

**OPINION NO. 86-108****Syllabus:**

1. Pursuant to R.C. 3311.051, "[i]f a county school district contains only one local school district there shall be only one board of education which shall be the county board of education which shall have all the powers and duties of a local board of education in addition to those of a county board."
2. A county board of education that has the powers and duties of a local board of education under R.C. 3311.051 may exercise its discretion in determining to what extent to consolidate the exercise of county board and local board functions, provided that applicable legal requirements are satisfied.
3. Implementation of R.C. 3311.051 does not affect the eligibility of the county school district or the local school district to receive funds under R.C. Chapter 3317.

---

**To: Dr. Franklin D. Walter, Superintendent of Public Instruction, Department of Education, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 19, 1986**

I have before me your request for my opinion concerning the operations of a county board of education when the county school district contains only one local school district. Your request relates to R.C. 3311.051, which reads as follows:

If a county school district contains only one local school district there shall be only one board of education which shall be the county board of education which shall have all the powers and duties of a local board of education in addition to those of a county

board. In such districts the county superintendent shall have the powers and duties of a local superintendent in addition to those of a county superintendent.

In any school district where there is a school building under construction on July 21, 1965, this section does not apply until, in the opinion of the superintendent of public instruction, the school building is completed and operational.

See R.C. 3311.052 (providing for elections to implement the provisions of R.C. 3311.051).

Your request concerns only situations in which a county school district contains a single local school district and is, thus, subject to R.C. 3311.051. Your letter of request states:

In certain locations...a county board of education and a local board of education continue to function in a district that has only one local school district. The same five elected members serve on both the county board and the local board and the same superintendent serves as both the county and local superintendent. The county board with its treasurer and the local board with its treasurer meet at separate, distinct times to conduct business and authorize expenditures reserved for each under state law.

Do districts that are operated by both a local board and a county board within a single local school district violate the provisions of Section 3311.051 of the Revised Code? If so, can such a district terminate the activities of the local board without diminishing the powers or responsibilities necessary to lawfully operate the district? What action is necessary to accomplish the termination? What effect is there on contracts?

R.C. 3311.051 states clearly that, if a county school district contains only one local school district, "there shall be only one board of education which shall be the county board of education which shall have all the powers and duties of a local board of education in addition to those of a county board." A plain and unambiguous statute leaves no occasion to resort to rules of statutory construction. See Sears v. Weimer, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Further, repeated use of the word "shall" in a code section is clear evidence that it is intended to be mandatory. See Cleveland Railway Co. v. Brescia, 100 Ohio St. 267, 126 N.E. 51 (1919); Woodmansee v. Cockerill, 115 Ohio App. 409, 185 N.E.2d 439 (Fayette County 1961). To the extent that it deals with the number of boards of education that may be maintained in a county school district with only one local school district, R.C. 3311.051 could not be more explicit: only one board of education may exist, and that board must be the county board of education. The only exception provided by R.C. 3311.051 is for an extension in the applicability of its provisions in an instance in which a school building was under construction on July 21, 1965. It is evident that, in the years that have passed since the effective date of R.C. 3311.051, any such situations should have been resolved. See 1965 Ohio Laws 761-62, 1899-1900 (Am. H.B. 634, eff. July 21, 1965). See generally Board of Education v. Marting, 7 Ohio Misc. 64, 217 N.E.2d 712 (C.P. Madison County 1966).

Your letter of request suggests that, notwithstanding the clear language of R.C. 3311.051, certain areas have continued to elect individuals separately as members of a county board of education and members of a local board of education, even though there is only one local school district in the county school district. Such action would clearly be in violation of provisions of R.C. 3311.051. I have, however, checked with the Secretary of State and have confirmed that the provisions of R.C. 3311.051 have been implemented throughout the state. See R.C. 3311.052. In situations in which a single local school district exists within a county school district, only one election is held and only one set of board of education members is elected. Pursuant to R.C. 3311.051, those members constitute the county board of education, but also have the powers and duties of a local board of education. The existing situation therefore reflects the legislative intent expressed in Section 2 (uncodified) of the bill enacting R.C. 3311.051:

This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for this necessity is that its enactment into law at the earliest possible time will eliminate any confusion that might arise by reason of the filing of a declaration of candidacy for member of the board of education of a local board, an office that will become nonexistent. Therefore this act shall go into immediate effect. (Emphasis added.)

1965 Ohio Laws 1899, 1900 (Am. H.B. 634, eff. July 21, 1965). See R.C. 3311.052; Board of Education v. Marting. See generally State ex rel. Flinn v. Wright, 7 Ohio St. 333 (1857)(the General Assembly may abolish any office that it has created through its own powers).

The implementation of R.C. 3311.051 has not diminished the powers and duties available for the operation of the county and local school districts in situations subject to its provisions. Instead, it has vested such powers and duties in a single entity, rather than in two separate entities. The powers and duties of the local superintendent and the county superintendent have, similarly, been vested in a single individual--that is, the county superintendent. The county board of education and county superintendent thus have power to control the collection and disposition of funds and other assets of the previously-existing local board of education, and to fulfill the obligations of that board, to the extent that the local board and local superintendent would have such power absent the implementation of R.C. 3311.051. See generally State ex rel. Tschappat v. Monroe County Board of Education, (unreported) No. 583 (Ct. App. Monroe County Oct. 16, 1984)(when a county board of education acts in the capacity of a local board of education pursuant to R.C. 3311.051, a statute limiting the employment ability and duties of a county board does not apply to such board); Board of Education v. Marting (litigation initiated by a local board of education which is abolished under R.C. 3311.051 continues in the name of the county school board).

In light of the existing situation, there is no need to discuss the termination of a local board of education as a separate legal entity. R.C. 3311.051, which provides for the consolidation of duties of the county board and the local board in certain circumstances, effectively eliminates the local

board of education in those circumstances. See R.C. 3311.052. See generally State ex rel. Attorney General v. Jennings, 57 Ohio St. 415, 49 N.E. 404 (1898); State ex rel. Village of Mayfield Heights v. Higham, 35 Ohio App. 243, 172 N.E. 159 (Cuyahoga County 1929). While board of education members elected pursuant to R.C. 3311.051 may, for internal purposes, distinguish the exercise of the powers and duties of the county board from the exercise of the powers and duties of the local board, they are, in all instances, acting as a single legal entity.

It appears, instead, that your concern is that boards elected pursuant to R.C. 3311.051 have not, in all instances, unified the administration of their duties. For example, a board established under R.C. 3311.051 may schedule one meeting to carry out the duties assigned by statute to a county board and a separate meeting to carry out the duties assigned to a local board, or may appoint two treasurers, one to perform county board functions and one to perform local board functions. See generally State ex rel. Tschappat v. Monroe County Board of Education, slip op. at 2 (considering a situation covered by R.C. 3311.051 and stating: "[t]he local school district board of education and the county board of education are comprised of the same members. Although identical in composition, the respective boards hold separate meetings, maintain independent records and separate personnel"). R.C. 3311.051 states clearly that a board of education elected pursuant to that section has the powers of both a county board and a local board. R.C. 3311.051 does not, however, specify how such a board is to exercise the powers of a local board. "Where authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." Jewett v. Valley Ry. Co., 34 Ohio St. 601, 608 (1878). Thus, in the absence of a directive from the General Assembly, a board of education acting under R.C. 3311.051 may exercise the powers of a county board and the powers of a local board in such manner as it deems reasonable, provided that applicable legal requirements are satisfied. See, e.g., R.C. 117.43(A)("[t]he auditor of state may prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies"); R.C. 3301.07(C) and (I)(the State Board of Education may require boards of education to file reports relating to the management and condition of state and federal funds and may require such reports from school districts as are necessary and desirable).

With respect to the holding of meetings, R.C. 3313.14 states:

The board of education of each city, exempted village, and local school district shall meet on a day occurring during the first fifteen days of January of each year, and shall organize by electing one of its members president and another vice-president, both of whom shall serve for one year. The treasurer of the board shall canvass the members of the new board no later than December thirty-first to establish the day of the organizational meeting prescribed by this section.

The board of each county school district shall hold its first meeting in January of each year, and shall organize by electing one of its members

president and another vice-president, both of whom shall serve for one year. (Emphasis added.)

R.C. 3313.15 further provides: "At the time of the organization meeting each board of education shall fix the time for holding its regular meetings. Regular meetings shall be held at least once every two months." R.C. 3313.16 provides for special meetings of a board of education, called by the president or treasurer or by any two members. It appears that it may be possible for a board established under R.C. 3311.051 to carry out both county and local school district functions at the same meetings. A county board subject to R.C. 3311.051 is, however, authorized to exercise all powers and duties of a local board of education and may, therefore, schedule meetings to consider only the concerns of the local school district, if it finds such procedure appropriate. I appreciate your concern that the performance of local school district functions as matters apart from county school district functions may not, in all cases, be the most efficient means possible. I cannot, however, conclude that such procedure is prohibited as a matter of law.

The appointment of a treasurer by a board of education is governed by R.C. 3313.22, which states:

Except as otherwise provided in division (E) of section 3311.19 of the Revised Code [dealing with joint vocational schools], the board of education of each local, exempted village, city, and joint vocational school district at an organization meeting shall elect a treasurer who may not be a member of the board or otherwise regularly employed by the board. No board of education, other than the board of an island school district, shall elect a person treasurer who does not hold a valid license issued under section 3301.074 of the Revised Code.

The treasurer shall initially serve for a two-year probationary term and thereafter, if reappointed, shall serve for a four-year term. Such treasurer may be removed at any time for cause by a two-thirds vote of the entire board. If the treasurer fails to maintain a valid license, he shall be removed by the board.

If the treasurer is reappointed as provided in this section, the board shall execute a written contract of employment for an initial four-year term and each four-year term thereafter. A board of education that does not intend to reappoint its treasurer, either after the treasurer's probationary term or after a four-year term, shall give such treasurer written notification of the board's intention not later than the first regularly scheduled board meeting of October. If the board does not give such notice by the specified date, the treasurer is considered reemployed for a four-year term at a salary determined by the board at its first organizational meeting in January.

A county board which chooses to act as the governing board of the county school district pursuant to division (D) of section 135.01 of the Revised Code<sup>1</sup> shall appoint a treasurer in the manner

<sup>1</sup> R.C. 135.01 states:

Except as otherwise provided in section 135.181 of the Revised Code, as used in sections

prescribed in this section for local, exempted village, and city school districts. In the case of a county board that does not choose to act as the governing board of the county school district pursuant to division (D) of section 135.01 of the Revised Code, the county superintendent shall act as treasurer of such board, but the tenure, removal, and licensing provisions described in this section shall not apply to him. (Emphasis and footnote added.)

If a county board does not choose to act as the governing board of the county school district pursuant to R.C. 135.01(D), the county superintendent shall act as treasurer of the board, and the board will have no need to appoint a treasurer. If a county board chooses to act as the governing board of the county school district pursuant to R.C. 135.01(D), the board shall appoint a treasurer in the manner prescribed for a local school district. It appears, therefore, that a county board governed by R.C. 3311.051 may appoint a single treasurer to perform both county district and local district functions. See generally R.C. 3313.222 ("[t]he boards of education of two or more school districts [including local school districts and county school districts in which the board of education chooses to act as the governing board of the district under R.C. 135.01(D)] may, by agreement, jointly employ a treasurer to act as treasurer of each district and compensate him in accordance with the terms of such agreement"). It does not, however, appear that a board operating under R.C. 3311.051 is required to appoint a single treasurer to perform both county district and local district functions, since the board is authorized by R.C. 3311.051 to exercise the powers and duties of a local board in addition to those of a county board.

Am. H.B. 634 stated as the purpose of the enactment of R.C. 3311.051 and 3311.052: "to eliminate duplication of offices and

---

135.01 to 135.21 of the Revised Code:

...  
 (D) "Governing board" means, in the case of the state, the state board of deposit; in the case of all school districts including county school districts except as otherwise provided in this section, the board of education, and when the case so requires, the board of commissioners of the sinking fund; in the case of a municipal corporation, the legislative authority, and when the case so requires, the board of trustees of the sinking fund; in the case of a township, the board of township trustees; in the case of a union or joint institution or enterprise of two or more subdivisions not having a treasurer, the board of directors or trustees thereof; and in the case of any other subdivision electing or appointing a treasurer, the directors, trustees, or other similar officers of such subdivision. The governing board of a subdivision electing or appointing a treasurer shall be the governing board of all other subdivisions for which such treasurer is authorized by law to act. A county school district shall operate as a governing board unless it adopts a resolution designating the board of county commissioners as the governing board for the county school district.  
 (Emphasis added.)

administrators where there is only one local school district in a county." 1965 Ohio Laws 1899-90 (Am. H.B. 634, eff. July 21, 1965). This purpose has been accomplished by the election of a single set of members to serve on a board of education in an area covered by R.C. 3311.051, and by the performance by a single individual of the duties of county and local superintendent. See R.C. 3319.01 (appointment of superintendent); State ex rel. Brennan v. Vinton County Local School District Board of Education, (unreported) No. 394, slip op. at 3 (Ct. App. Vinton County, released Sept. 22, 1983)(Stephenson, J., concurring) ("[t]he Vinton County school [district] contains only one local district and, thus...the county superintendent, has, by law, the powers and duties of a local superintendent"). The extent to which a particular board chooses to consolidate its county board functions and its local board functions in performing its duties under R.C. 3311.051 appears to be within the discretion of the board, and I cannot say as a matter of law that the holding of separate meetings, the appointment of separate treasurers, or the separate execution of other particular functions is not permitted. See State ex rel. Tschappat v. Monroe County Board of Education. Whether in particular circumstances the manner of administration selected by a particular board is reasonable is a question of fact to be determined in light of those circumstances.

As discussed above, the selection of methods of administration used by a board of education established under R.C. 3311.051 is within the discretion of the board, provided that all legal requirements are satisfied. Any changes in such methods will not affect the authority of the board to exercise "all the powers and duties of a local board of education in addition to those of a county board," R.C. 3311.051, nor will they interfere with contracts or other legal actions of the board entered into pursuant to its authority under R.C. 3311.051.

I understand that you are concerned, in particular, with the distribution of foundation program moneys in a situation covered by R.C. 3311.051. The foundation program is established by R.C. Chapter 3317. Certain sections within this chapter provide for the distribution of moneys to city, local, or exempted village school districts, see R.C. 3317.01; R.C. 3317.022; R.C. 3317.023; R.C. 3317.024; R.C. 3317.025; R.C. 3317.027; R.C. 3317.028; R.C. 3317.04, to the county school district, see R.C. 3317.024, or to the county board of education, see R.C. 3317.11. In areas coming within R.C. 3311.051, the local board of education no longer exists. R.C. 3311.051 has not, however, abolished the local school district in such a situation. Rather, the language used in the first sentence of R.C. 3311.051 makes it clear that the local district continues to exist. See Board of Education v. Marting, 7 Ohio Misc. at 69, 217 N.E.2d at 716 ("[t]he change in name and identity of control [of a local school district pursuant to the implementation of R.C. 3311.051 and 3311.052] did not in anywise change the district"). I am aware of no reason why such a local district may not receive moneys under R.C. Chapter 3317, even as the county school district may receive such moneys, to the extent that each such district is eligible for such moneys.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 3311.051, "[i]f a county school

district contains only one local school district there shall be only one board of education which shall be the county board of education which shall have all the powers and duties of a local board of education in addition to those of a county board."

2. A county board of education that has the powers and duties of a local board of education under R.C. 3311.051 may exercise its discretion in determining to what extent to consolidate the exercise of county board and local board functions, provided that applicable legal requirements are satisfied.
3. Implementation of R.C. 3311.051 does not affect the eligibility of the county school district or the local school district to receive funds under R.C. Chapter 3317.