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TERRITORY OF A SCHOOL DISTRICT MAY NOT BE TRANSFERRED TO ANOTHER SCHOOL DISTRICT IF SUCH TRANSFER WOULD LEAVE THE ORIGINAL SCHOOL DISTRICT WITH TWO NON-CONTIGUOUS TERRITORIES—§3311.06, R.C.

SYLLABUS:

Territory of a school district may not be transferred to another school district under Section 3311.06, Revised Code, if such transfer would leave the original school district with two non-contiguous territories; and the state board of education is without authority to approve such a transfer under that section.

Columbus, Ohio, March 10, 1961

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Could you please render this office your opinion on the following factual situation:

“The City of Marion desires to annex 94.63 acres of land to the City through voluntary proceedings filed by resident freeholders.

“Of the 94.63 acres, 89.28 acres are presently in the River Valley School District. The remainder of the territory is already in the Marion City School District. The City desires that the remaining 89.28 acres also become a part of the City School District.

“Two questions arise out of this desired transfer. Both questions relate to Section 3311.06 of the Revised Code of Ohio.

“The first question is as follows:

“When in the process of annexation of lands to a city, there is a desire to have that portion of lands which are not in the city School District transferred to the City School District from a local consolidated school district, then can the transfer of the lands be accomplished in accordance with Section 3311.06 R.C., even though as a result of the transfer of the contiguous lands a small portion of the remaining land of the local consolidated school district by the annexed lands?

“More specifically, the first paragraph of Section 3311.06 R.C., provides:

“The territory included within the boundaries of a city, local, exempt village, or joint vocational school district shall be contiguous except where a natural island forms an integrated part of the district.

“The City of Marion desires to comply with the Petition of certain resident freeholders and to annex 94.63 acres of land to the City. Of these 94.63 acres, 89.28 acres, hereinafter referred to as Tract A, are at present a part of River Valley School District.

“The remainder of the acreage is already a part of Marion City School District. It is the desire of the City of Marion and the resident freeholders to have Tract A transferred to the City School District.

“Tract A is contiguous to the City School District and accordingly complies with the requirement of the first paragraph of Section 3311.06, R.C.

“However, should Tract A be transferred to the City School District it would separate a small portion of River Valley School District, hereinafter referred to as Tract B from the remainder of River Valley School District. Tract B is not a part of the annexed territory.

“Accordingly, if the transfer of Tract A from River Valley School District to the Marion City School District fully complies with the requirement of the first paragraph of Section 3311.06 R.C., then is it necessary that Tract B and the remainder of River Valley School District be contiguous?

“The second question is as follows:

“When a part of the territory of a local consolidated school district is desirous of being transferred to a City School District in the process of annexation proceedings, and the transfer is in compliance with the policy of the State Board of Education relative to the transfer of territory for school purposes pursuant to a municipal annexation, then can Section 3311.06 R.C., preclude the State School Board from acting upon and approving the transfer of lands from one school district to another even though the lands that would be transferred are contiguous as required by the first paragraph of said Section, when in the course of such approval the transferred territory would separate a small portion of the school district from which the transfer was made from the remainder of the territory from which the transfer was made?”

The first paragraph of Section 3311.06, Revised Code, (then Section 4830-5, General Code), was discussed in Opinion No. 796, Opinions of the

Attorney General for 1951, page 550. In interpreting the intent of the language, it was determined that where it is sought to transfer territory forming a part of a local school district to another local school district, the territory transferred must be contiguous to the district to which it is to be transferred.

The opinion then concluded that if the districts are separated by a privately owned lane fifteen and one-half feet in width, the territory to be annexed is not "contiguous" to the district within the meaning of the section.

Although dealing with the same language, your request poses a different question. If I may rephrase your question, I think it asks whether a transfer of school territory under Section 3311.06, Revised Code, is precluded by the fact that, as a result of such attempt to transfer, the remaining land in the territory from which the annexed parcel was drawn will be made up of non-contiguous parts.

In your letter of request you quoted the first paragraph of Section 3311.06, *supra*, containing the language that:

"The territory included within the boundaries * * * shall be contiguous * * *."

It will be noted that the requirement as to territory being contiguous is not limited to the case of the territory being transferred being contiguous to the territory of the district to which it is transferred. The language used is much broader and would appear to require that all territory of the district from which the territory is transferred must also be contiguous.

The case of *Board of Education of Warren Township Rural School District, Trumbull County v. Board of Education of Warren City School District Trumbull County, et al* 121 Ohio St., 213 (May 29, 1929), bears out the above statement. Referring to former Section 4685, General Code, the first paragraph of such being similar to the first paragraph of present Section 3311.06, *supra*, the court stated at page 211 of its opinion:

"The county board of education in 1916 clearly violated that section in making changes in the boundaries of the districts, which left an 81 acre tract of land segregated from the township district and only connected therewith by a two-foot strip of ground nearly three miles in length. The county board of education had no more right to leave that tract of land segregated from the main body of township district than it would have had to take it away from the city district by direct and affirmative action."

More authority for the proposition that the words "shall be contiguous" apply to the territory of the district from which territory is to be transferred, can be found in the case of *Franklin Real Estate Company v. Henderson*, 64 Ohio Law Abs., 83 at page 95. Speaking again about transfers under the law here involved, the court stated as follows:

"What then is the legal effect of these particular transfers?

"A natural beginning of the answer to the foregoing question lies in a further question. What was the legal effect after such particular transfers? Must it likewise have been intended on the part of the Morgan County Board of Education that the territory thereafter *remaining* in the former Center Township Rural School District 'shall be contiguous; in compliance with the explicit mandatory provision of Section 4685, General Code, and its introductory mandate that such territory must be contiguous' "? (emphasis added)

In view of the above, therefore, I am constrained to conclude that the words "shall be contiguous" as used in the first paragraph of Section 3311.06, *supra*, refer not only to the territory being transferred and the district to which such transfer is being made, but they also refer to the remaining territory not transferred.

Coming to your second question, Section 3311.06, *supra*, provides:

"* * * When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory shall become part of the said city school district or the school district of which the village is a part *only upon approval by the state board of education.* * * *"

While this provision gives the state board authority to determine whether a transfer should be made, the board can approve only those transfers that comply with the law. Accordingly, the board could not approve a transfer which would leave the school district from which the transfer would be made with two non-contiguous parts.

Strengthening my opinion in this regard are the words of my predecessor in Opinion No. 1308, Opinions of the Attorney General for 1957, page 667 at page 669, speaking of the *Warren Township Rural School case, supra*, as follows:

"In the case at hand, although the statute does not, with any great degree of clarity, provide any rules or standards to guide the state board, it would seem to be the duty of the board to

observe the positive requirement of the statute that contiguity of territory within a school district be preserved. In this connection we may well paraphrase the language of the *per curiam* opinion in the Warren County School District case, *supra*, by concluding that 'the state board has no more right to leave that tract of land segregated from the main body of the existing district than it would have to take it away from the district of the annexing city by direct and affirmative action.'

"In other words, it seems clear to me that the language which the court used in the Warren Township case makes it the duty of the board which is authorized to approve or reject, in cases of transfer of school territory, to preserve or attain contiguity of territory as to each district, to the extent that it has the power to do so; and that it matters not at all whether it is by affirmative action of approval or rejection, by omission, or otherwise." * * *

Answering your specific questions, therefore, it is my opinion and you are advised that territory of a school district may not be transferred to another school district under Section 3311.06, Revised Code, if such transfer would leave the original school district with two non-contiguous territories; and the state board of education is without authority to approve such a transfer under that section.

Respectfully,
MARK MCELROY
Attorney General