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## SYLLABUS:

1. In the enactment of Sections 3311.30 and 3311.31 of the Revised Code, it was the intention of the General Assembly to make the favorable vote of 55% of the qualified electors in a newly created or altered school district voting on such

proposed changes the determining and effective step in the reorganization of such districts, subject only to the right of the electors in any district affected by the plan of reorganization, to veto such change as to their district, by a vote of 75% of those voting.

2. In any reorganization of school districts under the provisions of Section 3311.31 of the Revised Code, neither the board of education of a school district proposed to be created or altered nor the board of education of any school district to which territory is added or from which territory is taken has any duty to approve or power to override the vote of the electors therein provided for.

3. Where under the provisions of Section 3311.31, Revised Code, a reorganization of school districts has been approved by the electors, as therein provided, such reorganization thereby becomes effective and the provisions of Sections 3311.23, 3311.24 and 3311.26, Revised Code, are to be resorted to only for the purpose (1) of an equitable division of the funds and indebtedness of the districts involved, (2) the filing with the county auditor of a map of the territory transferred, and (3) the appointment by the county board of education of a board of education for a newly created district.

4. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under the provisions of Section 3311.31, Revised Code, to recommend the creation of an entire new school district embracing all or a portion of an exempted village district, and if such recommendation is approved by 55% of the electors voting in such newly created district as provided in said section, the board of education of such exempted village district would have no power to approve or disapprove such change.

5. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under the provisions of Section 3311.31, to recommend the addition to the territory of an exempted village district, of territory from another exempted village or local district, and where such recommendation is approved by 55% of the electors voting in the enlarged district as provided in said Section 3311.30, the board of education of such exempted village district would have no power to approve or disapprove such change.

6. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under Section 3311.31, Revised Code, to recommend the taking away of a portion of the territory of an exempted village school district and attaching it to a local school district, and if such recommendation is approved by 55% of the electors voting in the enlarged district, as provided in said Section 3311.30, neither the board of education of such local district nor the board of education of such exempted village district would have the power to approve or disapprove such change.

Columbus, Ohio, December 2, 1954

Hon. Ray Bradford, Prosecuting Attorney  
Clermont County, Batavia, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

“Section 3311.30 in the first paragraph provides,

“The jurisdiction of the citizens committee shall include all school districts in the county except city districts.’

“The districts in Clermont County, of course, are local school districts.

“Section 3311.31 provides for the procedure of the report of our committee, the submission to the superintendent of public instruction, and upon his approval, the submission to the electors of the district affected. This section among other things provides,

“‘If any proposed plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization in the new district proposed to be created, the reorganization shall be accomplished as provided by Sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code.’

“Section 3311.22 provides for the transfer of all or parts of school districts of the county school district to an adjoining district or districts of the county school district, and has no reference to exempted village school districts.

“Section 3311.26 provides that the county board of education may create a new local school district from one or more local school districts or parts thereof and has no reference to exempted village schools.

“Section 3311.23 provides for the transfer by the county board of education from a local school district to an adjoining city or exempted village school district. This section provides, however,

“‘Such transfer of territory shall not be complete until:

‘(A) A resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the county, city, or exempted village school district to which the territory is transferred.’

“Section 3311.24 provides for the transfer from a city school district or an exempted village school district to an adjoining city or exempted village school district or to a county school district. This section likewise provides:

“‘Such transfer shall not be complete until:

‘(A) A resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the city, exempted village, or county school district to which the territory is transferred.’

Our specific questions are:

“First, can this citizens’ committee in its recommendations recommend to create an entire new school district which would

embrace all or a portion of existing exempted village school districts, and if such a recommendation were submitted to the electors and approved by 55% of the voters, would the existing board of education of the exempted village school district affected, still have to approve the transfer by a vote of the majority of those elected to said Board?

“Second, can the citizens’ committee recommend the adding to the territory of an exempted village school district, and if this is done, the same is submitted to the voters and approved by 55% of those voting, would the transfer become effective without the approval of a majority of the elected members of the board of education of the exempted village school district?

“Third, can the citizens’ committee recommend the taking away of a portion of the territory of an exempted village school district and attaching that to another local school district, and if that question is submitted to the voters and approved by 55% of the voters voting thereon, does that need the approval of the majority of the board of education of the exempted village school district affected thereby?”

Sections 3311.30 and 3311.31 of the Revised Code to which you refer, are a part of an Act passed by the One Hundredth General Assembly, which became effective June 1, 1954. Section 3311.30 reads in part as follows:

“There shall be created in each of the counties of this state a county citizens’ committee to study the need and recommend proposals for the reorganization of the school districts of the county when the county board of education shall adopt a resolution providing for a citizens committee, or when a petition is filed with the county board of education containing the names of three per cent of the electors voting in the last general election in the county or 400 electors whichever number is smaller. The jurisdiction of the citizens committee shall include all school districts in the county except city districts.

“Each county committee shall consist of nine persons who are legal residents of the county and who are not elected officials or paid employees of the public school system. \* \* \*.”

This section proceeds to outline the procedure for organizing such county committee. Each exempted village, local and county board of education is to authorize one of its members to serve as a delegate to a convention to select the nine members of this citizens committee. It is clear, therefore, that the reorganization of districts contemplated by the law includes local and exempted village districts within the county but

excludes from its operation all city districts and excludes any transfers from the area of the county to any other county district. Section 3311.31 reads in part as follows:

“A county citizens committee shall within one year after it shall have been created file with the superintendent of public instruction a report approving existing organization or a plan for the reorganization of school districts *within the county*. Copies of such reports shall also be filed with the county board of education and with each board of education whose territory is involved. All boards receiving such report may register approval or disapproval with the state superintendent of public instruction. The superintendent of public instruction may approve or disapprove any such plan, and may make any suggestions or modifications which he deems necessary. Specific proposals for merging of districts involving only a portion of the county area may also be made.

“Upon the approval of the superintendent of public instruction and the county citizens committee, the county board of education at its next regular meeting shall by resolution request the county board of elections to submit the plan of reorganization to the electors, *of the districts involved*. If the superintendent of public instruction disapproves the plan and the citizens committee after reconsideration re-submits said plan in original or modified form, and the superintendent of public instruction continues to disapprove such plan, then a public meeting of the electors of the *districts involved* shall be called by the county superintendent of schools. If a majority vote of the electors present shall approve then the county board of education shall be authorized to arrange to place the issue on the ballot. If any proposed plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization *in the new district proposed to be created, the reorganization shall be accomplished as provided* by sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code but with no right of remonstrance nor limitation as to the year in which territory can be transferred. If, however, seventy-five per cent of all the qualified electors voting on such reorganization *in any one of the districts involved* vote in opposition to the reorganization, then that district shall not be included in such reorganization. \* \* \*.”

(Emphasis added.)

Here, it will be noted that after the approval of the superintendent of public instruction has been given to the plan, or in case of his veto, then the approval of a majority of the electors present at an informal public meeting, the plan prepared by the committee goes on the ballot, to be voted on by the electors of *all the districts which are involved in the*

*recommended plan.* This obviously would include all local and exempted village school districts to which anything is proposed to be added, or from which any territory is proposed to be taken. They are certainly all "involved" in the plan.

It is to be noted, however, that no provision for any particular percentage of the voters in the aggregate of the districts involved is made in the statute. The only controlling vote is 55% of the qualified electors voting on such reorganization "*in the new district proposed to be created.*" If 55% of such electors have voted favorably then the apparent effect of such approval is to order the organization of the new district. However, it is manifest that the vote of the electors in each district which is affected, becomes important, but only for the purpose of determining which, if any of such districts has vetoed the proposal as to that district by casting a vote of 75% in opposition.

Thus, if the plan proposed should involve the addition to district A of portions of territory from districts B, C and D, a vote of 55% of the electors residing in district A plus the territory proposed to be annexed, would primarily operate to approve the plan. However, if the total vote of district B should show that 75% of the electors in that district are opposed, then the portion of territory that was to be taken from district B would be dropped out of the plan. On the contrary if 70% or even 74% of the electors in districts B, C or D should be opposed to the plan their territory would nevertheless be taken from them and added to district A, and it does not appear that they would have any right of remonstrance. This may seem to be somewhat unfair to these districts, but it must be remembered that the organization and conduct of the public schools are matters that are entirely within the power of the legislature. See Ohio Constitution, Article VI, Section 2.

The Act under consideration shows signs of faulty construction in many respects. Some of the features which are somewhat vague were pointed out in previous opinions, viz., No. 3732 issued April 20, 1954, relating to the dissolution of a school district which has no schools, and No. 4145 issued July 27, 1954, relating to the informal meeting of electors referred to in Section 3311.31 *supra*. In the provisions which we are now considering, no specific reference is made to changes involving the addition to one district of territory taken from another. There are references to "merged districts" and "new district proposed to be created."

It is to be noted that after the provisions as to the preparation and submission to the electors, the statute provides:

“\* \* \* If a majority vote of the electors present shall approve then the county board of education shall be authorized to arrange to place the issue on the ballot. If any proposed plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization *in the new district proposed to be created, the reorganization shall be accomplished as provided by sections 33II.22, 33II.23, 33II.24 and 33II.26 \* \* \**”

(Emphasis added.)

If therefore, we are to give effect to the manifest purpose of the whole section we must assume that the legislature meant the words “new district” to include all proposed altered districts. Accordingly we look to section 33II.22 et seq. for any provisions that will “accomplish” and complete the changes recommended by the citizens committee and approved by the electors.

When we come to examine the four sections referred to, we find that they relate mainly to proceedings which a county board of education is authorized to initiate. None of them gives the county board any authority to take any territory from an exempted village district. Section 33II.23 gives such board authority to propose a transfer of territory from a *local* district either to another local district or to a city district or exempted village district. If the transfer is to a city district or to an exempted village district then it is provided:

“Such transfer of territory shall not be complete until:

“(A) A resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the county, city or exempted village school district to which the territory is transferred.

“(B) An equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer.

“(C) A map showing the boundaries of the territory transferred has been filed by the board of education accepting the transfer, with the county auditor of each county affected by the transfer.”

Section 33II.24, Revised Code, relates to a proceeding by the board of an exempted village district to transfer a part of its territory to an

adjoining city or exempted village district. It contains the identical provisions quoted above as paragraphs A, B, and C, in Section 3311.23.

The question then arises whether in view of the above quoted provisions, a local or exempted village board could, by a vote of a majority of its members, block a plan which has been duly approved by the electors and which involves an addition to or subtraction from its territory. It is my opinion that it could not. In the first place, the legislature having complete control over the school system, has provided in Section 3311.31 *supra*, a *new process* whereby *all of the territory in a county* except in city districts, but including exempted village districts, may be rearranged. Furthermore, the electors in that portion of a district which is to be taken, have helped by their votes to produce the 55% vote approving the plan; and furthermore, the electors of the entire district so affected have had their opportunity to veto the whole project so far as their district is concerned, by casting their 75% vote in opposition.

Section 3311.33, Revised Code, provides for the appointment of a board of education for a newly created school district. That section reads:

“Upon certification by the board of elections that the proposed plan of reorganization has been approved, the county board of education shall assign the assets and liabilities of the original districts to the new district so created and proceed to appoint a board of education for the new district in the same manner as is provided by section 3311.26 of the Revised Code.”

Section 3311.26, Revised Code, reads in part:

“A county board of education may create a new local school district from *one or more local school districts or parts thereof*, and in so doing shall make an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. \* \* \* When a new local school district is created within a county school district, a board of education for such newly created district shall be appointed by the county board of education. The members of such appointed board of education shall hold their office until their successors are elected and qualified. \* \* \*”

(Emphasis added.)

This section, it will be observed, contemplates a new district created from *local* districts only, but since the scope of the new procedure which is set forth in Section 3311.31 *supra*, wipes out the autonomy of exempted village districts, and refers to Section 3311.26 for the final accomplishment



of the changes ordered by the electors, it seems quite clear that we are not only authorized but required to adopt the provisions of the latter section relative to the appointment of a board of education for the newly created district. Accordingly, it is my opinion that the duty to appoint such new board devolves upon the county board of education.

It appears to me that the intention of the legislature was to make the vote of the electors the final and effective act in ordering the reorganization of the districts or creation of a new district, and that we are to resort to the four sections referred to, in so far as they are applicable, only for the purpose of implementing the changes, (1) by making an equitable division of the assets and indebtedness of the districts involved, (2) by getting on record a map showing the changes of boundaries, and (3) by appointment of a board of education for a newly created district.

In the construction of statutes it is a well recognized principle that courts will seek to ascertain the legislative purpose and intent and to carry out the legislative intent if possible. This proposition is stated by Crawford on Statutory Construction, page 249, as follows:

“Consequently, when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it. Of course, if the language is unambiguous and the statute’s meaning is clear, the statute must be accorded the expressed meaning without deviation, since any departure would constitute an invasion of the province of the legislature by the judiciary. And even where the statute is ambiguous, considerable caution should be exercised by the court lest its opinion be substituted for the intent of the legislature.”

Our Supreme Court in the leading case of *Slingluff v. Weaver*, 66 Ohio St., 621, had under consideration an act of the General Assembly which in terms appeared to take away from that court practically all of its appellate jurisdiction. The court held:

“1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the lawmaking body which enacted it. And where its provisions 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.”

In that case, the court found the act in question free from doubt, and enforced its provisions. But certainly in the statute we are considering, we find ambiguities which must be resolved, and at the same time we find a fairly clear purpose and intent which we must endeavor, if possible, to carry out.

Accordingly, it is my opinion :

1. In the enactment of Sections 3311.30 and 3311.31 of the Revised Code, it was the intention of the General Assembly to make the favorable vote of 55% of the qualified electors in a newly created or altered school district voting on such proposed changes the determining and effective step in the reorganization of such districts, subject only to the right of the electors in any district affected by the plan of reorganization, to veto such change as to their district, by a vote of 75% of those voting.

2. In any reorganization of school districts under the provisions of Section 3311.31 of the Revised Code, neither the board of education of a school district proposed to be created or altered nor the board of education of any school district to which territory is added or from which territory is taken has any duty to approve or power to override the vote of the electors therein provided for.

3. Where under the provisions of Section 3311.31, Revised Code, a reorganization of school districts has been approved by the electors, as therein provided, such reorganization thereby becomes effective and the provisions of Sections 3311.23, 3311.24 and 3311.26, Revised Code, are to be resorted to only for the purpose (1) of an equitable division of the funds and indebtedness of the districts involved, (2) the filing with the county auditor of a map of the territory transferred, and (3) the appointment by the county board of education of a board of education for a newly created district.

4. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under the provisions of Section 3311.31, Revised Code, to recommend the creation of an entire new school district embracing all or a portion of an exempted village district, and if such recommendation is approved by 55% of the electors voting in such newly created district as provided in said section, the board of education of such exempted village district would have no power to approve or disapprove such change.

5. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under the provisions of Section 3311.31, to recommend the addition to the territory of an exempted village district, of territory from another exempted village or local district, and where such recommendation is approved by 55% of the electors voting in the enlarged district as provided in said Section 3311.30, the board of education of such exempted village district would have no power to approve or disapprove such change.

6. The county citizens committee appointed pursuant to Section 3311.30, Revised Code, has authority under Section 3311.31, Revised Code, to recommend the taking away of a portion of the territory of an exempted village school district and attaching it to a local school district, and if such recommendation is approved by 55% of the electors voting in the enlarged district, as provided in said Section 3311.30, neither the board of education of such local district nor the board of education of such exempted village district would have the power to approve or disapprove such change.

Respectfully,

C. WILLIAM O'NEILL

Attorney General