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VACANCIES OCCURRING IN BOARD OF EDUCATION TO BE FILLED PURSUANT TO 3313.11, R.C.—WHICH IS EXCEPTION TO 3.02, R.C.—§§3313.11, 3.02, R.C.

SYLLABUS:

Vacancies occurring in a board of education are to be filled pursuant to the provisions of Section 3313.11, Revised Code, which operates as a special exception to the general provisions of Section 3.02, Revised Code, which latter section does not apply to the filling of vacancies in boards of education.

Columbus, Ohio, August 7, 1961

Hon. Geo. C. Steinemann, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“This office has been requested to give an opinion on the length of time to be served by an appointee to a District Board of Education when appointed by said Board to fill a vacancy and specifically whether such appointee serves for the entire unexpired term or only until a successor is elected at the next general election and qualifies for the position.

“Section 3313.11 of the Ohio Revised Code, effective January 1, 1954, provides for the creation and the filling of vacancies on a board of education and states ‘A majority vote of all the remaining members of the board may fill any such vacancy for the unexpired term’.

“This would seem to dispose of the matter and Section 3.02 effective October 1, 1953, dealing with the term to be served by an appointee to an elective office, provided that when an elective office became vacant and was filled by appointment such appointee held the office until his successor was elected and qualified. *Unless otherwise provided by law* such successor was to be elected for the unexpired term at the next general election.

“However, Section 3.02 was amended effective January 1, 1956, the words ‘unless otherwise provided by law’ were deleted, and the result is a mandatory provision that the successor be elected for the unexpired term at the next general election.

“The question presented is whether or not the provisions of Section 3.02 as effective January 1, 1956, control over the terms of Section 3313.11 as effective January 1, 1954.”

The question you have presented is, essentially, which of two statutes controlling the same subject matter should control the facts in your request when the statutes are in conflict. I note that Section 3.02, Revised Code, is a general statute which covers all elective offices in this state and provides the means whereby vacancies in such offices may be filled. This statute reads, in part, as follows :

“When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified ; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred ; * * *”

The statute with which this section is in conflict is Section 3313.11, Revised Code. This section is a special statute designed solely for filling vacancies in boards of education. It reads, in part, as follows :

“* * * A majority of all the remaining members of the board may fill any such vacancy for the unexpired term.”

In construing these statutes, and determining which should control the facts in your request, reliance may be had on the general principle of statutory construction providing that special statutes control over general statutes when both govern the same subject matter. This principle was enunciated by the Supreme Court of Ohio in *Fisher Bros. Co. v. Bowers*, 166 Ohio St., 191 at 196, as follows :

“We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. *State, ex rel, Steller et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N. E. 413; *State, ex rel, Elliott Co., v. Connar, Supt.*, 123 Ohio St., 310, 175 N. E., 200 *Acme Engineering Co., v. Jones, Admr.*, 150 Ohio St., 423, 83 N. E. (2d), 202; *Johnson v. United Enterprises, Inc., ante*, 149.”

While I would not hesitate to hold that the provisions of Section 3313.11, Revised Code, as a special statute designed only for filling vacancies on a board of education should control over Section 3.02, Revised Code, the general statute for filling vacancies in any elective office, I believe there is further evidence that this is the correct interpretation of the legislative intent. Prior to 1951, Section 3313.11, Revised Code, which was then Section 4832-10, General Code, read as it does now. In 1951 the General Assembly in 124 Ohio Laws, 106, changed the final sentence of this section to read as follows :

“* * * A majority vote of all the remaining members of the board may fill any such vacancy until the next regular municipal election at which time a member shall be elected to serve the unexpired term.”

In 1953, however, the General Assembly in 125 Ohio Laws, 516, changed this section, which had become Section 3313.11, Revised Code, so that the final sentence reads in the same form it does now, i.e., vacancies in a board of education to be filled by majority vote of the remaining members for the unexpired term of that vacancy. This would seem to reflect the intention of the General Assembly to discard for boards of education the system provided in Section 3.02, Revised Code, and to retain the filling of the vacancy for the complete unexpired term. Although as you point out in your request, Section 3.02, Revised Code, was amended in 1956, to delete the words “unless otherwise provided by law” the present provisions of Section 3313.11, Revised Code, were not changed and, therefore, the general presumption against an implied repeal of any statute tends to support the conclusion I have reached.

It is, therefore, my opinion and you are accordingly advised that vacancies occurring in a board of education are to be filled pursuant to the provisions of Section 3313.11, Revised Code, which operates as a

special exception to the general provisions of Section 3.02, Revised Code, which latter section does not apply to the filling of vacancies in boards of education.

Respectfully,

MARK MCELROY

Attorney General