

Annexations by Petition of Municipality for Municipal, County or State Owned Land

General Authority

The inhabitants, generally, of a municipality may enlarge its limits by annexation of contiguous territory under very limited conditions. The legislative authority of the municipality must pass an ordinance authorizing the annexation. This ordinance directs the village solicitor or city law director or another person named in the ordinance to take the necessary action to accomplish the annexation. The municipality may only initiate annexation proceedings of contiguous territory if it is owned only by the municipality, a county, or the state. Under former law, a municipality could initiate a petition for annexation of contiguous privately owned property. The petition had to be approved by the board and then submitted to the electors of the unincorporated area of the township. This option was repealed by SB 5.

ORC 709.13
ORC 709.14
ORC 709.16

Special Nature of Annexation Proceeding

Proceedings before the board of county commissioners of this type of annexation are conducted under ORC 709.16 to the exclusion of any other provisions of ORC Chapter 709 except for the following sections:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.14 -- Authority for municipality to initiate an annexation as explained by this chapter.
- C. 709.15 -- Description of municipal annexation petition as explained by this chapter.
- D. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- E. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Territory Not to Be Excluded From Township

Under this type of annexation, the territory annexed shall not be excluded or removed from the township under ORC 503.07.

ORC 709.16 (H)

Contents of Petition

The petition to annex contiguous land owned by the municipality, a county, or the state must contain the following items:

- A. The petition must set forth that under an ordinance of the municipality the territory described in the petition was authorized to be annexed.
- B. An accurate legal description of the perimeter of the territory proposed to be annexed.
- C. An accurate map or plat of the territory proposed to be annexed.

ORC 709.15

Consideration of Petition

A. *Petition Entered Upon Journal*

- 1. After the petition is filed, the clerk shall cause the petition to be entered upon the board's journal at its next regular session. This entry is the first official act of the board on the petition.
- 2. The board must act on the petition within 30 days after its receipt.

B. *Action by County Commissioners*

1. LAND OWNED BY A MUNICIPALITY

If the only territory to be annexed is contiguous territory owned by the municipality, the board must adopt a resolution granting the petition.

2. LAND OWNED BY A COUNTY

If the only territory to be annexed is contiguous territory owned by a county, the board may grant or deny the petition, by resolution.

3. LAND OWNED BY THE STATE

If the only territory to be annexed is contiguous territory owned by the state and the Director of Administrative Services has filed a written consent to the granting of the annexation, the board must grant the annexation.

- C. In all cases, the annexation shall be complete upon the entry upon the journal of a resolution granting the annexation.
- D. The clerk has no duty to forward the resolution and complete file of the annexation proceedings to the municipal clerk or auditor. However, CCAO recommends forwarding a copy of the resolution and complete record to the municipal clerk or auditor.

ORC 709.16

Appeals

No appeal in law or in equity shall be allowed from the granting of this type of annexation.

ORC 709.16 (F)

Situation When Annexation of Land Owned by a Municipality Is Void

If a municipality purchases land below an appraised fair market value and sells or agrees to sell it back to the person that sold it to the municipality, an annexation of such land approved under this special procedure is declared to be void.

In this case, the annexed property becomes part of the township from which it was annexed, if it still exists. If the township no longer exists, the board must attach the annexed territory to another township.

ORC 709.16 (G)

Commentary on Statutory Ambiguities and Other Issues

- A. Language contained in ORC 709.16, which encompassed and applied the municipal acceptance process of ORC 709.04, was dropped under SB 5. Thus, it now appears ORC 709.04 does not apply under this section. Consequently, the clerk has no duty to forward to the municipal auditor or clerk the resolution and complete record of the annexation proceedings. However, CCAO recommends that the clerk of the board forward a copy of the board's resolution and complete record to the municipal auditor or clerk.

Likewise, the municipality is not statutorily required to accept the annexation, pursuant to ORC 709.04, after the granting of the petition by the board as is the case in other procedures. Therefore, there is a question as to the responsibility of the municipal clerk to forward materials from the annexation proceedings to the county recorder, county auditor, and Secretary of State, pursuant to ORC 709.06.

- B. The statute prohibits the appeal of any annexation granted under this section but is silent on the opportunity to appeal the denial of an annexation. Since the only denial possible under this procedure is for land owned by the county and the board is specifically given complete discretion in its decision through the use of the word "may" in the statute, the opportunity for a challenge of the board's decision in this case seems unlikely.
- C. The law does not provide for any involvement or public comment regarding the petition. However, since all sessions of the board are open to the public, CCAO believes it is within the discretion of the board to accept public comment during any meeting on the petition.
- D. There is no specific statutory authority given for the board to refer the legal description and map or plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and map or plat. (ORC 709.02 (C) (2))
- E. Annexation by petition of a municipality for municipal, county, or state-owned land does not require a hearing. Commissioners, thus, should take special care to assure that the petition is valid and meets all other statutory requirements detailed in this chapter. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must be authorized under an ordinance of the municipality; be contiguous to the municipality; and include an accurate legal description of the perimeter and an accurate map or plat. In the case of state-owned land, written consent of the Director of Administrative Services is also required.

While ORC 709.16 (G) provides that annexation petitions filed under this procedure are void if the municipality purchases property below an appraised fair value and sells or agrees to sell the property back to the person that sold it to the municipality, it appears that there is no requirement for the commissioners to investigate this issue when making its decision. If such an allegation has been made or is suspected in the community, CCAO advises commissioners to immediately consult with the county prosecutor to determine if the board should consider this issue prior to granting the petition. CCAO believes that this provision of the law would generally be operative after the petition is granted through civil action in court.

Refer to Appendix for Flow Chart and Checklists

In the Appendix of this manual, the following appendices may be helpful in processing an Annexation of Contiguous Municipal, County, or State-Owned Land by Petition Submitted by Municipality:

Appendix R	Procedural Flow Chart
Appendix S	Procedural Checklist
Appendix T	Technical Checklist