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EDUCATION—CONSOLIDATION PROCEEDINGS—INITIATED BY STATE BOARD, §3311.37 R.C.—WHILE SUCH ACTION PENDING, COUNTY BOARD WITHOUT AUTHORITY TO ACT ON PETITION, §3311.22 R.C.

SYLLABUS:

1. Where proceedings for consolidation of school districts have been initiated by the state board of education, pursuant to the provisions of Section 3311.37, Revised Code, the county board of education of a county district in which part or all of such proposed territory is situated, is without authority, while such proceedings are pending, to receive or act on a petition filed pursuant to Section 3311.22, Revised Code, for transfer of a portion of the same territory.

2. Where the state board of education, acting under authority of Section 3311.37, Revised Code, has initiated proceedings for consolidation of two or more local school districts located in different counties, the county board of education having supervision of one such local district is without power to receive and certify to the board of elections of its county, a petition by the electors for transfer of a portion of their district. But when such proceedings by the state board of education have been completed, and the consolidated district has been assigned to one of the several county districts, then such petition may be received by such county district, and transmitted to the board of elections of the county of the residence of such petitioners.

Columbus, Ohio, February 11, 1959

Hon. Robert C. Carpenter, Prosecuting Attorney
Seneca County, Tiffin, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The State Board of Education acting under the authority of ORC 3311.37, submitted a proposal for the consolidation of the Jackson-Liberty Local School District in Seneca County, the Risingsun District in Wood County and the Jackson-Burgoon District in Sandusky County, to the electors in November of 1958; the voters of all three districts approved the merger.

“ORC 3311.37 provides in part: ‘When the new district consists of territory lying in two or more counties, the state board shall determine to which county school district the new district shall be assigned.’

“* * *

“Under ORC 3311.22, certain electors of the former Jackson-Liberty Local School District of Seneca County, Ohio, have attempted to file a petition with the Seneca County Board of Education, asking for the transfer of a part of said former district to another local school district in Seneca County, Ohio.

“We have advised the Seneca County Board of Education that it has no authority to accept such a petition; that any such petition should be ultimately filed with the county board of education of the county to which the new district is assigned by the State Board of Education. My opinion has not been well received, and I accordingly respectfully request your formal opinion based upon the above facts.

“* * *

“Under this set of facts, can a petition for transfer under ORC 3311.22 be filed by interested electors? If your answer is in the affirmative, where may such petition be filed?

“In case such a petition is presented to any one of the three involved county boards of education, are they bound to receive it? If so, how shall such board proceed?”

I note that at the time of your request, the state board of education, acting under the authority of Section 3311.37, Revised Code, had submitted a proposal for the consolidation of three local school districts,

located respectively in Seneca, Wood and Sandusky Counties, and that the electors in all three of those districts had approved the merger. It was then stated that the state board had not taken action as required by Section 3311.37, Revised Code, to complete the consolidation and to determine to which county school district the merged district should be assigned.

It appears that certain electors of the former Jackson-Liberty local school district of Seneca County had in the meantime, and during the pendency of these proceedings, attempted to file a petition with the Seneca County board of education asking for transfer of a part of their district to another school district in Seneca County. It appears from later correspondence that the state board completed the transfer on or about January 17, 1959, by assigning the consolidated district to the Sandusky County board of education.

I understand from your letter of January 26 that the Seneca County board of education did receive petitions for transfer of territory of the former Jackson-Liberty local school district between the date of the election in November of 1958, and the effective date of the creation of the new district on January 17, 1959, and that such petitions were, by said county board of education, certified to the Seneca County board of elections for submission to the electors under the provisions of Section 3311.22, Revised Code. It does not appear whether or not the somewhat complicated procedure of Section 3311.22, *supra*, was followed before the petition was certified to the board of elections.

The question, accordingly, is what shall the Seneca County board of elections do with this petition?

Section 3311.22, Revised Code, provides in part:

“If any proposal has been previously certified to the board of elections pursuant to sections 3311.37 and 3311.38 of the Revised Code which affects any of the territory affected by a proposal of the county board, the proposal of the county board shall not be placed on the ballot until after the election has been held on the proposal previously certified.”

While the above quoted provision does not foreclose the electors from the right to file a petition for transfer, yet it does prevent them from filing such petition until after the election provided for in Section 3311.37, Revised Code. It might be argued that immediately following such elec-

tion, and regardless of the favorable vote, the petition in question could have been filed. However, since that election is only one step in the completion of the proceedings initiated by the state board of education and the proposal has been approved by the electors having the right to vote on the proposition, it is my opinion that the right of residents of a portion of the territory involved, to file such petition is suspended until the state board has had a reasonable opportunity to complete the transfer. Section 3311.37, *supra*, provides that if the vote of the electors is favorable, "the state board shall create the proposed district." The same section provides that if the new district is in two or more counties, the state board shall determine to which county district it shall be assigned.

In Opinion No. 1152, Opinions of the Attorney General for 1957, p. 558, my predecessor held that in completing the formation of such new district, the state board could exercise a reasonable discretion in fixing the effective date of its action; which certainly includes a reasonable time for reaching its determination as to the county to which the new district should be assigned.

In the present case the state board proceeded expeditiously and completed the proceeding on or about the 17th of January 1959. Thereupon, by the determination of the state board, the entire territory involved in that proceeding was placed under the supervision of the county board of education of Sandusky County, and any authority which the Seneca County board of education had had was ended.

Accordingly, the attempt on the part of the electors in the local district mentioned, to get action on their petition for transfer by filing it with the Seneca County board of education, became abortive. This, however, does not prevent the petitioners from taking such action by initiating a petition for transfer and filing it with the county board of education of Sandusky County. Such board would, after the required preliminary procedure, certify the petition to the board of elections of Seneca County.

It is accordingly my opinion, and you are advised:

1. Where proceedings for consolidation of school districts have been initiated by the state board of education, pursuant to the provisions of Section 3311.37, Revised Code, the county board of education of a county district in which part or all of such proposed territory is situated, is without authority, while such proceedings are pending, to receive or act

on a petition filed pursuant to Section 3311.22, Revised Code, for transfer of a portion of the same territory.

2. Where the state board of education, acting under authority of Section 3311.37, Revised Code, has initiated proceedings for consolidation of two or more local school districts located in different counties, the county board of education having supervision of one such local district is without power to receive and certify to the board of elections of its county, a petition by the electors for transfer of a portion of their district. But when such proceedings by the state board of education have been completed, and the consolidated district has been assigned to one of the several county districts, then such petition may be received by such county district, and transmitted to the board of elections of the county of residence of such petitioners.

Respectfully,

MARK MCELROY

Attorney General