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COUNTY BOARD OF EDUCATION—3311.23 RC—TRANSFER OF TERRITORY OF LOCAL DISTRICT TO EXEMPTED VILLAGE DISTRICT ON OWN MOTION WITH EXEMPTED VILLAGE DISTRICT'S APPROVAL—COMPLIANCE WITH PERTINENT PROVISIONS OF 3311.23, 3311.27 RC—DESPITE PENDING PROPOSAL FOR BOND ISSUE ON WHICH NOTICE HAS BEEN GIVEN BUT NO ELECTION HELD.

SYLLABUS:

Under the provisions of Section 3311.23, Revised Code, a county board of education may, on its own motion, transfer a portion of territory in a local school district to an exempted village school district with that district's approval, providing that all pertinent provisions of that section have been complied with and after the publication of the resolution evidencing such action as required by Section 3311.27, Revised Code, despite the circumstance that there is pending in the local school district at the time such action is taken a proposal to issue bonds, and an election notice thereof has been given but the election has not been held.

Columbus, Ohio, March 6, 1957

Hon. T. J. Kremer, Jr., Prosecuting Attorney
Monroe County, Woodsfield, Ohio

Dear Sir:

Your request for my opinion reads, in part, as follows:

“The Board of Education of the Woodsfield Exempted Village School District has demanded that I write to you regarding an opinion relative to a school matter * * *

“This matter is a little involved, so I will attempt to outline it briefly. There is a section of the county which the Monroe County Board of Education has consolidated. There has been two votes on a bond issue in this section but the bond issue has failed to carry. Some time prior to the first of this year, the Monroe Local Board of Education decided to hold a special election to again vote on the question of the bond issue. They have advertised as to the special election and have done all things necessary for the election.

“One group in the area in which the bond issue will be voted on in the special election have voted almost to the person against the bond issue in the two previous votes. The Monroe County

Board of Education, at its meeting on February 4, 1957, accepted petitions from this group to be transferred out of the district. The petitions were made up after notice of the special election was given. Part of the group by petition asked to be transferred to the Woodsfield Exempted Village School District, and the rest of the group asked to be transferred to another district in the county school system. Said transfer met with no objection from the Board of Education of the Monroe Local School District.

“Since Woodsfield is an exempted village school district it must accept a transfer to make it valid. The other group that petitioned to be transferred to another district has been transferred to another district within the county school system.

“On February 18, 1957 the Board of Education of the Woodsfield Exempted Village School District met and there seems to be some question by this board as to the validity of the transfer. I have been instructed very definitely that said board desires an opinion from your office as to the validity of the transfer.

“Under Sec. 3311.23 of the Revised Code of Ohio, there seems to be no question of the validity of the transfer.

“A. The county board has submitted a copy of the resolution;

“B. An equitable division of the funds has been made by the county board of education;

“C. A map showing the boundaries has been filed;

“D. Publication has been made according to Sec. 3311.27 of the Revised Code of Ohio.

Upon further request from my office for a clarification of the facts you have furnished me with the following additional information:

“There is no question but that the Monroe County Board of Education acted under the first paragraph of Sec. 3311.23, RCO in this matter. The petition that was filed was not filed in any manner under any claim as being filed under Sec. 3311.23, paragraph two, but was merely an expression to the Monroe County Board of Education of the petitioners' wishes or desires as to the county board's transfer. The petition that was filed was in no way a forced petition or demand upon the Monroe County Board of Education, but was filed solely to show the county board the wishes of the petitioners.

“The following is a copy of the wording on the petition: ‘We, the undersigned, desire to be transferred from West Monroe Local School District to Woodsfield Exempted School District.’

“There is no question as to the fact that the Monroe County Board of Education acted solely under paragraph one of Sec. 3311.23, RCO. The petition that was filed was filed solely as to the petitioners’ desire as to what school they preferred to be transferred to, and the board would have taken its action regardless of any petition; and the petition did not enter into the board’s action.”

Where reference in your request has been made to the Monroe Local Board of Education, I assume that this is the Board of Education of the Monroe Local School District, in which district there have been two previous elections with regard to a bond issue and in which a third election has been called but has not yet taken place.

Your request calls to my attention, Section 3311.23, Revised Code, which is set forth in full, as follows:

“If a county board of education deems it advisable to transfer a part or all of the territory comprising a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. Such a transfer shall not take effect if, within thirty days after the filing of the map showing boundaries as required by paragraph (C) of this section, a majority of the qualified electors residing in the territory transferred voting at the last general election file with the county board of education a written remonstrance against such transfer. A county board of education may accept a transfer of territory from another county school district or from a city or exempted village school district and annex such territory to a contiguous local school district of the county school district.

“If there is filed with a county board of education prior to the first day of February in any even numbered year a petition requesting the transfer of a part of or all of the territory comprising a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and such petition is signed by seventy-five per cent of the qualified electors residing in the territory which the petition seeks to have transferred, voting at the last general election, such county board of education shall, prior to the first day of April next following the filing of such petition with the county board of education, either adopt a resolution transferring the territory as requested by such petition or adopt a resolution objecting to the requested transfer. If the resolution adopted by the county board of education is a resolution objecting

to the requested transfer, then the county board of education shall, within ten days after the adoption of such resolution, file a copy of the resolution, together with a copy of the petition and a map showing the boundaries of the territory which the petitioners seek to have transferred, with the state board of education. The state board of education, if it is not in agreement with the county board of education's action in objecting to the requested transfer of territory, shall, prior to the first day of August next following such action, provide for a hearing to be held in the county where the proposal to transfer territory was filed. The state board of education, a committee of its members designated by such board, or its representatives designated by such board, shall conduct and preside at such hearing. For a period of ten days after such hearing the petitioners who signed the original petition which was filed with the county board of education pursuant to this section may request that their names be removed from such petition. Not later than the first day of September after the filing with the state board of education, pursuant to this section, of a proposal to transfer territory, the state board of education shall either approve or disapprove such proposed transfer of territory and shall submit, in writing, to the county board of education filing such proposal, notice of its decision. If the decision of the state board of education is an approval of the proposed transfer of territory, then the county board of education shall, within thirty days after receiving the state board of education's decision, adopt a resolution transferring the territory.

“Upon the adoption by a county board of education, as authorized by this section, of a resolution transferring territory to another county school district or to a city or exempted village school district such county board of education shall, forthwith, submit a copy of such resolution to the clerk of the board of education of the county, city, or exempted village school district to which the territory is transferred. 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.

“When such transfer is complete the legal title of the school property in the territory transferred shall be vested in the board of education of the school district to which the territory is transferred.”

While your request does not give the date on which the resolution was passed by the Monroe County Board of Education, it is assumed that more than thirty days have elapsed since the filing of the map showing the boundaries as required by Division (C) of Section 3311.23, *supra*, and that no remonstrance has been filed with the board. It would thus seem that all of the provisions of Section 3311.23, Revised Code, relative to the transfer of territory under paragraph one of that section have now been fully complied with, and that the advertisement required by Section 3311.27, Revised Code, has been made. It would thus appear that a valid transfer of such territory could now be made to the Woodsfield Exempted Village School District upon the adoption by the board of education of that district of a resolution accepting such transfer, unless the fact that an election is pending in the Monroe Local School District on the question of issuing bonds in some way limits the authority of the Monroe County board of education to make a transfer of territory from that district.

Upon examining Section 3311.23, Revised Code, above set forth, it is apparent that this section places no such limitation upon the authority of the Monroe County board of education, and I find no provision of law, statutory or otherwise, that in any way restricts or limits the authority of a county board of education to transfer territory at a time when proceedings are pending to issue bonds and a notice of election on that question has been given in the local school district from which territory is to be transferred.

Therefore, I am of the opinion that under the provisions of Section 3311.23, Revised Code, a county board of education may, on its own motion, transfer a portion of territory in a local school district to an exempted village school district with that district's approval, providing that all pertinent provisions of that section have been complied with and after the publication of the resolution evidencing such action has been made as required by Section 3311.27, Revised Code, despite the circumstance that there is then pending in the local school district at the time such action is taken a proposal to issue bonds, and an election notice thereof has been given but the election has not been held.

While you have not requested my opinion as to the effect of this transfer upon the question of voting bonds in the Monroe local school district under that district's pending proceedings, I call your attention to the fact that you should consider the tax duplicate value of the property in that remaining portion of the district from which transfer has been made to determine whether or not the question of issuing bonds may now be voted under the limitations of Sections 133.04 and 133.041, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General