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1. HOME, COUNTY—SITUS, TERRITORY TO BE ANNEXED BY MUNICIPALITY—INMATES, LEGAL RESIDENTS—IF POSSESSED OF OTHER QUALIFICATIONS OF ELECTORS, ENTITLED TO VOTE AT ELECTION ON QUESTION OF ANNEXATION—SECTION 3561-1 G. C.
2. COUNTY WHICH OWNS LAND IN TERRITORY ADJACENT TO MUNICIPAL CORPORATION—NOT QUALIFIED TO PETITION FOR ANNEXATION—RIGHT OF PETITION LIMITED TO ADULT FREEHOLDERS RESIDING IN TERRITORY—SECTION 3548 ET SEQ., G. C.

SYLLABUS:

1. Inmates of a county home which is situated on territory sought by a municipality to be annexed, are, by the provisions of Section 4785-33, General Code, legal residents of such territory, and if they possess the other qualifications of electors, are entitled to vote at an election held pursuant to Section 3561-1, General Code, on the question of annexation.

2. A county which owns land in territory adjacent to a municipal corporation is not qualified to petition for annexation of such territory to such municipal corporation under the provisions of Section 3548, et seq., of the General Code, such right of petition being limited to adult freeholders residing on such territory.

Columbus, Ohio, November 29, 1946

Hon. D. Deane McLaughlin, Prosecuting Attorney
Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested concerning the situation described below.

Stark County is the owner of a county farm of some 300 acres, which because of the growth of the City of Canton is now situated as an island of county property surrounded by the corporate limits of the city. This county home site is also located in the midst of a highly desirable residential section.

The County Commissioners are taking steps under the law to sell the county home site, having a few years ago acquired another site for a similar purpose, in another part of the county.

The County Commissioners have caused the site to be surveyed, and the proposed streets platted with proper relation to the other streets surrounding the site. Both the Board of County Commissioners, and the City of Canton, are desirous of having this tract annexed into the City of Canton.

The specific questions asked of your office are:

(1) If the annexation should proceed by an application of Canton City as a municipal corporation under General Code 3558, et seq., do the provisions of 3561-1 calling for a vote by the electors residing in the territory, require the County Commissioners to have an election, at which election the only voters would be the inmates of the county home? The obvious purpose of the act was to give legal residents of a territory a chance to vote on whether or not they wish to become annexed to a city. We doubt whether the legislature contemplated any situation such as is described above. We call your attention to Section 4785-33, which deals with the legal residence of inmates of public institutions. It would seem to us that the inmates of a county home, although they may be electors entitled to vote, would not under the law have a legal residence at the public institution, and would not, therefore, be the electors contemplated by the Section 3561-1.

(2) If the annexation should proceed on an application of a citizen, or a free-holder, according to Section 3548, can the county, as the only landholder in the territory to be annexed, file such a petition requesting such annexation before the City

Council of the City of Canton? There are no inhabitants in the territory other than county home inmates, and no land owners in the territory other than Stark County.

The Commissioners have requested our office to take as prompt action as possible because they are desirous of concluding the matter as soon as possible in order to be able to take advantage of the prevailing high prices for real estate in this city. Your cooperation would be greatly appreciated.

Should you have any suggestions as to procedure in this matter that I have not touched upon, I would be very glad to have it."

The provisions of law governing the annexation of territory on application of a municipal corporation are found in Section 3558, et seq. of the General Code. Section 3559 contemplates the passage of an ordinance authorizing such annexation to be made. Section 3560 provides for filing with the county commissioners an application therefor.

Section 3561-1 insofar as pertinent, reads as follows:

"A vote, by the electors residing in the contiguous territory, 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 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."

Section 4785-33 of the General Code contains provisions relative to the *legal residence* of inmates of a county home. The section is a part of the chapter of the General Code relating to elections. This section reads as follows:

"Persons who are inmates of a public or private institution, or of a *county home maintained by the county*, who are citizens of the United States and have resided in this state one year next preceding the election and are otherwise qualified as to age and residence within the county and township, *shall have their lawful residence in the county and township in which said institution is located*. The legal residence of a qualified elector who may be an inmate of a home, lodging house or infirmary owned or maintained by a city, shall be the ward or precinct of such city

where such inmate was so domiciled or resident at the time of his admission to such home, lodging house or infirmary and may so continue during the time he may be an inmate thereof”

(Emphasis supplied.)

It will be observed that as to inmates of a county home, it is declared that if otherwise qualified they “*shall have their lawful residence* in the county and township in which such institution is located.”

Long prior to the enactment of this section the Supreme Court had held in the case of *Sturgeon v. Korte*, 34 O. S. 525, as follows:

“An inmate of a county infirmary, who has adopted the township in which the infirmary is situated as his place of residence, having no family elsewhere, and who possesses the other qualifications required by law, is entitled to vote in the township in which said infirmary is situated.

Such inmate is not under legal restraint as to incapacitate him from adopting the township in which the infirmary is situated as his place of residence.”

The Court in the course of its opinion said:

“This, we think, they were competent to do. Persons may be, and often are, so needy and helpless as to make it reasonably certain that the remainder of their days will be spent in the infirmary; and when this is the case, the infirmary is to such persons, in the full sense of the term, their habitation or home. If the inmate is a voter, and has no family in another township, and has adopted the infirmary as his abode, looks upon and treats it as his home, and has been sufficiently long a resident, he is entitled to vote at all elections in the township wherein the infirmary is situated.”

The somewhat different provision made by Section 4785-33 *supra*, relative to an inmate of a *city* home or infirmary seems to indicate that the general assembly regarded residence in those institutions as temporary, in that the legal residence of such inmate is declared to be “the ward or precinct of such city wherein he was domiciled or resident at the time of his admission.”

In view of the provisions of the statute last above quoted, it appears to me that there can be no doubt of the right of the inmates of the county home referred to in your letter to vote at the election required by the law

to be held on the question of annexation. The fact that the present situation is somewhat anomalous and may not have been foreseen by the general assembly does not in any way affect the conclusion. It seems very clear that the law does intend that inmates of a county home who possess the other qualifications as to length of residence in the county and township shall have the right to vote at all elections held within the township in which the home is located. They are, in the eyes of the law, just as completely legal residents of that territory as if they were tenants or home owners.

Reference is made in your letter to the possibility of proceeding under Section 3548, General Code, where the application for annexation is by the inhabitants residing in the territory proposed to be annexed.

Section 3548 provides in part as follows:

“The inhabitants residing on territory adjacent to a municipality may, at their own option, cause such territory to be annexed thereto, in the manner hereinafter provided. Application shall be by petition, addressed to the commissioners of the county in which the territory is located, signed by a majority of the adult freeholders residing on such territory, * * *.”

It will be observed that this application must be signed by “adult freeholders” residing on such territory. The county could hardly be said to be an *adult* freeholder and certainly it does not *reside* in the territory. The provision in question clearly contemplates that this proceeding is to be started only by reason of the desire of persons living and owning property within the territory, who are desirous of having their lands annexed to the municipality. In my opinion it is wholly inapplicable to the situation which you present.

I see no obstacle or difficulty in your proceeding with the annexation pursuant to the steps outlined in Section 3558, et seq. of the General Code.

Respectfully,

HUGH S. JENKINS
Attorney General