

1918

EDUCATION—TRANSFER OF TERRITORY, WITHIN COUNTY SCHOOL DISTRICT—ACTION UPON PLAN OF TRANSFER—PETITION SUBMITTED WITH NEW PLAN—§3311.22 R.C.

SYLLABUS:

1. If, pursuant to the provisions of Section 3311.22, Revised Code, a county board of education has, by a majority vote of its members, proposed a transfer of a part or all of one or more local school districts to an adjoining district or districts within the county school district, and such proposal has, after compliance with all the provisions of said section, been filed with the county board of elections for submission to the electors as therein provided, and thereafter a petition signed by 55% or more of the electors proposing a transfer on a different basis of part or all of the same territory is filed with the county board of education, such petition would be too late for consideration and the election already set in motion should proceed.

2. If, pursuant to Section 3311.22, Revised Code, a county board of education has, by resolution duly adopted, proposed a transfer of territory from one or more local school districts to an adjoining district or districts within the county school district, and the preliminary procedure prescribed in said section looking to a submission of the proposition to the electors of the districts affected, is still in process, and such proposition has not yet been certified to the board of elections, and a petition of electors duly signed is presented to such county board praying for a different plan of re-arrangement of part or all of such territory, the county board should give consideration to such petition and should carry out the procedure with reference thereto as prescribed in said Section 3311.22, Revised Code.

Columbus, Ohio, April 3, 1958

Hon. Hugh I. Troth, Prosecuting Attorney
Ashland County, Ashland, Ohio

Dear Sir:

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

“Section 3311.22, Revised Code of Ohio, provides in part that a county board of education *or* qualified electors by petition, may propose certain transfers of local districts to an adjoining district. In the event both the county board of education proposes a transfer and a petition properly filed proposes a different transfer, which proposal goes on the ballot?”

“It is my opinion that as the code provides that one ‘or’ the other may propose transfers, only one of the two could go on the ballot. If this is correct, which of the two would go on the ballot or would it be determined by whichever was filed first?”

You refer to that provision of Section 3311.22, Revised Code, which authorizes a proposal either by the county board of education or by a petition of qualified electors residing within the described district for transfer of territory of a local school district to an adjoining district or districts within the county school district.

This same section provides that if such petition is filed with the county board, that board must consider the same at its next meeting, which occurs not later than thirty days following the filing of the petition, and if no meeting is scheduled within that period then the county superintendent is required to call a special meeting of the board for the purpose of receiving such petition. The statute then proceeds as follows:

“The county board shall *then* file a copy of such proposal with the board of education of each school district whose boundaries would be altered by such proposal and with the state board of education. All boards of education receiving copies of such proposal may, *within thirty days thereafter*, register approval or disapproval of the proposal with the county board. *If the proposed transfer is by resolution of the county board of education, or if by petition and affects less than all of a district, the county board may, within sixty days after the expiration of the thirty day period, modify the proposal.* If the county board modifies the proposal it shall immediately file a copy of such modified proposal with the board of education of each school district whose boundaries would be altered by such proposal and with the state board of education.” (Emphasis added)

Here it will be noted that the county board’s authority to modify the proposal is somewhat limited. It may not modify if the proposition emanated from a petition of the electors and “affects less than all of a district”. Except for this condition, the county board may modify the proposal within sixty days after the expiration of the thirty day period within which boards of education concerned may register approval or disapproval of the proposal. If the county board does modify the proposal, it shall immediately file a copy of such modified proposal with the board of education of each school district whose boundaries would be altered by the proposal and with the state board of education. There does not appear to be any further reserved authority to either the boards affected or to the state board of education to make further objections to the proposal as modified. I quote further from the same section as follows:

“If the county board has not filed a modified proposal, it shall certify the original proposal to the board of elections for the

purpose of having the proposal placed on the ballot at the next general election which occurs not less than ninety days after the expiration of the sixty day period *during which the county board might have modified the proposal*. If the county board is not authorized to modify the proposal, the certification provided above shall be made within sixty days after the petition was presented to the county board. *If the county board has filed a modified proposal, it may, and if the original proposal was presented by petition, shall certify the modified proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general election which occurs not less than ninety days after the date on which such modified proposal was filed with the boards of education as above provided.*"

(Emphasis added)

It appears that finally, either after modification or failure to modify, or incapacity to modify the proposal, the county board of education must certify the proposal to the board of elections for the purpose of having it placed on the ballot at the next general election which occurs not less than ninety days "after the date on which such modified proposal was filed with the boards of education as above provided".

Just how we may apply this rather complicated procedure to the question which you present is the one proposition before us. I do detect in the law an imputation that the county board should give attention to the wishes of the electors, even though the board is given authority to proceed on its own initiative. The statute quoted provides that the board *shall* consider a petition within thirty days, calling a special meeting if necessary.

Manifestly, if no petition has been filed, and the county board which had initiated the proposal has duly filed it with the board of education of each school district whose boundaries would be altered, and with the state board of education, and none of them has registered its disapproval, and the county board had not seen fit to make any modification, then the proposal should have been filed with the board of elections for submission to the electors. If, after this has been done, a petition of the electors asking for a different plan of transfer of territory is filed, with the county board of education, I would have no hesitancy in saying that it was too late to interfere with the proposal that had already reached the board of elections and was in the process of preparation for submission. If, however, at any time during the somewhat involved proceedings leading up to certifications to the board of elections, a petition has been duly

signed by the required number of electors and is presented to the county board asking for a different plan of rearrangement of territory, it would seem to me that in the light of the entire procedure as above outlined, it would be the duty of the county board to consider that petition and put it through the process above outlined with a view to a possible modification of the proposal to be submitted to the electors.

After all, a petition of this character would represent the will of more than the majority of the entire electorate of the territory directly to be affected and should be entitled to consideration in preference to the arbitrary action of the board itself.

Some light is thrown on the subject of conflict of procedures in the matter of re-arrangement of school district boundaries by Section 3311.38, Revised Code. By the provisions of that section, the state board of education is authorized to propose changes similar in nature and by procedure similar to that provided in Section 3311.22, *supra*, which we have been considering. Said Section 3311.38, *supra*, contains this provision:

“If any proposal has been previously certified to any board of elections pursuant to section 3311.22 or 3311.26 of the Revised Code which affects any of the territory affected by the proposal of the state board, the proposal of the state board shall not be placed on the ballot until after the election has been held on the proposal previously certified.”

Manifestly the legislature considered that the first proposition which reaches the board of elections should have precedence.

In specific answer to your inquiry it is my opinion, and you are advised:

1. If, pursuant to the provisions of Section 3311.22, Revised Code, a county board of education has, by a majority vote of its members, proposed a transfer of a part or all of one or more local school districts to an adjoining district or districts within the county school district, and such proposal has, after compliance with all the provisions of said section, been filed with the county board of elections for submission to the electors as therein provided, and thereafter a petition signed by 55% or more of the electors proposing a transfer on a different basis of part or all of the same territory is filed with the county board of education, such petition would be too late for consideration and the election already set in motion should proceed.

2. If, pursuant to Section 3311.22, Revised Code, a county board of education has, by resolution duly adopted, proposed a transfer of territory from one or more local school districts to an adjoining district or districts within the county school district, and the preliminary procedure prescribed in said section looking to a submission of the proposition to the electors of the districts affected, is still in process, and such proposition has not yet been certified to the board of elections, and a petition of electors duly signed is presented to such county board praying for a different plan of re-arrangement of part or all of such territory, the county board should give consideration to such petition and should carry out the procedure with reference thereto as prescribed in said Section 3311.22, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General