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1. BOARD OF EDUCATION, COUNTY—WHEN NEW LOCAL SCHOOL DISTRICT CREATED, OLD SCHOOL DISTRICT CEASES TO EXIST—SECTION 4831-1 G. C.
2. CANDIDATES SEEKING ELECTION, MEMBERS BOARD OF EDUCATION, ENTITLED TO HAVE NAMES PLACED ON BALLOT IF PETITIONS FILED WITHIN STATUTORY PERIOD AND SUFFICIENT IN LAW.
3. CANDIDATES SEEKING ELECTION, MEMBERS OF BOARD OF EDUCATION OF SCHOOL DISTRICT OF ABOLISHED SCHOOL DISTRICT—PETITIONS ARE INVALID.
4. APPOINTEE MEMBERS, BOARD OF EDUCATION, NEWLY CREATED LOCAL SCHOOL DISTRICT, HOLD OFFICE UNTIL SUCCESSORS ELECTED AT GENERAL ELECTION AND UPON THEIR QUALIFICATION.
5. BOARD OF ELECTIONS WITHOUT AUTHORITY TO ACCEPT NOMINATING PETITIONS AT TIME LATER THAN PRESCRIBED IN SECTION 4785-92 G. C.

SYLLABUS:

1. When a county board of education creates a new local school district pursuant to Section 4831-1 of the General Code, the old school district ceases to exist.
2. Candidates seeking election as members to a board of education of a newly created school district are entitled to have their names placed on the ballot if petitions are filed within the statutory period and are otherwise sufficient in law.
3. Nominating petitions filed by candidates seeking election as members to a board of education of a school district which has been abolished by action of a county board of education, pursuant to Section 4831-1 of the General Code, are invalid.

4. Appointed members to a board of education of a newly created local school district hold office until their successors are elected at the general election and upon qualification of the members elected thereby.

5. A board of elections is without authority to accept nominating petitions at a time later than that prescribed in Section 4785-92 of the General Code.

Columbus, Ohio, October 5, 1949

Hon. Gibson L. Fenton, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir :

This is to acknowledge receipt of your communication concerning certain questions submitted by the Williams County Board of Elections. The pertinent facts and questions submitted are :

“Facts concerning Pulaski-Jefferson Local School District :

“1. The Pulaski-Jefferson Local School District was created by the Williams County Board of Education May 3, 1949. A new board of education was appointed for the Pulaski-Jefferson Local School District by the Williams County Board of Education.

“2. Since no remonstrance was filed within 30 day period, the Pulaski-Jefferson Local School District became a legal school district.

“3. R. H. and P. M. filed as candidates for members of Pulaski-Jefferson Local School District for a term of two years. The three other members D. S., G. M. and M. S. filed as candidates members board of education Pulaski-Jefferson Local School District for a term of four years. These petitions were filed before August 10, 1949.

“Question One raised by the Williams County Board of Elections: Are the petitions as filed by R. H., P. M., D. S., G. M., and M. S. correctly filed?

“Facts about the new Stryker Local School District :

“1. The new Stryker Local School District was created by the Williams County Board of Education August 12, 1949.

“2. No remonstrance was filed within 30 days.

“3. The Williams County Board of Education appointed C. H., N. J. S., H. G., E. P., and J. L. S. as members board of education.

“Questions raised by the Williams County Board of Elections are :

"Question 1. Are nominating petitions filed by M. R., J. L. S., E. P., H. C., K. J. and W. C. on or before August 10, 1949, for membership of board of education the old Stryker Local School District as it existed on August 10th void now that a new local school district Stryker area was created on August 12th by the Williams County Board of Education?"

"Question 2. C. H., N. J. S., H. G., E. P., J. L. S. are to be members of the new Stryker Local School District until their successors are duly elected and qualified. Will these five board members serve until December 31, 1949, or until December 31, 1951?"

"Question 3. Since the action of the County Board took place 30 days before the general election to be held in November, 1949, and since the dead-line for filing nominating petitions was August 10, 1949, what right, if any, would the Williams County Board of Elections have to permit candidates to file for membership board of education of the new Stryker Local School District?"

The creation of a new local school district by a county board of education is provided for in Section 4831-1 of the General Code, and it reads as follows:

"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. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. 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. A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election two members shall be elected for a term of two years and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as is provided by law for the election of members of the board of education of a local school district."

It is further provided in Section 4831-16 of the General Code that:

“A county board of education shall cause any resolution adopted by such board evidencing any action authorized by sections 4831-1 and 4831-13, to be published in one newspaper of general circulation in the territory affected, once each week for two consecutive weeks, and such publication shall be completed not later than the third Saturday following the adoption by the county board of education of such resolution.”

From the facts submitted, it is evident that the old school district has been abolished and that a new local school district has been duly created pursuant to Sections 4831-1 and 4831-16; that because of such creation the situation is such, in my opinion, as to call for the election of an entire new board of education to succeed the board appointed by the county board of education. The election of this board should take place at the coming November election, it being the first election of members of boards of education after the creation of a new district and the appointing of a board for the district. At this coming election there should be two members elected for two years and three members elected for four years as provided for by the above quoted statutes.

In 32 O. Jur., at page 1072, it is said:

“It is well settled that an office of legislative creation may be abolished by the power which created it * * *.”

The election laws of the State of Ohio are contained in Section 4785-3 et seq. of the General Code. Section 4785-4 provides when elections shall be held, as follows:

“General elections in the state of Ohio and its political subdivisions shall be held as follows:

“* * * d. For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years.
* * *”

Section 4785-90 of the General Code provides for nomination by petition for the election of members of boards of education, and it reads in part as follows:

“Nominations of candidates for election as members of boards of education * * * shall be made only by nominating petitions * * *. A nominating petition as herein provided for

may consist of one or more separate petition papers, each of which shall be substantially in the form prescribed in Section 4785-91 of the General Code. * * * Each nominating petition herein provided for shall be signed by qualified electors of the school district * * * in which the candidate designated therein would be a candidate for election as an officer thereof, * * *."

Section 4785-92, General Code, provides :

"All separate petition papers comprising the nominating petition of a candidate for election at a general election shall be filed as one instrument not later than 6:30 P. M. of the ninetieth day before the day of such general election, and shall be accompanied by the written acceptance of nomination by the nominee named in such petition. In the absence of such acceptance the nominee's name shall not be printed on the ballot.

"* * * If the petition nominates a candidate whose election is to be determined by the electors of a county or a district or subdivision within the county, it shall be filed with the board of elections of such county. * * *

"All petition papers so transmitted to a board of elections, and all nominating petitions filed with a board of elections, shall, under proper regulations, be open to public inspection until 6:30 P. M. of the eighty-fifth day before the day of such general election. Each board shall, not later than the eighty-fourth day before the day of such general election examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to * * *."

Section 4785-101, General Code, provides, in part :

"On the non-partisan ballot shall be printed the names of all candidates for election to * * * office of member of board of education * * * in which primary elections are not held for nomination of candidates by political parties as provided for by law, * * *.

"Such ballots shall have printed across the top thereof, and below the stubs, the words: 'Official Non-partisan Ballot.'

"The order in which the offices shall be listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided, that state, district and county judicial offices shall be listed first on the ballot in such order, followed by municipal and township offices, and by offices of member of board of education, in the order stated. * * *"

Section 4785-102, General Code, provides :

"* * * The names of candidates for the board of education of school districts shall be placed on the ballot without party

designation of any kind. At the head of the list of school board candidates shall be the title 'For members of the board of education,' the number to be elected, directions to the voter as to voting for one, two or more as the case may be; * * *

Obviously, the nominating petitions filed by R. H., P. M., D. S., G. M. and M. S., designating the term for which each member is to be elected, and filed with the board of elections, is a nominating petition for the office of member of the board of education as provided for in Section 4785-92, supra, and the board of elections has no alternative other than to accept said petitions and place the names of those persons filing upon the ballot this coming election, assuming, of course, that the nominating papers are otherwise sufficient in law.

You are therefore advised that the petitions as filed by R. H., P. M., D. S., G. M. and M. S. are correctly filed, in so far as same relate to the newly created school district and as to the form and filing of same.

Now as to the questions relative to the new Stryker Local School District. From the facts submitted, it is apparent that the new Stryker Local School District was duly created pursuant to law. What effect does the abolition of an office have in this respect? It is said in 32 O. Jur., at page 1074, that:

"The effect of the abolition of an office always is to terminate the term of the incumbent, since he cannot be an officer or incumbent of an office which has ceased to exist; in other words, he cannot be a de facto officer of an office no longer in existence."

It necessarily follows that any petition filed with a board for election to an office not in existence would be void.

Your question as to when the term for the appointive members ceases can be answered from the wording of Section 4831-1 of the General Code, which says that the members of such appointed board of education shall hold their office until their successors are elected and qualified. Your communication indicates consideration of two dates, viz., December 31, 1949, and December 31, 1951. From that I am assuming you are questioning the time of the election. It should be noted that Section 4831-1 also states "a board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district." It is obvious that the election of member-

ship to the new Stryker Local School District must be held this November, since there is an election occurring more than thirty days after such appointment. Our sole problem, as I see it, is the meaning of the word "qualified." In 32 O. Jur. at pages 1039 and 1040, it is said:

"As a general proposition, the term of office may be said to commence only from the time that the right to enter upon its duties begins.

"The commencement of the term of office is usually fixed by the constitutional provision or the statutes governing the particular office; and when a date is mentioned, the term of office begins on such day. Where no time is fixed by law for the commencement of an official term, however, it begins to run from the date of the appointment; or, in the case of an elective office, according to the general rule followed by the Ohio courts, it starts from the date of the election, unless it is apparent that the predecessor has been elected for the full term which has not yet expired, in which case it seems that the term does not begin at once."

Section 4832-9 of the General Code provides:

"Before entering upon the duties of his office each person elected or appointed a member of a board of education shall take an oath to support the constitution of the United States and the constitution of this state and that he will perform faithfully the duties of his office. Such oath may be administered by the clerk or any member of the board."

It is my opinion that the member so appointed will serve only until such time as there is an election and those elected qualify by taking the oath of office.

A board of elections is a creature of statute and as such has only those powers specifically granted to it by law or such as may necessarily be implied therefrom. The election laws provide for the time and method by which candidates may file for election to membership of a board of education. In Sutherland, Statutory Construction, Vol. 3, p. 107, it is said:

"* * * When a statute directs things to be done by a private person within a specified time, and makes his rights dependent on proper performance thereof, unless the failure to perform in time may injure the public or individuals, the statute is mandatory."

Would the public be injured in so far as the dead-line of filing a petition is concerned? I think not. Since the office has been duly created,

it becomes the duty of the board of elections to place upon the November ballot sufficient blank spaces as there are candidates to be elected, in which the voters may write in a name.

In a recent opinion of mine, Opinions of Attorney General No. 806, rendered August 13, 1949, in the second branch of the syllabus I held that :

“On either a non-partisan or party column ballot when no person has filed and qualified as a candidate for an office, the title of the office should be printed on the ballot and a blank space provided underneath the title of such office.”

In view of the foregoing, and specifically answering your questions, it is my opinion that :

1. The petitions of R. H., P. M., D. S., G. M. and M. S., in so far as same relate to the form, designation of term and the time of filing, is correctly filed.

2. The nominating petitions filed by M. R., J. L. S., E. P., H. C., K. J., and W. C., on or before August 10, 1949, for membership of board of education of the old Stryker Local School District, as it existed on August 10th, are void and of no effect.

3. C. H., N. J. S., H. G., E. P., and J. L. S. will cease to be members of the new Stryker Local School District after the November election and upon qualification of members elected thereby.

4. The Williams County Board of Elections is without authority to permit candidates to file for office after August 10, 1949.

Respectfully,

HERBERT S. DUFFY,
Attorney General.