

(1) The Department of Public Welfare has no authority under Sections 1819 and 1820 of the General Code to inquire into the question of legal settlement as between counties in the state.

(2) The question of the legal settlement of a person, whom it is sought to have committed to a state institution, as between counties in the state is a jurisdictional one which must be determined by the court in which the proceeding is brought.

(3) A person who has acquired a legal settlement in a county of this state does not lose that legal settlement until another such settlement has been acquired as provided in Section 3477, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

717.

ANNEXATION OF ONE OR MORE TOWNSHIPS TO A MUNICIPAL CORPORATION—APPORTIONMENT OF NET INDEBTEDNESS—ADJUSTMENT OF UNENCUMBERED BALANCES—ADJUSTMENT MADE BY COUNTY AUDITOR MUST BE ACCEPTED BY ORDINANCE OR RESOLUTION OF MUNICIPALITY.

SYLLABUS:

Upon the annexation of a portion of one or more townships to a municipal corporation within which township tax levies for the payment of township debts do not apply, the auditor of the county in which the township is located shall apportion the existing net indebtedness of the township between the territory transferred to the municipal corporation and the unannexed portion of the township or townships in the proportion that the total tax duplicate for the annexed territory bears to the total tax duplicate remaining in and for the unannexed portion of the township or townships. The portion of said net indebtedness apportioned to the territory annexed shall be assumed and paid by the municipal corporation. A like adjustment shall be made of the unencumbered balances of the funds of the township. The annexation shall not be effective until the apportionment as made by the county auditor shall be accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation.

COLUMBUS, OHIO, July 11, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication reading as follows:

“The Bureau is making an examination of the affairs of the City of Akron and is in receipt of a letter from its examiner, which reads:

“On August 2, 1927, Senate Bill No. 290, an act to supplement Section 3557 of the General Code, relative to the division of funds and indebtedness when territory is annexed to a municipal corporation, goes into effect. The following situation is now existing in the City of Akron relative to the annexation of a part of Tallmadge Township, known as Goodyear Heights Sub-division No. 1:

In December, 1926, the Council of the City of Akron passed an ordinance authorizing the City Solicitor to take the necessary steps to annex a portion of Tallmadge Township. The annexation proceedings have been delayed because of the indebtedness of that portion of the township for road improvement bonds. The commissioners were unfavorable to the proposition until some means had been devised to pay the indebtedness. There was no provision in the laws of Ohio which allowed a municipality to assume the indebtedness of a territory about to be annexed.

Senate Bill No. 290, the bill in question, was sponsored by Senator Emmons from Summit County, with the problem relative to Goodyear Heights in view. The introductory portion of the act reads as follows:

"When proceedings have been commenced to annex a portion of a township or a portion of more than one township to a municipal corporation, upon which the tax levies made by the trustees of such township or townships for the payment of the township debt, do not apply."

The question has been raised as to whether or not Goodyear Heights, which is a portion of Tallmadge Township in the County of Summit, and upon which the tax levies made by the Trustees of Tallmadge Township for the payment of a township debt do apply, is a portion of a township as designated in the act which will come within the provisions of the act. I will appreciate the opinion of the Attorney General on this point.

This being a matter of general interest, your views in connection therewith will be greatly appreciated."

Senate Bill No. 290, passed by the 87th General Assembly, provides for the enactment of supplemental Section 3557-1, General Code, as follows:

"When proceedings have been commenced to annex a portion of a township, or portions of more than one township, to a municipal corporation upon which the tax levies made by the trustees of such township or townships for the payment of the township debt do not apply, the auditor of the county in which said territory is located shall ascertain and apportion the amount of existing net indebtedness of the township which shall be assumed and paid by the municipal corporation. The apportionment shall be made in the proportion of the total duplicate for the annexed territory transferred to the municipal corporation to the total tax duplicate remaining in and for the unannexed portion of the township or townships. He shall ascertain, adjust and divide between the municipal corporation and the unannexed portion of the townships or townships any unencumbered balance on hand to the credit of any fund of such township, in the same proportion as is herein provided for division and apportionment of indebtedness. Provided, however, that no division shall be made of a balance in any fund of a township that is required by law for the retirement of its indebtedness. In case any net indebtedness is assumed by the municipal corporation as herein provided, the council or other legislative authority of such municipal corporation shall provide for the payment of the same by the levy of taxes therefor, or by the appropriation from an appropriate fund; and the proceeds of such tax levies or appropriation shall be transferred to the proper authorities of the township for the final redemption of its indebtedness. The apportionment provided in this section shall not be in effect until it is accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation. The passage of such resolution or ordinance shall be necessary to the validity of the annexation." (Italics the writer's.)

Prior to this enactment, when territory was detached from a township and annexed to a municipal corporation, the law made no provision either for a division of the funds belonging to the two subdivisions or for an apportionment of the indebtedness of the subdivisions affected by the transfer. It was therefore the evident purpose of this enactment to remedy this defect in the law, and to make provision whereby an equitable adjustment of the finances of two subdivisions, when territory is detached from one and annexed to the other, might be made, such for instance, as the situation which has arisen with respect to the annexation of a portion of Tallmadge township known as Goodyear Heights to the city of Akron.

That this apparent purpose is accomplished by the terms of the statute is clear, when the statute is read in the light of the purpose for which it was passed and consideration is given to its plain and unambiguous terms.

The words above italicized constitute a substantive clause which modifies the term "municipal corporation" and does not relate back to "portions of a township" or "portions of more than one township" as has suggested itself to your examiner and no doubt prompted his inquiry. This will more clearly appear to you by taking into consideration the correct punctuation of the sentence of which the italicized words form a part. Your examiner has no doubt been confused by reason of having been furnished a copy of the act which was incorrectly punctuated. I note in his communication he has placed a comma after the word "corporation" in the third line of the quotation from the statute and after "debt" in the fifth line, which if correct, would be somewhat confusing.

The correct punctuation is as I have indicated herein, in the light of which, the terms of the statute are clear and unambiguous.

I am therefore of the opinion that the clause "upon which the tax levies made by the trustees of such township or townships for the payment of the township debt, do not apply" has reference to the municipal corporation to which is to be attached "the portion of a township" or "portions of more than one township" and with reference to the situation about which your examiner inquires, it does not relate to the portion of Tallmadge township which is being annexed to the city of Akron. Therefore, when the county auditor makes the apportionment as provided for in the act and it is accepted by ordinance or resolution of the legislative authority of the city of Akron, the annexation will be complete.

Respectfully,

EDWARD C. TURNER,
Attorney General.

718.

REAL ESTATE—ACQUISITION OF, ADJACENT TO COURT HOUSE—ISSUANCE OF BONDS—WHEN BONDS NEED NOT BE ISSUED.

SYLLABUS:

1. *Where it is proposed to issue bonds for the acquisition of additional real estate adjacent to a court house, for the purpose of affording light, air, protection from fire, suitable surroundings, ingress and egress, it is necessary, under the provisions of section 2293-16 of the General Code, to secure authority therefor by a vote of the electors, in the event that the amount thereof exceeds twenty thousand dollars.*

2. *In the event that there are available sufficient funds to acquire the necessary real estate for the purposes mentioned without the necessity of the issuance of bonds, the board*