

OPINION NO. 71-069

Syllabus:

1. A county auditor is not required to accept for filing, recording, and transfer, pursuant to Section 709.06, Revised Code, an annexation which has been approved by a municipality upon citizens' application, where discrepancies exist between the description in the petition and the map or plat to such an extent that bona fide disputes might arise concerning the location of the boundaries.

2. Refusal by a county auditor to accept his copy of annexation proceedings, pursuant to Section 709.06, Revised Code, negates the entire purported annexation rather than just that territory which failed to meet the specific requirements of Chapter 709, Revised Code.

To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, October 14, 1971

I have before me your request for my opinion which reads, in part, as follows:

"1. Is a County Auditor required to accept for filing, recording and transfer pursuant to Section 709.06, R.C., an annexation approved by a municipality upon citizens application, where it appears that the clerk of township trustees a portion of whose territory is sought to be annexed was never given the notices required by Sections 709.03 and 709.031, R.C., and it further appears that discrepancies exist between the description in the Petition and the map or plat, and because of the inadequate information (apportionment of acreage where the proposed corporation line severs a tract) in regard to the tracts affected, he is unable to transfer the lands purportedly annexed on the tax books?

"2. If the County Auditor is not required to accept the purported annexation, what, if any, legal effect does it have on the territory sought to be annexed, and its inhabitants?

"3. If the proceedings are not valid as to the Fearing Township portion, are they valid as to Marietta Township portion?

"4. If the answer to question #1 is in the affirmative, please advise how the County Auditor is to effect the necessary transfer of lands involved particularly where the annexation line severs a tract of land."

Your letter indicates that a petition was filed under Section 709.02, Revised Code, for the annexation of territory adjacent to Marietta the board of county commissioners of Washington County approved the petition under Section 709.033, Revised Code; and on March 19, 1971, Marietta accepted the proposed annexation under Section 709.04, Revised Code. The City of Marietta certified a copy at the annexation proceedings, pursuant to Section 709.06, Revised Code, to the Auditor of Washington County. After examination, the Auditor refused to accept the certified copy for filing for the following reasons:

"1. The Resolution of the City of Marietta accepting the annexation referred to the land as in Marietta Township, and the plat or map attached to the original petition showed a portion of the area to be annexed as situated in Fearing Township.

"2. Discrepancies appeared to exist in the area to be annexed as shown on the plat or map, and described in the Petition.

"3. The description in the petition considered together with the map or plat does not provide information so that the County Auditor may effect a division on the tax books of the lands of a particular owner whose tract is severed by the proposed annexation line.

"4. The Fearing Township Trustees were never given any notice of the proposed annexation of a portion of their territory. The Trustees and their Clerk state that they (either in official or individual capacity) first learned of the proposed annexation of a portion of their Township on April 28, 1971."

It should be noted, that Section 709.21, Revised Code, provides:

"No error, irregularity, or defect in the proceedings under sections 709.01 to 709.20, inclusive, of the Revised Code, shall render them invalid, if the annexed territory has been recognized as a part of the annexing municipal corporation, and taxes levied upon it as such have been paid, and it has been subjected to the authority of the legislative authority of such municipal corporation, without objection from the inhabitants of such territory."

(Emphasis added)

This Section, however, is not applicable in this case since your correspondence disclosed that no taxes have been levied by, or paid to, the municipality of Marietta upon the territory in question. Therefore, although serious doubts arise as to whether the procedure followed for annexation substantially complied with that required in Section 709.02, *et seq*, Revised Code, the real question presented is whether a county auditor may, under any circumstances, refuse to accept for filing, recording, and transfer a citizen's petition for annexation already granted by the board of county commissioners and approved by the annexing municipality.

In the present case, the proposed annexation was accepted pursuant to Section 709.04, *supra*, by the City Council of Marietta, in Resolution No. 66 (70-71) and certified by the City Auditor as being correct. Section 709.06, *supra*, deals with the subsequent procedure to be followed. It reads as follows:

"If the resolution or ordinance required by section 709.04 of the Revised Code is an acceptance of the proposed annexation, the auditor or clerk of the municipal corporation to which annexation is proposed shall make three copies, containing the petition, the map or plat accompanying the petition, a transcript of the proceedings of the board of county commissioners, and resolutions and ordinances in relation to the annexation, * * *. The auditor or clerk shall forthwith deliver one such copy to the county auditor, * * *."

(Emphasis added)

It was upon this delivery that the Washington County Auditor refused to accept his copy of the proceedings because the petition for annexation did not contain a "full description" of the territory to be annexed.

Since the duties of the County Auditor include the assessing of real estate for tax purposes, with an appraisal and listing of all property liable to taxation in the county, the need for accuracy in

annexation proceedings is paramount. In order to determine the proper valuation to be made, the auditor must know the exact boundaries of municipal and county lands. Accordingly, the Code has made it mandatory that the map or plat be an accurate and full description of the territory sought to be annexed. Section 709.02, supra, provides, in pertinent part, as follows:

"Such petition shall contain:

"(A) A full description and accurate map or plat of the territory sought to be annexed;

" * * * * * "

Continuing, Section 709.033, supra, states:

"After the hearing on a petition to annex, the board of county commissioners shall enter an order upon its journal allowing the annexation if it finds that:

"(A) The petition contains all matter required in section 709.02 of the Revised Code.

" * * * * * "

"(D) The territory included in the annexation petition is not unreasonably large; the map or plat is accurate; and the general good of the territory sought to be annexed will be served if the annexation petition is granted.

" * * * * * "

(Emphasis added)

Several cases have helped clear up what constitutes an accurate map under the provisions of the Code. Dealing with the incorporation of municipalities, Norfolk and Western Railway Company, et al., v. Schaefer, 69 Ohio L. Abs. 591 (1954), held:

"While it is not necessary that the maps and description required by the statutes relating to the incorporation of municipalities be meticulously and mathematically correct in all details, the intent of the statutory law requires that it be possible to ascertain from them the territory to be incorporated and a map or description from which bona fide disputes may arise concerning the location of boundaries does not have that degree of certainty which the statute requires."

More specific was the decision of Hoye v. Schaeffer, 81 Ohio L. Abs. 193 (1959), which stated:

"A map of the territory to be incorporated which attempts by different colors to show such territory and the adjacent territory of the adjoining municipality and in so doing includes in

the municipality and omits from the unincorporated territory ninety-two one-hundredths of an acre of the territory sought to be incorporated and also fails to tint other areas sought to be incorporated, is not an accurate map within the meaning of §707.15 R.C." [Now included in Section 707.02, Revised Code].

The Supreme Court, discussing the authority of a county recorder to refuse to accept transfer instruments in Preston v. Shaner, 172 Ohio St. 111 (1961), held that, where there is evidence to support a "finding that the description of the property is not definite, accurate and detailed", it is not error for a court to deny a writ of mandamus to require the county recorder to "* * * accept and record instruments for the transfer of realty and the release of mortgages, * * *." Finally, in Opinion No. 69-139, Opinions of the Attorney General for 1960, my predecessor indicated that a county auditor need not accept for transfer on the tax duplicate any conveyance of real estate when he is unable to clearly identify the property to be transferred.

Although it is well settled that a county auditor is a ministerial officer, 14 O. Jur. 2d §92, makes it clear that:

"Even in the performance of his clearly ministerial duties he [the county auditor] is required to exercise his intelligence. It is his duty to use his judgment concerning the official acts which he is called upon to perform, to a degree commensurate with the responsibility, and to act in good faith and with the prudence and integrity which an honest man of ordinary prudence would exercise under like circumstances."

Since it becomes impossible for the county auditor to perform his duties when the boundaries of annexed territory are indefinite, good judgment dictates that he not accept a copy of the annexation proceedings until a precise delineation of the property is illustrated on an accurate map or plat. Therefore, since the county auditor acted clearly within his authorized discretion in refusing to accept his copy, the annexation proceedings must be deemed to have failed and must be corrected and properly filed before effective.

In regard to your inquiry as to a possible severing of Fearing Township from the annexation proceeding agreement between the city and the county, the authority seems to hold against such an action. In Urner v. Pickelheimer, 45 Ohio App. 343 (1933), a somewhat similar effort to sever in an annexation proceeding was rejected because it would "completely subvert the original intention and the manifest wishes of the original signers of the petition for annexation, and leave them helpless, * * *." In this light, the annexation proceedings accepted by resolution of the city must be deemed as void and of no effect. Consequently, the inhabitants of the supposed annexed area are not inhabitants of the City of Marietta, until annexation has been legally accomplished pursuant to the requirements of Chapter 709, Revised Code.

Therefore, in specific answer to your questions, it is my opinion, and you are so advised, that:

1. A county auditor is not required to accept for filing, recording, and transfer, pursuant to Section 709.06, Revised Code, an annexation which has been approved by a municipality upon citizens' application, where discrepancies exist between the description in the petition and the map or plat to such an extent that bona fide disputes might arise concerning the location of the boundaries.

2. Refusal by a county auditor to accept his copy of annexation proceedings, pursuant to Section 709.06, Revised Code, negates the entire purported annexation rather than just that territory which failed to meet the specific requirements of Chapter 709, Revised Code.