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Final Analysis
 Legislative Service Commission

Sub. H.B. 24

125th General Assembly
 (As Passed by the General Assembly)

- Reps.** Wolpert, McGregor, Flowers, Reidelbach, Seitz, Husted, Widowfield, Fessler, Olman, Daniels, Walcher, Ujvagi, Collier, Cirelli, Wagner, C. Evans, Schlichter, Sferra, Price, Cates, Hughes, Kearns, Schneider, D. Stewart, J. Stewart
- Sens.** Stivers, Mumper, Robert Gardner, Goodman, Jacobson, Harris, Miller, Austria, Randy Gardner, Amstutz

Effective date: August 29, 2003

ACT SUMMARY

- Authorizes the Attorney General to institute legal action to dissolve certain villages upon the request of and specified findings of the Auditor of State.
- Requires courts of common pleas to dissolve certain villages when they make specified findings in an Attorney General-commenced legal action to dissolve such a village.
- Generally requires certain municipal corporations to have a population of over 100 in order to have a mayor's court.

CONTENT AND OPERATION

Village dissolution

Continuing and former law

Under continuing law, a village may be dissolved when at least 40% of the electors of the village petition the legislative authority of the village for an election on the issue and the dissolution is approved by a majority of those voting on the issue. If dissolution is approved, the corporate powers of the village cease once the election results are certified to the Secretary of State and the county recorder.

(Sec. 703.20--not in the act.) After a petition for dissolution is filed with its legislative authority, a village cannot create any new liability until the result of the election is declared and, if the vote approves the dissolution, thereafter (sec. 703.21).

The surrender of corporate powers does not affect vested rights or accrued liabilities of the village, or its power to settle claims, dispose of property, or levy and collect taxes to pay existing obligations. Due and unpaid taxes may still be collected once the corporate powers have been surrendered. All moneys and property remaining after the surrender belong to the township or townships located wholly or partly within the village. Under former law, if more than one township was to receive the remaining money or property, it had to be divided among the townships in proportion to the amount of territory each had within the village boundaries as compared to the total *township* territory within the village. (Sec. 703.21.)

Changes made by the act

Villages to which new method applies. The act creates an additional way for a village to be dissolved and surrender its corporate powers (sec. 703.201(E)). This new method is based upon the findings of the Auditor of State in an audit report and applies only to certain villages: those that have a population of 150 persons or less and consist of less than two square miles (hereafter, a covered village). Such a village must be found in an audit report to have met at least two of the following conditions (sec. 703.201(A) and (B)):

- The village has been declared to be in a fiscal emergency under the Local Government Fiscal Emergency Law and has been in fiscal emergency for at least three consecutive years with little or no improvement on the conditions that caused the fiscal emergency declaration.
- The village has failed to properly follow applicable election laws for at least two consecutive election cycles for any one elected village office.
- The village has been declared to be unauditible in at least two consecutive audits by the Auditor of State.¹

¹ *The act references the provision of law requiring the Auditor of State to generally conduct audits of each public office at least biennially (sec. 117.11--not in the act). The Auditor of State may determine that a public office is unauditible if its accounts, records, files, or reports have been improperly maintained (sec. 117.41--not in the act).*

- The village does not provide at least two services typically provided by municipal government, such as police or fire protection, garbage collection, water or sewer service, emergency medical services, road maintenance, or similar services, but not including any administrative service or legislative action.
- The village has failed for any fiscal year to adopt the tax budget required under the Tax Levy Law.
- A village elected official has been convicted of theft in office, either under the Ohio Criminal Code or an equivalent criminal statute at the federal level, at least two times in a period of ten years. The convicted official can be the same person or different persons.

Procedure for dissolution. If the Auditor of State finds in an audit report of a covered village that the village meets at least two of the above conditions, the Auditor of State must send to the Attorney General a certified copy of the report and a letter requesting the Attorney General to institute legal action to dissolve the village in accordance with the act. The report and letter must be sent within ten business days after the Auditor of State transmits the report to the village. The report transmitted to the village must be accompanied by a notice of the Auditor of State's intent to refer the report to the Attorney General for legal action. (Sec. 703.201(B).)

The Attorney General may file in the court of common pleas, within 20 days after receipt of the Auditor of State's report and letter, a legal action requesting the dissolution of the village.² If a legal action is filed, the court must hold a hearing within 90 days after the date of the filing. A notice of the hearing must be filed with the Attorney General, the clerk of the village, and each clerk of any township located wholly or partly within the village. (Sec. 703.201(C).)

At the hearing to dissolve the village, the court must determine whether the village has a population of 150 persons or less and consists of less than two square miles (i.e., that it is a covered village), and whether it meets at least two conditions for surrendering corporate powers. If the court makes these findings, it must order the dissolution of the village and provide for the surrender of its corporate powers in the same manner as occurs after a petition for dissolution and an approving vote of the electors. The Attorney General must file a certified copy of the court's order of dissolution with the Secretary of State and the county recorder of the county in which the village is located. The Secretary of State and the county

² Presumably, "the court of common pleas" is that having jurisdiction in the county where the village is located.

recorder must make a record of the certified court order in their respective offices. The corporate powers of the village cease upon the recording in the county recorder's office. (Sec. 703.201(C).)

Determination of population. Under the act, for purposes of this type of dissolution and surrender of corporate powers, the population of a village must be the population determined either at the last preceding federal decennial census or according to the population estimates certified by the Department of Development in non-census years (sec. 703.201(D)).

Debts of the village. Upon receipt of an Auditor of State's audit report and the notice of the Auditor of State's intent to refer the report to the Attorney General for legal action, the legislative authority of a village generally cannot create any new liability until the court's decision in the legal action is declared.³ If the court orders dissolution, the village can no longer incur debt. All property remaining after the surrender of corporate powers and the settlement of debts belongs to the township or townships located in the village. (Sec. 703.21.)

Minimum population requirement for a municipal corporation to have a "mayor's court"

In Ohio, "mayor's courts" may exist by virtue of the law conferring jurisdiction on the mayors of certain municipal corporations to hear and determine prosecutions for violations of municipal ordinances and for certain moving traffic violations. Formerly, there was no population requirement for having a mayor's court in a municipal corporation. The act generally imposes such a population requirement by specifying that only mayors of certain municipal corporations having a population of more than 100 have jurisdiction to hear and determine those prosecutions. (Sec. 1905.01.)

³ A caveat is that, if the Attorney General does not file a legal action for the village's dissolution, the village is prohibited from creating any new debt only for 30 days after receipt of the Auditor of State's notice.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-03	p. 82
Reported, H. County & Township Gov't	03-20-03	p. 273
Passed House (89-8)	04-01-03	pp. 310-311
Reported, S. State & Local Gov't & Veterans Affairs	04-08-03	pp. 249-250
Passed Senate (32-1)	04-09-03	pp. 276-277
Concurrence (83-16)	05-07-03	pp. 461-462

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