

Note from the Attorney General's Office:

1990 Op. Att'y Gen. No. 90-071 was clarified by
2002 Op. Att'y Gen. No. 2002-023.

OPINION NO. 90-071**Syllabus:**

1. Pursuant to R.C. 503.07, a municipal corporation may petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township brought within a municipal corporation pursuant to such a change of township lines shall, in accordance with R.C. 503.14, be annexed to the township in which the municipal corporation or the greater part of it was previously situated. This procedure may be followed even though it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.
2. It is not necessary for a municipality to seek a change in township boundaries pursuant to R.C. 503.02, rather than R.C. 503.07, when the proposed change will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.
3. If a change in township boundaries proposed under R.C. 503.07 would result in the detachment of lands from a township in one county and their attachment to a township in an adjoining county, the petition for such change of boundaries must be submitted to the boards of commissioners of both counties.
4. R.C. 503.07 and 503.15 do not preclude a municipal corporation that seeks to form a "paper township" or to place all its residents within the boundaries of a single township from taking several actions over a period of years to achieve that objective, rather than filing a single petition.

To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio and Michael Miller, Franklin County Prosecuting Attorney, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, September 27, 1990

I have before me your requests for an opinion concerning the modification of township boundaries in a situation that may affect two counties. The facts presented to me are that the City of Dublin, Ohio occupies land located in three counties and four townships, as follows: (1) Perry Township, Franklin County; (2) Washington Township, Franklin County; (3) Jerome Township, Union County; and (4) Concord Township, Delaware County. Washington Township has the largest area of township jurisdiction within the City. The City Council of Dublin would like to have the boundaries of Concord and Washington Townships changed so that the section of the City presently in Concord Township, Delaware County, will become part of Washington Township. Washington Township is now located entirely in Franklin County; if the change in boundaries is made as proposed, Washington Township will have territory in both Franklin and Delaware Counties. The change is sought for the purpose of assuring that adequate fire protection services will be provided throughout the city boundaries. The arrangements for the provision of fire services and the tax consequences that may result from a change in township boundaries appear to be the subject of some controversy; they are, however, not the subject of the opinion requests and, accordingly, are not addressed in this opinion.

The specific questions presented are as follows:

1. Can Section 503.07 be used by a municipality to detach lands from one township and place them in a second township when the action sought will not result in the municipality being wholly within one township or result in the formation of a "paper township" as contemplated by Section 503.07?
2. If the municipality is not taking action to form a "paper township" or to place all of its residents within the boundaries of one township can Section 503.07 be used to detach an area of one township and place it in a different township or must Section 503.02 be followed?
3. Assuming the municipality's legislative body states that its ultimate purpose is to form a "paper township" or to place all of its residents within the boundaries of a single township can the actions be taken "piecemeal" over a three year period or do Sections 503.07 and 503.15 require that a single petition be filed with the joint boards of county commissioners to accomplish the objectives of Section 503.07 at one time?
4. Since the detachment of Concord Township, Delaware County lands and the placement of those lands in Washington Township, Franklin County would by necessity change the boundaries of both Concord Township which occupies Delaware County, and Washington Township which presently lies wholly within Franklin County, must a petition be filed with the joint boards of county commissioners of Franklin and Delaware Counties pursuant to Section 503.15 ORC before the mutual boundary lines can be changed?

I assume that, by use of the term "paper township," you mean a township that comes within the following provisions of R.C. 703.22: "When the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation." Thus, as used in this opinion, the term "paper township" means a township that has limits that are identical to those of a municipal corporation so that the township offices are abolished pursuant to R.C. 703.22. See generally, e.g., 1985 Op. Att'y Gen. No. 85-033; 1954 Op. Att'y Gen. No. 4642, p. 648 (approved and followed, in part, in 1967 Op. Att'y Gen. No. 67-013; overruled, in part, on other grounds in 1959 Op. Att'y Gen. No. 91, p. 42, see note 2, *infra*).

Your questions relate to a change of township boundaries pursuant to R.C. 503.07, which states:

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, *the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township.*

Thus, in the specified circumstances,¹ the legislative authority of a municipal corporation may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation.

R.C. 503.07 does not require that township boundaries be made completely identical with municipal boundaries; rather, it permits the township lines to be changed in order to become identical "in part" with the limits of the municipal corporation, and it is this type of change that is contemplated by the City of Dublin. If the township lines become identical "in part" with the limits of the municipality, and if part of the township continues to exist outside of the municipal boundaries,

¹ R.C. 503.07 refers to a situation in which either: (1) the limits of a municipal corporation do not comprise the whole of the township in which it is situated; or (2) by change of the limits of a municipal corporation, the limits of the corporation include territory lying in more than one township. The first situation is not applicable to the facts that you have presented, since that situation contemplates a municipal corporation that is located entirely within a single township. I assume, for purposes of this opinion, that the facts with which you are concerned come within the second situation. It is clear that the limits of the corporation in question include territory lying in more than one township. Whether that situation resulted from changes in the limits of the corporation or was present from the incorporation of the municipality is not clear on the facts that you have presented. It should be noted, however, that prior to the adoption of the Revised Code to replace the General Code in 1953, the second situation set forth above expressly included all instances in which the limits of a municipal corporation included territory lying in more than one township, however that result occurred. G.C. 3249, the predecessor to R.C. 503.07, included the language: "or if by change of the limits of such corporation, *or otherwise.*" (Emphasis added.) The recodified language of R.C. 503.07 has not been read as being strictly limited to situations resulting from changes in the limits of a municipal corporation. See 1977 Op. Att'y Gen. No. 77-031 at 2-113 ("R.C. 503.07 contains provisions by which township boundary lines can be made identical with those of the municipality of which it is part when, for any reason, such lines are not identical"). This is consistent with the general principle that changes made during a recodification are not considered to be substantive in nature, absent clear intent that the construction of the statute be changed. See, e.g., R.C. 1.30; 1984 Op. Att'y Gen. No. 84-051 at 2-171 to 2-172 (citing *Village of Elmwood Place v. Schanzle*, 91 Ohio St. 354, 110 N.E. 922 (1915)); 1955 Op. Att'y Gen. No. 5422, p. 304; 1954 Op. Att'y Gen. No. 4642, p. 648 at 653-54 (approved and followed, in part, in 1967 Op. Att'y Gen. No. 67-013; overruled, in part, on other grounds in 1959 Op. Att'y Gen. No. 91, p. 42).

then the township offices do not cease to exist pursuant to R.C. 703.22. Rather, the township, with its changed boundaries, continues to function. This result is required so that the portion of the township outside of the municipal boundaries will continue to have a local government to provide it with necessary services. *See generally* 1954 Op. No. 4642; 1949 Op. Att'y Gen. No. 687, p. 330. The facts presented are that Washington Township has territory both inside and outside the corporation limits of the City of Dublin. Thus, even if additional land within the City is added to Washington Township and Washington Township has certain boundaries in common with the City of Dublin, the township government will not cease to exist because a portion of the township will remain outside the municipal boundaries.

R.C. 503.14 contains other provisions relating to boundary changes, as follows:

When the change of boundaries of townships is required by reason of the extension of the limits of a municipal corporation, such change shall be made by annexation to the township in which the municipal corporation or the greater part of it was previously situated, of such parts of other townships as are covered by such extension.

It has been established that this provision relates to boundary changes made pursuant to R.C. 503.07.²

Read literally, R.C. 503.07 permits a municipal corporation to petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township that are brought within the municipal corporation by such a change are, pursuant to R.C. 503.14, to be annexed "to the township in which the municipal corporation or the greater part of it was previously situated." On the facts that you have presented, Washington Township is the township in which the greatest part of the City of Dublin is currently situated.

² In 1954 Op. No. 4642, at 653-54, one of my predecessors discussed the history of R.C. 503.14, as follows:

The section above quoted [R.C. 503.14] was originally enacted as section 482 of the Municipal Code in 70 Ohio Laws, 4. As originally enacted it provided substantially the same as present Section 503.14, Revised Code, except that after the word "required" the words "under Section 480" appeared. Section 480 of the former Municipal Code is now substantially Section 503.07, Revised Code. Notwithstanding that this section reference was eliminated upon the incorporation of the Municipal Code into the General Code and subsequently upon the incorporation of the General Code into the present Revised Code, I am nevertheless convinced that no substantial change was intended and that the use of the word "required" was intentional and not accidental, and indicated a legislative understanding that when a petition was duly presented to the Board of County Commissioners for an appropriate change in the township boundaries, that such change was then a "required" one and was therefore mandatory.

1954 Op. No. 4642 was overruled, in part, on the question whether it was mandatory that the county commissioners make a change in township lines that was requested under R.C. 503.07. *See* 1959 Op. Att'y Gen. No. 91, p. 42. That issue has been put to rest by subsequent legislative change, so that now R.C. 503.07 states clearly that the board of county commissioners "shall" change the boundaries of a township upon the petition of a city and "may" change the boundaries of a township upon the petition of a village. *See* 1961 Ohio Laws 1300 (Am. H.B. 329, eff. Oct. 20, 1961). In other respects, 1954 Op. No. 4642 appears to remain valid. Thus, 1954 Op. No. 4642 and the history discussed therein serve as support for the conclusion that R.C. 503.14 relates to changes in township lines made under R.C. 503.07.

Thus, if the boundaries of Concord Township are changed pursuant to R.C. 503.07 so that a portion of Concord Township now within the City is excluded from Concord Township, that portion shall, pursuant to R.C. 503.14, be annexed to Washington Township.³

Your first question asks whether this result is appropriate "when the action sought will not result in the municipality being wholly within one township or result in the formation of a 'paper township' as contemplated by Section 503.07." It is clear that R.C. 503.07 is part of the statutory scheme for the creation of a "paper township." See also R.C. 703.22. It is not, however, apparent from R.C. 503.07, R.C. 703.22, or any other authority of which I am aware that R.C. 503.07 may be used only for the purpose of bringing the municipality wholly within one township or forming a "paper township." Action may be taken under the terms of R.C. 503.07 whenever "the limits of a municipal corporation do not comprise the whole of the township in which [the municipal corporation] is situated," or "if by change of the limits of [a municipal] corporation [the limits] include territory lying in more than one township." See note 1, *supra*. R.C. 503.07 provides that the purpose of a petitioned change must be to change the township lines "in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation." There is no requirement that a change to make the lines identical in part with the limits of the municipal corporation must apply to all townships located within the municipal corporation or to all portions of a particular township, or that such a change must result in the abolition of township offices pursuant to R.C. 703.22. The provisions of R.C. 503.14 suggest a contrary result, since they indicate that parts of a township brought within the municipal corporation by a change of township lines under R.C. 503.07 shall be annexed to the township in which the municipal corporation or the greater part of it was previously situated.⁴ There is no indication that the municipality must be wholly within a single township or that there must be a "paper township."

³ Implicit in the questions considered in this opinion is the question whether a single township may exist across county lines. While it is clear that a township is generally created within a single county, *see, e.g.*, R.C. 503.02, and that township law generally contemplates that each township will be located within a single county, *see, e.g.*, R.C. 507.051; R.C. 509.05, there is no direct constitutional or statutory provision restricting a township to existence within a single county. See generally 1967 Op. Att'y Gen. No. 67-013 at 2-26 ("nowhere in our constitution, statutes, or ruling case law is a township restricted by definition as constituting a geographical subdivision lying solely within one county, any more than the same proposition would be applicable to a municipal corporation"); *cf.* Ohio Const. art. X, §§1-2. It is clear that townships have existed across county lines in instances in which R.C. 703.22 has been operative to abolish township offices. See, *e.g.*, Op. No. 67-013. R.C. 703.22 does not deny the existence of a township whose boundaries are coterminous with those of a municipal corporation; it provides, instead, that the township offices are abolished. The effect of this provision "is simply to preclude a meaningless duplication of offices, duties, and responsibilities...." *Franklin Township v. Village of Marble Cliff*, 4 Ohio App. 3d 213, 217, 447 N.E.2d 765, 769 (Franklin County 1982); *see* Op. No. 84-051 at 2-171 n. 1; 1954 Op. No. 4642 at 652 ("[R.C. 703.22] does not purport to abolish the township, but merely the offices thereof"). See generally 1969 Op. Att'y Gen. No. 69-032. Even as a township whose offices have been abolished under R.C. 703.22 may exist across county lines, it appears that a township that retains its officers and governmental responsibilities may so exist.

⁴ I note, as a matter of interest, that if freehold electors owning land in the portion of a township outside a municipal corporation's boundaries petition to have that territory erected into a new township, excluding the territory within the municipal corporation, the board of county commissioners is required to erect that territory into a new township. In such a case, "the territory lying within the limits of the municipal

I conclude, therefore, in response to the first question, that, pursuant to R.C. 503.07, a municipal corporation may petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township brought within the municipal corporation pursuant to such a change shall, in accordance with R.C. 503.14, be annexed to the township in which the municipal corporation or the greater part of it was previously situated. This procedure may be followed even though it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.

The second question asks whether R.C. 503.02, rather than R.C. 503.07, must be used to change township boundaries if a municipality is not taking action to form a "paper township" or to place all of its residents within the boundaries of one township. R.C. 503.02 states:

The board of county commissioners may change the boundaries of any civil township, or partition any township among other townships within the county, by attaching a part of one township to another, by dividing one township and attaching the parts to other townships, or by laying off and designating a new township from the territory of one or more townships of the same county or from territory not before included in a civil township, when it is made to appear necessary or expedient by a petition for that purpose, signed by a majority of the householders residing within the bounds of the townships to be affected by such partition or division.

It is clear that R.C. 503.02 provides a method that may be used to change township boundaries. It does not, however, appear that R.C. 503.02 precludes action under R.C. 503.07 where that action is appropriate. *See generally Berlin v. Kilpatrick*, 89 Ohio L. Abs. 390, 398, 172 N.E.2d 339, 343 (C.P. Trumbull County 1958) ("[t]he authority in [R.C. 503.02] was apparently designed for use in the earlier days when there was territory in the state of Ohio which had not been assigned to or incorporated into an originally surveyed township"). As discussed above, I have concluded that action to change township boundaries may be taken under R.C. 503.07 even if it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22. I conclude, correspondingly, that it is not necessary for a municipality to seek a change in township boundaries pursuant to R.C. 503.02, rather than R.C. 503.07, when the proposed change will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.

For ease of discussion, I turn now to the fourth question, which asks, since the proposed change of township boundaries would affect townships in two different counties, whether a petition for the change of boundaries must be filed with the boards of county commissioners of both counties. R.C. 503.15 addresses this issue as follows:

When a municipal corporation is situated in two or more counties, the application for change of township lines provided for by section 503.07 of the Revised Code may be made to the board of county commissioners of the county in which the change of boundaries is proposed, or, *if the change is to be made in two or more counties, such application shall be made to the boards of the several counties as to the territory situated within them, respectively.* (Emphasis added.)

Thus, pursuant to R.C. 503.15, when a change of township lines is proposed and the change affects two or more counties, the application for change must be made "to the boards of the several counties as to the territory situated within them, respectively."

corporation in the original township shall be considered as not being located in any township." R.C. 503.09. *See generally Berlin v. Kilpatrick*, 89 Ohio L. Abs. 390, 172 N.E.2d 339 (C.P. Trumbull County 1958).

In the instant situation, there is a proposal to change the boundary of Concord Township, which is located wholly within Delaware County. The petition must, thus, be submitted to the Board of Commissioners of Delaware County. The proposed change would also modify the boundary of Washington Township, which is now located entirely within Franklin County and extends to the line dividing Franklin and Delaware Counties. If the proposed change is made, the Washington Township line that is currently located on the county boundary will be abolished and the territory of Washington Township will be expanded into Delaware County. The fact that the proposed change would modify a township boundary currently laid out in Franklin County requires that the petition for a change of township boundaries be submitted to the Board of Commissioners of Franklin County, as well as to the Board of Commissioners of Delaware County.

I am aware that R.C. 503.15 states that the petition for change applies, in each county, to the territory situated within that county. In the situation that you have described, there is no proposal that territory within Franklin County change townships. Since, however, it is proposed that the boundary of a township within Franklin County be changed, it must be concluded that the change will be made, in part, in Franklin County. It is, accordingly, appropriate that the Board of Commissioners of Franklin County be presented with the petition pursuant to R.C. 503.07 and 503.15. See generally *Berlin v. Kilpatrick*, 89 Ohio L. Abs. at 396, 173 N.E.2d at 342 ("the Board of County Commissioners is the authority in whom the power to change the boundaries of a civil township is placed").

I return now to the third question, which asks whether a municipality that has as its ultimate purpose the formation of a "paper township" or the placement of all its residents within the boundaries of a single township may take actions to achieve that purpose in a "piecemeal" fashion, over a period of three years, or whether that purpose must be achieved by the filing of a single petition under R.C. 503.07 and 503.15. I am aware of no authority that addresses this question. I note, however, that R.C. 503.07 provides that petitions may be made "for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation." The presence of the words "in part" suggests that it is possible to deal with part of the township lines at a time, rather than dealing with all the lines at once. See generally 1954 Op. No. 4642. I am aware that R.C. 503.15 speaks of "the" application for a change of township lines provided for by R.C. 503.07, and that it might be argued that this language indicates that there is to be only a single application. I find, however, that ordinary usage of the word "the" permits the language of R.C. 503.15 to be read as applying to each application for a change of township lines provided for by R.C. 503.07, and I find that this reading is consistent with the general statutory scheme. See, e.g., R.C. 1.42-.43; *Webster's New World Dictionary* 1473 (2d college ed. 1978). I conclude, accordingly, that R.C. 503.07 and 503.15 do not preclude a municipal corporation that seeks to form a "paper township" or to place all its residents within the boundaries of a single township from taking several actions over a period of years to achieve that objective, rather than filing a single petition.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 503.07, a municipal corporation may petition for a change of township lines so that the lines become identical in part with the limits of the municipal corporation. Any parts of a township brought within a municipal corporation pursuant to such a change of township lines shall, in accordance with R.C. 503.14, be annexed to the township in which the municipal corporation or the greater part of it was previously situated. This procedure may be followed even though it will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.
2. It is not necessary for a municipality to seek a change in township boundaries pursuant to R.C. 503.02, rather than R.C. 503.07, when the proposed change will not result in the municipality's being wholly within one township or in the formation of a "paper township" in accordance with R.C. 703.22.

3. If a change in township boundaries proposed under R.C. 503.07 would result in the detachment of lands from a township in one county and their attachment to a township in an adjoining county, the petition for such change of boundaries must be submitted to the boards of commissioners of both counties.
4. R.C. 503.07 and 503.15 do not preclude a municipal corporation that seeks to form a "paper township" or to place all its residents within the boundaries of a single township from taking several actions over a period of years to achieve that objective, rather than filing a single petition.