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MUNICIPAL CORPORATION—ANNEXATION OF TERRITORY—BOARD OF ELECTIONS REQUIRED TO PLACE QUESTION ON BALLOT AND SUBMIT IT TO ELECTORS OF UNINCORPORATED PORTION OF TOWNSHIP—SECTION 3561-1 G. C.—QUESTION SHOULD BE SUBMITTED BEFORE PROCEEDINGS OF COUNTY COMMISSIONERS AUTHORIZED BY SECTION 3561 G. C. ARE HELD.

SYLLABUS:

The question of annexation of territory to a municipal corporation, required by Section 3561-1, General Code, to be placed on the ballot by the board of elections, and submitted to the electors of the unincorporated portion of the township should be so placed on the ballot and submitted before the proceedings of the county commissioners authorized by Section 3561, General Code, are had.

Columbus, Ohio, September 25, 1947

Hon. Seabury H. Ford, Prosecuting Attorney, Portage County
Ravenna, Ohio

Dear Sir:

I have before me your letter requesting my advice in regard to the proper proceeding in the proposed annexation by the city of Ravenna of territory contiguous to the city, and particularly as to the time when the election required by Section 3561-1, General Code, should be held with reference to the procedure of the county commissioners.

The annexation proceedings to which you refer are those governed by Section 3558 et seq., General Code. The sections which are pertinent read as follows:

“Section 3558. When the inhabitants generally of a municipal corporation desire to enlarge its corporate limits by the annexation of contiguous territory, it shall be done in the manner hereinafter specified.

Section 3559. The council of the corporation, by a vote of not less than a majority of the members elected, shall pass an ordinance authorizing such annexation to be made, and directing the solicitor of the corporation, or some one to be named in the ordinance, to prosecute the proceedings necessary to effect it.

Section 3560. The application of the corporation to the county commissioners for such purpose shall be by petition, setting forth that, under an ordinance of the council the territory therein described was authorized to be annexed to the corporation. The petition shall contain an accurate description of the territory, and be accompanied by an accurate map or plat thereof.

Section 3561. When the petition is presented to the commissioners, like proceedings shall be had, in all respects, so far as applicable, as are required in case of annexation on application of citizens in this chapter. However, if the only territory to be annexed is territory owned by the county, the consent of the legislative authorities only of the political units concerned shall be necessary to complete such annexation.

Section 3561-I. 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. * * *

Section 3561-I supra was amended by the recent General Assembly in Senate Bill No. 168, by requiring the question of annexation to be submitted to the electors of the unincorporated area of the township in which the territory proposed to be annexed is situated, instead of to the electors residing in such territory only. That amendment, however, does not affect the question which you raise. Section 3561-I was introduced into the law long after the other sections relating to annexation were in effect, and its numerical position, following Section 3561, might suggest that the proceedings before the county commissioners are to be had before the matter is submitted to the electors. Note, however, that the time for holding the election is fixed with reference to the date of the *passage of the ordinance*, and "thereupon *all* annexation proceedings shall be stayed". This certainly blocks all steps in the proceedings which follow the passage of the ordinance.

It will be noted that the vote of the electors conclusively determines whether or not the territory may be annexed. It would seem, therefore,

a futile proceeding to hold a hearing and submit the matter to the county commissioners before the controlling question has been submitted and decided. The first step in the annexation proceeding which the law requires is the passage by the municipal council of the ordinance authorizing such annexation to be made. Logically, the next step would be to ascertain whether the electors in the unincorporated area of the township will consent to the annexation. If their vote is favorable, then according to the language of Section 3561-1 "proceedings *shall begin* within ninety days to complete annexation". I think emphasis may well be laid on the words, "shall begin". Proceedings, so far as the county commissioners are concerned, will certainly "begin" by filing a petition with that body, and the other steps required by the law will follow. If we take the contrary view, the county commissioners would proceed, under the law relating to the original incorporation of villages, to appoint a time for hearing at least six weeks ahead, (Section 3520, General Code) to require notices of the proposed annexation to be published and posted and then to a hearing which might be considerably protracted and possibly contested, and would finally determine that the annexation ought to be made, and having reached that conclusion and entered their order to that effect, it would then be found that the whole proceeding was a waste of time and money because of the refusal of the electors to consent to the annexation. I do not believe the law intended to require so absurd a procedure.

Specifically answering your question it is my opinion that the question of annexation of territory to a municipal corporation, required by Section 3561-1, General Code, to be placed on the ballot by the board of elections and submitted to the electors of the unincorporated portion of the township should be so placed on the ballot and submitted before the proceedings of the county commissioners authorized by Section 3561, General Code are had.

Respectfully,

HUGH S. JENKINS,
Attorney General.