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ANNEXATION TRANSCRIPT, PETITION AND PLAT—BEFORE CITY COUNCIL FOR FINAL ACTION—PETITION ON TABLE FOR INDEFENITE PERIOD—COUNTY COMMISSIONERS CAN RESCIND RESOLUTION OF APPROVAL AND MAY REQUEST CITY COUNCIL TO RECALL TABLED PETITION AND REJECT PROPOSED ANNEXATION—SECTION 3550 G. C.

SYLLABUS:

When an annexation transcript, petition and plat are put before the city council for final action, under Section 3550, General Code, and such council lays the petition on the table for an indefinite period, the county commissioners can rescind their resolution approving the petition and may request the city council to recall the petition from the table and reject the proposed annexation.

Columbus, Ohio, August 26, 1949

Hon. Jackson Bosch, Prosecuting Attorney  
Butler County, Hamilton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On July 12, 1948 a majority of the residents of a subdivision located in Lemon Township, Butler County, Ohio, and contiguous to the city of Middletown, Ohio, filed a petition with the county commissioners of Butler County, Ohio, under O. G. C. Section 3548, asking that the subdivision be annexed to the city of Middletown.

"At a regular session, on September 14, 1948, the commissioners, after having complied with the statutory steps, adopted a resolution approving the petition. Thereafter the final transcript of the commissioners and accompanying plat and petition were filed with the auditor of the city of Middletown on October 20, 1948.

"On October 20, 1948, the auditor laid the transcript and accompanying plat and petition before the Council of the city of Middletown. The Council passed a motion laying the petition on the table. On January 5, 1949, the petition was recalled from the table and the Council passed a motion receiving the petition and laying it on the table. Since that time the Council has taken no action.

"The residents of the subdivision are anxious to have their status decided one way or the other. Since the Council's action in tabling the matter is one of delay only, the petitioners have reported to the county commissioners that in this event they no longer desire annexation.

"Your opinion is respectfully requested on the following question:

"When an annexation transcript, petition and plat are laid before the City Council before final action, under O. G. C. Section 3550, and such Council lays the petition on the table for an indefinite period, can the county commissioners rescind their resolution approving the petition and request the Council to recall the petition from the table and reject the application for annexation because of such rescission by the commissioners?"

The statutes of Ohio, Sections 3547 to 3557-1, General Code, inclusive, have established a definite method whereby inhabitants of a

territory adjacent to a municipality may cause such territory to be annexed. They provide for a petition asking for annexation to be signed by a majority of adult freeholders residing in the territory. They also provide for this petition to be presented to the board of county commissioners for its approval. Section 3522, General Code, provides in part as follows:

“\* \* \* and if it seems to the commissioners right that the prayer of the petition be granted, they shall cause an order to be entered \* \* \*”

The above statutes are summarized to show that even after the petitioners of the territory present their petition to the commissioners, the commissioners are to use their discretion in approving it or rejecting it. The commissioners surely have a right to reconsider their decision. No vested rights have been interfered with. No acceptance or rejection by the city council has occurred to take it from the commissioners' hands. In the case of *The State ex rel., v. The Board of Public Service of Columbus*, 81 O. S. 218 at page 224 it says:

“\* \* \* That rule, well settled by numerous adjudications, is to the effect that the action of such bodies respecting legislative or administrative matters is not always conclusive and beyond recall, but that they are possessed of inherent power to reconsider their action in matters of that nature, and adopt if need be the opposite course in all cases where no vested right of others has intervened, the power to thus act being a continuing power. \* \* \*”

In the case of *George W. Pickelheimer v. Henry Urner, Auditor*, 29 O. N. P. (N. S.) 547, the fourth branch of the syllabus reads as follows:

“4. The jurisdiction of county commissioners to approve or reject a proposed annexation is continuing and their rejection of the proposal may be later rescinded, so long as there is not a withdrawal from the petition of enough petitioners to reduce the number remaining below the legal requirement.”

Also at page 533 of same volume, it reads in part as follows:

“Under our statutes the action of two governmental bodies is necessary to effect its annexation. These two bodies are the County Commissioners and the Municipal Council. The action of the County Commissioners in approving the annexation has the effect of a consent to withdrawal of the territory from the unincorporated and to its incorporation into the incorporated

territory. It is, however only an approval or consent, and in the case of annexation proceedings initiated by a petition of freeholders, the petition approved by the County Commissioners is an offer made to the municipal corporation and is without effect until the municipal council accepts it. It would seem, therefore, that until the offer was accepted it could be withdrawn either by the County Commissioners or by the petitioners. The municipal ordinance accepting the offer of annexation is the official action comparable to the final judgment of a court, and until such action the annexation proceeding is pending, during which any petitioner would seem to have the right to withdraw. \* \* \*."

In the present situation no approval or disapproval has been given by the city council. Since the legislature has seen fit to give the commissioners discretionary power to approve or disapprove annexation, it certainly intended that they should have the opportunity to reconsider their actions if no vested rights are injured thereby.

Therefore, it is my opinion that when an annexation transcript, petition and plat are put before the city council for final action under Section 3550, General Code, and such council lays the petition on the table for an indefinite period, the county commissioners can rescind their resolution approving the petition. I further believe that the city council may then be requested to recall the petition from the table and reject the proposed annexation.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.