



HANDBOOK

Ohio County Commissioners

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CHAPTER 85

INCORPORATION, DETACHMENT, AND MERGER

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85.01 INTRODUCTION

While annexations are quite common, petitions proposing municipal incorporation are rare. HB 228, effective March 2, 1992, significantly altered the manner in which incorporations are accomplished. There are different procedures for the incorporation of villages and cities, but the petitions for each are presented to the county commissioners. This chapter will outline the procedures necessary for incorporation, as well as those for detachment and merger. Incorporation law is found in Chapter 707 of the Revised Code, and merger and detachment in Chapter 709.

85.02 INCORPORATION OF VILLAGES (ORC 707.01 - 707.11)

The incorporation of a village is initiated by the circulation of a petition. The petition must contain the signatures of 51 percent of the voters in the proposed territory, as determined by the number of people who voted for governor in the last election. The petition must contain:

1. A full description and accurate map of the territory within the proposed village.
2. A statement signed by the county auditor as to the total assessed valuation of the area proposed for incorporation.
3. A statement that the area consists of not less than two square miles, includes a population of at least 800 persons per square mile, and has a per capita property tax value of at least \$3,500. This figure includes all real, personal and public utility property.

4. A statement from the Secretary of State that the proposed name is not being used by any other municipality.
5. A statement of whether the proposed village includes territory within three miles of another municipality.
6. The name of a person to act as agent for the petitioners.

85.03 PETITION PRESENTED TO COUNTY COMMISSIONERS

When the petition is complete, it is filed with the county commissioners, who makes it available to any interested person. If the area to be incorporated is in two or more counties, the petition is filed in the county with the largest number of qualified voters. The commissioners may charge a fee to cover the cost of verifying the signatures. If the proposed area to be incorporated falls within three miles of any existing municipality, the commissioners must notify that municipality after it makes such a finding on the journal. Commissioners take no further action until or unless the legislative authority of the municipality approves the petition for incorporation.

If none of the territory is within three miles of an existing municipality, or if it is and the existing municipality approves the petition, the commissioners set the time and place for a public hearing, not less than 40 nor more than 90 days after it receives the petition. This information is published, by the agent for the petitioner, for three consecutive weeks.

85.04 COMMISSIONERS HEARING

At the public hearing, the commissioners hear testimony and consider affidavits from any interested person, either for or against the incorporation. The commissioners may amend the petition without further public hearing if the amendment does not increase the area to be incorporated. If new lands are included in the incorporation, another public hearing is required. The county commissioners shall allow the incorporation after entering its action on the journal if it finds that:

1. The petition contains all required information and the statements in the petition are true.
2. Notice has been published as required.
3. The number of signatures on the petition is sufficient.
4. The proposed village is compact and not unreasonably large.
5. Municipal services such as police and fire protection, sanitary and storm sewers, planning, zoning and subdivision control, and parks and recreational facilities can be financed with a reasonable local tax.

6. The general good of the community, including areas within and outside of the proposed village, will be served.

The county commissioners must then file all papers with the county recorder. After 60 days the recorder files a complete record with the Secretary of State, at which time the incorporation is complete.

Note that the discretion of the county commissioners is considerably broader for incorporations than for annexations. For incorporations, the commissioners may consider the general good of the entire community, not just the good of the area to be incorporated. In annexation proceedings, only the general good of the area to be annexed may be considered.

85.05 INJUNCTIVE RELIEF

Within 60 days from the filing of the papers with the recorder, any interested person may petition the court of common pleas for an injunction restraining the recorder from filing the papers with the Secretary of State. Reasons for an injunction include a claim of errors, or a claim that the commissioners decision was unlawful or unreasonable.

The injunction petition is filed with the county recorder, who shall deliver it, along with all records of the incorporation matter, to the clerk of courts. The court holds a hearing on the matter within 20 days. If the court finds no error or that the commissioners decision was not unlawful or unreasonable, the county recorder immediately forwards copies of all records to the Secretary of State. If an error is found or if the decision of the commissioners is found to be unlawful or unreasonable, the court issues an order barring the recorder from recording the documents and from sending copies to the Secretary of State.

85.06 INCORPORATION OF A CITY (ORC 707.29 - 707.30)

Territory may be petitioned for incorporation as a city if it meets all of the following criteria:

1. It is at least four square miles.
2. It has a population of at least 25,000 and a population density of at least 1,000 persons per square mile.
3. It has an assessed property value of at least \$2,500 per capita including all real, personal, and public utility property.
4. It does not completely surround an existing municipality.
5. It is contiguous.

85.07 PETITION FOR INCORPORATION AS A CITY

Unlike a petition for village incorporation, a petition for city incorporation must be a request that the issue be placed on the ballot at a special election. Upon receipt of the petition the commissioners must make it available for public inspection. The petition must contain signatures equaling 20 percent of the number who voted for governor at the last election. The petition must contain the following:

1. A full description and accurate map.
2. A statement signed by the auditor as to the assessed valuation of the area.
3. A statement showing that the territory meets all the criteria for city incorporations.
4. A statement by the Secretary of State that the proposed name is not being used by any other municipality.
5. The name of a person to act as agent for the petitioners.

The petition is filed with the county commissioners, who file a copy with the board of elections. The board of elections determines the sufficiency of the signatures and must do so within 60 days after the date the petition is filed with the commissioners. The county commissioners may also refer the map, plat and description to the county engineer to check for accuracy and he must respond within 90 days.

85.08 SPECIAL ELECTION ON INCORPORATION

The agent for the petitioners must publish, once a week for three consecutive weeks, a notice of the filing, containing the substance of the petition and the date of filing. Any interested person or municipality may appear before the commissioners at any session before it makes its determination, which must be within 90 days from filing, in support of or against the information contained in the incorporation petition.

The commissioners must, within 90 days, determine whether the petition fulfills all the requirements and whether the notice has been published as required. If so, and if the board of elections determines that the signatures on the petition are sufficient, the board of elections shall schedule a special election. If a majority votes in favor of the incorporation the board of elections certifies the result to the county commissioners, who journalize the proceedings and deliver a certified transcript to the county recorder.

The county recorder then makes a record of the documents, map, petition, and transcript, and enters them in the proper book and forwards a copy to the Secretary of State. The incorporation shall become effective when the record is filed by the Secretary of State.

If the majority votes against the incorporation, the board of elections certify the result to the county commissioners. Incorporation proceedings then cease, and no further petitions may be filed for the same incorporation for at least three years.

85.09 COST OF SPECIAL ELECTION

The cost of the special election is not borne by the county. If the incorporation is approved, it is paid by the newly incorporated city. If the electors reject the incorporation the costs are paid by the township or townships involved. If more than one township had land proposed to be incorporated, the costs are share on the basis of the proportion of land area proposed to be incorporated from each township.

85.10 APPROVAL OF SECRETARY OF DEFENSE FOR CERTAIN INCORPORATIONS

Ohio law requires the Secretary of Defense to approve the incorporation of any land where there is located a military base, camp or similar facility used for housing members of the armed forces.

85.11 DETACHMENT FROM MUNICIPALITY WITH ITS ASSENT

A majority of the owners of land in any portion of a municipality may petition the county commissioners for detachment from that municipality. If there are no freehold electors in the territory, the petition may be made by a majority of landowners. The petition must contain an accurate description of the land and an accurate map or plat of the territory.

If the municipality, by ordinance, assents, the county commissioners detach that portion from the municipality. They also must attach it to any contiguous township or create a new township, if the petition requests the establishment of a new township. This new township need not contain 22 square miles as is required of other newly created townships.

The commissioners must then ascertain and apportion the indebtedness and monies between the contiguous or new township and the remaining portion of the municipality. The complete record of the proceedings, as certified by the county auditor, are recorded by the county recorder. When this is completed the detachment is complete. Details of this procedure are found in Section 709.38 of the Revised Code.

85.12 DETACHMENT FROM VILLAGE BY ELECTION

A petition to submit to the voters the question of detachment from a village may be filed with the board of elections. The petition may be for detachment from the village or detachment and the creation of a new township. The petition must be signed by freehold electors, and the area of land must not contain less than 1,500 acres. The petition must contain:

1. An accurate description of the territory sought to be detached.

2. An accurate map of the territory sought to be detached.
3. If a new township is sought, the name of the township.
4. The name of the agent for the petitioners.
5. Signatures equal in number to 15 percent of the votes cast at the last general election in the area to be detached.

Within 10 days of filing, the board of elections determines whether the petition conforms to the requirements. If it does not, no further action is taken. If it does, the board orders an election at a convenient place not less than 75 days thereafter. The board of elections must give 10 days notice, by publication in a paper of general circulation, of the election and post three or more notices in public places in the territory to be detached.

If a majority of the ballots are against the detachment, there are no further proceedings on the matter for at least two years. If the majority are for the detachment, the board of elections shall so certify to the county recorder, who will enter the records in the official book of records, preserve the original records, and send a certified copy to the Secretary of State. The detachment is then complete.

An apportionment of property, funds, and indebtedness of the village must be made between the village and the detached territory on the basis of the tax duplicate of the village before and after detachment. Details of this procedure are found in Sections 709.39 and 709.40 of the Revised Code.

85.13 PETITION FOR DETACHMENT OF FARM LANDS

The owner of unplatted farm lands annexed to a municipality may petition the court of common pleas for detachment. This action can not take place within five years from the date of annexation. If the court finds that the lands are farm lands, not within the original limits of the municipality, that the lands are taxed for municipal purposes in excess of the benefits conferred upon the lands, and that the lands may be detached without materially affecting the best interests of the municipality, then the court may detach the lands from the municipality.

See Sections 709.41 and 709.42 of the Revised Code for details.

85.14 MERGER OF MUNICIPALITIES OR OF MUNICIPALITY WITH TOWNSHIP

Two or more municipalities, or a municipality and the unincorporated areas of a township, may be merged. The procedure is rather long, and the county commissioners are not involved. The basic steps are outlined in this section. For details see Sections 709.43 - 709.48 of the Revised Code.

1. A petition for merger must contain the reasons for merger and five candidates per jurisdiction who are nominated to be merger commissioners.
2. The petition, which must contain 10 percent of the voters in each jurisdiction, is filed with the board of elections, who places it on the ballot at the next general election.
3. If the issue is disapproved in any of the jurisdictions, no further action may be taken on the matter for four years.
4. If the issue is approved in all jurisdictions, the five candidates are elected to the merger commission to formulate the conditions for merger.
5. The merger commission must complete its work and ceases to exist 75 days before the next general election after it was elected.
6. The conditions of merger, agreed upon by the merger commission, are submitted to the electors of the involved jurisdictions.
7. If the conditions of merger are disapproved by the voters in any of the jurisdictions, no further petitions for merger may be filed for at least three years.
8. If the conditions for merger are approved by the voters of each jurisdiction, the merger is effective the first day of January following certification of the election results.

The municipality with which merger is proposed succeeds to the interests of the jurisdiction to be merged in monies, taxes, special assessments, property, accounts receivable, and all other matters.

On or after the date a petition is filed, no petition for annexation of any part of the township to be merged may be filed until the question of forming a merger commission is defeated, the merger commission fails to reach agreement, or the conditions of merger are defeated by the voters.