May 19, 2003

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
West Union, Ohio 45693

SYLLABUS: 2003-018

If a referendum election is held on the proposal of the governing board of an educational service center to create a new local school district from one or more local school districts under R.C. 3311.26, the electors residing in the district that would be newly created are eligible to vote upon the proposal, but those residing in the original district or districts that would lose territory are not.

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OPINION NO. 2003-018

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
West Union, Ohio 45693

Dear Prosecutor Kelley:

You have requested an opinion concerning who is eligible under R.C. 3311.26 to vote on the proposal of an educational service center's governing board to create a new local school district.

Briefly stated, R.C. 3311.26 authorizes the governing board of an educational service center (ESC) to propose "the creation of a new local school district from one or more local school districts or parts thereof." The governing board must file a copy of any such proposal "with the board of education of each school district whose boundaries would be altered by such proposal." *Id.* No sooner than thirty days after its proposal for the creation of a new district, the governing board must then adopt a resolution making the creation effective prior to the next July unless, prior to the expiration of such thirty-day period, thirty-five percent of the qualified electors "residing in the area included in such proposed new district," file a petition of referendum against the creation of "the proposed new district." *Id.* If a petition of referendum is filed, the governing board must certify the proposal to the appropriate board or boards of elections, which must arrange "for the submission of such question to the electors of the county or counties qualified to vote thereon." *Id.*

That part of R.C. 3311.26 about which you ask states: "The persons qualified to vote upon a proposal are the electors residing in the proposed new districts." You wish to know whether the use of the plural, "districts," rather than the singular form of the word, means that both the original district that would lose territory, and the district that would be newly created from the territory of the original district, are considered to be a "proposed new district," so that the electors residing in the original district, as well as those residing in the district that would be newly created from the territory of the original district, are eligible to vote on the referendum. In order to answer your question, we must examine this particular language within the context of R.C. 3311.26 as a whole, as well as compare the statutory scheme governing the creation of a new district with that governing the transfer of territory from one district to another. It is also instructive to examine the history of R.C. 3311.26.

**R.C. 3311.26**

It is a well-established rule of statutory construction that a statute and its various parts must be construed as a whole. *Humphrys v. Winous Co.*, 165 Ohio St. 45, 49, 133 N.E.2d 780 (1956). Particular language may not be considered in a vacuum nor disassociated from the rest of the statute, and legislative intent must be "derived from the four corners of the statute." *Cullen v. Milligan*, 61 Ohio St. 3d 352, 358-59, 575 N.E.2d 123 (1991). *See also First Federal Savings and Loan Association v. Evatt*, 143 Ohio St. 243, 249, 54 N.E.2d 795 (1944) ("[i]t is axiomatic that all parts of a statute shall be construed together," and the entire statute must be considered as a complete plan). Reading R.C. 3311.26 as a whole leads us to conclude that a local school district from which territory would be taken for the creation of a new district is not considered to be a "proposed new district," and thus electors residing therein are not eligible to vote on the proposal.

First, every one of the numerous references in R.C. 3311.26 to a "new," "proposed," or "proposed new" district uses the singular form with the sole exception about which you ask, and the context in which they are used indicates that only one "new" district would be created under the proposal. For example, the first sentence of the first paragraph of R.C. 3311.26 states that the governing board of an ESC may, by resolution, "propose the creation of *a new* local school district from one or more local school districts or parts thereof" (emphasis added). The sense of this language is that *one new* district is to be created from *one or more existing* districts. *See Webster's Third New International Dictionary* 1 (1993) (defining the indefinite article, "a," as "a function word before most singular nouns"). Similarly, the second paragraph provides that the governing board of an ESC "proposing the creation of a new district" must adopt a resolution making the creation effective unless, prior to the expiration of the thirty-day period required to elapse between the board's initial resolution proposing the creation and its resolution making the creation effective, "qualified electors residing in the area included in such proposed new district" file a petition of referendum against the creation of "the proposed new district." Again, the singular is used, and the implication is that only one new district would be created.

Other examples of the language used in R.C. 3311.26 support the interpretation that only one new district is being proposed. The seventh paragraph of R.C. 3311.26 states that, "[i]f the proposed district" is approved by a majority of voters, "the governing board shall then create such new district" prior to the next first day of July. The ninth paragraph states that the ESC governing board must, after the election, file with the county auditor "of each county affected by the creation of a new district an accurate map showing the boundaries of such newly created district."

It is also significant that the General Assembly uses different language in R.C. 3311.26 to include or refer to a school district from which territory would be or has been taken. *See Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"). The last sentence of the first

paragraph requires the ESC governing board proposing the creation of a new district to file a copy of the proposal "with the board of education of *each* school district *whose boundaries would be altered* by such proposal" (emphasis added). This description clearly includes a district that would lose territory under the proposal, and could have been used to describe the residence of electors eligible to vote if that had been the intent of the General Assembly. *See Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections).

The seventh and eighth paragraphs of R.C. 3311.26 address the apportionment of the assets and liabilities of the respective districts upon the creation of a new district, and, read together, provide that, if "the proposed district" is approved, the governing board shall "create such new district," and "[u]pon the creation of such district, that part of the net indebtedness *of each former district becoming only in part a part of the new district* shall be assumed by the new district" in the prescribed ratio (emphasis added). The eighth paragraph also states that, "[u]pon the creation of such district, the funds of each former district becoming only in part a part of the new district shall be divided equitably by the governing board between the new district and that part of the former district not included in the new district as such funds existed on the effective date of the creation of the new district." R.C. 3311.26 thus clearly distinguishes between the one "proposed," "new," or "newly created" district and the "former" district or districts.

**Comparison to Transfer of Territory**

It is also instructive to compare R.C. 3311.26, providing for the *creation* of a *new* district, with R.C. 3311.22 and R.C. 3311.231, which govern the *transfer* of all or part of one or more local school districts to *another existing* district.[1] Both statutes provide that the transfer may be proposed by either the governing board of an ESC, or by petition filed by no less than fifty-five percent of the electors residing within that portion of a school district proposed to be transferred. Similarly, if the proposal is made by the governing board of the ESC, a petition of referendum may be filed by a majority of the electors "residing in the area proposed to be transferred." *See* 1962 Op. Att'y Gen. No. 3407, p. 913.

Although only those electors who reside within that part of the district that would be transferred are eligible to sign either a proposal or referendum petition, both R.C. 3311.22 and R.C. 3311.231 make eligible to vote on the transfer proposal all electors "residing in the district or districts containing territory that is proposed to be transferred." Thus an elector residing in any part of the district is eligible to vote, regardless of whether he resides in that part of the

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[1] R.C. 3311.22 applies to transfers of territory from local school districts to other local school districts within the same educational service center (ESC), while R.C. 3311.231 governs the transfer of territory from local school districts in one ESC to an adjoining ESC or to an adjoining city or exempted village school district.

district that would be transferred under the proposal. *See State ex rel. Erwin v. Board of Education*, 17 Ohio St. 2d 63, 245 N.E.2d 730 (1969); 1962 Op. Att'y Gen. No. 3407, p. 913.

It is thus apparent that if the General Assembly had in fact intended to make eligible to vote the electors residing in any part of the district losing territory under R.C. 3311.26, it would have expressly done so as it did in R.C. 3311.22 and R.C. 3311.231. *See Lake Shore Electric Railway Co. v. Public Utilities Commission.*

**History of R.C. 3311.26**

The solitary use of the plural "proposed new districts" in R.C. 3311.26 may be a remnant from the rather complicated history of the statute's enactment and development. When the statutory scheme now found in R.C. Chapter 3311 was first enacted in 1943-1944 Ohio Laws 475, 509 (H.B. 217, filed June 17, 1943), the board of education of a county school district[2] was required to adopt a plan of territorial organization prescribing "such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will provide a more economical or efficient county school system," G.C. 4831. H.B. 217 made no provision for submitting the plan to a referendum. However, after adoption of the plan by the county board (and prior to the board's submission of the plan to the state Superintendent of Public Instruction), electors "qualified to vote in territory within the territorial boundary lines of the county school district" could file a protest "relating to the change or failure to change boundary lines of any local school district within the county school system, wherein said electors reside." G.C. 4831-3. If the protest was signed by fifty-one percent or more of the electors "of the local school district or districts so affected," the reorganization plan could not be adopted as to that school district or districts. *Id.* Initially, therefore, all electors residing in the original district that would lose territory to the creation of a new district were eligible to participate in the protest.

In 1947 the statutory scheme was amended to provide separately for *transferring* a school district or part thereof to another existing district or districts, and for *creating a new* local school district from one or more existing districts or parts thereof. 1947 Ohio Laws 572 (Am. S.B. 75, filed June 26, 1947). While Am. S.B. 75, like the 1943 legislation, made no provision for a referendum election, it did provide that the creation of a new district would not take effect if a majority of the electors "residing in the territory included in such newly created district" filed a written remonstrance against it, G.C. 4831-1. The term "newly created district," as used in G.C. 4831-1 (now R.C. 3311.26), was singular and not plural, indicating that electors residing in that part of the district that would not be made part of the new district were no longer eligible to participate in the process for deciding the matter, in this case, signing the written remonstrance.

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[2] In 1995, county school districts were abolished and educational service centers were created in their stead. 1995-1996 Ohio Laws, Part I, 900, 1147-49 (Am. Sub. H.B. 117, eff. Sept. 29, 1995). *See* R.C. 3311.05-.058; R.C. 3313.01.

R.C. 3311.26 was again amended by 1956-1957 Ohio Laws 204, 209 (Am. Sub. S.B. 278, eff. Jan. 1, 1958), which required a county board of education proposing the creation of a new local school district to, *inter alia*, certify its proposal to the board of elections for placement on the ballot. Am. Sub. S.B. 278 provided that the persons qualified to vote upon the proposal were "the electors residing in the *districts* whose boundaries would be altered by the proposal," and that, "[i]f the proposed district be approved by at least a majority of the electors voting on the proposal in each district whose boundary would be altered by the proposal, the county board shall then create such district effective as of the next succeeding July 1 following the election." It was thus clear under Am. Sub. S.B. 278 that all electors residing in the district or districts that would lose territory to the proposed new district were eligible to vote on the question of the new district's creation, and that the approval of electors residing in *each* of the districts that would lose territory was required to create the new district.

In 1959 Ohio Laws 510, 515 (Am. Sub. S.B. 455, eff. July 28, 1959), however, R.C. 3311.26 was again amended to provide for the option of a referendum on the county board's proposal, rather than requiring an election to approve the plan in every case. Specifically, R.C. 3311.26 provided for a referendum election if thirty-five percent of the qualified electors residing in the area included in such "proposed new district" filed a petition of referendum against the proposal. R.C. 3311.26 was amended by Am. Sub. S.B. 455 to read as it does currently, that the persons qualified to vote are "the electors residing in the *proposed new districts*," and if "the *proposed district* be approved by at least a majority of the electors voting on the proposal, the county board shall then create such *new district* prior to the next succeeding July 1 and shall so notify the state board of education" (emphasis added). The references to the electors residing in the districts or in each district whose boundaries would be altered were eliminated.

Whether use of the plural, "districts," was inadvertently retained from Am. Sub. S.B. 278, or is otherwise a drafting error, it is insufficient, standing alone, to grant electors, who reside in that part of the district that would not be made part of the new district, the right to vote on the proposal. As discussed above, this conclusion is supported by reading R.C. 3311.26 as a whole, and by comparing R.C. 3311.26 with R.C. 3311.22 and R.C. 3311.231, where the General Assembly has clearly and explicitly granted electors residing in the entire district the right to vote on the transfer of territory. *See generally Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph one) (where the provisions of a statute "are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted"); 1993 Op. Att'y Gen. No. 93-020 at 2-110 (replacement of one phrase with another was "a drafting error that cannot be given substantive effect").

**Conclusion**

Therefore, it is my opinion, and you are advised that, if a referendum election is held on the proposal of the governing board of an educational service center to create a new local school

district from one or more local school districts under R.C. 3311.26, the electors residing in the district that would be newly created are eligible to vote upon the proposal, but those residing in the original district or districts that would lose territory are not.

Respectfully,

JIM PETRO
Attorney General