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PETITION OF REFERENDUM—ONLY ONE TO BE FILED AT OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS—SEPARATE PETITIONS NOT REQUIRED TO BE FILED BY ELECTORS OF EACH COUNTY INVOLVED. SECTIONS 3311.26, R.C.

SYLLABUS:

1. Section 3311.26, Revised Code, provides for only one petition of referendum to be filed at the office of the county superintendent of schools and does not require that separate petitions be filed by the electors of each county involved, where the proposed district is located in more than one county.

2. In an election held pursuant to a petition of referendum under Section 3311.26, Revised Code, on the question of the creation of a new local school district, where parts of the school districts involved are located in different counties, a separate certification of the proposal should be made by the county board of education to the board of elections in each county involved, and all electors residing in the area included in the proposed new districts are eligible to vote at such election.

Columbus, Ohio, October 26, 1959

Hon. John G. Peterson, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

“The Greene County Board of Education is anticipating consolidating three districts in the Greene County School System, those being Cedar Cliff, Greeneview, and Jefferson, under the provisions of the new legislation, particularly Section 3311.26 of the Revised Code of the State of Ohio.

“They have proposed the following question and requested me to request an early opinion from your office regarding the same :

“ ‘In case of a referendum under Section 3311.26 of the Revised Code of the State of Ohio, we would like to know if the signatures of those living in other counties but who are a part of the Greene County School System, would have to be signed on separate petitions in the same manner in which signatures for nominating petitions for board of education members. This creates a particular problem in our case, since Greene County requires registration, and Clinton County does not, and we have a considerable number of people living in Clinton County who are in the Greene County School System.’

“I believe that Section 3503.01 of the Revised Code of the State of Ohio controls this situation, but am in doubts as to procedure to be followed by the board of education and the Greene County Board of Elections.

“We would appreciate your formal opinion on this question at your earliest convenience.”

Amended Substitute Senate Bill No. 455, of the 103rd General Assembly, passed as an emergency measure and effective July 28, 1959, amended Section 3311.26, Revised Code, such section now reading in part as follows :

“A county board of education may, by resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof. Such proposal shall include an accurate map showing the territory affected. After the adoption of the resolution, the county board shall file a copy of such proposal with the board

of education of each school district whose boundaries would be altered by such proposal.

“The creation of a new local school district, as proposed by a county board of education under the provisions of this section, shall become effective on the thirtieth day after the adoption by the county board of the resolution proposing such creation unless, prior to the expiration of such thirty-day period, qualified electors residing in the area included in such proposed new district, equal in number to thirty five per cent of the qualified electors voting at the last general election, file a petition of referendum against the creation of the proposed new district.

“A petition of referendum filed under the provisions of this section shall be filed at the office of the county superintendent of schools. The person presenting the petition shall be given a receipt containing thereon the time of day, the date, and the purpose of the petition.

“If a petition of referendum is filed, the county board of education shall, at the next regular meeting of the county board, certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than sixty days after the date of such meeting, or at a special election, the date of which shall be specified in the certification, which date shall not be less than sixty days after the date of such meeting.

“Upon certification of a proposal to the board or boards of elections pursuant to this section, the board or boards of elections shall make the necessary arrangements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

“The persons qualified to vote upon a proposal are the electors residing in the proposed new districts.

“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.”

Under this section, if a petition of referendum is filed as provided therein, the county board of education is required at its next regular meeting to certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than sixty days after the date of such meeting.

It will be noted that Section 3311.26, *supra*, does not require that petitions be filed with the board of elections but does provide that a petition of referendum may be filed at the office of the county superintendent of schools. The county board of education then certifies the petition to the board of elections for the purpose of having the proposal placed on the ballot. I must conclude, therefore, that the section provides for the filing of only one petition of referendum and that there is no provision for the filing of separate petitions for each county where more than one county is involved.

Regarding the actual election on the question, Section 3311.26, *supra*, reads in part:

“Upon certification of a proposal to the board or boards of elections pursuant to this section, the *board or boards* of elections shall make the necessary arrangements for the submission of such question to the electors of the *county or counties* qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

“The persons qualified to vote upon a proposal are the electors residing in the *proposed new districts*.” (Emphasis added)

In the instant case the voting would involve voters in different counties, and it would necessarily follow that a separate certification of the proposal should be made to each county board of elections concerned, since the proposal would have to be voted on by all of the electors of the area included in the proposed new district.

Accordingly, it is my opinion and you are advised:

1. Section 3311.26, Revised Code, provides for only one petition of referendum to be filed at the office of the county superintendent of schools and does not require that separate petitions be filed by the electors of each county involved, where the proposed district is located in more than one county.

2. In an election held pursuant to a petition of referendum under Section 3311.26, Revised Code, on the question of the creation of a new local school district, where parts of the school districts involved are located in different counties, a separate certification of the proposal should

be made by the county board of education to the board of elections in each county involved, and all electors residing in the area included in the proposed new districts are eligible to vote at such election.

Respectfully,

MARK McELROY

Attorney General