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MUNICIPALITY—PROCEEDINGS INSTITUTED TO ANNEX CONTIGUOUS TERRITORY—DEFEATED BY ADVERSE VOTE—SECTION 3558 ET SEQ., G. C.—ELECTION HELD UNDER SECTION 3561-1 G. C.—NO BAR TO APPLICATION AT ANY TIME FOR ANNEXATION OF TERRITORY, FILED BY RESIDENT CITIZENS—SECTION 3548 ET SEQ., G. C.

## SYLLABUS:

Where proceedings have been instituted by a municipality to annex contiguous territory pursuant to Section 3558 et seq., General Code, and such proceedings were defeated by an adverse vote at an election held under Section 3561-1, General Code, said Section 3561-1 is not a bar to an application at any time for the annexation of said territory or a portion thereof filed by the citizens residing therein pursuant to Section 3548 et seq. of the General Code.

Columbus, Ohio, July 24, 1951

Hon. John H. Anderson, Prosecuting Attorney  
Trumbull County, Warren, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“A petition signed by a majority of the resident freeholders of an unincorporated area in Hubbard Township, adjacent to the Village of Hubbard, has been filed with the Trumbull county

commissioners for the purpose of annexing a certain area to that Village.

“Less than five years ago the Village of Hubbard by ordinance attempted to annex a larger area, which included the portion now seeking annexation. As required by law, the proposition was submitted to the electorate residing in the unincorporated portion of the township and was defeated.

“Question: Does the five year limitation as provided in Section 3561-1, General Code, apply to the present attempt now being made, as outlined in the first paragraph of this letter?”

Section 3558 et seq., General Code, authorizes the annexation of contiguous territory, on the application of a municipality. The proceedings are begun by the filing by the municipality of an application addressed to the county commissioners, setting forth that under ordinance of council the territory described in the application is authorized to be annexed to the corporation. The subsequent proceedings contemplate a hearing and an order by the commissioners. Section 3561 reads as follows:

“When the petition is presented to the commissioners, like proceedings shall be had, in all respects, so far as applicable, as are required in case of annexation on application of citizens in this chapter. However, if the only territory to be annexed is territory owned by the county, the consent of the legislative authorities only of the political units concerned shall be necessary to complete such annexation.”

Section 3561-1, General Code, reads in part, as follows:

“A vote, by the electors of the unincorporated area of the township shall be taken under the election laws of the state of Ohio at the next general or primary election occurring more than thirty days after council passes the ordinance mentioned in section 3559 of the General Code. Thereupon all annexation proceedings shall be stayed until the result of the election shall be known. If a majority of the electors of the unincorporated area of the township voting in said election favor annexation, proceedings shall begin within ninety days to complete annexation, and if a majority vote is against annexation, no further proceedings shall be had for annexation for at least five years. \* \* \*”

Prior to the enactment of Section 3561-1 in 1941, it was possible for a municipal corporation to institute and carry to completion proceedings for annexation of outlying territory without the consent of, and against

the desire of the inhabitants of the territory sought to be annexed. In an act passed May 15, 1941, 119 Ohio Laws, 853, Section 3561-1 was enacted, providing for a vote of the electors residing in the territory sought to be annexed. It was there provided that if a majority vote is *against annexation*, "no further proceedings shall be had for annexation for at least five years." This section was amended by an act effective September 10, 1947, 122 Ohio Laws, 249, providing that such vote should be by the electors of the unincorporated area of the township. The same provision was retained as to the effect of an adverse vote.

It seems very clear that the legislative intent in enacting this section was to prevent the municipality from exercising what had been an arbitrary right, contrary to the will of the inhabitants of territory outside of the municipality who would be directly affected. The use of the word "further" must certainly refer to the proceedings which have been instituted by the municipality. It appears to me that it was intended that residents of the territory in question should be left unmolested by the municipality for a period of at least five years.

If your question were based on a situation where the municipality itself was proposing within the five year period to start another proceeding looking to the annexation of a portion of the territory as to which the election had been had, I would have no hesitancy in holding that such procedure would be contrary to the prohibition contained in the statute quoted, even though more or less territory was included. Manifestly, if a municipality could start a new procedure at any time following an adverse decision at an election, by either decreasing or increasing the area of the territory proposed to be annexed, it could force another election, and could repeat this process over and over, to the point of becoming a species of persecution.

Your letter, however, presents an entirely different situation. Here, the inhabitants of the unincorporated portion of the territory have voted adversely. It may be assumed that the inhabitants of the territory sought to be annexed were hostile to the proposition, but whether they were or were not, their fate has been controlled by a vote of the electors outside the municipality. If, as stated, a majority of the resident freeholders of an unincorporated area comprising only a portion of the territory originally sought to be annexed, now desire to be annexed to the municipality, they are given the right to institute a procedure to that effect by Sections

3548 to 3557-I, inclusive, of the General Code. Section 3548 reads as follows:

“The inhabitants residing on territory adjacent to a municipality may, at their own option, cause such territory to be annexed thereto, in the manner hereinafter provided. Application shall be by petition, addressed to the commissioners of the county in which the territory is located, signed by a majority of the adult freeholders residing on such territory, and shall contain the name of a person authorized to act as the agent of the petitioners in securing such annexation, and a full description of the territory, and be accompanied by an accurate map or plat thereof.”

By the terms of Section 3549, General Code, this petition is presented to the county commissioners and the same proceedings shall be had so far as applicable, and the same duties in respect thereto shall be performed by the commissioners and other officers, as are required in case of an application to be organized into a village.

These latter proceedings are found in Section 3516, General Code, and require a notice of the filing of the petition and the time and place of hearing to be published and posted, which is followed by a public hearing and an order for incorporation, or as in this case, for annexation.

Section 3553 provides that a petition to enjoin such proceeding may be filed in the Court of Common Pleas within sixty days after the filing of a transcript of such proceedings and a map of the territory, with the auditor or clerk of the corporation. If no such injunction is sought, the transcript and map are presented to the municipal council which is authorized by resolution or ordinance, to accept or reject the application for annexation.

It will be seen that these two procedures looking to annexation are quite distinct, and as I have before pointed out, they are covered by different laws.

It might be noted, in this connection that in the enactment of the General Code, the two processes are given distinct general headings: “ANNEXATION ON APPLICATION OF CITIZENS” and “ANNEXATION ON APPLICATION OF A CORPORATION.”

Section 3561-I appears to me to have no connection whatsoever with the proceedings above outlined whereby the inhabitants of outlying territory seek annexation, and their petition may be approved by the county

commissioners and finally accepted by the municipal council. There is manifest reason for this statute prohibiting further aggressive action on the part of a municipality, for a certain period, but I can see no possible reason for considering that it has anything to do with a procedure that is instituted by the inhabitants of an outlying territory who desire annexation to the municipality.

Accordingly, in specific answer to your question it is my opinion that where proceedings have been instituted by a municipality to annex contiguous territory pursuant to Section 3558 et seq., General Code, and such proceedings were defeated by an adverse vote at an election held under Section 3561-1, General Code, said Section 3561-1 is not a bar to an **application at any time for the annexation** of said territory or a portion thereof filed by the citizens residing therein pursuant to Section 3548 et seq. of the General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General