

## Legal Aspects of the Ohio Revised Code Relating to the Duties and Procedures of the Elected Merger Commission

This overview of the relevant sections of the Ohio Revised Code and their applicability to the merger process should provide some insight to each commissioner and to the public, of what is required by law and what to expect as the process continues.

The third paragraph of R.C. §709.46(A) requires that the first meeting of the elected commissioners shall be held in the chamber of the Sugarcreek Township Board of Township Trustees at 9:00 A.M. on the tenth day after the Greene County Board of Elections certifies the election's approval by the voters. At this first meeting Sugarcreek Township Fiscal Officer Ted Hodson shall serve as the temporary chairperson until such time as the commissioners can elect its permanent officers. The final sentence of the third paragraph of R.C. §709.46(A) is extremely important to understanding how the commissioners shall make their decisions, not only for the selection of their permanent officers, but also for all subsequent decisions that the commissioners shall decide. It states,

“The commission shall select its own permanent officers and shall proceed to meet as often as necessary to formulate conditions for merger that are satisfactory to a *majority of the members of the commission from each political subdivision.*”

As a result of this specific language, the ten (10) member commission is not in reality a ten (10) member commission, but in fact it is a combination of two (2), five (5) member commissions, meeting together, and which requires a majority vote of each of the five (5) member commissions in order to decide issues. This means that in order to select its permanent officers and to conduct any other business or make any final decisions or agreements, a simple six (6) member vote is not sufficient. Rather it requires that if six (6) votes are sufficient, at least three (3) affirmative votes must come from each five (5) member commission. In order to provide examples and explain this in greater detail it will help to refer to the five (5) members elected by Sugarcreek Township voters as the “township commissioners” and the five (5) members elected by the City of Bellbrook voters as the “city commissioners”.

In selecting a president, for example, having six (6) votes would be sufficient if and only if, three (3) each come from both the township and the city commission. If four (4) city commissioners vote for a president, but only two (2) township commissioners vote for the same candidate as president, the election for president will fail, even though the required number of six (6) votes has been obtained. Similarly, a unanimous five (5) city commission vote together with even two (2) township commission votes will not suffice. The measure must be passed by a simple majority (three [3]) of *each* five (5) member commission. This same formula must similarly be followed in order to determine quorum requirements, i.e., there must be at least six (6) members present in total, and of that minimum (6) members, at least three (3) must be present from both the township commission and the city commission. Having four (4) or five (5) city commissioners

present, together with either only one (1) or two (2) township commissioners present, or vice versa, shall *never* constitute a legal quorum, nor will it allow a vote to pass any particular issue for which a simple majority vote is sought and needed.

Division (C) of R.C. § 709.46 addresses how the costs of the commissions' activities shall be paid for by each political subdivision, and does not present itself as an issue requiring detailed explanation at this time. The city and the township have not included in the 2009 budget any amount at this time to be associated with these costs. This will be the topic of discussion for both jurisdictions in the near future and each jurisdiction will communicate accordingly one with the other, and with the merger commission on this matter.

The next statute is R.C. § 709.461. In its entirety division (A) of the statute addresses the manner in which the commissioners perform their work, mentioning the operative words, "collaborative," and "consensus." It also addresses the commissioner's rule-making authority to govern meetings, with particular attention paid towards ensuring each member possesses identical authority to all other members and that he rules serve the purpose of building agreement among the members. The statute indicates that the commissions shall seek the advice of public and private sources in their efforts to study and ultimately draft appropriate conditions for the merger. The commissions may also enlist the contracted services with a certified mediator, arbitrator, or other such expert in dispute resolution in order to achieve the previously stated manner of collaborative efforts".

Division (B) requires that both the city commission and the township commission consider, among other issues, both the increase and decrease of funding sources to the township due to a successful merger a the tend of the process.

Division (C) provides that the merger conditions may involve the election of new officers to govern the City, assuming the merger is successful, under certain conditions not necessarily pertinent here. The conditions may also include a provision that the City's Charter may be amended to include specified provisions identified by the commissioners, and may involve the delayed execution of the merger agreement if successful to a date when any charter amendments become effective, if any.

R.C. § 709.462 further describes the work of the commissions. Division (A) requires that the conditions for merger be prepared, and only after their preparation, that they be voted upon. This requires that he conditions be assembled as a single instrument and that it be voted upon in that fashion, rather than piece-meal fashion as they are identified and discussed. Division (B) addresses a situation where the commissioners cannot obtain a majority vote from both the city and the township commission as to agreement on any single condition, or more than one condition. If this occurs, the commissioners are to vote along city and township commission lines, as to whether or not the merger *should not occur*. In that event, if a majority of the members of the commission from each political subdivision votes against the merger (i.e., in favor of the motion that merger should not occur) the merger issue is dead. The statute states that no further proceedings

shall be had on the merger petition and repeats the language of R.C. § 709.46(A), *supra*, that no future petition for merger may be filed within three (3) years after the date of the commission's vote, as opposed to the vote of the public under R.C. § 709.45. Division (C) addresses the contrary situation where all conditions for merger are agreed upon by sufficient majority vote of the members of each commission. If this occurs, the commissioners shall issue a report listing the conditions agreed to and their reasoning behind their inclusion as an adopted condition. In that event, according to timelines established by the statute, the commissioners shall certify their agreement to the Greene County Board of Elections who shall draft the language for the question of either approval or rejection of the merger conditions for the electors of both jurisdictions to vote upon. Upon completion of the vote the Greene County Board of Elections shall certify its results. Finally, Division (D), regardless of whether or not agreement has been reached by the commissions as to the merger conditions, shall cease to exist on the seventy-fifth day preceding the next general election occurring after the election of the members of the commission (November 4, 2008). As a result the commission has only approximately nine months to reach an agreement as to the conditions required for merger and to certify them to the Greene County Board of Elections. The commissioners may request and extension of time that can be granted by the City Council and the Board of Township Trustees but is limited in time to only approximately one (1) additional year. In the event the commissions cease to exist under this division, the issue is dead, and no further petitions for merger may be filed with the Greene County Board of Elections within three years to the date the commissions cease to exist.

Section 709.47(A) discusses both the passage and failure by the voters of the merger conditions certified to the Greene County Board of Elections by the elected commissioners. The defeat of the measure by the voters tracks the same language found in R.C. § 709.46(A), 709.462(B) and 709.46(D). The result is the same, the issue is dead and no future petition for merger may be filed with the Greene County Board of Elections within three (3) years of the date of the issue's defeat at the hands of the voters. Should the issue be certified to the Greene County Board of Elections for consideration of the voters, a majority vote in favor must be obtained in both the City and the Township. The defeat of the measure in either jurisdiction shall be fatal to the possibility of merger and the issue will be dead and may not resurrect for an additional three (3) years. If approved by the voters under R.C. § 709.47(A), the merger is effective on January 1<sup>st</sup> of the following year, unless a later date is included in the conditions in accordance with necessary City Charter amendments under R.C. § 709.461(C).

Attachments:

- R.C. § 709.46
- R.C. § 709.461
- R.C. § 709.462
- R.C. § 709.47

## **709.46 Disapproval or approval of merger.**

(A) If the question of merging one or more municipal corporations and the unincorporated area of a township, as provided in section 709.45 of the Revised Code, is disapproved by a majority of those voting on it in the township or a municipal corporation proposed to be merged or in the municipal corporation with which merger is proposed, no further petitions shall be filed under that section proposing the same merger for at least three years after the date of that disapproval.

If the question of merging is approved by a majority of those voting on it in each political subdivision proposed to be merged and in the municipal corporation with which merger is proposed, the five candidates from each of those political subdivisions shall be elected to the commission to formulate the conditions of merging the political subdivisions. The first meeting of the commission shall be held in the chamber of the legislative authority of the municipal corporation that has the smallest population or, in the case of a merger of the unincorporated area of a township and one or more municipal corporations, in the office of the board of township trustees, at nine a.m. on the tenth day after the certification of the election by the last of the respective boards of elections to make that certification, unless that day is a Saturday, Sunday, or holiday, in which case the first meeting shall be held on the next day thereafter which is not a Saturday, Sunday, or holiday.

The clerk of the municipal legislative authority or the fiscal officer of the board of township trustees in whose chamber or office the first meeting of the commission is held shall serve as temporary chairperson until permanent officers are elected. The commission shall elect its own permanent officers and shall proceed to meet as often as necessary to formulate conditions for merger that are satisfactory to a majority of the members of the commission from each political subdivision.

(B) In case of a vacancy on the commission, the vacancy shall be filled by an appointee of the legislative authority of the municipal corporation, or the board of township trustees of the township, that the prior commissioner represented. The person appointed to fill the vacancy shall be an elector of that political subdivision and, if the person is representing a township, shall reside in the unincorporated area of that township.

(C) The costs of the commission shall be divided among the participating political subdivisions in proportion to the population that each participating political subdivision bears to the total population of the territory proposed to be merged. For these purposes, a township's population shall be based solely upon the population of the unincorporated area of the township proposed to be merged. It shall be a proper public purpose for a municipal corporation or township to expend general fund moneys for these payments.

(D) All meetings of the commission shall be subject to the requirements of section 121.22 of the Revised Code.

Effective Date: 09-29-1994; 04-07-2005; 12-20-2005

## **709.461 Collaborative formulation of merger conditions - unincorporated areas.**

(A) In formulating the proposed merger conditions, the commission shall attempt to work in a collaborative process that results in a consensus of its members as to the best proposal for all of the political subdivisions involved. To this end, the commission shall adopt rules for the orderly operation of commission meetings that permit all commission members to be co-leaders, as appropriate, so that overall no one member has more authority than any of the other members in determining the proposed conditions. These rules may create a framework for building agreement among the members to adopt proposed conditions. The commission also shall seek the advice of both public and private sources to help the commission fully study the merger situation so that appropriate conditions are drafted. If funding permits, the commission may contract with a dispute resolution expert to help make the process more collaborative.

(B) When a merger proposal includes the unincorporated area of a township, the commission shall consider, among the other issues it considers before adopting its proposed merger conditions, both the increase and decrease of funding sources due to the unincorporated township territory becoming incorporated territory.

(C) The proposed merger conditions may provide for the election, prior to the merger, of new officers to govern the municipal corporation with which merger is proposed after the merger is complete, provided that the provision does not conflict with the charter of the municipal corporation with which merger is proposed. If more than one municipal corporation is to be included in the merger, the proposed conditions shall designate one of the municipal corporations as the municipal corporation into which the township and any other municipal corporations involved are being merged. The proposed conditions also may provide that the municipal corporation into which the other political subdivisions are to be merged shall amend its existing charter to include specified provisions and may state that the merger, if approved, shall not become effective until the date on which that municipal charter includes the required provisions. In the case of a merger of a township with a single municipal corporation, the merger conditions also may provide for the annexation of a school district located wholly within the township to the school district of the municipal corporation.

Effective Date: 04-07-2005

## **709.462 Vote on merger conditions - agreement by majority of subdivision members - term of commission.**

(A) Once proposed merger conditions are prepared, the members of the commission shall vote on them.

(B) If no proposed merger condition can be agreed upon by a majority of the members of the commission from each political subdivision, the members of the commission may vote on whether the merger should not occur. If, in that situation, a majority of the members of the commission from each political subdivision votes against the merger, no further proceedings shall be had on the petition filed under section 709.45 of the Revised Code, and no further petitions shall be filed under that section proposing a merger of any or all of the political subdivisions that were the subjects of that petition for at least three years after the date of the commission's vote.

(C) If proposed merger conditions are agreed upon by a majority of the members of the commission from each political subdivision, the commission shall issue a report listing the conditions agreed to and the reasoning behind adopting each condition. In addition, after the next general election occurring after the election of the members of the commission, but not less than seventy-five days preceding the second general election occurring after the election of the members of the commission, the commission, unless it has ceased to exist under division (D) of this section, shall certify the fact of that agreement and a list of the agreed-to merger conditions to the board of elections of each of the counties in which the political subdivisions proposed for merger are located. The question of the approval or rejection of the merger conditions shall be submitted to the voters at that second general election occurring after the election of the members of the commission. The boards of elections shall submit the merger conditions for the approval or rejection of the electors in the portions of the political subdivisions within their respective counties, and, upon the holding of the election, each board of elections other than the board of the county in which the petition is required to be filed shall certify its results to the board of elections of the county in which the petition is required to be filed.

(D) Regardless of whether a merger commission succeeds in reaching an agreement, the commission shall cease to exist on the seventy-fifth day preceding the next general election occurring after the election of the members of the commission, unless the commission requests an extension of time from the legislative authority of each political subdivision involved and each of those legislative authorities approves the extension. This extension of time may be only until the seventy-fifth day preceding the second general election occurring after the election of the members of the commission. If the commission ceases to exist under this division, no further petitions shall be filed under section 709.45 of the Revised Code proposing a merger of any or all of the political subdivisions that were the subjects of the petition considered by the commission for at least three years after the date the commission ceases to exist.

Effective Date: 04-07-2005

## **709.47 Procedure after disapproval or approval.**

(A) If merger conditions agreed upon by a merger commission of a township and one or more municipal corporations are disapproved by a majority of those voting on them in the township or a municipal corporation proposed to be merged or in the municipal corporation with which merger is proposed, no further petitions shall be filed under section 709.45 of the Revised Code proposing the merger of any of the territory within that proposed merger for at least three years after the date of that disapproval.

If merger conditions are approved by a majority of those voting on them in each political subdivision proposed to be merged and in the municipal corporation with which merger is proposed, the merger is effective on the first day of January of the year following the certification of the results of the election by the board of elections with which the petition is required to be filed, unless the conditions specify a different date, in which case the date specified is the effective date of merger. On and after the effective date, the territory of each political subdivision proposed to be merged is annexed to and included in the territory and corporate boundaries of the municipal corporation with which the merger is proposed. The form of government, ordinances, resolutions, and other rules of the municipal corporation with which merger is proposed apply throughout the newly included territories to the extent they are not in conflict with the conditions approved by the electors. The charter, if any, of the municipal corporation with which merger is proposed applies throughout the newly included territories. The corporate existence and the offices of the municipal corporations or of the township proposed to be merged terminate on that date.

(B) The municipal corporation with which merger is proposed succeeds to the following interests of each political subdivision proposed to be merged in:

(1) All moneys, taxes, and special assessments, whether the moneys, taxes, or special assessments are in the treasury or in the process of collection;

(2) All property and interests in property, whether real or personal;

(3) All rights and interests in contracts or in securities, bonds, notes, or other instruments;

(4) All accounts receivable and rights of action;

(5) All other matters not included in divisions (B)(1) to (4) of this section.

(C) On and after the merger's effective date, the municipal corporation with which merger is proposed is liable for all outstanding franchises, contracts, debts, and other legal claims, actions, and obligations of the political subdivisions proposed to be merged.

(D) When a merger proposal includes the unincorporated area of a township, the board of county commissioners of the county in which the unincorporated area is located and the legislative authority of the municipal corporation with which merger is proposed shall negotiate an agreement requiring the county to continue providing within the unincorporated area for a determined period of time after the merger's effective date the county services it was providing within the unincorporated area on the day prior to the merger's effective date. During the negotiation process, each of the following shall occur:

(1) Before the merger's effective date, the board of county commissioners and the legislative authority of the municipal corporation shall each create a proposed transition plan that addresses, among other potential issues for agreement between the county and the municipal corporation, the following:

(a) The period of time the county will continue to provide the county services to the unincorporated area and the date upon which the municipal corporation will succeed to the county's responsibility of providing those services;

(b) Payment by the municipal corporation to the county for the continued provision of the county services to the unincorporated area during that period of time.

(2) On the merger's effective date, the board of county commissioners and the legislative authority of the municipal corporation shall exchange their proposed transition plans.

(3) Within thirty days after the merger's effective date, the board of county commissioners and the legislative authority of the municipal corporation shall meet to discuss the proposed transition plans and the creation of a compromise transition plan that addresses, among other potential issues for agreement between the county and municipal corporation, the issues listed in division (D)(1) of this section.

(4) Within sixty days after the date of the meeting between the board of county commissioners and the legislative authority of the municipal corporation under division (D)(3) of this section, the board and the legislative authority shall agree upon a compromise transition plan.

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