

House Local Government Committee
February 22, 2011
House Bill 50

Mr. Chairman and Members of the Committee:

While it is not unusual for a property owner to be annexed into a municipality against his or her or its wishes, one should not expect that to occur in an expedited annexation that, by statute, can be filed and approved only if all of the property owners within the annexation territory have signed the petition (R.C. 709.023). I offer this position statement in support of House Bill 50, which, if passed, would remedy this anomaly in the state's annexation laws. The perspective I offer is based upon my 20-plus years of legal representation of townships regarding annexations.

R.C. 709.02(E) provides that, unless a political subdivision whose property is included in an annexation petition signs that petition, it is not considered an "owner" for purposes of being counted in the petition—even if the property owned by the political subdivision constitutes most of the territory sought to be annexed. Unfortunately, the extension of "ownership" status to political subdivision property owners only if they sign an expedited annexation petition—which is the subject of H.B. 50—can lead to results that are not in the public interest, and certainly unfair by any standard.

Moreover, since the non-signing political subdivision property owner is not an "owner" for purposes of annexation, it is excluded from the notice requirements of the expedited method for annexation set forth in R.C. 709.023. R.C. 709.023(B) provides that the agent for the annexation petitioners must provide notice to the Township, the Municipality, the Board of County Commissioners, and the owners of property adjacent to the territory proposed for annexation. There is no requirement that owners within the annexation territory itself receive notice in these types of annexation petitions. Why? Perhaps it is because an incorrect assumption was drawn that all of the owners within the territory would be signators to the petition and therefore would not need notice. R.C. 709.02(E) reminds us otherwise.

With these two sections in mind, the following scenario could occur (and similar situations have occurred) unless H.B. 50 is passed: an R.C. 709.023 annexation petition includes 100 acres—50 acres of school district property on which an elementary school sits, along with 40 acres of land owned by a township, and 10 acres of land owned by a city (which seeks to annex the school in order to include teachers and staff as income tax payers). R.C. 709.023 requires for approval a finding that "all of the owners of real estate in that territory" have signed the petition. This particular petition could carry the signature of only one of these owners and still meet the 100% signature rule. That signature could be that of the owner of the smallest parcel – in this case the city. Utilizing an annexation method designed for annexations of which all owners approve, the city could successfully orchestrate the annexation of the properties of the school district and the township against their wishes and, in the case of the school district, without notice.

R.C. 709.023 provides for only very limited review of an expedited annexation petition. There is no opportunity to inquire, “Will the benefits of this annexation outweigh the detriments?” “Will the annexing city be able to provide emergency medical services? or “Will emergency services to the elementary school decline as a result of the annexation?” This type of review is reserved for the non-expedited method of annexation in which not all of the owners have signed. (See R.C. 709.033). Political subdivisions that oppose the annexation of their owned properties should not be subject to a method of annexation that provides for no meaningful review by a board of county commissioners and no opportunity for them to be heard. A change in the law, such as that proposed by House Bill 50, will remedy this problem.

While the purpose of House Bill 50 is to make what may seem like a rather minor revision to the current R.C. 709.02(E) definition of “owner,” the outcome would have a major impact—an impact of reasonableness, fairness, and good public policy.

Respectfully submitted,

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