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EDUCATION: COUNTY CITIZENS COMMITTEE

1. APPOINTMENT OF COUNTY CITIZENS COMMITTEE MUST BE MADE PRIOR TO JANUARY 1, 1958.
2. COUNTY CITIZENS COMMITTEE ORGANIZED BEFORE JANUARY 1, 1958 MAY CONTINUE TO FUNCTION UNTIL JUNE 30, 1958.
3. PLAN FOR REORGANIZATION SUBMITTED BY COUNTY CITIZENS COMMITTEE TO STATE BOARD OF EDUCATION PRIOR TO JULY 1, 1958 HAS PRECEDENCE OVER COUNTY BOARD OF EDUCATION PLAN ADOPTED PURSUANT TO AM. SUB. S.B. 278, 102nd G.A.

SYLLABUS:

1. Under the authority of Section 3311.30 Revised Code, a county board of education may at any time prior to January 1, 1958, take the steps required by said section leading to the appointment of a County Citizens Committee.

2. Under the provision of Section 3 of Amended Substitute Senate Bill No. 278, which will become effective January 1, 1958, a county citizens committee organized prior to the effective date of said act, may continue to function as provided in Sections 3311.30 and 3311.31 Revised Code, until the 30th day of June, 1958, and any resolution providing for the reorganization of school districts adopted by such committee and certified to the state board of education prior to July 1, 1958, shall be valid for submission to the electors, as provided in Section 3311.31 Revised Code, notwithstanding the repeal by said Senate Bill No. 278, of Sections 3311.30 and 3311.31 as of January 1, 1958.

3. By virtue of the provisions of Section 3 of Amended Substitute Senate Bill No. 278, passed May 29, 1957, any plan for reorganization of the schools of a county adopted by a county citizens committee and certified to the state board of education prior to July 1, 1958, shall take precedence over any proposal for reorganization of school districts adopted by a county board of education pursuant to the powers granted them by said Senate Bill No. 278.

Columbus, Ohio, August 22, 1957

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“The Columbiana County Board of Education has asked me to secure an opinion from your office in connection with Amended Substitute Senate Bill 278, which was passed by the recent legislature and has to do with transfer of territory within and between the school districts.

“Section 3 of the new act provides in part that ‘Nothing herein shall nullify or affect any action pending or taken by County Citizens’ Committees now in existence . . .’. Section 4 provides that the new act shall take effect on January 1, 1958.

“The first question is: May a County Board of Education legally establish a Citizens’ Committee any time from now until December 31, 1957, under authority of Revised Code Section 3311.30. The second question is: Since Amended Substitute Senate Bill 278 becomes effective January 1, 1958, what effect would a working, legally established Citizens’ Committee have on the various provisions of Senate Bill 278, such as Sections 3311.22, 3311.231, 3311.26, 3311.261? Would these various petitions for transfer of territory be legal if a Citizens’ Committee is operating?”

Amended Substitute Senate Bill No. 278, passed by the 102nd General Assembly on May 29, 1957, was entitled:

“An Act To amend sections 3311.22, 3311.26, and 3311.34, and to enact sections 3311.231 and 3311.261 and to repeal sections 3311.23, 3311.27, 3311.30, 3311.31, 3311.32, 3311.33, and 3311.36 of the Revised Code to provide for reorganization of school districts within a county.”

Sections 3311.22 to Section 3311.26, inclusive, of the Revised Code, as they have existed for many years, deal with the powers of county boards of education to make changes in the boundaries of the local districts under their jurisdiction, and, generally speaking, authorize such boards to make such changes, subject to the right of the electors residing in the territory transferred to veto the action by filing a protest within a limited time. The new statute withdraws from county boards the power to *order* such changes and substitutes the power to “propose” changes, and provides that such proposals are to be submitted to a vote of the electors of the entire district or districts whose territory is proposed to be transferred. I shall later on refer to the provisions of these new sections as bearing on the questions you have submitted.

Sections 3311.30 and 3311.31 Revised Code, relate to the organization and powers of the “county citizens’ committee” to propose plans for the reorganization of school districts within the entire county or portions

thereof. These sections became effective June 1, 1954. Section 3311.30 describes the procedure for the formation of such committee. Its territorial jurisdiction includes all local districts, exempted village districts, and by a later amendment, city districts at their option. Both of these sections are repealed by the new Act in question.

Section 3311.31, Revised Code, provides in part as follows:

“A county citizens committee shall within one year after it shall have been created file with the superintendent of public instruction a report approving existing organization or a plan for the reorganization of school districts within the county. Copies of such reports shall also be filed with the county board of education and with each board of education whose territory is involved. All boards receiving such report may register approval or disapproval with the state superintendent of public instruction.
* * *”

Then follows provision for the submission of the plans to the electors of the districts affected, and the section proceeds as follows:

“If any proposed plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization in the new district proposed to be created, the reorganization shall be accomplished as provided by sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code but with no right of remonstrance nor limitation as to the year in which territory can be transferred. If, however, seventy-five per cent of all the qualified electors voting on such reorganization in any one of the districts involved vote in opposition to the reorganization, then that district shall not be included in such reorganization.”

The obvious effect of the enactment of Amended Substitute Senate Bill No. 278 was to make certain changes in the powers and procedure of the county boards of education and to do away with the provision for the organization of county citizens committees.

The questions which you present arise out of the repeal of the statutes relative to the county citizens committee complicated by certain provisions in the Act as to the effective date of the Act itself and the date of the cessation of the powers of the said citizens committee.

The Act itself is to take effect January 1, 1958, but Section 3 thereof provides as follows:

“Section 3. Nothing herein shall nullify or affect any action pending or taken by county citizens committees now in existence,

created under authority granted in section 3311.30 of the Revised Code, *pursuant to resolutions adopted prior to July 1, 1958*. Nothing herein shall nullify or affect any proceedings or action pending under the provisions of present sections 3311.22, 3311.23 and 3311.26 of the Revised Code.” (Emphasis added.)

When the Legislature speaks of “county citizens committee now in existence”, we must assume that it refers to any county citizens committee created under the authority of Section 3311.30, Revised Code up to and including the 31st day of December, 1957. It further appears that any such committee which has been created up to that time may take such action as the law allows and continue to exercise its authority to reorganize the districts embraced within its present jurisdiction by resolution adopted up to and including the 30th day of June, 1958. The repeal, therefore, of Sections 3311.30 and 3311.31 *supra*, together with Section 3 *supra*, of the new act, has the effect of preventing the further organization of such committees, but allowing those already organized to continue the exercise of their functions until June 30, 1958.

Since the present laws appear to give the citizens committee the power to accomplish by a different procedure substantially all of the territorial changes that are within the authority of the county boards, there naturally arises the question as to which shall have precedence. The wording of Section 3 of the act, above quoted, does not clear, but rather aggravates the doubt on this subject. Nothing in the new act “shall nullify or affect any action pending or taken by a county citizens committee.” On the other hand nothing in the new act “shall nullify or affect any proceedings or actions pending under the provisions of present Sections 3311.22, 3311.23 and 3311.26 of the Revised Code”, which govern the powers of the county boards.

The same doubt has existed ever since the inauguration of the county citizens committee plan and the question as to supremacy was presented to my immediate predecessor as follows:

“Is the authority of a county board of education limited in making transfers after the county citizens committee has been created? * * *”

The then Attorney General in Opinion No. 4145, Opinions of the Attorney General for 1954, page 397, held as shown by the 8th paragraph of the syllabus:

“8. Sections 3311.22 and 3311.23, Revised Code, authorizing a county board of education to make transfers of territory from one district to another, remain in force, but the authority to make such transfers is suspended pending final action on a plan of county wide reorganization prepared and filed pursuant to Section 3311.31, Revised Code.”

By way of justification for that conclusion, it was said in the course of the opinion :

“Your question is whether the enactment of this new law would deprive the county board of education from proceeding under the existing statutes which are left undisturbed, to make transfers of territory without awaiting the recommendation of a county citizens committee and without the procedure set out in Section 3311.31 *supra*. It will be noted that in the portion of Section 3311.31 which I have quoted, there is a provision that when the proposed plan of reorganization has been approved by a vote of 55% of the qualified electors, reorganization ‘shall be accomplished as provided in Section 3311.22 et seq.’ The new statute embodied in House Bill No. 125 certainly did not repeal those sections. On the contrary, it recognized them and required proceedings under them, but after the conclusion of the formal vote of the electors on the general plan.

* * *

“If we concede to a county board the authority to take the actions last referred to while a proceeding under Section 3311.31 *supra* is in process of completion, then it is manifest that such board could virtually destroy that process by altering or abolishing local districts in a way that would confuse and perhaps destroy the general plan. Accordingly, I must conclude that pending the conclusion of action on such general plan, the powers of the county board would be suspended. If such plan should be defeated by vote of the electors, then of course, the board would have free right of action. And if such plan is adopted, I cannot see that the county board would be limited in its rights under the general laws to make further changes. There is nothing in the law that makes the general plan inviolate for any period.”

I concur in the reasoning and conclusion therein expressed as applying to the statutes then and now in force, but a closer examination of Section 3, *supra*, of the new act suggests that that Section was possibly not intended to bear on the relations of the two bodies to each other, but rather to give each the right to complete what it had begun prior to the taking effect of the new legislation.

However, your second question is directed to a possible conflict between actions taken by a county citizens committee during its six months period of grace, and action taken by a county committee during that same period, under the provisions of the new law. It is necessary, therefore, to examine these new provisions.

Without attempting any detailed analysis of their long and complicated provisions, it is sufficient to say that the new Sections 3311.22, 3311.231 and 3311.26 Revised Code, authorize the county board of education to submit proposals, which eventually are certified to the board of elections for submission to the electors of all the districts affected by the proposed changes, and a majority vote in each district is required for their adoption.

About fifteen days before the passage of Senate Bill 278, the legislature enacted Sections 3311.37 and 3311.38 Revised Code, which give the state board of education quite similar powers to present proposals, which likewise are submitted to the electors. In each of these enactments there is a provision which yields the right of way to the one which reaches the board of elections first with its proposal. The provision of Section 3311.37 reads as follows:

“If any proposal has been previously certified to any board of elections pursuant to section 3311.22 or 3311.26 of the Revised Code which affects any of the territory affected by the proposal of the state board, the proposal of the state board shall not be placed on the ballot until after the election has been held on the proposal previously certified.”

Similar wording with reference to action by the state board is found in new Sections 3311.22, 3311.231 and 3311.26. Having in mind that it is permitting any citizens committees “now in existence” to function until July 1, 1958 and evidently desiring to give such committee the green light, the legislature added Section 3 which I again quote in part:

“*Nothing herein contained shall nullify or affect any action pending or taken by county committees now in existence, pursuant to resolutions adopted prior to July 1, 1958.*” (Emphasis added.)

I cannot escape the conclusion that if a citizens committee has adopted a plan of reorganization of school districts, as provided in Section 3311.31 Revised Code, as it now exists, and has filed the same with the State Board of Education, successor to the state Superintendent of public instruction, prior to July 1, 1958, such plan would take precedence over any proposal

submitted by a county board of education pursuant to the provisions of Amended Substitute Senate Bill No. 278, enacted by the 102nd General Assembly.

Most of the foregoing discussion relates to your second question. As to your first inquiry relative to the right of a county board of education to establish a county citizens committee up until December 31, 1957, it appears to me to be evident that since Section 3311.30, Revised Code, is in full force until the effective date of its repeal, the county board of education could legally establish a county citizens committee until that date.

Accordingly, in specific answer to the questions submitted, it is my opinion :

1. Under the authority of Section 3311.30 Revised Code, a county board of education may at any time prior to January 1, 1958, take the steps required by said section leading to the appointment of a County Citizens Committee.

2. Under the provision of Section 3 of Amended Substitute Senate Bill No. 278, which will become effective January 1, 1958, a county citizens committee organized prior to the effective date of said act, may continue to function as provided in Sections 3311.30 and 3311.31 Revised Code, until the 30th day of June, 1958, and any resolution providing for the reorganization of school districts adopted by such committee and certified to the state board of education prior to July 1, 1958, shall be valid for submission to the electors, as provided in Section 3311.31 Revised Code, notwithstanding the repeal by said Senate Bill No. 278 of Sections 3311.30 and 3311.31 as of January 1, 1958.

3. By virtue of the provisions of Section 3 of Amended Substitute Senate Bill No. 278, passed May 29, 1957, any plan for reorganization of the schools of a county, adopted by a county citizens committee and certified to the state board of education prior to July 1, 1958, shall take precedence over any proposal for reorganization of school districts adopted by a county board of education pursuant to the powers granted them by said Senate Bill No. 278.

Respectfully,
WILLIAM SAXBE
Attorney General