



Ohio Supreme Court Clarifies the Requirements for Certain Expedited Annexations

Aug 06, 2020

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In a unanimous decision, the Ohio Supreme Court held that a territory to be annexed under an expediated type-2 annexation needs to only share 5% of its continuous length with the annexing municipality. A type-2 annexation, pursuant to R.C. 709.023, allows a group of property owners to annex their territory to a municipality without a separate agreement with the township so that they continue to be part of the current township. This means that the residents of the territory become residents of both the township and the municipality, subject to the taxes of both and able to receive services from either entity.

The case, *State ex rel. Xenia v. Greene County Board of Commissioners*, involved a proposed type-2 annexation of roughly 45 acres of land located between the City of Xenia and Central State University. The majority of the land to be annexed consisted of a bike path owned by the City that was located within Xenia Township. The bike path ran from the City to CSU, where it was adjacent to an additional 4.5 acres owned by the University that was also part of the proposed annexation.

While both the City and CSU, who were the only two property owners of the territory to be annexed, agreed to the annexation, the Greene County Board of Commissioners denied the type-2 annexation petition. In denying the petition, the Board determined that the territory to be annexed was insufficiently contiguous with the City because it resembled a “balloon on a string” annexation, where a larger piece of territory is annexed into a municipality through a narrow connecting strip. The City sought judicial review of the Board’s decision, arguing that the Board exceeded its statutory authority under R.C. 709.023 in denying the proposed type-2 annexation.

The Ohio Supreme Court held for the City and directed the Board to approve the proposed type-2 annexation.^[i] The Court determined

that the 5% continuity requirement contained in R.C 709.023(E)(4) was the sole continuity requirement for a type-2 annexation. In coming to its conclusion, the Court rejected the Board's argument that the type-2 annexation statute also incorporated the Court's judicial definition of "contiguous." Previously, in interpreting a different annexation statute that does not contain a defined contiguity requirement, the Court had adopted a definition of contiguous that looked with disfavor upon shoestring or "balloon on a string" annexations. Here though, the Court concluded that, because the type-2 annexation statute does contain a defined contiguity requirement, this is the sole contiguity requirement for these types of annexations.

Applying the 5% continuity requirement to the proposed annexation, the Court held that the territory shared a contiguous boundary with the City of at least 5% of the territory's perimeter and thus satisfied the requirements for a type-2 annexation. Because the proposed type-2 annexation satisfied all of the other requirements of R.C. 709.023, the Court concluded that the Board lacked the authority to deny the petition.

If you would like more information about this decision or if you have questions about annexation, please contact [Phil Hartmann](#), [Yaz Ashrawi](#), [Dr. Christopher Thomas](#), or any member of our [Government Services](#) team.

[\[i\]](#) On behalf of the Ohio Municipal League, Frost Brown Todd filed an amicus curiae brief urging the Court to adopt the City of Xenia's interpretation of the type-2 annexation statute, which the unanimous Court ultimately adopted.

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