

**OPINION NO. 88-102**

**Syllabus:**

1. For purposes of R.C. 709.02, a partnership is a firm and may be an owner which may petition to annex partnership real property to a municipal corporation.
2. Where partnership real property is included in a petition to annex under R.C. Chapter 709, the partnership should be counted as the "owner" for purposes of signing the petition and for determining whether a majority of owners has signed the petition to annex.

---

**To: Michael F. Boller, Shelby County Prosecuting Attorney, Sidney, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1988**

I have before me your request for my opinion concerning the construction of the term "owner" in R.C. 709.02 as applied to real estate included on a petition to

annex territory to a municipality. Your specific concern is whether a partnership which owns real estate is characterized as an "owner" or whether each partner is an "owner" for purposes of R.C. Chapter 709.

Annexation of territory to a municipality is authorized by R.C. Chapter 709. Two methods are provided: annexation upon petition of landowners, pursuant to R.C. 709.02 through 709.11, and annexation upon election of township voters initiated by ordinance of the annexing municipality, pursuant to R.C. 709.13 through 709.21. See also *Board of Trustees of Perry Township v. Cicchinelli*, 35 Ohio App. 3d 173, 520 N.E.2d 235 (Stark County 1986), *motion to certify record overruled*, No. 87-382 (Ohio Sup. Ct. April 8, 1987); *State ex rel. Loofbourrow v. Board of County Commissioners of Franklin County*, 99 Ohio App. 169, 132 N.E.2d 259 (Franklin County 1955).

Your request concerns annexation upon petition of owners under R.C. 709.02, which states, in part:

*The owners of real estate adjacent to a municipal corporation may, at their option, cause such territory to be annexed thereto, in the manner provided by sections 709.03 to 709.11 of the Revised Code. Application for such annexation shall be by petition, addressed to the board of county commissioners of the county in which the territory is located, and signed by a majority of the owners of real estate in such territory....*

As used in sections 709.02 to 709.21 and 709.38 and 709.39 of the Revised Code, "owner" or "owners" means any adult individual seized of a freehold estate in land who is legally competent and any firm, trustee, or private corporation that is seized of a freehold estate in land.... (Emphasis added.)

The general rule is that R.C. 709.02 allows all owners of real estate in the territory sought to be annexed to sign annexation petitions and to be counted in determining whether or not a majority has signed. 1980 Op. Att'y Gen. No. 80-034 (local board of education holds real estate in trust for district and is owner); 1979 Op. Att'y Gen. No. 79-043 (board of education of local school district is owner in a trust capacity); 1973 Op. Att'y Gen. No. 73-048 (clarified by Op. 80-034) (board of county commissioners which holds title is owner); 1971 Op. Att'y Gen. No. 71-004 (each cotenant-in-common counted as owner, as each has an undivided fractional interest in the whole).

R.C. 709.02 brings four classes of holders of real estate title within the definition of owner — adult individuals, firms, trustees, and private corporations. "Adult individual" and "private corporations" have plain meanings. "Trustee" has been construed to include public entities. See 1986 Op. Att'y Gen. No. 86-019 (State of Ohio and a conservancy district may be owners); 1982 Op. Att'y Gen. No. 82-060 (board of park commissioners may be owner); Op. No. 80-034 (board of education of local school district may be owner); Op. No. 79-043 (board of education of local school district may be owner); Op. No. 73-048 (board of county commissioners may be owner). "Firm" has not been specifically construed in the annexation context; however, "firm" has been generally construed to include partnerships. See *McMillen v. Industrial Commission of Ohio*, 13 Ohio App. 310, 312 (Columbiana County 1920) ("[t]he word 'firm' is used in its ordinary sense as designating a partnership, or an association of persons acting together for a particular purpose and not as a person or corporation"); *Thomas-Bonner Co. v. Hooven, Owens & Rentschler Co.*, 284 F. 377, 380 (S.D. Ohio 1920) ("The word 'firm' is synonymous with 'partnership'").

It appears that, absent a statutory definition of "firm" for annexation purposes, the word "firm" should be given its ordinary meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983); *Lake County National Bank of Painesville v. Kosydar*, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973). Under such meaning, partnerships are included as "firms" for purposes of R.C. 709.02. This classification is appropriate, since it does not appear that property owned by a partnership fits within any of the other categories named in R.C. 709.02. A

partnership is clearly not a trustee or a private corporation. Further, while partnership property is owned by the persons who form the partnership, it does not appear that each partner can be considered to be an individual seized of a freehold estate in land owned by the partnership, within the meaning of R.C. 709.02. By statute in Ohio, each partner's interest in real property owned by the partnership is a *tenancy in partnership* which does not appear to constitute a *freehold estate in land*. A freehold estate is defined as "an estate for life or in fee simple." *Morrow v. Wittler*, 25 Ohio N.P. (n.s.) 85, 88 (C.P. Montgomery County 1924); Op. No. 71-004. The nature of the tenancy in partnership is defined by R.C. 1775.24, which states:

(A) A partner is coowner with his partners of specific partnership property holding as a *tenant in partnership*.

(B) The incidents of this tenancy are such that:

(1) A partner, subject to sections 1775.01 to 1775.42 of the Revised Code, and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess the property for any other purpose without the consent of his partners.

(2) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(3) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under exemption laws.

(4) On the death of a partner, his right in specific partnership property vests in the surviving partners, unless he was the last surviving partner, in which case his right in the property vests in his legal representative. The surviving partners have, or the legal representative of the last surviving partner has, no right to possess the partnership property for any but a partnership purpose. This division is subject to the procedures set forth in sections 1779.01 to 1779.08 of the Revised Code.

(5) A partner's right in specific partnership property is not subject to dower, statutory interest of a surviving spouse, heirs, or next of kin, or allowance to a surviving spouse or minor children. (Emphasis added.)

The precise nature of tenancy in partnership has been the subject of scholarly debate. Legal scholars have gone so far as to state that "[t]he incidents of this tenancy [tenancy in partnership] are so negligible that ownership of the property is, for all practical purposes, in the partnership, not in the partners." A. Blomberg, *Crane & Blomberg on Partnership* 228 (1968). The Uniform Partnership Act "expressly eliminates all individual rights of partners in firm realty" and vests the exclusive rights of enjoyment, control and disposition in the firm. 2 *American Law of Property* 43 (A. Casner, ed. 1952). *Accord*, 1976 Ohio Ethics Commission Op. No. 76-012, at 3 ("a general partner does not have individual legal title to partnership property"). It, thus, has been argued that the incident of ownership pertaining to a tenancy in partnership vests individual partners with *de minimus* interests in specific partnership real property. It is unnecessary for purposes of this opinion to explore the fine points of property law. It is sufficient to conclude that an individual partner's interest in partnership real property is less than a freehold estate in land.

Treating a partnership rather than its individual partners as "owners" under R.C. 709.02 is consistent with the general treatment of partnership real property in R.C. Chapter 1775.<sup>1</sup> Under Ohio law a partnership is treated as an entity for

<sup>1</sup> For purposes other than the holding and conveying of real property and suing and being sued, a partnership is generally *not* treated as a separate legal entity under Ohio law. *Battista v. Lebanon Trotting Association*, 538 F.2d 111 (6th Cir. 1976). Ohio, instead, follows the common law "aggregate

purposes related to real estate. R.C. 1775.07 (title to real property may be held by a partnership); R.C. 1775.09 (partnership may convey real property); *Church Budget Envelope Co. v. Cornell*, 136 N.E.2d 101 (Ct. App. Franklin County 1955). See also R.C. 2307.24 (partnership treated as entity for purposes of suing and being sued.)

The conclusion that the partnership is an "owner" under R.C. 709.02 is buttressed by application of the rule of statutory construction of *noscitur a sociis*, that the coupling of similar words shows they are to be understood in the same sense. The rule requires that "firm," "trustee" and "private corporation" be treated similarly. See *Myers v. Seaberger*, 45 Ohio St. 232, 12 N.E. 796 (1887). Since R.C. 709.02 treats a corporation rather than its shareholders as an owner and a trustee rather than the trust beneficiaries as an owner, it is appropriate that a partnership firm, rather than the partners, be regarded as owner for purposes of R.C. 709.02. Under this interpretation, R.C. 709.02 essentially applies an entity theory of property ownership to aggregate associations of individuals.

Therefore it is my opinion and you are hereby advised that:

1. For purposes of R.C. 709.02, a partnership is a firm and may be an owner which may petition to annex partnership real property to a municipal corporation.
2. Where partnership real property is included in a petition to annex under R.C. Chapter 709, the partnership should be counted as the "owner" for purposes of signing the petition and for determining whether a majority of owners has signed the petition to annex.

---

theory" of partnership under which a partnership is the sum of the partners rather than being regarded as an entity in itself. *Fairway Development Co. v. Title Insurance Company of Minnesota*, 621 F. Supp. 120 (N.D. Ohio 1985).