

OPINION NO. 68-100

Syllabus:

1. A local school district transferred to an adjoining county school district pursuant to Section 3311.231, Revised Code, may not be transferred as and remain an independent local school district but must be annexed to an existing local, city or exempted village school district.

2. There is no provision in Section 3311.231, Revised Code, for a referendum on the question of the choice of the school district to which such territory shall be annexed.

To: Harry A. Sargeant, Jr., Sandusky County Pros. Atty., Fremont, Ohio
By: William B. Saxbe, Attorney General, June 13, 1968

I have before me your request for my opinion on the following questions:

"For purposes of this letter, please assume that by either a vote of the taxpayers, or by resolution of the County Board of Education which has not been objected to by referendum, it is proposed that a local school district in County A be transferred to County B.

"If the Board of Education of County B accepts the transfer, (1) may it permit the transferred local school district to remain as an independent local school district rather than being annexed to an existing local, exempted village or city school district in County B, do the taxpayers in the transferred local school district in County A have a right of referendum on the question of the choice of the school district in County B to which they are annexed?"

The applicable portion of Section 3311.231, Revised Code, states:

"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 percent of the qualified electors voting at the last general election residing within that portion of a local 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." (Emphasis added)

A county school district is defined by Section 3311.05, Revised Code, as being:

"The territory within the territorial limits of a county, exclusive of the territory embraced in any city school district, exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a 'county school district.'"

Thus a county school district is divided into local school districts, which for some purposes are under the control of the county board of education. Transfer of territory to an adjoining county school district is covered by Section 3311.231, Revised Code, which provides, in part:

"Where a county board of education adopts a resolution accepting territory transferred to the county school district under the provisions of section 3311.24 of the Revised Code, the county board shall, at the time of the adoption of the resolution accepting the territory, designate the school district to which the accepted territory shall be annexed."

This section of the statute provides that the transferred territory be annexed to an existing school district. There is no statutory authority for the transferred territory to remain an independent local school district. Since the county board of education only has authority over local school districts, the transferred territory would be annexed to a local school district by the accepting of a county board of education.

I note that once the transfer to an adjoining county school district has been completed, an independent local school district could be created under the provisions of Section 3311.26, Revised Code.

Upon transfer of a local school district to an adjoining city or exempted village school district, the territory transferred would become part of the city or exempted village school district under the provisions of Section 3311.231, supra. The accepting county board of education has no authority to annex the territory transferred to an existing exempted village or city school district.

In answer to your second question I note that Section 3311.231, supra, provides in part:

"* * * * *

"Where a transfer of territory is proposed by a county board of education under the provisions of this section the county board shall, at its next regular meeting that occurs not earlier than the thirtieth day after the adoption by the county board of the resolution proposing such transfer, adopt a resolution making the transfer as originally proposed unless, prior to the expiration of such thirty-day period, quali-

fied electors residing in the area proposed to be transferred, equal in number to a majority of the qualified electors voting at the last general election, file a petition of referendum against such transfer."

If the transfer is initiated by petition, such petition will indicate to which adjoining city, exempted village or county school district such territory will be annexed and is not subject to referendum against such transfer, since the electors will vote on the transfer.

If the transfer is initiated by the county board of education, the electors may file a petition of referendum against such transfer to an adjoining city, exempted village or county school district. But the statute does not provide for the right of referendum on the question of the choice of school districts to which the territory will be annexed. The referendum would be on the question whether or not to become annexed to a certain city, village or county school district.

Upon the completion of a transfer to an adjoining county school district the electors of the transferred territory have no voice, either by initiating petition or negative referendum as to which local school district the territory will be annexed. This determination is completely in the hands of the accepting county board of education.

Therefore, it is my opinion and you are hereby advised that:

1. A local school district transferred to an adjoining county school district pursuant to Section 3311.231, Revised Code, may not be transferred as and remain an independent local school district but must be annexed to an existing local, city or exempted village school district.

2. There is no provision in Section 3311.231, Revised Code, for a referendum on the question of the choice of the school district to which such territory shall be annexed.