

532

CONSOLIDATION OF SCHOOL DISTRICTS—RESCISSION OF PREVIOUS ACTION BY BOARD OF EDUCATION. SECTION 3311.261 REVISED CODE.

SYLLABUS:

1. If a petition for consolidation of a school district is submitted, by the voters in a school district having only an elementary school, invoking Section 3311.261, Revised Code, and the signatures obtained represent seventy-five percent of such electors who voted at the last general election residing within such elementary school district, the county board of education shall transfer such territory as petitioned. A county board having thus acted on or before January 1, 1959 has completed its duty and a rescission by this board, at a special meeting, after January 1, 1959, is an unauthorized act and is without legal effect.
2. Where, pursuant to a proper petition under the provisions of Section 3311.261, Revised Code, a county school board has transferred territory in accord with such petition, the boards of education of each district receiving such territory must approve such transfer; if such approval by all of the districts so affected was not given before January 1, 1959, the terminal date of the efficacy of Section 3311.261, Revised Code, the entire proposal must be deemed to have failed.

Columbus, Ohio, May 27, 1959

Hon. Wm. H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir:

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

"In Accordance with Ohio State Code Section 3311.261, the electors of Colerain Local School District submitted a petition signed by approximately 900 voters, to the Belmont County Board of Education. This was about 200 more signatures than the 75% needed to make it mandatory that the Belmont County Board of Education act upon the petition.

"This petition was filed with Mr. J. J. Shannon, Superintendent and Clerk of the Belmont County Board of Education on November 4, 1958. Favorable action was taken by the County Board of Education on November 19, 1958, and all interested parties were so notified.

"The Bridgeport School Board and the Mt. Pleasant Board voted not to accept the sections of the Colerain School District assigned to them.

"The St. Clairsville, Richland Local School District have not taken any action on the section of the Colerain Section of the school district assigned to them.

"The Belmont County Board of Education, at a special meeting on February 10, 1959, rescinded their approval of the above described petition.

"The Martins Ferry Board of Education at their regular meeting of February 11, 1959, unanimously accepted the area of the Colerain School District assigned to them, acting on the premise that the action taken by the County Board of Education on February 10, 1959 was illegal.

"The specific question that we desire answered is whether the Belmont County Board of Education has the authority to rescind an action taken in accordance with Section 3311.261 of the Revised Code of Ohio.

"I am sending along with this request copies of the Resolutions that were passed by the Belmont County Board of Education relative to this matter, as well as a map setting forth the areas of Colerain Township which would go to the various school boards."

An answer to your request requires an analysis of the provisions of Section 3311.261, Revised Code, to which you refer.

Section 3311.261, Revised Code, reads in part as follows:

“Notwithstanding sections 3311.32, 3311.23 and 3311.26 of the Revised Code, *until January 1, 1959*, \* \* \*

“If such petition is signed by qualified electors of the district equal in number to at least seventy-five per cent of the qualified electors voting at the last general election residing within such *elementary school district the county board of education shall make such transfer*. \* \* \* (Emphasis added)

This section was manifestly intended to take care of an emergency growing out of a situation where a district had no high school, and was seeking to be consolidated with another district which had such high school. As will be noted, it was to continue in force only for one year, to wit, to January 1, 1959. It was evidently an alternative proceeding available only to district which came within the condition that they were without any high school.

It will be observed that this section makes a grant of specific authority to the county school board and expressly limits the authority. Your request raises no question as to the conditions precedent in the section necessary to enable the county board to act. I will therefore assume that they are regular in nature and not of import in the instant question.

This section placed a mandatory duty upon the Belmont County School Board to transfer the territory of the Colerain Local School District pursuant to, and in accordance with the petition submitted to them November 4, 1959, and under Section 3311.261, Revised Code, the board had no further duty to perform.

This section further ceased to have force and effect on January 1, 1959, and therefore, on and after that date, the Belmont County School Board had no authority or duty nor any powers under such section.

Now on February 10, 1959 after much authority ceased the Belmont County School Board acted to rescind their action of November 19, 1958, which action was the result of a mandatory duty, and not the result of a discretionary duty.

The action by the Belmont County School Board of February 10, 1959, was clearly beyond their power and duty under Section 3311.261,

*supra*. It follows that such action exceeded the authority given by Section 3311.261, Revised Code, and as such was illegal.

The foregoing raises another phase of your problem, that is, the disposition of the pending transfer made by the Belmont County School Board on November 19, 1958.

It is evident that on January 1, 1959 the transfer was not final because it lacked the necessary approval of the various boards in the districts receiving territory per the proposal of transfer by the Belmont County Board of Education.

Section 3311.261, Revised Code, provides for the approval of transfers in the following language :

“\* \* \*. Such transfer shall be subject to the approval of the boards of education to which the district is being transferred.”

Analogous language in Sections 3311.231 and 3311.38, Revised Code, has been the subject of a prior opinion from this office.

The question of whether or not proposal for transfer under Sections 3311.231, 3311.37, or 3311.38, Revised Code, must be approved by all receiving school districts was the subject of a former Attorney General's Opinion rendered April 17, 1958. The first headnote of this Opinion No. 1973, Opinions of the Attorney General for 1958, reads as follows :

“1. If a proposal for transfer of school territory comprising all or part of one or more school districts is submitted to the electors, pursuant to the provisions of Section 3311.231 or Section 3311.38, Revised Code, the proposal, in order to be approved, must receive the vote of a majority of the electors voting in each entire district whose territory is proposed to be transferred, and must also be approved by the board of education of the district to which such territory is to be transferred; if such approval of all the districts so affected is not given the entire proposal will fail.”

Therefore, in the instant case, the terminal date of January 1, 1959, preceded any action by the receiving districts, such districts lost any power to accept said proposal, and the entire proposal thereby failed.

Accordingly, it is my opinion and you are advised :

1. If a petition for consolidation of a school district is submitted, by the voters in a school district having only an elementary school, involving

Section 3311.261, Revised Code, and the signature obtained represent seventy-five percent of such electors who voted at the last general election residing within such elementary school district, the county board of education shall transfer such territory as petitioned. A county board having thus acted on or before January 1, 1959 has completed its duty and a rescission by this board, at a special meeting, after January 1, 1959, is an unauthorized act and is without legal effect.

2. Where, pursuant to a proper petition under the provisions of Section 3311.261, Revised Code, a county school board has transferred territory in accord with such petition, the boards of education of each district receiving such territory must approve such transfer; if such approval by all of the districts so affected was not given before January 1, 1959, the terminal must be deemed to have failed.

Respectfully,

MARK McELROY

Attorney General