

Regular Annexations: Conditions for Annexation

General Comments

In order to grant a regular annexation petition, specified statutory conditions must be met. These conditions are listed in ORC 709.033 (A) and are listed later in this chapter.

SB 5 broadened some of these conditions to provide discretion to the board of county commissioners to consider the impact an annexation may have on unincorporated area located outside the territory proposed to be annexed but located one-half mile or less from any of the territory proposed to be annexed. SB 5 also responds to the problems regarding the failure of many annexations to adequately deal with issues of maintenance and jurisdiction of roads which lie adjacent to the annexed territory.

Important Procedural Changes

The board of county commissioners' decision on whether a regular annexation petition meets the conditions for annexation, as specified in ORC 709.033 (A) (1) to (6), must now be entered on the journal no later than 30 days after the completion of the hearing. Prior to SB 5, the law allowed the commissioners 90 days to reach their decision.

The board also is required to provide specific findings of fact as to whether each of the conditions, listed in ORC 709.033 (A) (1) to (6), has been met. The decision of the board must be based upon a preponderance of the substantial, reliable, and probative evidence on the whole record. It will be important for the findings of fact to provide a reference to the record of the proceeding to support the board's conclusion on each condition.

Conditions for Annexation

Following are the conditions that must be met in a regular annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in ORC 709.02. (see technical checklist in Appendix H) (ORC 709.033 (A) (1))
- B. The persons who signed the petition are owners of real estate in the territory proposed to be annexed. (ORC 709.033 (A) (2))
- C. The number of valid signatures constituted a majority of the owners of real estate in the territory as of the date the petition was filed. (ORC 709.033 (A) (2))

- D. The municipality has complied with ORC 709.03 (D), the requirement to adopt by ordinance or resolution a statement indicating what services it will provide and an approximate date it will provide the services to the territory proposed to be annexed, upon annexation. (ORC 709.033 (A) (3))
- E. The territory is not unreasonably large. (ORC 709.033 (A) (4))
- F. ON BALANCE, the general good of the territory proposed to be annexed will be served, AND THE BENEFITS TO THE TERRITORY PROPOSED TO BE ANNEXED AND THE SURROUNDING AREA WILL OUTWEIGH THE DETRIMENTS TO THE TERRITORY PROPOSED TO BE ANNEXED AND THE SURROUNDING AREA, if the petition is granted. (Note: Text in capital letters denotes new language in SB 5.)

 “Surrounding area” is defined as the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed. (ORC 709.033 (A) (5))
- G. No street or highway will be divided or segmented by the boundary line between a township and the municipality as to create a road maintenance problem, or, if a street or highway will be so divided or segmented, the municipality has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway. (ORC 709.033 (A) (6))

Discussion of the ORC 709.033 (A) (5) Condition

Under former law, this condition for annexation read as follows:

The general good of the territory sought to be annexed will be served if the annexation petition is granted.

Under SB 5, this condition for annexation now reads as follows:

On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area if the annexation petition is granted. As used in division (A) (5) of this section, “surrounding area” means the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed.

In the preparation of this manual, CCAO requested comments from the Ohio Municipal League, the Ohio Township Association, lawyers that have been active practitioners of annexation law, and others. It is fair to state that the exact meaning of this new condition is open to various interpretations. CCAO believes that the exact meaning of this condition for annexation will not be clear until after it is litigated and there is a body of case law to give commissioners direction.

CCAO believes that most of the interested parties to the controversy that surrounds the meaning of this condition for annexation would, however, agree that there are now two elements to this condition for annexation:

- A. The general good of the territory proposed to be annexed will be served, and
- B. The benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area.

Beyond this general consensus, the major disagreement concerns how the “on balance” language that is part of this condition for annexation should be interpreted.

General speaking, there are two ways in which this condition for annexation can be read that will be discussed in the following sections.

Approach 1 to the ORC 709.033 (A) (5) Condition

Under Approach 1, the contention is that both elements of this condition for annexation are separately determined and that both must be met in order to grant the petition. Under this interpretation, the commissioners could not grant the petition for annexation unless both of the elements of this condition for annexation have been met.

Under Approach 1, the following questions might be relevant based on a preponderance of the substantial, reliable and probative evidence on the whole record of the annexation proceedings:

- A. On balance, will the general good of the territory proposed to be annexed be served if the petition is granted?
- B. On balance, will the benefits to the territory proposed to be annexed and the surrounding area outweigh the detriments to the territory proposed to be annexed and the surrounding area if the petition is granted?

Under Approach 1, the answer to both questions must be “yes” in order for the petition to be granted.

Approach 2 to the ORC 709.033 (A) (5) Condition

Under Approach 2, the contention is that both elements of this condition for annexation are separately determined, but that both conditions need not be met in order to grant the petition. Under this interpretation, the first element of the condition for annexation would always have to be met - the element dealing with the general good of the territory proposed to be annexed being served. However, a finding that the benefits to the territory proposed to be annexed and the surrounding area does NOT exceed the detriments to the territory proposed to be annexed and the surrounding area would not automatically mean that the commissioners must deny the petition. In this case, the commissioners would have to balance these two separate determinations.

Under Approach 2, the following questions might be relevant based on a preponderance of the substantial, reliable and probative evidence on the whole record of the annexation proceedings:

- A. Will the general good of the territory proposed to be annexed be served if the petition is granted?
- B. Will the benefits to the territory proposed to be annexed and the surrounding area outweigh the detriments to the territory proposed to be annexed and the surrounding area if the petition is granted?
- C. On balance, has the overall condition for annexation, considering both elements of the condition, been met?

It should be noted that the Ohio Township Association strongly believes that Approach 2 is not the intent of the General Assembly, while Approach 1 is. Others feel that Approach 2 is the proper interpretation. Various reviewers urged CCAO to simply include the statutory language given the differences of opinion

on the exact meaning of this language. Others were concerned that our narrative could be used as evidence in litigation that may be instituted to interpret this language. CCAO opted to include the two approaches in an effort to at least alert commissioners to the controversy. CCAO recommends that commissioners meet with their county prosecutor to discuss this condition for annexation in detail. It is the view of CCAO that the exact meaning of this condition for annexation may have to await direction from the courts.

The “Unreasonably Large” Test

Prior to SB 5, commissioner discretion in annexation proceedings was limited to determining general good of the territory proposed to be annexed AND whether the territory was unreasonably large. The “unreasonably large” test remains a separate condition for commissioners to evaluate. The issue of what constitutes an “unreasonably large” area of territory is not numerically or geographically defined in statute and has been the subject of several court cases. While there is no single accepted test, there is general accord on the relevant factors to be weighed. These factors include:

- A. The geographic character, shape, and size of the territory to be annexed in relation to the territory to which it will be annexed (the municipality), AND in relation to the territory remaining after the annexation is completed (the remaining township area).
- B. The ability of the annexing municipality to provide necessary municipal services to the added territory (can consider both geographic and financial “largeness”).
- C. The effect on remaining township territory if annexation is permitted. If the territory sought to be annexed is so great a portion of the township’s tax base that the annexation would render the remaining township incapable of supporting itself, then commissioners can reasonably conclude it is unreasonably large.