

**OPINION NO. 2003-002**

**Syllabus:**

A petition for transfer submitted under R.C. 3311.24 must bear the signatures of seventy-five per cent of the qualified electors residing within the territory pro-

posed to be transferred who actually voted at the last general election. (1964 Op. Att'y Gen. No. 1043, p. 2-190, syllabus, paragraph 1, approved and followed.)

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**To: Amanda Spies Bornhorst, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio**

**By: Betty D. Montgomery, Attorney General, January 9, 2003**

We have received your request for an opinion concerning the signatures that appear on a petition for the transfer of territory to an adjoining school district pursuant to R.C. 3311.24. You have asked the following question: "Must a petition submitted under Section 3311.24 of the Ohio Revised Code bear the signatures of 75% of the qualified electors residing within the territory proposed to be transferred who actually voted at the last general election?"

To address your question, let us begin with a review of the relevant statute. R.C. 3311.24 authorizes a request to the State Board of Education for the transfer of territory from one school district to another. The request is submitted by the board of education of a city, exempted village, or local school district from which the territory is proposed to be transferred, either upon the determination of the board of education that the transfer is advisable or upon the petition of electors of the territory proposed to be transferred. The State Board of Education decides whether to approve or disapprove the proposed transfer of territory. R.C. 3311.24(A).

When the proposal to transfer territory originates with the electors, it must be submitted by "a petition, signed by *seventy-five per cent of the qualified electors* residing within that portion of a city, exempted village, or local school district proposed to be transferred *voting at the last general election.*" R.C. 3311.24(A) (emphasis added). The issue is whether the electors who sign the petition must be electors who actually voted at the last general election (and who are still qualified electors of the territory), or whether the number of electors who voted is used to determine the number of signatures that must be submitted, with any qualified elector residing in the territory permitted to sign, regardless of whether that elector actually voted at the last general election.

The language of the statute, read literally, says that the petition must be signed by the stated percentage of qualified electors "voting at the last general election." R.C. 3311.24(A). A plain reading of the statute thus leads to the first interpretation set forth above — that the electors who sign the petition must be electors who actually voted at the last general election. This is the interpretation that has been given to the statute in the past and, as discussed more fully below, we conclude that this interpretation continues to be valid.

The precise question you have raised was addressed by a prior Attorney General in 1964 Op. Att'y Gen. No. 1043, p. 2-190. That opinion concluded, in the first paragraph of the syllabus:

A petition for transfer under Section 3311.24, Revised Code, must contain the signatures of seventy-five per cent of the *qualified electors* residing in the territory proposed to be transferred *who actually voted in the last general election.*

1964 Op. Att'y Gen. No. 1043, at 2-190 (syllabus, paragraph 1) (emphasis added).

The 1964 opinion based its conclusion on a literal reading of the language of R.C. 3311.24.<sup>1</sup> It found support also in *Iddings v. Board of Education of Jefferson County School District*, 155 Ohio St. 287, 98 N.E. 827 (1951), an Ohio Supreme Court case that construed analogous language in a statute that provided a means for challenging the creation of a new school district. 1964 Op. Att'y Gen. No. 1043, at 2-192 to 2-193.

The *Iddings* case considered language requiring signatures of “a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election.” *Iddings v. Bd. of Educ. of Jefferson County Sch. Dist.*, 155 Ohio St. at 289, 98 N.E. at 828 (emphasis added). The Ohio Supreme Court found that the signatures were required to be made by persons who actually voted at the last general election, stating:

It has been so frequently stated as to become axiomatic that the meaning and intent of a legislative enactment are to be determined primarily from the language itself. The plain provisions of a statute must control. If there is no ambiguity therein there is no occasion to construe or interpret. To construe or interpret what is already plain is not interpretation but legislation, which is not the function of courts. When the meaning is plain from the language employed, an attempt to construe it only tends to make ambiguous that which is simple and clear.

*Id.* at 290, 98 N.E.2d at 829. The court went on to find that the statute, as so construed, was not in violation of any state or federal constitutional provision. *Id.* at 291-92, 98 N.E. at 829-30.

The statute under consideration in the *Iddings* case (G.C. 4831-1, now appearing at R.C. 3311.26) has been amended to require signatures *equal in number* to a stated percentage of the qualified electors voting at the last general election. However, the conclusion it expressed remains valid as applied to statutes that contain the language it considered. R.C. 3311.26; *see* 1964 Op. Att'y Gen. No. 1043, at 2-192 to 2-193.

Both the 1964 opinion and the *Iddings* case found support for their conclusions in the clear distinction in language between R.C. 3311.24, which plainly requires signatures of qualified electors voting at the last general election, and other statutes that expressly provide for signatures *equal in number* to a percentage of electors who voted at the last general election. 1964 Op. Att'y Gen. No. 1043, at 2-191 to 2-192; *Iddings v. Bd. of Educ. of Jefferson County Sch. Dist.*, 155 Ohio St. at 290-91, 98 N.E.2d at 829; *see also* 1969 Op. Att'y Gen. No. 69-088. This distinction continues under existing statutes. *Compare* R.C. 3311.24 *with, e.g.*, R.C. 3311.22 (“qualified electors of the area affected equal in number to at least fifty-five per cent of the qualified electors voting at the last general election”); R.C. 3311.231 (“qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election”); R.C. 3311.26 (“qualified electors residing in the area included in such proposed new district, equal in number to thirty-five

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<sup>1</sup>1964 Op. Att'y Gen. No. 1043, p. 2-190, at 2-191, states:

A literal reading of the language in question compels the conclusion that the petition must contain the signatures of qualified electors who actually voted in the territory in the last general election. And, while the rule of literalness should not be used to defeat the obvious purpose of an enactment, I feel constrained to apply it to the language in question.

per cent of the qualified electors voting at the last general election"); *see also State ex rel. Moore v. Malone*, 96 Ohio St. 3d 417, 775 N.E.2d 812 (2002).<sup>2</sup>

It is presumed that the General Assembly adopted the language of R.C. 3311.24 advisedly, knowing and understanding the meaning of the language it used. *See generally Thompson Electric, Inc. v. Bank One, Akron, N.A.*, 37 Ohio St. 3d 259, 264, 525 N.E.2d 761, 766-67 (1988); *Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948). Had the General Assembly intended that the signatures on the petition needed to be only equal in number to seventy five-per cent of the qualified electors who voted at the last general election (rather than being the signatures of electors who actually voted), it could have adopted language expressing that intention. *See generally State ex rel. Moore v. Malone; Lake Shore Electric Ry. Co. v. Public Utils. Comm'n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926).

In 1989, the Ohio Supreme Court applied the analysis set forth in *Iddings* and the 1964 opinion to a territory transfer petition under R.C. 3311.24, apparently accepting the conclusion that the signers of the petition must have actually voted in the prior general election, and concluding that the number of signatures required should be based on a subgroup of all the electors residing in the subject territory, with the subgroup consisting of the persons who voted in the prior general election and continued to reside in the territory. *State ex rel. Harrell v. Bd. of Educ. of Streetsboro City Sch. Dist.*, 46 Ohio St. 3d 55, 59-60, 544 N.E.2d 924, 929 (1989). Thus the interpretation set forth in *Iddings* and adopted by the Attorney General in 1964 continues to be adopted and applied. *See also* Kimball H. Carey, *Anderson's Ohio School Law* § 2.11, at 19 (2002-03 ed.) (describing petition under R.C. 3311.24 as "signed by at least seventy-five percent of the qualified electors residing in that portion of such school district proposing to be transferred, and who actually voted at the last general election").

For the reasons discussed above, it is my opinion, and you are advised, that a petition for transfer submitted under R.C. 3311.24 must bear the signatures of seventy-five per cent of the qualified electors residing within the territory proposed to be transferred who actually voted at the last general election. (1964 Op. Att'y Gen. No. 1043, p. 2-190, syllabus, paragraph 1, approved and followed.)

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<sup>2</sup>Language effecting the same result as R.C. 3311.24 appears in R.C. 709.24 (formerly G.C. 3567-1), providing for an annexation proposal to be presented to a municipal corporation in the form of a petition "signed by resident electors, who voted at the last regular municipal election, numbering not less than twenty-five per cent of the number of electors who voted in such election in the territory proposed to be annexed." R.C. 709.24; *see Iddings v. Bd. of Educ. of Jefferson County Sch. Dist.*, 155 Ohio St. 287, 290, 98 N.E.2d 827, 829 (1951); *compare* R.C. 709.24 with R.C. 709.27 ("resident electors of a number not less than twenty-five per cent of the number of electors voting at the last previous regular municipal election of the municipal corporation with which annexation is proposed").