 3245 et seq. of the General Code.*

COLUMBUS, OHIO, August 26, 1921.

HON. GEORGE W. SHEPPARD, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—Your letter of recent date was duly received, requesting my opinion on the following:

“The incorporated village of New Boston, Scioto county, Ohio, was incorporated from territory originally in Clay township. Recently the city of Portsmouth, Ohio, added certain territory of Clay township to said city of Portsmouth, which territory completely cuts off New Boston from Clay township.

Heretofore the officers for the incorporated village of New Boston, and Clay township outside of the village, have elected township officers, as the officers of Clay township. Since Clay township has been cut off from the incorporated village of New Boston by territory added to the city of Portsmouth, the people of Clay township want to elect their own officers, and they also want to levy their own taxes independent of any of the property of the incorporated village of New Boston.

Can they do this under the facts and circumstances as here related?”

Additional facts covering the subject matter supplied by your inquiry are gathered from the Fourteenth Federal Census Statistics of 1920, wherein it may be discovered that in 1918 a portion of Clay township was annexed to Wayne township (Portsmouth City), also since January 1, 1920, a part of Porter township, Scioto county, comprising Sciotoville village, has been annexed to Portsmouth city.

Since an examination of the map of Ohio reveals the fact that New Boston village and Portsmouth city are apparently adjacent municipalities, both abutting on the Ohio river, and since, though not stated, it is inferred, that the incorporated village of New Boston has not been annexed to the city of Portsmouth, the inference is likewise drawn that Portsmouth city in order to annex the incorporated village of Sciotoville (which also abuts on the Ohio river, on the eastern side of New Boston village), had annexed

a strip of territory lying north of the northern boundary line of the incorporated village of New Boston, said strip of territory comprising the lands of a portion of Clay township not included within the limits of the incorporated village of New Boston. While the question of contiguity of the portions of territory annexed by Portsmouth city is not raised by your inquiry, it is presumed in the absence of information upon the subject, that all territory annexed to Portsmouth city, including that of the incorporated village of Sciotoville, was contiguous thereto as required by law, and especially by the provisions of section 3566 G. C.

As gathered then from the contents of your communication, the following conditions prevail, namely, that by reason of the annexation of a portion of Clay township, Scioto county, by the municipal corporation of Portsmouth city, originally Clay township, or the territory thereof, is now comprised of three distinct groups of incorporated territory, namely, (1) the quasi-public corporation of Clay township of the northern portion of said township, including that area of the township not incorporated as municipal corporations, (2) that portion of Clay township contained within the municipal corporation of the city of Portsmouth and lying between the northern portion of the township termed quasi-public corporation, and the incorporated area contained within the incorporated village of New Boston, and (3) that portion of the township contained within the incorporated limits of New Boston village.

In other words, Clay township now contains two municipal corporations whose boundaries are adjacent, and claim is made that by reason of their peculiar location in the township, the one completely cuts off the other from the rest of the township. While geographically speaking such a claim may seem to have merit, in view of the peculiar conditions arising, yet it is not seriously contemplated that such a conclusion may be drawn, either logically or by inference of law.

Before the annexation of any of the territory of Clay township by the city of Portsmouth, New Boston village was incorporated and included Clay township territory, yet under such conditions it was not then contended that such an act removed or cut off the territory included within such corporate limits from the rest of Clay township. In fact, the contrary view seems to be held in your communication, since it states, "Heretofore New Boston, and Clay township outside the village, have elected township officers." Apparently then, for election purposes, territory included within the limits of the incorporated village, was still considered as Clay township, and by reason of the incorporation of New Boston village, such included territory had lost none of the governmental characteristics formerly peculiar to Clay township.

Such a view, together with its logical deduction of the operation of law, upon the incorporation of the village of New Boston, is thought to be correct, and is moreover supported by authority.

In *State vs. Wood*, 17 O. S. 544, a similar conclusion is reached by the court in regard to similar subject matter pertaining to incorporated cities wherein it is held:

"On the organization of a city within the limits of a township the boundaries of the two being not the same, the territory within the city is not thereby withdrawn from the township, and while the electors of the city may not vote for assessors and supervisors of highways as officers of the township, they may vote for trustees, clerk, treasurer, justices of the peace and constables."

So it would appear that upon the incorporation of cities as well as vil-

lages the law contemplates no change in the original governmental characteristics of the township territory included within the limits of such incorporated areas, with the minor exception of the privilege of voting for assessors and highway supervisors, as well as that exception arising by reason of the operation of section 3512 G. C. which establishes the rule that when the boundaries of a municipality become identical with those of the township, all township offices shall be abolished and the duties thereof shall afterwards be performed by the corresponding officers of the city or village with the exception of justices of the peace and constables.

Since section 3512 G. C. does not apply to the question under consideration, for the reason that the boundary lines of the incorporated areas discussed are not identical with the township, it would follow that with the minor exception of the matter of highway supervisors and assessors, no substantial change had occurred in the general character of that portion of Clay township included within the incorporated limits of the village of New Boston, when such territory is considered as a political subdivision of the state, created for civil and political purposes, and while it is true that the citizens of those incorporated areas under consideration have gained by reason of such incorporation certain added privileges afforded them by the city or village, such as police and fire protection, etc., yet they are still residents of Clay township, in that they have still retained the right of voting for the principal officers of the township at all official elections held therein. Hence, the conclusion is deduced that in the event of the incorporation of cities and villages, with the exceptions noted, the functions of township government are contemplated as being still in existence in those portions of included territory, and are viewed to operate in complete harmony with those of the municipal corporations created.

In view, therefore, of such considerations, it would become apparent that the citizens of that portion of Clay township included within the municipal limits of New Boston, being entitled to the suffrage of township elections, may not lawfully be excluded therefrom by the arbitrary or voluntary action of the citizens of any other portion of the township, and since township officials could not legally be elected for a portion only of the township, it necessarily would follow that taxes levied under such conditions would likewise be without authority of law. It is thought to be concluded therefore, under the conditions presented by your inquiry, that Clay township still remains an entity, as well as an original subdivision of the state, and may not be divided as such by the arbitrary withdrawal of any particular portion of the township or the citizens thereof, who may be desirous of electing their own officials and levying their own taxes independent of and to the exclusion of other portions of the township.

While a negative conclusion, therefore, must be reached in answer to the question as contained in your communication, it is, on the other hand, thought that if by reason of diversity of interests, or for local expediency the citizens or householders of Clay township desire to create new townships out of the old, statutory authority for the same may be found by the provisions of sections 3245 et seq. of the General Code, and if upon compliance with the provisions of law, a new township should be erected out of that portion of Clay township as is described in your inquiry, it would obviously follow that answer to a similar question as the one presented would then be in the affirmative.

Respectfully,
JOHN G. PRICE,
Attorney-General.