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1. PETITION—DUTY, COUNTY BOARD OF EDUCATION TO DETERMINE VALIDITY OF INDIVIDUAL SIGNATURES AND NUMERICAL SUFFICIENCY OF QUALIFIED ELECTORS WHO SIGNED PETITION—SECTION 3311.23 RC.
2. NAME, QUALIFIED ELECTOR SIGNED BY ANOTHER PERSON—IF PURPORTED SIGNATURE NOT ACCOMPLISHED IN PRESENCE OF AND AT DIRECTION OF ELECTOR, SIGNATURE INVALID.
3. EDUCATION, COUNTY BOARD OF—DUTY TO EXERCISE SOUND DISCRETION TO DETERMINE VALIDITY OF PETITION—SHOULD ADOPT REASONABLE MEANS TO EFFECT DETERMINATION.

SYLLABUS:

1. Section 3311.23, Revised Code, places upon a county board of education the duty to determine both the validity of the individual signatures to a petition filed pursuant thereto, and the numerical sufficiency of the qualified electors signing such petition.

2. Where the name of a qualified elector is signed by another person to a petition authorized by Section 3311.23, Revised Code, and such purported signature was not accomplished in the presence of and at the direction of such elector, such purported signature is invalid.

3. A county board of education with which a petition has been filed pursuant to Section 3311.23, Revised Code, has a duty to exercise its sound discretion in determining the validity of such petition, and a board which has knowledge of invalid signatures on such petition should adopt some reasonable means of determining both which signatures are in fact valid and the numerical sufficiency of those signatures found to be valid.

Columbus, Ohio, April 12, 1956

Hon. Dorothy Kennedy, Prosecuting Attorney
Brown County, Georgetown, Ohio

My dear Miss Kennedy:

I have before me your request for my opinion in which you present facts which may be summarized as follows:

Petitions have been filed with the county board of education, as

authorized by Section 3311.23, Revised Code, requesting the transfer of a part of or all of the territory comprising certain local school districts to adjoining county, exempted village or city school districts. Examination of the petitions, as presented, discloses that not all of the purported signatures appearing thereon are the signatures of the persons whose names are affixed to the petitions. These purported signatures, as shown by your inquiry, are the result of the actions of certain electors who signed a petition, or part petition, when presented to him and then wrote thereon the name of another member of the family, and in one case the names of three other members of the family. You further stated that the circulator of each petition, or part petition, as the case may be, "stated under oath that he saw each person sign."

I believe the questions suggested in your inquiry may be stated as follows:

1. Does a county board of education have a duty to determine the validity of a petition filed with the board pursuant to Section 3311.23, Revised Code, both as to the individual signatures appearing thereon and the sufficiency of the total number of signatures required by the said section?

2. What is the legal effect upon a petition filed with a county board of education, as provided in Section 3311.23, Revised Code, of the purported signature of a qualified elector, which purported signature was not placed thereon by the elector, but is in fact the name of such elector as written by another, and, further, what is the legal effect, if any, of the prior authorization by the elector to such other person to place the elector's name on the said petition, or the subsequent ratification of the act, or both?

3. What is the duty of a county board of education in relation to petitions on which such purported signatures appear?

It is important to note at the outset that Section 3311.23, Revised Code, provides two methods by which a proposal to transfer a part or all of the territory of 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 may be initiated.

Your inquiry concerns itself with the procedure set forth in the following portion of the said Section 3311.23, Revised Code:

“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. * * *”
Emphasis added.)

This language was not changed by the amendment to Section 3311.23, Revised Code, which became effective January 3, 1956.

Before turning to an examination of the question paraphrased above, some brief attention should be given to certain interpretations of Section 3311.23, Revised Code, which you suggested. I approve and follow Opinion No. 2673, Opinions of the Attorney General for 1948, page 69, in which it was held that the term “general election” within the meaning of Section 4831-13, General Code, now Section 3311.23, Revised Code, means any election held on the first Tuesday after the first Monday in November, as defined in Section 4785-3, General Code, now Section 3501.01, Revised Code. The term “last general election,” as used in Section 3311.23, Revised Code, therefore, means that election held on the first Tuesday after the first Monday in November immediately prior to the first day of February in any even numbered year.

I further approve and concur in the holding in Opinion No. 2673, supra, that by the said Section 4831-13, General Code, the only electors who are qualified electors for the purpose of signing the petitions provided for therein are those residing in the territory sought to be transferred who actually voted in the last general election.

It is then immediately apparent that those qualified electors whose signatures are valid on such a petition must have resided in the territory sought to be transferred at the time of the last general election and must have voted in the said territory in that election; it is equally apparent that they must have resided in the territory at the time of signing the petition.

Your first question concerns itself with the extent of the duty, and the method of performing such duty, of the county board of education in

determining whether any petition filed with it pursuant to Section 3311.23, Revised Code, complies with the requirements of the said section.

Referring again to the portion of Section 3311.23, Revised Code, quoted earlier in this opinion, it is found that the county board of education must act within a definite time period upon any such petition which is filed before the first day of February in an even numbered year and which *"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."* It can not be assumed that it was the intent of the legislative body that the validity of the individual signatures and the adequacy of the total number of signatures should be left to chance.

It is incumbent upon a county board of education to act when there is filed with the board a petition meeting the statutory requirements, and it is, therefore, incumbent upon any such board to adopt that procedure by which it may determine that each such petition so filed is a valid petition within the meaning of Section 3311.23, Revised Code.

The remaining questions which you have presented relate to the purported signatures of electors who are qualified to sign, but did not in fact sign. In your inquiry you presented the following statement of facts:

"Secondly, how far does the county board have to go in determining the validity of signatures? Here is our situation: when the petitions were filed with the county board, upon examination of them, it was fairly obvious that in many instances, one person had signed not only his own name, but at least one other person's name, and in one instance, as many as three other person's names. This occurred in the case of a husband signing for his wife or the head of a household signing for his family. Thereupon, some of the county board members took it upon themselves to question (privately and out of board meeting) some of those individuals and received various replies. In most cases, the husband would freely admit that he had signed his wife's name inasmuch as they had discussed the matter and that she had directed him to sign her name, whenever the circulator of the petition came, in the event that she was absent or otherwise unavailable. In some cases, the husband signed his wife's name because he knew that she was in agreement, although she had not directed him, before such signing to sign her name, however, upon being informed of her husband's act, she okey and verified same. All of the individuals at the present time confirm and okey the act as what they would have done had they been present to sign. At the bottom of each petition, the circulator stated under oath that he saw each person sign."

From the foregoing, I do not assume that in any case the elector whose name was affixed to a petition by another was actually present and directed the writing by which the name of the said elector was affixed to the petition paper. I assume, rather, that the purported signing of a name by another was a matter of expediency to further the purpose of securing the names of the required number of qualified electors.

Section 3311.23, Revised Code, provides for action to be taken by a county board of education upon the filing with the said board of a petition signed by the required percentage of electors residing in the territory sought to be transferred; there is no provision that the petition may be signed by or on behalf of such electors. I am unable to conclude that the requirement that such a petition be "signed by" a rather high percentage of the residents in the territory, who must also meet other tests of qualifications, contemplates anything other than a personal signing.

In this connection, I direct your attention to 80 Corpus Juris Secundum, page 1287, Section 2, where it is said:

"* * * Under a statute requiring an instrument to be signed in person, or using similar words, the signature must be made by the person's own hand or by another at his request and in his presence, and previous authority or subsequent ratification is not sufficient."

The following language is found in the same work at page 1291, being Section 6:

"Generally, a signature may be made for a person by the hand of another, acting in the presence of such person, and at his direction, or request, or with his acquiescence, unless a statute provides otherwise. *A signature so made becomes the signature of the person for whom it is made*, and it has the same validity as though written by him. Such mode of signing is sufficient for a sealed instrument, even though the party affixing the signature does not have authority to do so under seal. *Where a signature is made in this manner the person writing the name is regarded as a mere instrumentality, by which the person whose signature is written exercises his own discretion and acts for himself, and not through an agent.* So a mark made for a person at his direction may be regarded as his signature." (Emphasis added.)

It necessarily follows that a petition has not been signed by an elector whose name was affixed to the petition by another, and such signing was not in the presence of and at the direction of such elector.

Section 3311.23, Revised Code, does not undertake to define or describe the petition which may be filed with a county board of education; neither does it establish any methods by which the signatures of the electors shall be secured, nor does it directly place any duty upon the circulator of such petition. Yet, I do not interpret the said statute as meaning by the word "petition" an informal paper writing circulated and executed in any way which at the time seems most convenient. Such an interpretation would be completely at variance with the definite requirements as to the number, residence and the voting qualifications of the signers.

Section 3311.23, Revised Code, does, however, impose a definite duty upon a board of education to adopt a resolution either transferring certain territory from a local school district or objecting to such transfer when a proper petition paper is filed with the board. There is no duty so to act unless a petition meeting the statutory requirements is filed.

It becomes, then, the duty of the county board of education to determine that a petition so filed is signed by the necessary number of qualified electors residing in the territory sought to be transferred; this duty is implied in the language of the statute. A board which has actual knowledge that there are on such petition purported signatures which are not in fact the signatures of the electors whose names appear and which were not affixed in the presence of and at the direction of such electors, should disregard such signatures and also adopt any reasonable method of determining the validity of the other signatures on the said petition.

Although Section 3311.23, Revised Code, does not require that such petitions be verified by the circulator, your statement of facts shows that the petitions or part petitions in question do contain affidavits by the circulators that they saw each person sign. You indicate that the county board of education has reason to believe that in some instances these statements are false. As there is no mandate in the statute that these petitions be verified by the circulator, a petition which has a false affidavit attached is not necessarily void in entirety, but the false affidavit is a factor to be considered, together with all others, in determining the validity of any part of the petition.

There is in the said statute no duty on the board to conduct a hearing in order to determine the validity of such petitions, yet I am unable to

conclude that there is any legal objection to the board's adopting such method of performing the duty which is impliedly imposed upon it.

It is, therefore, my opinion and you are advised:

1. Section 3311.23, Revised Code, places upon a county board of education the duty to determine both the validity of the individual signatures to a petition filed pursuant thereto, and the numerical sufficiency of the qualified electors signing such petition.

2. Where the name of a qualified elector is signed by another person to a petition authorized by Section 3311.23, Revised Code, and such purported signature was not accomplished in the presence of and at the direction of such elector, such purported signature is invalid.

3. A county board of education with which a petition has been filed pursuant to Section 3311.23, Revised Code, has a duty to exercise its sound discretion in determining the validity of such petition, and a board which has knowledge of invalid signatures on such petition should adopt some reasonable means of determining both which signatures are in fact valid and the numerical sufficiency of those signatures found to be valid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General