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APPLICATION FILED BY MUNICIPALITY TO ANNEX CONTIGUOUS TERRITORY—SECTION 709.17 R. C.—PROCEEDINGS STAYED UNTIL APPROVED BY MAJORITY OF ELECTORS OF UNINCORPORATED AREA OF TOWNSHIP VOTING.

SYLLABUS:

Where under the provisions of Section 709.13 et seq., Revised Code, an application by a municipality to annex contiguous territory has been filed with the county commissioners, Section 709.17, Revised Code provides that the proceedings thereon shall be stayed until the proposition has been submitted to and approved by a majority of the electors of the unincorporated area of the township voting on such proposition, and the fact that the area sought to be annexed belongs to the state of Ohio, would not justify an omission to hold such election.

Columbus, Ohio, November 23, 1956

Hon. Marlowe Witt, Prosecuting Attorney
Henry County, Napoleon, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading in part as follows:

"The City of Napoleon, Ohio, proposes to annex certain territory to it by the procedures set forth in Revised Code Section 709.13 et seq. The property proposed to be annexed consists of lands owned by the State of Ohio, consisting in part of lands operated by the Division of Wild Life and Conservation and the remaining part consists of the lands of the old Miami and Erie Canal, over which the State Department of Highways exercises jurisdiction. The entire tract consists of approximately 20 acres and is contiguous to the City of Napoleon. There are no freeholders residing on this property and the only inhabitants consist of persons residing in small cabins, who have obtained permission from the State to use a part of the property for vacation purposes. In connection with this annexation, I have particular reference to your Section 709.17 Revised Code which in effect states that the electors of the unincorporated area of the township shall vote on the question of annexation. The section also contains an exception in the case where the land is owned by the county. In this case, an election is not required.

"Specifically, the question submitted is, 'May a municipal corporation annex contiguous territory owned by the State of Ohio without the vote required in Section 709.17.'"

Section 709.13 et seq., of the Revised Code, set forth the proceedings for annexation upon application of a municipality. Originally, such annexation was accomplished, on application of the municipal council to the county commissioners, who were authorized, after a hearing, to order such annexation without any right of election either of the inhabitants of the territory affected, or of the inhabitants of the township concerned. By an Act passed May 15, 1941, 119 O. L., 853, Section 3561-1, General Code was enacted, providing that such annexation proceedings should be stayed until the question had been submitted to a vote of the electors residing in the contiguous territory proposed to be annexed.

In the light of the provisions of that statute it was held by my predecessor in Opinion No. 6759, Opinions of the Attorney General for 1944, page 138:

“1. When the council of a municipality passes an ordinance looking to the annexation to such municipality of territory contiguous thereto, pursuant to the provisions of Section 3558 et seq. General Code, and there are no electors residing within the territory sought to be annexed, Section 3561-1, General Code, providing for a vote by electors residing in territory so proposed to be annexed has no application, and the county commissioners may upon the filing of the petition of the municipality for such annexation proceed to a hearing and action on such petition.”

By an Act passed May 7, 1947, 122 O. L., 249 said Section 3561-1, General Code, was amended to read:

“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. Provided, however, that when the territory sought to be annexed is owned by a county and when the electors residing in said territory so owned are inmates of or resident employees of a county institution the foregoing provisions relative to a vote shall not apply.

(Emphasis added.)

* * *

The provisions of Section 3561-1 supra, have been embodied in substantially the same language in Section 709.17 of the Revised Code. It will be observed that the statute contains no exception as to property owned by the state.

Your letter suggests that because the property in question is exempt from taxation and its annexation would entail no loss of revenue to the township, therefore the statute calling for an election should be disregarded.

I can see no basis for that theory. For reasons known only to the legislature, it saw fit to do away with the election in case the property

was owned by the county; but made no exception in case the area to be annexed belonged to the state. In each case the property would be exempt from taxation. But there is nothing in the terms of the statute that appears to base the requirement or omission of an election on the matter of loss of taxes to the township.

We can only follow the statute as enacted, and it is therefore my opinion that where under the provisions of Section 709.13 et seq., Revised Code, an application by a municipality to annex contiguous territory has been filed with the county commissioners, Section 709.17, Revised Code, provides that the proceedings thereon shall be stayed until the proposition has been submitted to, and approved by a majority of the electors of the unincorporated area of the township voting on such proposition, and the fact that the area sought to be annexed belongs to the state of Ohio, would not justify an omission to hold such election.

Respectfully,
C. WILLIAM O'NEILL
Attorney General