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EDUCATION, TRANSFER OF TERRITORY—§3311.23 R.C. REPEALED—TRANSFER OF LOCAL SCHOOL DISTRICT TO ADJOINING CITY SCHOOL DISTRICT, §3311.231 R. C.

SYLLABUS:

1. Section 3311.23, Revised Code, was repealed by Amended Substitute Senate Bill Number 278, 102nd General Assembly (127 Ohio Laws 204), effective January 1, 1958.

2. Section 3311.231, Revised Code, which was enacted by Amended Substitute Senate Bill Number 278, 102nd General Assembly (127 Ohio Laws 204), effective January 1, 1958, provides the method by which a local school district may be transferred to an adjoining city school district.

Columbus, Ohio, March 31, 1959

Hon. Joseph Blair Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

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

“In my official capacity as Prosecuting Attorney of Athens County, Ohio I have been requested by the Athens County Board of Education to obtain from you an opinion on the following problem.

“Athens Local School District, Athens Township, Athens County, Ohio is in a position where it has been determined that they must cease to exist. The Athens County Board of Education and the Board of Education Athens City District, Athens County, Ohio have been in correspondence and conference concerning a proposed transfer of the Athens Local District to the Athens City District.

“There are apparently two statutes presently in the Revised Code which cover the proposed transfer. Revised Code Section 3311.23 provides the procedure for the transfer of local school district territory. Following the above section of the law in Pages Ohio Revised Code Annotated the following language appears:

‘This section was also repealed by SB 278 (127 v. 204), passed 5-29-57, effective 1-1-58. The above amendment (127 v. 661) was passed 5-28-57. It has not been determined which action of the legislature prevails.’

The question upon which I would like an opinion is which of the two statutes cited in the above language prevails?”

Amended Substitute House Bill No. 320, 102nd General Assembly (127 Ohio Laws 661), amended Section 3311.23, Revised Code, relative to the procedure for the transfer of local school districts. This bill was passed on May 28, 1957, was signed by the Governor and filed with the Secretary of State on June 17, 1957, and became effective on September 16, 1957.

Amended Substitute Senate Bill No. 278, 102nd General Assembly (127 Ohio Laws 204), expressly repealed existing Section 3311.23, Revised Code, as of January 1, 1958, and enacted Section 3311.231, Revised Code, which enactment provided a new procedure for the transfer of local school districts. This bill was passed on May 29, 1957, was signed by the Governor and filed with the Secretary of State on June 18, 1957, and became effective on January 1, 1958.

Section 2 of Amended Substitute Senate Bill No. 278, *supra*, stated:

“That *existing* sections 3311.22, 3311.23, 3311.26, 3311.27, 3311.30, 3311.31, 3311.32, 3311.33, 3311.34, and 3311.36 of the Revised Code are hereby repealed.” (Emphasis added.)

Section 4 of Amended Senate Bill No. 278, *supra*, stated:

“That this act shall take effect on January 1, 1958.”

Your letter is concerned with the question whether Section 3311.231, Revised Code, or Section 3311.23, Revised Code, presently governs the

transfer of a local school district to a city school district. Thus, the question to be decided is whether Amended Substitute Senate Bill No. 278, *supra*, repealed Section 3311.23, Revised Code, as amended by Amended Substitute House Bill No. 320, *supra*.

On the subject of repeal, it is stated in 37 Ohio Jurisprudence, 388 that :

“The general rule is that a statute can be repealed only by express provision of a subsequent law or by necessary implication. * * * A repeal is implied when the intention to repeal is inferred from subsequent repugnant legislation, *and express when literally declared by a new law, either in specific terms—as where particular laws or provisions are named and identified and declared to be repealed*—or in general terms * * * (Emphasis added.)

In the instant case, Amended Substitute Senate Bill No. 278, *supra*, was enacted subsequent to the enactment of Amended Substitute House Bill No. 320, *supra*, had a later effective date, and expressly repealed *existing* Section 3311.23.

It is a fact that, at the time Amended Substitute Senate Bill No. 278, *supra*, was passed, Amended Substitute House Bill No. 320, *supra*, had not yet become effective. Thus, it might be argued that the Legislature, in repealing Section 3311.23, *supra*, intended to repeal the section as it existed on May 29, 1957. It appears clear, however, that the intention of the Legislature was to expressly repeal Section 3311.23, Revised Code, as it existed immediately prior to January 1, 1958, the effective date of Amended Substitute Senate Bill No. 278, *supra*. This intention appears apparent from the enactment itself which, as noted above, expressly repealed existing Section 3311.23, Revised Code, as of January 1, 1958. Since Amended Substitute House Bill No. 320, *supra*, had become effective on September 16, 1957, the amendment to Section 3311.23, *supra*, was in effect at the time said section was repealed.

The intention of the Legislature appears to be further indicated regarding the repeal in that, at the time Amended Substitute Senate Bill No. 278, *supra*, was passed, Amended Substitute House Bill No. 320, *supra*, had already been considered and passed. Thus, the Legislature was aware of the amendment to Section 3311.23, *supra*, when it provided for the repeal of said section and when it provided for the new procedure for transfer of a local school district by enacting Section 3311.231, *supra*.

Section 3311.231, *supra*, effective January 1, 1958, reads in part as follows :

“A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.”

The procedure provided in said Section 3311.231 differs from that formerly contained in Section 3311.23, *supra*, mainly in that the question of the transfer of a local school district must be submitted to the electors of the area affected for final determination. Section 3311.23, *supra*, did not contain this provision. There are also other differences between the two sections. Thus, under the general rule that a statute later in time will control over a statute containing inconsistent or repugnant language and which is earlier in time of passage, the enactment of Section 3311.231, *supra*, constituted an implied repeal of Section 3311.23, *supra*, even if the section had not been expressly repealed.

On this point it is stated in 37 Ohio Jurisprudence, p. 388 that: “A repeal is implied when the intention to repeal is inferred from subsequent repugnant legislation, * * *.” Also, in *State v. Lathrop*, 93 Ohio St., 79 (85), the court cited with approval the holding in *Southwark Bank v. Commonwealth*, 26 Pa. St., 446, as follows :

“1. The general rule is that where two statutes contain repugnant provisions, the one last signed by the governor is a repeal of the one previously signed.

“2. This is so merely because it is presumed to be so intended by the lawmaking power ; but where the intention is otherwise, and that intention is apparent from the face of either enactment, the plain meaning of the legislative power thus manifested is the paramount rule of construction.”

As noted above, Amended Substitute Senate Bill No. 278, *supra*, was signed by the Governor after the signing of Amended Substitute House Bill No. 320, *supra*, was filed with the Secretary of State on a later date, and had a later effective date than said Amended Substitute House Bill No. 320. Also, as discussed earlier, I am of the opinion that the evident

intention of the Legislature in the instant case was to repeal Section 3311.23, Revised Code, as it existed immediately prior to January 1, 1958, the effective date of Amended Substitute Senate Bill No. 278, *supra*.

Accordingly, it is my opinion and you are advised :

1. Section 3311.23, Revised Code, was repealed by Amended Substitute Senate Bill No. 278, 102nd General Assembly (127 Ohio Laws 204), effective January 1, 1958.

2. Section 3311.231, Revised Code, which was enacted by Amended Substitute Senate Bill No. 278, 102nd General Assembly (127 Ohio Laws 204), effective January 1, 1958, provides the method by which a local school district may be transferred to an adjoining city school district.

Respectfully,

MARK MCELROY

Attorney General