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EDUCATION—TRANSFER OF TERRITORY—PETITION FILED WITH COUNTY BOARD OF EDUCATION DOES NOT INITIATE A PROCEEDING WHICH TAKES ON MEANING SO AS TO BE SAVED BY §1.20 R.C.—AMENDED VERSION OF TRANSFER STATUTES APPLY TO SUCH PETITION

SYLLABUS:

There being no provision in Section 3311.22, Revised Code, as effective prior to January 1, 1958, the effective date of Senate Bill 278, 102nd General Assembly, for a petition for transfer of school district territory within a county school district, a petition filed with a county board of education requesting such a transfer was an informal and non official act and did not initiate proceedings for transfer, so that on January 1, 1958, the effective date of the amendment to Section 3311.22, Revised Code, no proceeding for transfer was pending within the meaning of Section 1.20, or Section 3311.341, Revised Code; and any action upon such request taken by such county board of education subsequent to January 1, 1958, must be taken in accordance with the amended version of the statute.

Columbus, Ohio, February 21, 1958

Hon. Robert A. Fries, Prosecuting Attorney
Wood County, Bowling Green, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On December 9, 1957 a petition was filed with the County Board of Education of Wood County, Ohio, requesting a transfer of a part of a school district to an adjoining district in this county. On that date no action was taken. On December 16, 1957 the board again deferred action. On December 23, 1957 the president of the board called for a motion to consider the proposed transfer. No motion was made and the president declared the request for consideration of the transfer lost for want of a motion. On January 13, 1958 a request was again made for action to be taken on the original petition to transfer the territory.

“We are now interested in knowing whether action of the board shall now be considered under Section 3311.22 of the Revised Code as it was in effect on the date of filing the petition, or whether such action of the board shall be governed by Section 3311.22 that is now in effect and became effective January 1, 1958.”

Section 1.20, Revised Code, provides :

“When a statute is repealed or amended, such repeal or amendment does not affect pending actions, prosecutions, or proceedings, civil or criminal. When the repeal or amendment relates to the remedy, it does not affect pending actions, prosecutions, or proceedings, unless so expressed, nor does any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

In addition, Section 3311.341, Revised Code, provides :

“Nothing herein shall nullify or affect any action pending or taken by county citizen committees now in existence, created under authority granted in section 3311.30 of the Revised Code, pursuant to resolutions adopted prior to July 1, 1958. Nothing herein shall nullify or affect any proceedings or action pending under the provisions of present sections 3311.22, 3311.23 and 3311.26 of the Revised Code.”

The word “herein” refers to Senate Bill No. 278, 102nd General Assembly, the bill which also included the present Section 3311.22, Revised Code.

The solution to your problem then depends on two questions :

- (1) Was any proceeding pending on January 1, 1958?
- (2) If so, does the amended section expressly provide that it shall affect pending proceedings?

In my opinion no proceeding for transfer was pending on January 1, 1958. It appears to me that the first petition mentioned in your letter did not initiate proceeding for transfer. Under the present form of Section 3311.22, Revised Code, as effective January 1, 1958, a petition in compliance with the statute does initiate proceedings. Under the same section as effective prior to that date, however, no provision was made for petition, except in remonstrance to an action already taken. Prior to January 1, 1958, a petition requesting transfer of a part of a school district to an adjoining district in the same county school district was only an informal request and had no legal effect.

In Opinion No. 6808, Opinions of the Attorney General for 1956, p. 504, my predecessor said, reading the syllabus of that opinion :

“By reason of the provisions of Section 1.20, Revised Code, the amendment effective September 29, 1955, of Section 3311.06,

Revised Code, did not affect annexation petitions pending when such amendment became effective; and territory of a school district included in the territory sought to be annexed would be transferred in accordance with the provisions of said Section 3311.06 as it stood when such annexation proceedings were begun."

Under Section 3311.06, Revised Code, as then effective, territory annexed to a city or village automatically became a part of the city or village school district. Thus petitions for annexation filed under the provisions of Chapter 709., Revised Code, initiated a proceeding which, if carried through to its conclusion, resulted by operation of law in the transfer of school district territory; and at any time after the filing of such petitions proceedings were in effect pending under Section 3311.06, Revised Code. This opinion reflects, of course, the liberal interpretation the courts have afforded the saving statute.

Your case is quite obviously distinguished from that in Opinion No. 6808, *supra*.

Further, even if the petitions filed on December 9, 1957, could be said to initiate a proceeding, that proceeding was terminated by the refusal of the county board of education to act upon it, and no proceeding was pending on January 1, 1958.

Having decided that no proceeding was pending on January 1, 1958, it becomes unnecessary to consider the second question.

It is my opinion, and you are advised that:

There being no provision in Section 3311.22, Revised Code, as effective prior to January 1, 1958, the effective date of Senate Bill 278, 102nd General Assembly, for a petition for transfer of school district territory within a county school district, a petition filed with a county board of education requesting such a transfer was an informal and non official act and did not initiate proceedings for transfer, so that on January 1, 1958, the effective date of the amendment to Section 3311.22, Revised Code, no proceeding for transfer was pending within the meaning of Section 1.20 or Section 3311.341, Revised Code; and any action upon such request taken by such county board of education subsequent to January 1, 1958, must be taken in accordance with the amended version of the statute.

Respectfully,
WILLIAM SAXBE
Attorney General