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ZONING/ORDINANCE — TOWNSHIP — ADOPTED — SECTION 3180-35 G.C.—APPROVAL OF ELECTORS IN UNINCORPORATED AREA OF TOWNSHIP—NOT AFFECTED BY ACTION OF COUNTY COMMISSIONERS—ERECTION OF NEW TOWNSHIP OUT OF PORTION OF TOWNSHIP WITHIN LIMITS OF MUNICIPAL CORPORATION—SECTION 3249 G.C.

SYLLABUS:

A township zoning ordinance which has been adopted under the provisions of Section 3180-35, General Code, with the approval of the electors residing in the unincorporated area of such township, is not affected by the action of the county commissioners, under the provisions of Section 3249, General Code, in erecting a new township out of that portion of such township within the limits of a municipal corporation.

Columbus, Ohio, June 3, 1952

Hon. Thomas H. Blakely, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Acting under General Code Section 3249 of the State of Ohio, the municipalities of Willoughby, Eastlake, Willowick, Wickliffe, Timberlake, Lakeline and Waite Hill filed petitions with the Commissioners of Lake County, Ohio, requesting the erection of townships out of Willoughby Township and a portion of Kirtland Township, the boundaries of which would be coterminous with the boundaries of the municipalities.

“The County Commissioners granted the requests and created new townships in each of the municipalities coterminous with the boundaries of the respective municipalities and also created a new township out of the unincorporated part of original Willoughby Township. The name Willoughby Township was retained by the unincorporated part.

“The unincorporated part of Willoughby Township had adopted township zoning several years previously.

“Our question is—does Township Zoning as previously adopted, continue to apply to Willoughby Township as it now exists?”

Section 3249, General Code, authorizing the changes here in question, reads as follows:

“If the limits of a municipal corporation do not comprise the whole of the established township or townships in which it is situated, or if by change of the limits of such corporation, or otherwise, they include territory lying in more than one township, and the council of such corporation shall in either case, by a vote of the majority of the members thereof, petition the commissioners of the proper county for a change of township lines so as to make them identical in whole or in part with the limits of the corporation, or to erect a new township out of the portion of such township or townships included within the limits of such municipal corporation, the commissioners on presentation of such petition, with the proceedings of the council duly authenticated, at a regular or adjourned session, may change the boundaries, of the township or townships, or erect such new township accordingly.”

It appears from these provisions that changes in township boundaries may be made thereunder alternatively as follows:

1. If the limits of a municipality do not comprise the whole of the established township in which it is located, township lines may be changed so as to make them identical with the limits of the corporation, (a) in whole, or (b) in part.
2. If the same is true of a municipality located in *more than one* township, similar action may be taken to make township lines identical with the limits of the corporation (a) in whole, or (b) in part.
3. In any such situation the alternative action may be taken of erecting a new township out of the portion of such township or townships included within the limits of the municipal corporation concerned.

In the first and second situations above described it is clear that where the township lines have been made identical *only in part* with the boundaries of the municipality, the only effect would be to transfer such municipality from one township to another, or to place it entirely in one township in a case where it had previously been situated in more than one.

However, where such lines are made wholly identical with the boundaries of the municipality, it is clear that the unincorporated territory previously situated within the township is excluded therefrom. Such territory, if it be less than twenty-two square miles in area can be annexed to a contiguous township, or it may be erected into a new township under the provisions of Section 3250, General Code, which reads:

"In making such change, if any township not having within its limits a city or village, is reduced in territory to less than twenty-two square miles, it 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. If a 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."

I find no express provision in the statute for the disposition of such excluded territory which is in excess of twenty-two square miles in area, but it can scarcely be doubted that the commissioners could include it in a contiguous township by a change of boundaries effected under the general provisions of Section 3245, General Code, which reads:

"The county commissioners may alter or change the boundaries of any civil township or townships, or partition any township or townships among other townships within their respective counties, by attaching a part of one township to another, or by dividing one township and attaching the parts to other townships, or by laying off and designating a new township from the territory of one or more townships of the same county, or from territory not before included in a civil township, when it is made to appear necessary or expedient, by a petition for that purpose, signed by a majority of the householders residing within the bounds of the respective townships to be affected by such partition or division."

Whatever action is taken in this regard, however, with respect to the first and second situations described above, it would appear that the political entity of the original township in such cases would follow the reduced territory which is now coterminous with the municipality, since the boundaries of such township have been changed "so as to make them identical * * * with the limits of the corporation." Such is the case in the change of county boundaries as indicated by Read, J., in *Crawford County v. Commissioners*, 16 Ohio, 467 (468), in the following language:

"* * * The identity of a county does not depend upon its territorial boundaries, but its political organization, * * *."

"* * * A change of boundary is not the erection of a new county. If its political organization continues, its identity is preserved, its existence dates from the act erecting it, and not the act which may change its boundary. * * *"

Because both counties and townships are creatures of the statute, it would appear that this rule would be applicable in the instant case also.

In the third situation described above, however, it is to be observed that the statute provides for the erection of a *new township* out of that portion of the old which is included within the limits of the municipal corporation. In such cases it would follow, under the rule in the Crawford County case, *supra*, that the original political entity would follow the unincorporated territory not included in such municipal limits.

With these rules in mind we may proceed to inquire, in the situation you describe, whether the political entity remains intact in the unincorporated portion of the original Willoughby Township, which portion, following the action of the commissioners, is still known by that name.

You have stated that the action so taken has resulted in the creation of seven *new* townships coterminous with each of seven municipalities in the two original townships of Willoughby and Kirtland. By reference to a township map of Lake county, I note that at least two of such municipalities were located in the original Willoughby township. It obviously would be impossible in this situation so to change township lines as to make them coterminous with each of these municipalities, and thus to preserve in each of them the original political entity of the old township. Nor does it appear that this was attempted. You state that a *new township* was created in each such case, thus indicating that the commissioners have proceeded under the third alternative method provided for in Section 3249, *supra*. Such being the case, it follows that the commissioners could not, and did not, create a *new township* out of the unincorporated portion of the old, for such action is not authorized by law in this situation. From this it follows that the present Willoughby township is a political entity identical with that of the original township.

In this situation I am unable to perceive how the change in the township lines reducing it in area would affect the validity of zoning ordinances theretofore in effect. It is to be noted here that such zoning ordinance could have been made effective in this township only by a favorable vote thereon under the provisions of Section 3180-35, General Code. This section reads:

“If the zoning resolution is adopted by the board of township trustees, the board of township trustees shall cause the question of whether or not the proposed plan of zoning shall be put in effect to be submitted to the electors residing in the

unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect if the plan was so approved."

Of special significance is the provision above for a vote by the electors "residing in the unincorporated area of the township." This clearly indicates that the specific zoning resolution here in question has already been voted on by the electors resident in the same territory which now comprises the township with which we are concerned. This being true, it could probably be said, even in a situation where the reduced township is erected into a new political entity, that a zoning ordinance theretofore approved by vote of the electors resident therein would be unaffected by such change. Where, as in the case at hand, the political entity of the old township has continued unchanged, I conclude without difficulty that such ordinance is unaffected.

Respectfully,

C. WILLIAM O'NEILL
Attorney General