

OPINION NO. 77-031

Syllabus:

If a municipal corporation fails to initiate proceedings pursuant to R.C. 503.07 to adjust township boundaries, the inhabitants of township territory that has been annexed to such a municipal corporation are still subject to, and eligible to vote on township tax levies and issues.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, June 7, 1977

I have before me your request for my opinion inquiring whether the inhabitants of territory that has been annexed to a municipal corporation are eligible to vote on township levies and issues where the municipal authorities have not initiated proceedings to adjust the township limits as provided by R.C. 503.07.

R.C. 503.07 contains provisions by which township boundary lines can be made identical with those of the municipality of which it is part when, for any reason, such lines are not identical. This would be the case in the instant situation where a municipality has, pursuant to R.C. Chapter 731, annexed territory which comprises part of a township. Thus, in such a case the new boundaries of the municipality would extend into the township and conversely the township boundaries would extend into the municipality. The purpose of R.C. 503.07 is to eliminate such a situation by allowing for the alteration of the township boundary lines to be identical with those of the municipality, so that the part of the township that was annexed would be wholly and exclusively within the municipal boundaries.

If, however, a municipality does not initiate the procedure set forth in R.C. 503.07 the annexed township territory does not cease to be a component part of the township or townships in which it is situated. Halsey v. Ward, 17 Ohio St. 544 (1967); 1954 Op. Att'y. Gen. No. 4642, p. 648; 1924 Op. Att'y. Gen. No. 1213, p. 82.

In 1954 Op. Att'y. Gen. No. 4642, p. 648, the first and fourth branches of the syllabus provide as follows:

"1. The extension of the limits of a municipality by the annexation of territory in an adjacent township does not per se affect the limits or

political existence of such township. The municipal authorities may, however, initiate proceedings under the provisions of Section 503.07, Revised Code, to adjust the township limits to make them identical in whole or in part with the municipal limits so as to accomplish the abolition of certain township offices under the provisions of Section 703.22, Revised Code.

"

"4. Where the limits of a municipality extend over into the territory of a township the political existence of a township is not affected and electors of the municipality residing within the overlapping portion of the township may vote for a township trustee, township clerk, justices of the peace and constables to be elected in such township."

It is clear, therefore, that when township and municipal boundaries overlap, the inhabitants of the overlapping territory are considered residents of both the municipality and the township with all of the benefits and obligations attendant thereto.

The subject of taxation of township property within a municipality was specifically discussed in 1924 Op. Att'y. Gen. No. 1213, p. 82, wherein it was stated:

"The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or taxing purposes."

Further, it was noted in this opinion:

"It will be noted therefore that it is the general rule that a township can levy a tax on all the taxable property located in the township including the property in a village or city within the township, unless an exception is found in the statute providing for the tax."

Thus, it would appear that property of the township, even though it is also located within the limits of a municipality, still retains a complete and independent existence as part of the township. The inhabitants of

the territory located within the municipality still retain their full voting rights with regard to the election of the various township officers and the property of such territory still remains subject to township tax levies, unless there is some exception in the statute providing for the specific tax. Accordingly, the owners of such property would clearly have the right to vote on levies and issues which might result in any additional taxation to their property. See: 1944 Op. Att'y. Gen. No. 7038, p. 406 and 1939 Op. Att'y. Gen. No. 198, p. 249 (dealing with the issue of taxation of the township area located within a municipality).

The problems created when municipal and township boundaries overlap were discussed in 1954 Op. Att'y. Gen. No. 4642, p. 648, where it was noted as follows:

"It is of course readily foreseeable that where a municipal and a township boundary overlap, in part, inequitable situations may arise both with respect to the citizens of a municipality within the township as well as with respect to citizens of the municipality. For example, the citizens of the municipality might well find themselves subject to taxation both by the township as well as the municipality within which they reside."

As my predecessor specifically noted in the foregoing opinion, it is advisable when a municipality annexes a part of a township that the provisions of R.C. 503.07 be followed as a matter of course in order to avoid the burdensome and inequitable situations that would otherwise result.

In the absence of such a procedure, however, I must conclude that the inhabitants of a township territory that has been annexed to a municipal corporation are still subject to and eligible to vote on township tax levies and issues.

In reaching this conclusion, I am not unaware of the operation and effect of R.C. 709.12. This section, which provides for an apportionment of the indebtedness and a division of the funds of the township between the township and the municipality, when its territory is annexed, provides 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 board of township trustees for the payment of the township debt do not apply, the county auditor 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. The auditor shall ascertain, adjust, and divide between the municipal corporation and the unannexed portion of the township any unencumbered balance on hand to the credit of any fund of such township, in the same proportion as is provided in this section for the division and apportionment of indebtedness. No division shall be made of a balance in any fund of a township that is required for the retirement of its indebtedness. In case any net indebtedness is assumed by the municipal corporation as provided in this section, the legislative authority of such municipal corporation shall provide for the payment of such indebtedness by the levy of taxes therefor, or by the appropriation from an appropriate fund. The proceeds of such levy or appropriation shall be transferred to the proper authorities of the township for the final redemption of its indebtedness."

(Emphasis added)

It is clear that R.C. 709.12 contemplates the division of all funds whatever their source, except proceeds of tax levies intended for the payment of interest or principal of township indebtedness. However, in 1943 Op. Att'y. Gen. No. 6475, p. 616 my predecessor discussed an earlier version of this statute which was, for purposes of this opinion, identical to the one now in effect. The third branch of the syllabus provides as follows:

"In the division of funds contemplated by Section 3557-1, General Code, [now R.C. 709.12] only the unencumbered balances of funds actually on hand can be considered, and moneys in the process of collection are not included in the division required by said section."

This proposition was again stated in 1960 Op. Att'y. Gen. No. 1901, p. 720.

Therefore, it is clear that the division of funds

contemplated by R.C. 709.12 involves only those unencumbered funds of the township which are on hand at the time of the annexation to the municipality. Any subsequent funds coming into the treasury of the township need not be divided in the manner prescribed by R.C. 709.12. As such, I must conclude that the provisions of R.C. 709.12 in no way alter the conclusions reached above that the inhabitants of the township territory which has been annexed to a municipality would be subject to, and eligible to vote on, township tax levies and issues. The division of the funds contemplated is not ongoing. Rather, it is done only once at the time of the annexation of the township territory.

Therefore, it is my opinion and you are so advised that if a municipal corporation fails to initiate proceedings pursuant to R.C. 503.07 to adjust township boundaries, the inhabitants of township territory that has been annexed to such a municipal corporation are still subject to, and eligible to vote on township tax levies and issues.