

**Note from the Attorney General's Office:**

1958 Op. Att'y Gen. No. 58-2686 was modified by 1959 Op. Att'y Gen. No. 59-91 and overruled in part by 1962 Op. Att'y Gen. No. 62-3310.

2686

TOWNSHIPS — CHANGES IN BOUNDARIES — BOARD OF COUNTY COMMISSIONERS—§503.07 R.C.—ERECTION OF NEW TOWNSHIP—§§503.03, 503.07, 503.08 R.C.—NOTICE REQUIRED, §503.04 R.C.—APPORTIONMENT OF FUNDS BETWEEN OLD AND NEW TOWNSHIPS—§§503.02, 503.03 R.C.—AREA OF ORIGINAL TOWNSHIP REMAINS LIABLE FOR OBLIGATIONS CONTRACTED PRIOR TO SUCH CHANGE—NO AUTHORITY FOR APPORTIONMENT OF EXISTING OBLIGATIONS—1743 O. A. G. 1958, P. . . . , APPROVED AND FOLLOWED.

SYLLABUS:

1. It is the duty of a board of county commissioners to determine in the first instance whether a petition presented to such board by the legislative authority of a municipal corporation pursuant to Section 503.07, Revised Code, is such a proper petition within the meaning of the said section that the board of county commissioners must then perform its mandatory duty to effect the requested change in township boundaries or erect a new township in accordance with such petition, but there is a *prima facie* presumption of the validity both of the proceedings of the legislative authority of a municipal corporation and the authentication by the officer charged with that duty, of such proceedings.

2. Section 503.08, Revised Code, authorizes the erection of a new township comprising less than the area otherwise required by Section 503.03, Revised Code, where a board of county commissioners is acting pursuant to petitions filed by the legislative authority of a municipal corporation under authority of Section 503.07, Revised Code, and a majority of the householders in the unincorporated area of a reduced township under authority of Section 503.08, Revised Code. Opinion No. 1743, Opinions of the Attorney General for 1958, p. . . , approved and followed.

3. A board of county commissioners proceeding according to Section 503.07, Revised Code, is required by Section 503.04, Revised Code, to give the necessary notice, to record the changed or altered boundaries of any township and the boundaries of any newly created township, and to name any such newly created township, in the manner set forth in the said Section 503.04, Revised Code.

4. Section 503.03 and Section 503.02, Revised Code, imply a duty on the part of the board of county commissioners of apportioning the funds in the treasury of a previously existing township where the boundaries of such township are changed or a new township is erected pursuant to Section 503.07, Revised Code.

5. Where a board of county commissioners acts under authority of Sections 503.07 and 503.08, Revised Code, to alter, diminish or change in any way the territorial limits of a township, Section 503.17, Revised Code, requires that the entire original township and all portions thereof shall remain liable for all contracts, engagements or liabilities contracted prior to such change, and there is no authority in law for an apportionment of such previously existing obligations.

Columbus, Ohio, September 5, 1958

Hon. Theodore Lutz, Prosecuting Attorney  
Richland County, Mansfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Instruction has been requested by the Board of County Commissioners of Richland County, Ohio as to the proper procedure to be followed by the said Board in relation to a petition of the Council of the Village of Lexington filed with the Board of Commissioners requesting the establishment of a civil township with boundaries identical with the limits of the Village of Lexington, Ohio. Copies of the petition and Council resolution are included for your scrutiny.

"The Village of Lexington is situated within Troy Township in Richland County, Ohio. The petition appears to be prepared under authority of Section 503.07, Ohio Revised Code. The certificate attached reveals that the resolution and petition were approved by a majority of the Council of the Village of Lexington, though that fact does not appear upon the face of either the petition or resolution. We are advised that the area of Troy Township outside the limits of Lexington Village will not compose twenty-two square miles in area.

"We presume that in proceeding upon this petition the Board of County Commissioners are governed by Section 503.04 Ohio Revised Code relative to notice and hearing to be had and the recording of the change of boundaries in the creation of the new township as set forth in that section.

"In regard to the area of Troy Township outside the limits of Lexington Village, Section 503.08 Ohio Revised Code would appear applicable and the County Commissioners would have available three alternative courses delineated in that section and as interpreted in 1955 O. A. G. No. 5422.

"With relationship to the division of funds of Troy Township as presently constituted, we note that Sections 503.09 through 503.13 Ohio Revised Code contemplate a division of funds by the County Commissioners where the petition is initiated by freeholders outside the limits of a "City" rather than where the petition is initiated by a Village Council as in this instance.

"In the case of *In Re Village of Rossford*, 21 O. O. 152, it was held that where a village is incorporated and a new township

created by the County Commissioners co-extensive and coterminous with the boundaries of the village, the division of township funds between the newly created township and the remaining portion of the old is to be made by the Probate Court of the county under authority granted by Section 707.28 Ohio Revised Code. In that case, the village was newly created whereas in this instance, the Village of Lexington has been in existence for many years. Under these circumstances, shall division of Troy Township funds be under the authority of 707.28 Ohio Revised Code, or will some other rule dictate?

"We are familiar with 1932 O. A. G. Opinion No. 4843 but are concerned with the interpretation of that opinion in relation to a current township-wide voted levy for purposes of providing the presently existing Troy Township including Lexington Village with fire protection. Notes are outstanding in anticipation of collection of said levy. Are the debts of Troy Township to be pro-rated between the planned civil township and the remainder of Troy Township as it shall be re-constituted?

"Reference is made to 1954 O. A. G. Opinion No. 4642 (Syllabus No. 2) which holds that it is the mandatory duty of the Board of County Commissioners to comply with a petition filed under Section 503.07 Ohio Revised Code. In this instance, is the transcript consisting of resolution, certificate and petition filed with the Board of County Commissioners sufficient to make it mandatory upon the Board of Commissioners to comply with the request of the petitioners?

"If the proceedings by the Village of Lexington as filed with the County Commissioners are in fact properly constituted and if the County Commissioners comply with the requirements of Sections 503.04 and 503.08 Ohio Revised Code, what are the proceedings necessary for the County Commissioners to fulfill their obligation in this instance?"

Section 503.07, Revised Code, reads:

"If the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, and the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, petitions the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation, the board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, may change the boundaries of the township or erect such new township."

Opinion No. 4642, Opinions of the Attorney General for 1954, p. 648, to which you have referred in your inquiry, held that where a municipal corporation, by its legislative authority, properly petitions the board of county commissioners for a change of township limits or the erection of a new township, as provided in Section 503.07, Revised Code, the said board must proceed according to law to make such change or erect a new township. I am in accord with that ruling. In my Informal Opinion No. 12, Informal Opinions of the Attorney General for 1957, p. 61, I concluded with this language:

“Hence it is my opinion and you are further advised that the provisions of Section 503.07 of the Revised Code are mandatory even though a change of boundaries of townships is not required by reason of the extension of the limits of a municipal corporation, as provided in Section 503.14, Revised Code.”

You have then asked me to advise you whether, in my opinion, the resolution, petition and certificate presented to the board of county commissioners by the legislative authority of the Village of Lexington are in such compliance with Section 503.07, Revised Code, that the board of county commissioners must now perform this duty. This is, in my opinion, a question of fact which must be determined in the first instance by the county commissioners acting in their official capacity. It is beyond the scope of my office to rule upon such a question of fact.

It is to be observed, however, that the statute in question prescribes no requirements as to the form of language of such a petition, but directs that it be presented pursuant to a vote of the majority of the members of the legislative authority of the municipality and that the proceedings of the said legislative authority must be authenticated. The board of county commissioners is required to act when a proper petition has been presented to that board, and in determining whether or not such a petition has been duly presented; that board should be guided by the general rule which is stated as follows in 28 Ohio Jurisprudence, p. 294:

“In the absence of evidence to the contrary, the law indulges a prima facie presumption in favor of the validity of the proceedings of a municipal council. \* \* \*”

The following statement, found in 32 Ohio Jurisprudence, p. 953, seems to me to be pertinent in any consideration by the board of the sufficiency of the certification by the village clerk:

“No doctrine is better established than that the acts of an officer, within the scope of his powers and authority, are presumed to be rightly and legally performed until the contrary appears; that is, the action of a public officer or board, within the limits of the jurisdiction conferred by law, is presumed to be not only valid but also in good faith and in the exercise of sound judgment. Acts done which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter. \* \* \*”

In your letter of inquiry you have suggested that the area of Troy Township remaining if such new township is erected will contain less than twenty-two square miles. I assume that there is no municipal corporation in this portion of Troy Township. In this connection I invite your attention to Opinion No. 1743, Opinions of the Attorney General for 1958, p. 95, which was issued on February 20, 1958. The syllabus of the opinion reads:

“Section 503.03, Revised Code, forbids, with certain exceptions, the reduction of the territory of a township to an area less than twenty-two square miles unless such township wholly includes a municipal corporation, but this section does not prevent the creation of a new township of such reduced area as provided in Section 503.08, Revised Code, where such reduction is an incident of changes made in township boundaries affected under the provisions of Section 503.07, Revised Code.”

You have further suggested in your inquiry that the board of county commissioners would proceed under Section 503.08, Revised Code, in making disposition of the territory remaining in Troy Township following action by such board upon any proper petition presented in accordance with Section 503.07, Revised Code. With this suggestion I agree, and I am also in accord with your suggestion that the said board could (1) annex the remaining territory to any contiguous township, (2) annex to such remaining portion of Troy Township territory from contiguous townships and erect a new township, or (3) erect the remaining territory into a new township upon the receipt of such a petition as is provided for in the said Section 503.08, Revised Code. See Opinion No. 5422, Opinions of the Attorney General for 1955, p. 304.

I shall discuss next your inquiry concerning the application of Section 503.04, Revised Code, to the situation you have presented. That section reads:

“Before action is taken on an application for partition, alteration, change, or laying off of the boundaries of a township by the

board of county commissioners, at least thirty days' notice of the time for the hearing on such application or petition shall be given by advertisement, at three public places within the bounds of the territory proposed to be partitioned, altered, changed, or laid off. The board shall cause the boundaries of such township, so changed or altered, or new township laid off, to be recorded in a book to be kept for that purpose, and shall give each new township, so laid off, an appropriate name. No two townships in any county shall be incorporated by the same name."

It may, at first, seem that the first sentence of Section 503.04, Revised Code, could have no application in a situation where there is a mandatory duty upon the board of county commissioners to act in compliance with a proper petition. Further reflection, however, leads me to conclude that this procedure must be followed where the legislative authority of a municipality is proceeding under Section 503.07, Revised Code. The language of Section 503.08, Revised Code, is indicative of legislative intention that the householders of the unincorporated area of a township which is reduced to less than the required area shall have an opportunity to initiate appropriate proceedings for the erection of a new township. Section 503.04, Revised Code, provides the method by which such householders may be informed that a petition presented by the legislative authority of a municipal corporation will effect some change in the former township boundaries and that such a petition as is authorized by Section 503.08, Revised Code, may be prepared and presented to the board of county commissioners. Furthermore, that section imposes upon the said board the duty to record the boundaries as changed.

You have inquired whether any necessary division of funds presently belonging to Troy Township should be made pursuant to Section 707.28, Revised Code, as in the case of *In re Village of Rossford*, 67 Ohio App., 148, or under some other statutory authority.

I am impelled to the conclusion that the Rossford case has no application to the situation you present. The Village of Lexington has been in existence for many years, according to your letter, and it is presumed that any division of funds between the municipal corporation and the township within which it was incorporated has been completed. Section 707.28, Revised Code, appears to apply only to that division of property which becomes necessary when "a village is created out of a portion of a township, or portions of more than one township." In the *Rossford* case, *supra*, the municipality began to function on May 1, 1940; in June,

1940, action was initiated to create a new township, pursuant to Section 503.07, Revised Code, then Section 3249, General Code. The headnote of that case reads :

“Where a village is incorporated and a new township created by the county commissioners, coextensive and coterminous with the boundaries of the village, the division of township funds, between the newly created township and the remaining portion of the old, is to be made under Sections 3244 to 3250, General Code, by the Probate Court of the county in which the township is situated, and not under Section 3250-1 to 3250-5, General Code, by the county commissioners.”

In the course of the opinion it was pointed out that there can be no division of funds without statutory authority and that in the case of a village, Section 3544, General Code, now Section 707.28, Revised Code, was the only statute applicable. I do not, however, interpret anything in that case or in Section 707.28, Revised Code, as extending that principle to the situation you present. It seems to me that Section 503.02 and 503.03, Revised Code, when read together, make it clear that it is the board of county commissioners which must make the necessary apportionment of funds where such apportionment results from the erection of a new township rather than from the incorporation of a village. Section 503.02, Revised Code, vests in the board of county commissioners certain powers to alter the boundaries of existing townships; Section 503.03, Revised Code, reads in pertinent part :

“ \* \* \* In case of division or partition of a township, the funds in the treasury thereof shall be apportioned to the townships to which portions thereof are attached, or to the new townships established, to the extent they are collected from such territory.”

I am in accord with the view expressed in Opinion No. 687, Opinions of the Attorney General for 1949, p. 330. The inquiry concerned a village which had filed a petition seeking to have township lines changed so that they would be wholly identical with the corporate limits. The author of that opinion said this, at page 337 :

“ \* \* \* In the situation you present the village is not newly created and it is, therefore, my opinion that Section 3544 would have no application. The apportionment, therefore, would be governed exclusively by Section 3246, and would be made thereunder by the county commissioners at the time of the granting of the application of the village.



Section 3544 and 3246, General Code, are now, respectively, Section 707.28 and 503.03, Revised Code.

In the *Rossford* case, *supra*, the court distinguished the earlier case of *In re Lemon Township Trustees*, 60 Ohio App., 1, pointing out that the question presented there involved a city and not a village. While the *Lemon Township* case, *supra*, contains language which at first glance seems to be pertinent to your inquiry, I am impelled to the conclusion that it is not applicable. Here we are dealing with a village and not a city, and I cannot conclude that present Section 503.10, Revised Code, formerly Section 3250-5, General Code, applies in the instant case. Sections 503.09 to 503.13, inclusive, Revised Code, relate to those situations in which a city is eliminated from a township in accordance with the procedure set forth in the said sections.

Finally, I shall discuss the question which you have stated in this way: "Are the debts of Troy Township to be pro-rated between the planned civil township and the remainder of Troy Township as it shall be re-constituted?" You have mentioned that there is a presently existing debt representing expenditures for the purpose of providing all of Troy Township, including the Village of Lexington, with fire protection and that notes have been issued in anticipation of the collection of a special tax levy authorized by a vote of the electors of Troy Township.

It is quite clear that all of the territory presently comprising Troy Township remains liable for this obligation. Section 503.17, Revised Code, reads:

"When a township is altered, diminished, or changed in any way by the formation of new townships, additions to other townships, or otherwise, such original township and all portions thereof shall remain liable to the same extent on contracts, engagements, or liabilities contracted by such township prior to the change as if no such alteration, diminution, or change had taken place."

This statute does not, of course, dispose of the more basic problem regarding the manner in which taxes shall be levied for the purpose of retiring all existing obligations of the township. The board of county commissioners has not as yet, I understand, taken any action pursuant to the petition filed on behalf of the Village of Lexington, and I, therefore, invite your attention to Section 503.18, Revised Code. That section reads:

“In case of a division or change of a township *which has retained its original name*, the board of township trustees, in levying a tax for the payment of any legal or just claims against such township contracted prior to the change, shall procure a certified abstract from the county auditor, or, in case parcels of such township have been attached to townships of different counties, from the county auditors of the counties to which any portion of such township has been attached, of all the taxable property situated in such attached portions, with the names of the persons owning them.” (Emphasis added)

Sections 503.19 and 503.20, Revised Code, provide the procedure to be followed by the board of township trustees in making the assessment and levy provided for in Section 503.18, Revised Code. I find no authority in law for a board of county commissioners, when acting pursuant to a petition filed in accordance with Section 503.07, Revised Code, to apportion the debts of the existing township. The legislature has placed such a duty upon the county commissioners when that board is performing the duties prescribed in Section 503.09, *et seq.*, Revised Code, but has not imposed a similar duty in a situation such as you have presented. This, in my opinion, is indicative of a legislative intent that no such power or duty exists and makes it incumbent upon the board of county commissioners to so act that there will be a successor township within the meaning of Section 503.18, Revised Code.

Your attention is invited to *Trustees v. Thoman*, 51 Ohio St., 285, in which the original township of Jackson was divided into the two new townships of Jackson and Jefferson. In the opinion, written by Minshall, J., this language appears at page 295:

“\* \* \* It will appear from an examination of the statute authorizing the division of townships, now embraced in sections 1385 and 1386, Revised Statutes, that the original township and all parts and portions of the same, remain liable for all claims and demands existing against it at the time of the division. At the time of the division in 1872, the original township of Jackson was, by an act of the legislature, liable for payment of bounties to the veteran volunteers that had been credited to it. This liability was discharged by the new township, retaining the name of Jackson, with money obtained by an issue of bonds that it subsequently paid off. But the liability discharged was as much a liability of Jefferson in proportion to the value of its property for taxation, as it was of the township of Jackson; and there is no question but that under the statute, its trustees might, instead of issuing bonds, have made a levy upon the taxable property in both townships, for that purpose; or might have done so to pay the bonds as they matured. \* \* \*”

Section 1386, Revised Statutes, was substantially similar to present Section 503.18, *et seq.*, Revised Code.

You are, therefore, advised:

1. It is the duty of a board of county commissioners to determine in the first instance whether a petition presented to such board by the legislative authority of a municipal corporation pursuant to Section 503.07, Revised Code, is such a proper petition within the meaning of the said section that the board of county commissioners must then perform its mandatory duty to effect the requested change in township boundaries or erect a new township in accordance with such petition, but there is a *prima facie* presumption of the validity both of the proceedings of the legislative authority of a municipal corporation and the authentication by the officer charged with that duty, of such proceedings.

2. Section 503.08, Revised Code, authorizes the erection of a new township comprising less than the area otherwise required by Section 503.03, Revised Code, where a board of county commissioners is acting pursuant to petitions filed by the legislative authority of a municipal corporation under authority of Section 503.07, Revised Code, and a majority of the householders in the unincorporated area of a reduced township under authority of Section 503.08, Revised Code. Opinion No. 1743, Opinions of the Attorney General for 1958, p. 95, approved and followed.

3. A board of county commissioners proceeding according to Section 503.07, Revised Code, is required by Section 503.04, Revised Code, to give the necessary notice, to record the changed or altered boundaries of any township and the boundaries of any newly created township, and to name any such newly created township, in the manner set forth in the said Section 503.04, Revised Code.

4. Section 503.03 and Section 503.02, Revised Code, imply a duty on the part of the board of county commissioners of apportioning the funds in the treasury of a previously existing township where the boundaries of such township are changed or a new township is erected pursuant to Section 503.07, Revised Code.

5. Where a board of county commissioners acts under authority of Section 503.07 and 503.08, Revised Code, to alter, diminish or change in any way the territorial limits of a township, Section 503.17, Revised

Code, requires that the entire original township and all portions thereof shall remain liable for all contracts, engagements or liabilities contracted prior to such change, and there is no authority in law for an apportionment of such previously existing obligations.

Respectfully,

WILLIAM SAXBE

Attorney General

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2695

HIGHWAYS—WEIGHT LIMITS, TRUCKS—“MAXIMUM AXLE LOAD”—TANDEM AXLES, SPACED EIGHT FEET OR MORE APART—PROCEDURE FOR WEIGHING—§5577.04 R.C.

SYLLABUS:

Under the provisions of Section 5577.04, Revised Code, tandem axles spaced eight feet or more apart should be weighed separately to determine whether each axle is within the prescribed “maximum axle load,” and should be weighed as a unit to determine whether such axles are within the prescribed weight limitation applicable to successive axles eight feet or more apart.

Coulmbus, Ohio, September 8, 1958

Hon. Wilford R. Miller, Prosecuting Attorney  
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The local law enforcement agencies in this County have requested that I seek from your office an interpretation of Section 5577.04 of the Revised Code of Ohio, and specifically that portion of the statute relating to maximum axle load.

“Certain truck and trailer manufacturers are now manufacturing truck trailers with tandem axles which exceed the 8 ft. space stated in the second paragraph of the statute. I enclose herewith a manufacturer’s diagram of such a trailer.

“In determining the weight per axle, our local law enforcement agencies have been weighing each axle separately, believing