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ANNEXATION PROCEEDINGS—PENDING—IF CHANGE WOULD EFFECT LIMITS OF LOCAL SCHOOL DISTRICT—BOARD OF EDUCATION OF LOCAL DISTRICT DOES NOT HAVE SUCH LEGAL INTEREST AS WOULD PERMIT BOARD TO EXPEND PUBLIC SCHOOL FUNDS TO SUPPORT OR OPPOSE PROCEEDINGS—SECTION 3311.06 RC.

## SYLLABUS:

Where pending annexation proceedings, if consummated, would effect a change in the limits of a local school district as provided in Section 3311.06, Revised Code, the board of education of such local district does not have such a legal interest therein as would permit such board to expend public school funds either in supporting or opposing such proceedings.

Columbus, Ohio, January 17, 1955

Hon. C. Watson Hover, Prosecuting Attorney  
Hamilton County, Cincinnati, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The inhabitants of an unincorporated area located in Township A, adjacent to a village located in Township B, have petitioned the County Commissioners to have said territory annexed to said village, pursuant to the provisions of Section 709.02, Revised Code.

“The territory proposed to be annexed represents a large portion of the tax duplicate of a local school district situate in Township A, which duplicate will be lost to said district in the event of annexation.

“The Board of Education of said school district wishes to appear before the County Commissioners at the annexation hearing to present evidence and arguments in opposition to the annexation. The Board has requested an opinion as to its right to employ counsel, other than the prosecuting attorney, for this purpose.

“After careful consideration by this office, and in view of the apparent conflict between Sections 309.10 and 3313.35 of the Revised Code of Ohio, which conflict, in our opinion, is not

fully resolved by the opinion in the case of *Knepper v. French*, 125 O. S. 613, this office feels that the Board's request, in addition to the question of its right to employ legal counsel to represent it in proper actions, raises the question as to its right to appear through counsel before the Board of County Commissioners to oppose the pending annexation proceedings.

"We, therefore, respectfully request your opinion on the following two questions:

"1. Does a local Board of Education, as such, have legal authority and a sufficient legal interest in the results of a pending annexation proceedings to permit it to expend public funds for the purpose of either opposing or supporting such an annexation proceeding?

"2. Should you find that a local Board of Education has sufficient authority and legal interest to appear either for or in opposition to said annexation proceedings, does the Board then have authority to employ and pay from public funds legal counsel, other than the prosecuting attorney, to represent it in the preparation and presentation of its evidence at said hearing?"

Considering first the general question of the authority of a board of education to employ counsel, the apparent conflict, mentioned in your inquiry, between Sections 309.10 and 3313.35, Revised Code, was the subject of consideration in *Knepper v. French*, 125 Ohio St., 613, and was squarely resolved in that decision. The prior analogous statutes there involved were Section 2918, General Code, now Section 309.10, Revised Code, and Section 4761, General Code, later codified as Section 4834-8, General Code, and still later codified as Section 3313.35, Revised Code. In the opinion "by the court" in this decision we find the following statement, p. 616:

"\* \* \* we are of the opinion that 2918, having been enacted at a later date than 4761, becomes an exception thereto."

In Section 309.10, Revised Code, we find this provision:

"Sections 309.08 and 309.09 of the Revised Code do not prevent a school board from employing counsel to represent it, but such counsel, when so employed, shall be paid by such school board from the school fund."

This is the provision, formerly found in Section 2918, General Code, which the court in the *French* case held to be controlling and I perceive no reason why it should not be still so regarded. I conclude, therefore,

that under the provisions of Section 309.10, Revised Code, a board of education may employ counsel to represent it in any proceeding in which the board has a legitimate interest.

In considering whether the board of education in the case at hand has such a legitimate interest in proposed annexation proceedings we may first note the potential effect thereof on the district within which the board is responsible for the operation of the public schools. In Section 3311.06, Revised Code, it is provided:

“\* \* \* When territory is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part. An equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the superintendent of public instruction, whose decision shall be final.”

In your inquiry you indicate that a large part of the tax duplicate “will be lost” to the district concerned thus reducing considerably the amount of tax revenues which would otherwise be paid to the board. It is to be noted, however, that the statute provides for an equitable division of the funds and indebtedness between the districts involved so that in so far as revenues needed to pay off outstanding obligations is concerned the board could scarcely be thought to have any interest in the matter. Whether the proposed transfer would reduce substantially the number of pupils to be accommodated or involve the transfer of existing school facilities, you do not indicate. These considerations cannot be regarded, for reasons which will presently appear, as giving rise to any *legal* interest in the matter by the board *as such*, although the several members may well have a very real political interest in it.

Responsibility for the establishment of an efficient system of common schools in this state is committed in the first instance, under the provisions of Article VI, Ohio Constitution, to the General Assembly. As to the organization, administration and control of such system, Section 3, Article VI, provides:

“Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by

referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.”

The General Assembly, in the discharge of the duty thus imposed, has made provision in Chapter 3311., Revised Code, for dividing the state into school districts, and has committed the management and control of the schools in each such district to a city, exempted village, or local board of education as the case may be. See Section 3313.47, Revised Code. Such boards are statutory creatures possessing only statutory powers; and in the matter of expending public funds, their powers are strictly construed. *State, ex rel. Clarke v. Cook*, 103 Ohio St., 465.

The creation, classification, revision, and dissolution of such districts and the enumeration of the powers of the boards provided for such districts are matters which are wholly within the legislative control. Provision is found in Chapter 3311., Revised Code, for the revision of existing districts by the transfer of territory from one district to another in any of several ways. We have already noted that upon annexation of rural territory to a municipality such territory becomes a part of the city or village school district concerned. Annexation may be accomplished by any of the several methods provided in Chapter 709., Revised Code, and, generally speaking, it may be said that whatever method is utilized the decision on a proposal to annex is committed to the choice of (1) the inhabitants of the territory concerned and (2) the legislative authority of the corporation. No provision is made in Chapter 709., *supra*, for any participation in annexation proceedings by a board of education as such, either by resolution, remonstrance, or otherwise; and, of course, so far as the chapter on school districts and county planning is concerned, Chapter 3311., Revised Code, the change in the limits of the school districts affected is automatic upon the annexation proceedings becoming effective.

In Chapter 3311., *supra*, there is provision also for a change in the territorial limits of existing school districts (1) by action of the county board of education, subject to remonstrance by the electors residing in the territory proposed to be transferred, Section 3311.22, Revised Code, (2) by the county board upon petition of the electors residing in the territory proposed to be transferred, Section 3311.23, Revised Code, (3) by the superintendent of public instruction, in cases where it is sought to transfer territory *from* a city or exempted village school district, upon

the request of the board of education of the city or exempted village school district concerned, or upon the petition of the electors residing in the territory proposed to be transferred, Section 3311.24, Revised Code, (4) by a vote of the electors in the case of a school district which does not maintain any public schools, Section 3311.29, Revised Code, and (5) by a vote of the electors of all of the several districts involved in a plan of reorganization proposed by a county citizens' committee, Sections 3311.30 and 3311.31, Revised Code.

In none of these situations has the General Assembly seen fit to give a local board of education, *as such*, any voice in the matter of a proposed transfer with the single exception that the board of a city or exempted village district may *propose* that a portion of the territory of its own district be detached therefrom and assigned to another district.

This circumstance is strongly indicative of a legislative intent that the governing body of a school district should have no right of protest in matters concerned with the imminent loss of a portion of the district's territory, but that such right of protest was to be given, in the main, to the resident electors of the territory sought to be transferred.

Moreover, it must be remembered that we are here concerned with a public agency created by statute whose powers and duties are defined by statute, the several members of the board being public officers charged with limited statutory responsibilities. It is familiar law that neither a public agency nor a public officer, as such, has any legitimate interest in the continued existence of the agency or the office concerned. The legislative authority which creates an agency or office may add to or diminish the powers and duties pertaining thereto, or may abolish it entirely; and in doing so the legislature may, of course, act directly or may provide for such action by other public agencies, officers, or by the electors concerned. It seems clear that the legislature has followed the latter course in the case you have described and has reposed no authority regarding the matter in the board of education concerned.

Finally, it is necessary to point out, since the expenditure of public school funds is involved, that in fiscal matters the powers of a board of education are definitely limited and are strictly construed. In *State, ex rel. Clarke v. Cook*, 103 Ohio St., 465, referred to above, the second paragraph of the syllabus is as follows:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly

and distinctly granted. (State, ex rel. Locher, Pros. Atty., v. Menning, 95 Ohio St., 97, approved and followed.)”

The reference in this decision to the Locher case suggests the application in the case of boards of education of the rule therein stated as follows, p. 99:

“\* \* \* The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

In the instant case it cannot be said that the interest of the board in the proposed annexation proceedings is such as to justify an interpretation of Section 309.10, Revised Code, as an authorization which is “clear and distinctly granted” to expend school funds to oppose such proceedings. At best such authority on the part of the board “is of doubtful import” and such doubt must be resolved against its exercise.

I am not unmindful that in the French case, *supra*, the court upheld the right of a board of education to hire counsel to defend an action brought against it in connection with the proposed transfer of territory from one school district to another. In that case, however, it was the *county* board of education which was involved, an agency which, as noted above, has a very definite statutory responsibility in the matter of transferring territory from one *local* district to another. For this reason I cannot regard that decision as applicable in the instant case.

Accordingly, in specific answer to your inquiry, it is my opinion that where pending annexation proceedings, if consummated, would effect a change in the limits of a local school district as provided in Section 3311.06, Revised Code, the board of education of such local district does not have such a legal interest therein as would permit such board to expend public school funds either in supporting or opposing such proceedings.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General