

# **Bond Case Briefs**

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## **ANNEXATION - OHIO**

### **State ex rel. Xenia v. Greene County Board of Commissioners**

**Supreme Court of Ohio - June 25, 2020 - N.E.3d - 2020 WL 3456716 - 2020 -Ohio- 3423**

City that sought type-2 annexation of township's land, whereby residents of the annexed land were to become residents of both city and township, brought action requesting a writ of mandamus compelling county to approve city's annexation petition.

The Second District Court of Appeals denied county's motion for summary judgment, granted city's motion for summary judgment, and issued the writ. County appealed.

The Supreme Court held that:

- Writ of mandamus was proper vehicle to compel county to approve city's petition;
- Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement;
- City's petition satisfied the contiguity requirement;
- City's petition satisfied condition that annexation not create an unincorporated area that was completely surrounded by the annexed territory; and
- City's petition satisfied condition that city agree to correct road-maintenance problems.

Writ of mandamus was proper vehicle to compel county to grant city's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township; annexation statute's subsection setting forth the conditions for granting a such petition did not contain the sort of open-ended language that governed traditional annexation, which entailed a factual determination concerning the general good of the annexed territory, but instead the subsection afforded the county no discretion if the petition satisfied all of the subsection's conditions, and county's performance of its duties under the statute did not, on its own, foreclose the possibility that the county could be compelled to grant the petition in a mandamus action.

Contiguity condition set forth in type-2 annexation statute established the sole contiguity requirement for such annexation, whereby residents of the annexed land became residents of both city and township, as relevant to the statute's condition that a petition for type-2 annexation meet all of the requirements set forth in statute governing the filing of annexation petitions, which contained its own contiguity requirement; unlike the filing statute, the type-2 annexation statute's contiguity condition defined the minimum degree of touching necessary in a type-2 setting, and application of contiguity principles crafted outside the type-2 setting would have rendered the specific limitations embodied in the type-2 annexation statute's contiguity condition meaningless.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the territory proposed for annexation have a boundary contiguous with the municipal corporation of at least 5% of the territory's perimeter; the city calculated a shared boundary of 5.31%, while the county, which opposed annexation, calculated a boundary of 5.03%, and the effect that city's future plans might have had on the percentage did not impact the determination of whether the city's

petition satisfied the contiguity condition.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the annexation not create an unincorporated area of a township that was completely surrounded by the territory proposed for annexation; although the proposed annexation would create two township islands, the condition did not forbid township islands created by the coupling of pre- and post-annexation boundaries, and here the territory proposed for annexation would form merely one side of a triangular-shaped island and one side of a quadrilateral-shaped island.

City's petition for type-2 annexation, whereby residents of the annexed land were to become residents of both city and township, satisfied the type-2 annexation statute's condition that the city agree to assume maintenance of a street or highway that would be divided or segmented by a boundary line between the city and township; city stated in its petition that it would correct road maintenance problems, city was not required to present to the township an agreement concerning road-maintenance issues, and contention that city would fail to correct problems in light of its alleged past failures to do so was speculative and did not create a fact issue as to whether city in fact agreed in its petition to correct road-maintenance problems.