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SCHOOL DISTRICTS—CONSOLIDATION OR TRANSFER OF—
BOTH ISSUES CANNOT BE SUBMITTED TO ELECTORS AT
SAME ELECTION—§§3311.26, 3311.231, R. C.

SYLLABUS:

1. Where, pursuant to Section 3311.26, Revised Code, a county board of education has proposed to consolidate two or more local school districts, and before such proposition has been certified to the board of elections for submission to the electors, a petition is filed, pursuant to the provisions of Section 3311.231, Revised Code, by the electors in one of said districts praying for transfer of its territory to an adjoining exempted village or city district, the proposition of such petition, if found to be in regular order, should be certified to the board of elections and the proposal initiated by the board should be withheld. Opinion No. 1908 of April 4, 1958 and Opinion No. 572 of June 5, 1959, approved.

2. A proposition for consolidation of school territory initiated by a county board of education under the provisions of Section 3311.26, Revised Code, and a proposal for transfer of a local school district to an exempted village or city district presented by petition of the electors of such district, cannot both be submitted to the electors at the same election; and if a proposal for consolidation under Section 3311.26, Revised Code, has been certified to the board of elections for submission at the next general election, a substantially certified proposal, pursuant to Section 3311.231, Revised Code, cannot be submitted at the same election, and it must be disregarded by the board of elections.

3. Although a county board of education may have acted illegally in certifying a proposal for consolidation of school territory to the board of elections, the illegality of such action can only be established by judicial decree, and the board of elections, in the absence of such decree, must submit the proposal as certified.

Columbus, Ohio, July 17, 1959

Hon. Richard O. Harris, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir :

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

“Pursuant to a request of the Champaign County Board of Elections which I represent as Prosecuting Attorney I am requesting your opinion on the questions set out below, based on the following events and circumstances.

“Pursuant to Section 3311.26 Revised Code the Champaign County Board of Education passed a resolution on March 17, 1959 to consolidate two local school districts namely, Urbana Local School District and Salem Local School District. The County Board of Education then filed a copy of the proposal with the State Board of Education and the Salem Local and Urbana Local Boards within the thirty day period set out in the statute. The State Board of Education acknowledged the proposal and the Urbana Local Board of Education disapproved the proposal while the Salem Local Board of Education suggested two alternative proposals and indicated this consolidation proposal was their third choice. The mandatory thirty day period ended on April 16, 1959 and within the following sixty day period as set out by the statute, the Resolution of the County Board of Education was certified to the Board of Elections on April 30th. At no time was the proposal changed or modified by the County Board before it was certified to the Board of Elections.

“Before the mandatory thirty day period in the statute expired, the County Superintendent received petitions from electors of the Urbana Local School District on April 13, 1959 asking for Urbana Local School District to be transferred to the Urbana City School. These petitions contain the signatures of approximately eighty to eighty-five per cent of the qualified electors in the Urbana Local District who are eligible to sign these petitions. These petitions were filed with the County Superintendent pursuant to Section 3311.231 of the Revised Code. The procedure set out in this section was followed and the County Board of Education subsequently certified the Urbana Local transfer proposal to the County Board of Elections on June 1, 1959 which was within the sixty day period after the County Superintendent received the petitions.

“I would like your opinion on the following questions :

"1. Section 3311.231 of the Revised Code provides in part, "if any proposal has been previously certified to a Board of Elections pursuant to Sections . . . 3311.26 . . . of the Revised Code which affects any of the territory affected by a proposal authorized herein, the proposal to be submitted under this section shall not be placed on the ballot until after the election has been held on the proposal previously certified." In view of this wording and the facts set out above, was the County Board of Education consolidation proposal properly and legally certified to the Board of Elections under Section 3311.26 Revised Code so as to bring this consolidation proposal within the wording of Section 3311.231 of the Revised Code set out above which directs that the proposal previously certified be placed on the ballot?

"2. Would the Board of Elections be within its rights to put both issues on the ballot at the November, 1959 general election?

"3. If both proposals cannot be placed on the ballot, which proposal must be placed on the ballot?

"4. What disposition should be made of the proposal not placed on the ballot? Can it be held for the next general election or would a new resolution or new petitions have to be passed, filed and certified?

"I might add that my predecessor resigned June 15th and I was appointed to fill his unexpired term. This problem was presented to me the following day. I understand that representatives of the different groups concerned with the problem have already contacted your office. A study of the law on this problem reveals certain ambiguities which tend toward questionable and inequitable results. It is hoped that your opinion can clear the air, so to speak and indicate the proper procedure to follow.

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It appears from your statement that the resolution of the Champaign County Board of Education proposing a consolidation of the Urbana Local School District and Salem District was adopted on March 17, 1959, and that after following the steps required by Section 3311.26, Revised Code, that proposition was on April 30, 1959, certified to the board of elections for submission to the electors of the districts involved.

It further appears that on April 13, 1959 a petition signed by approximately 80 to 85 per cent of the qualified electors in the Urbana Local District was filed with the county board praying for a transfer of their district to the Urbana City School District. This petition after the preliminary proceedings required by Section 3311.231, Revised Code, was also

certified to the board of elections on June 1, 1959. Arising out of this situation you present three questions:

1. Would the Board of Elections be within its rights to put both issues on the ballot at the November, 1959 general election?

2. If both proposals cannot be placed on the ballot, which proposal must be placed on the ballot?

3. What disposition should be made of the proposal not placed on the ballot? Can it be held for the next general election or would a new resolution or new petitions have to be passed, filed and certified?

In Opinion No. 1918 issued by my predecessor on April 4, 1958, substantially the same question was presented, the only difference being, in that case the petition of the electors was for transfer, not to a city district, but to another local district in the same county, pursuant to the provisions of Section 3311.22, Revised Code. The conclusion of that opinion was that preference should be given to the proposal of the petitioners, and that the procedure set forth in the statute relative thereto should be followed.

Although my predecessor found no definite statutory provision fixing the order of precedence in such case, he did point out what he considered the manifest purpose of the statute in regard to a petition presented by the electors. After discussing the procedure to be followed in each situation he said:

“Just how we may apply this rather complicated procedure to the question which you present is the one proposition before us. I do detect in the law an imputation that the county board should give attention to the wishes of the electors, even though the board is given authority to proceed on its own initiative. The statute quoted provides that the board *shall* consider a petition within thirty days, calling a special meeting if necessary.”

You will find in Section 3311.231, Revised Code, a similar proposition making it the duty of the board of education to consider a petition of the electors *within thirty days after its receipt*, calling a special meeting of the board, if necessary.

In Opinion No. 1918, above referred to, the Attorney General used the following language, in which I concur:

“After all, a petition of this character would represent the will of more than the majority of the entire electorate of the

territory directly to be affected and should be entitled to consideration in preference to the arbitrary action of the board itself.”

A situation substantially identical with the one you present was presented and was the subject of my Opinion No. 572 issued June 5, 1959 where the question was as to a resolution for consolidation adopted by the county board under Section 3311.26, Revised Code, and a petition of the electors filed under Section 3311.231, Revised Code, praying for annexation to an exempted village district. In that case neither of these propositions had been certified to the board of elections, and I held as follows:

“Where a county board of education has, pursuant to the provision of Section 3311.26, Revised Code, adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than 55% of the electors residing in one of such districts file with said board, pursuant to the authority of Section 3311.231, Revised Code, a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections as required by said Section 3311.231 and to disregard the original proposal of the board to create a new district. Opinion No. 1918 issued April 4, 1958 approved and followed.”

The county board of education, having before it the petition signed by more than 80% of the electors in the Urbana Local District, and the emphatic disapproval of the board of education of said local district, and the mild disapproval of the board of the Salem Local District, seemed determined to push to the front its own proposal, which was probably doomed to defeat, and accordingly within a few days after the required thirty-day period of notice to the various boards concerned, it hastened to file its own proposal with the board of elections, under the provision of Section 3311.26, *supra*. It had sixty days within which to take such action, and since it must have known that the election could not take place until November, there was certainly no need for haste. While the county board may and may not have known of the 1958 Opinion of the Attorney General, No. 1908, to which I have referred, it may be assumed that it could have gotten advice on the subject of priority from the prosecuting attorney.

Section 3311.231, Revised Code, under which the petition of the electors of the Urbana Local District was filed, contains this provision:

“If any proposal has been previously certified to a board of elections pursuant to sections 3311.22, 3311.26, 3311.37 and 3311.38, of the Revised Code, which affects any of the territory affected by a proposal authorized herein, the proposal to be submitted under this section shall not be placed on the ballot until after the election has been held on the proposal previously certified.”

By its hasty action, therefore, although in my opinion illegal, it apparently sought to take cover under the statute, and foreclosed consideration of the petition of the electors of the said Urbana Local District, and postponed any action that they might obtain pursuant thereto for at least a year.

The wrong which has been done can only be undone by action of the county board in withdrawing from the board of elections the certification made on April 30, 1959, of its proposition of consolidation.

As to the futile petition of the electors of the Urbana Local District, it will remain with the board of elections for submission a year later, unless rendered impotent by a favorable vote of both districts on the proposal of consolidation, or withdrawn by its signers.

So far as the board of elections is concerned, they have no alternative but to submit the proposal of the county board filed April 30, 1959, and disregard the certification of the electors' proposal filed June 1, 1959.

If there is to be effective action to force the county board to do what it should do, it must come from a judicial decree. I can but interpret the law as I see it, but have no power to implement my conclusion.

Accordingly, in specific answer to the questions submitted by you, it is my opinion and you are advised :

1. Where, pursuant to Section 3311.26, Revised Code, a county board of education has proposed to consolidate two or more local school districts, and before such proposition has been certified to the board of elections for submission to the electors, a petition is filed, pursuant to the provisions of Section 3311.231, Revised Code, by the electors in one of said districts praying for transfer of its territory to an adjoining exempted village or city district, the proposition of such petition, if found to be in regular order, should be certified to the board of elections and the proposal initiated by the board should be withheld. Opinion No. 1908 of April 4, 1958 and Opinion No. 572 of June 5, 1959, approved.

2. A proposition for consolidation of school territory initiated by a county board of education under the provisions of Section 3311.26, Revised Code, and a proposal for transfer of a local school district to an exempted village or city district presented by petition of the electors of such district, cannot both be submitted to the electors at the same election; and if a proposal for consolidation under Section 3311.26, Revised Code, has been certified to the board of elections for submission at the next general election, a subsequently certified proposal, pursuant to Section 3311.231, Revised Code, cannot be submitted at the same election, and it must be disregarded by the board of elections.

3. Although a county board of education may have acted illegally in certifying a proposal for consolidation of school territory to the board of elections, the illegality of such action can only be established by judicial decree, and the board of elections, in the absence of such decree, must submit the proposal as certified.

Respectfully,

MARK MCELROY

Attorney General