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1. TERRITORIAL ORGANIZATION OF COUNTY SCHOOL DISTRICT—COUNTY BOARD OF EDUCATION AUTHORIZED TO INCLUDE IN PLAN TO TRANSFER PART OR ALL OF LOCAL DISTRICT WHICH OPERATES NO SCHOOLS, TO AN ADJOINING COUNTY SCHOOL DISTRICT OR TO AN ADJOINING CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT—SECTIONS 4831 AND 4831-13, G. C.
2. STATUS WHERE PROTEST TO TRANSFER FILED BY 51% OR MORE OF ELECTORS OF LOCAL SCHOOL DISTRICT OR DISTRICTS SO AFFECTED—PLAN ADOPTED ON OR BEFORE FIRST MONDAY IN FEBRUARY, 1946.

3. PROTEST, SECTION 4831-3, G. C., TO BE EFFECTIVE TO DEPRIVE SUPERINTENDENT OF PUBLIC INSTRUCTION OF AUTHORITY TO ADOPT PLAN OF REORGANIZATION PROPOSED BY COUNTY BOARD OF EDUCATION MUST BE SIGNED BY 51% OR MORE OF ALL ELECTORS WHO RESIDE IN COMBINED TERRITORY OF LOCAL DISTRICT OR DISTRICTS WITHIN COUNTY DISTRICT TO WHICH PROPOSED TRANSFER IS TO BE MADE—NO PROVISION IN LAW FOR PROTEST BY ELECTORS IN DISTRICT TO WHICH SUCH TRANSFER PROPOSED.
4. DUTY OF SUPERINTENDENT OF PUBLIC INSTRUCTION TO DETERMINE VALIDITY AND SUFFICIENCY OF PROTESTS OF ELECTORS WHEN COPIES OF ALL PROTESTS FILED—SECTIONS 4831-3, 4831-4, G. C.
5. SCOPE OF AUTHORITY OF SUPERINTENDENT OF PUBLIC INSTRUCTION TO APPROVE OR MODIFY PLAN OF TERRITORIAL ORGANIZATION OR MAKE CHANGES AFFECTING LOCAL DISTRICT OR DISTRICTS—SECTION 4831-6, G. C.

SYLLABUS:

1. Under the provisions of Sections 4831 and 4831-13 of the General Code, a county board of education is authorized to include in a plan of territorial organization of the county school district, the transfer of part or all of a local district which operates no schools, to an adjoining county school district or to an adjoining city or exempted village school district.

2. When a county board of education has provided, in a plan of territorial organization of the local school districts under its supervision adopted on or before the first Monday in February, 1916, for the transfer of part or all of the territory of a local district which is operating no schools to another school district, and a protest against such transfer has been filed by 51% or more of the electors of the local school district or districts so affected, the said county board may, but is not required again to propose such transfer and include it in a plan which it may adopt in any following even numbered year.

3. The protest mentioned in Section 4831-3, General Code, in order to be effective to deprive the superintendent of public instruction of authority to adopt a plan of reorganization proposed by a county board of education must be signed by 51% or more of all the electors residing in the combined territory of the local district from which and the local district or districts within the county district, to which the proposed transfer is to be made. However, in case the transfer is to be made to another county district or to a city or exempted village district, such protest need only be signed by 51% of the electors residing in the local district proposed to be

transferred, there being no provision in the law for a protest by the electors in the district to which such transfer is proposed.

4. The county board of education with whom protests of electors have been filed pursuant to Section 4831-3, General Code, is not required to determine the validity or sufficiency of such protests but is required by Section 4831-4 of the General Code, to file copies of all such protests with the superintendent of public instruction, and it is the duty of such superintendent to determine the validity and sufficiency of such protests.

5. The superintendent of public instruction has authority under Section 4831-6, General Code, to approve, with such modifications as he deems proper, a plan of territorial organization submitted to him by a county board of education, but he may not inaugurate by way of modification, changes affecting any local district or districts, as to which changes protests have been filed by 51% or more of the electors residing in the local district or districts affected.

Columbus, Ohio, November 29, 1945.

Hon. William G. Wickens, Prosecuting Attorney
Elyria, Ohio

Dear Sir:

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

"I hereby respectfully request your opinion as to the construction and application of Sections 4831, 4831-3 and 4831-4, G. C., effective October 12, 1945, and contained in recent House Bill 63. In regard to these sections I particularly solicit your opinion on the following questions:

1. With relation to the requirement that 'The County Board of Education of each county in which there are one or more local school districts which operate no schools shall take immediate steps for the dissolution of such school districts and for the attachment of the territories thereof to adjoining school districts which do operate schools,' is the County Board of Education thereby vested with power in preparing its plan of organization to attach a school district not operating schools to an adjoining city or exempted village school district? Or must the district so dissolved be attached to an adjoining district within the county school system?

2. Is it necessary for the County Board of Education, upon adopting a new plan of territorial organization every two years, to take immediate steps for the dissolution of school districts not operating schools, or is such duty, as imposed by Section 4831, G. C., fully discharged if an attempt to so dissolve

is once made and if the attempt is thereupon nullified by the filing of a protest petition as provided by Section 4831-3, G. C.?

3. May the protest petitions provided for by Section 4831-3, G. C., be filed only by the electors of the school district to be dissolved, or may such protest be filed by the electors of the school district to which the dissolved district is to be attached?

4. Who shall determine the validity and sufficiency of the protest petitions? Whether or not a person is or is not an elector is determined by consideration of many factors and it is apparent that the number of electors within any district can only be ascertained by a survey or census. Is the County Board of Education authorized to expend money to have such surveys made and to investigate the electoral status of the signers of protest petitions? If not, who shall make such determinations and pass upon the sufficiency and validity of the petitions?

5. After the County Board of Education has adopted its plan of reorganization, as provided by Section 4831, G. C., and assuming that a protest signed by more than 51% of the electors of the dissolved district is filed with the County Board of Education, as provided in Section 4831-3, G. C., then and in that event would this automatically leave the original district as formerly constituted without change, or would the Superintendent of Public Instruction still have authority to modify the plan of organization in spite of the protest petitions? If he does not have such authority because of the provisions of Section 4831-3, G. C., is he permitted to make a re-examination of the protest petition and determine its validity and sufficiency, or must he accept the determination previously made by the County Board of Education?"

The sections of the General Code to which you refer were originally enacted by the 95th General Assembly as a part of the new school code, and the provisions relative to territorial organization included Sections 4831 to 4831-14, General Code. In the 96th General Assembly a number of these sections were amended, and Section 4831-5 was repealed. Section 4831, as originally enacted, was mandatory in *requiring* every county board of education, on or before the first Monday in March in the year 1944 and in every even numbered year thereafter, to adopt a plan of territorial organization, and the sections which followed carried through the same mandatory idea. Section 4831-5 which was repealed, required the superintendent of public instruction to withhold the distribution of state funds to any county board which failed in any even numbered year to adopt a new

plan. The amendments referred to changed the provision of said Section 4831 so as to give each county board *authority*, on or before the first Monday in February in the year 1946, and biennially thereafter, to adopt a new plan of territorial organization of the school districts under its supervision, making it mandatory to do so only where it found a local district which was operating no schools, in which event it was required to take "immediate steps" for the dissolution of such district and the distribution of its territory to adjoining districts *and to include such action in its territorial plan to be adopted in 1946*. This feature of the new law was discussed in my opinion No. 445 rendered September 12, 1945. The sections following were so amended as to carry out this optional feature of the law relating to the territorial changes which might be made by a county board.

1. Your first inquiry is as to the power of a county board of education in taking steps for the dissolution of a school district which operates no schools, to provide in its plan of reorganization for attaching such district to an adjoining city or exempted village school district. This involves a more particular examination of certain sections of the law to which I have referred. Section 4831, General Code, reads as follows:

"On or before the first Monday in February in the year 1946 and on or before the first Monday in February in every even numbered year thereafter each county board of education may, by a majority vote of its full membership, adopt a new plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will provide a more economical or efficient county school system; and to this end, the county board of education of each county in which there are one or more local school districts which operates no schools, shall take immediate steps for the dissolution of such school districts and for the attachment of the territories thereof to adjoining school districts which do operate schools. The distribution of the territories of such dissolved school districts shall be shown in the plan of district organization which such county boards of education shall adopt in 1946."

Section 4831-13, General Code, reads:

"If the county board of education deems it advisable to transfer territory *from a local school district within the county school district to an adjoining county school district or to an*

adjoining city or exempted village school district, or if a petition, signed by 75% of the qualified electors residing within the territory proposed to be transferred, requests such a transfer, and such petition is filed with the county board of education on or before February first in an even numbered year, the proposed transfer of territory shall be included in a forthcoming plan of territorial organization of the school districts to be made and adopted under the provisions of Section 4831 of the General Code." (Emphasis added.)

It will be observed that Section 4831, *supra*, standing alone, would appear to contemplate nothing more than a rearrangement of the local districts embraced within the jurisdiction of the county board of education. Section 4831-13, however, clearly contemplates that the board of education may take steps looking to the transfer of territory of a local school district within its jurisdiction to an adjoining county school district or to an adjoining city or exempted village school district, and if a petition signed by 75% of the qualified electors residing in the territory proposed to be transferred requests such transfer, then the proposed transfer of territory "shall be" included in a forthcoming plan of territorial organization to be made and adopted under the provisions of Section 4831, General Code. Our Supreme Court had these two sections directly under consideration in the case of *State, ex rel. Miller vs. Superintendent of Public Instruction*, 145 O. S., 441, where it was held:

"Under the provisions of Sections 4831-3 and 4831-13, General Code, the Superintendent of Public Instruction is without authority to approve a requested plan of territorial organization transferring territory from a local school district within a county school district to an adjoining county school district if a protest is signed and duly filed by 51 per cent or more of the electors of the local school district affected."

The court, in the course of its opinion shows very clearly that these two sections of the statutes are in *pari materia*. It is accordingly my opinion that a district which, under the provisions of Section 4831, General Code, a county board of education is required to dissolve may, under the provisions of Section 4831-13, be attached to an adjoining county school district or to an adjoining city or exempted village school district. It should be observed, however, that said Section 4831-13 goes no further than to require the county board to include "the proposed transfer" in "a

forthcoming plan * * * to be made and adopted under the provisions of Section 4831 of the General Code". No authority is given the county board to make the transfer. It is further to be noted that the "adoption" by the county board of a plan has no effect except to start a proceeding which ultimately comes before the superintendent of public instruction for action. Section 4831-4, General Code, requires the "plan" to be filed with the Superintendent, together with all protests, and the sections following provide for the approval of such plan by the superintendent before it becomes effective.

2. Your second question is whether a county board of education having taken steps for the dissolution of a local school district not operating schools and having planned its attachment to another district or districts and having been prevented from making that plan effective by the filing of a protest under the provisions of Section 4831-3, General Code, is required upon adopting a new plan of territorial organization every two years to make another attempt to accomplish that purpose. In answering this question it is necessary to examine the terms of Section 4831-3, General Code, in connection with Section 4831, *supra*. Section 4831-3 reads as follows:

"Any group of electors, qualified to vote in territory within the territorial boundary lines of the *county school district*, may, at any time prior to the second Monday in March following the adoption of the plan of organization by the county board of education, file with the county board of education a protest relating to proposed change in the *boundary lines of any local school district* within the county school system wherein said electors reside.

Such protest shall be in writing, signed by the electors making such protest, specifically setting forth the nature of the protest together with the reasons therefor and shall be in duplicate.

If such protest so filed be signed by 51% or more of the electors of the *local school* district or districts *so affected*, then the county board of education and the superintendent of public instruction shall not have the authority to adopt the plan of reorganization proposed so far as the said local school district or districts protesting are concerned." (Emphasis added.)

Your question as stated seems to imply that a new plan of territorial organization must be adopted by the county board every two years. As I have already pointed out, that mandatory requirement of the former law

was removed by the late amendment. And as Section 4831 now stands, it seems to me that the General Assembly in providing that the board "shall take immediate steps for the dissolution of such school districts" etc. and that "the distribution of the territories of *such dissolved districts* shall be shown in the plan of district organization which such county boards of education shall adopt in 1946", indicated its intention that the *mandatory* requirement of this section was to be limited to the situation existing at the time the amendment was enacted and to the plan of territorial reorganization which the board might adopt in 1946. I do not find anything in the law that *requires* the board to repeat its attempt to dissolve these districts if it has once been blocked by an effective protest. On the other hand, there appears to be nothing in the law which would prevent the board of education, in connection with a plan which they might adopt in any of the even numbered years after 1946, from again attempting the dissolution of such local districts and its embodiment in a plan then to be adopted. Section 4831-3, *supra*, it will be noted provides that if the protest of 51% of the electors is filed, the county board of education and the superintendent of public instruction "shall not have the authority to adopt *the plan* of reorganization *proposed*." This appears to me to apply to the plan which the board is required to put forward in the year 1946, and to any plan which it may propose at any biennial period subsequent thereto.

3. Your third question as to the scope of the territory to be covered by the protests filed under Section 4831-3, General Code, was directly answered by the opinion of my predecessor No. 6703 found in 1944 Opinions, Attorney General, page 75. The fifth branch of the syllabus of that opinion reads as follows:

"Where an adopted plan of organization for school district territory provides for the incorporation in district 'A' of all the territory of district 'B' and it is desired to effectively protest against such an arrangement, it will be necessary that the protest filed in pursuance of Section 4831-3, General Code, be signed by at least 51% of all the electors residing in the combined area of both districts 'A' and 'B'."

The conclusion there expressed, and in which I concur, must, however, be confined to a transfer within the territorial jurisdiction of the county board. Where it is sought to transfer to another county district or to a city or exempted village district, the protest is limited by the terms of Section 4831-3 to the local district or districts involved in the plan.

There is no provision in the law for protests by electors in such other county or city or exempted village districts to which a transfer may be made under Section 4831-13, *supra*. That was the situation in the case of *State, ex rel. Miller v. Superintendent of Public Instruction* to which I have already referred.

4. Your fourth question is as to the authority which should examine and pass upon the validity and sufficiency of the protests. Who is to determine whether the signers of the protests are electors of the local district or districts affected, and whether the requisite percentage has signed? Section 4831-3, *supra*, merely provides that the protests are to be filed "with the county board of education"; and further that "if such protest so filed be signed by 51% or more of the electors of the local school district or districts so affected" then the county board and the superintendent of public instruction shall not have authority to adopt the plan proposed.

As I have already pointed out, the county board has no authority whatever in the matter of changing territorial boundaries of districts or dissolving districts and redistributing their territory. It has only the power to adopt a plan of a proposed alteration of districts. If protests are filed against its proposal, it has no authority to inquire into the merits of such protests or their validity. Its only duty is to file them with the superintendent of public instruction. The language of the statute is somewhat unclear and to a certain extent meaningless in providing that the filing of the protest shall deprive the board as well as the superintendent of the "authority to adopt the plan or reorganization proposed", since the whole matter which is the subject of the protest is the plan which the board has already adopted and of which it is required by Section 4831-2, General Code, to give public notice for two weeks "following the adoption". What the statute means, of course, is that the board's recommendation fails and that the superintendent of public instruction shall be deprived of authority to make any order approving the proposed plan. The presence or absence of a sufficient protest really determines the jurisdiction or lack of jurisdiction of the superintendent to take action so far as it would affect the protesting territory, and it appears to me clear that it is his duty and his alone to determine the validity and sufficiency of the protests.

5. Your fifth question, as to the authority of the superintendent of public instruction to take action by way of modification of a plan proposed by a county board in the face of a protest signed by the requisite percentage of electors calls for an examination of the statutes relative to the power of the superintendent in acting on a plan which has been proposed by the county board and submitted to him. Section 4831-4, General Code, provides in part as follows:

“On or before the first Monday in May in the year 1944 and on or before the first Monday in May in every even numbered year thereafter each county board of education shall file with the superintendent of public instruction the plan of territorial organization of local school districts adopted by the county board of education together with a copy of any and all protests to such plan of organization which may have been filed with the county board of education and a map of the county showing in solid lines the territorial boundaries of all school districts therein, as of the date of submission of such map, the location and character of roads and highways, the location of streams and natural barriers and the location of each school building.

On such map shall be clearly marked by broken lines any changes in the boundary lines of local school districts provided for by the plan of organization adopted by the county board of education.”

Keeping in mind the provisions of Section 4831-3, General Code, which I have already quoted, to the effect that if the protest of 51% of the electors is filed, “the superintendent of public instruction shall not have the authority to adopt the plan of reorganization proposed so far as the said local district or districts protesting are concerned” we pass to Section 4831-6, General Code, which reads:

“On or before the second Monday in August in each even numbered year the superintendent of public instruction *shall approve, with such modification as he deems proper*, each plan of territorial organization of school districts submitted to him by county boards of education, and shall, not later than the first Monday in September, in each even numbered year, notify, in writing, the various county boards of education of his action on such plans of organization.

In the event the superintendent of public instruction modifies a plan of organization submitted to him by a county board of education, he shall state, in writing, his reasons for such modification and send a copy of such reasons to such board of educa-

tion at the time he notifies such board of his action on the plan of organization submitted to him by such board.”

(Emphasis added.)

Bearing in mind that the “plan of organization” to which all of these statutes relate is a county-wide plan, it is quite evident that the superintendent may receive a plan which is entirely unobjectionable to most of the districts in the county system, but is the subject of protests from one or more. It should also be noted that Section 4831-3, *supra*, contemplates that in addition to the *effective* protest of 51% from the territory directly affected, there may be other protests from any part of the county district. Accordingly, the superintendent might modify the plan as submitted to him by eliminating those features as to which protests of either of the above mentioned classes have been filed, and approving the plan as so modified. I do not believe that he could evade the effect of the 51% protest by making a change which might be equally objectionable. Possibly, in practical operation the superintendent may, by conference with the various parties interested, be able to arrive at a compromise that would result in withdrawal of protests. But it seems clear that he cannot interpose a new plan of his own under the guise of a modification. To do so would deprive the electors of a district affected of the right of protest and would practically nullify Section 4831-3, *supra*.

Section 4831-7, General Code, requires the county board to notify the local boards under its jurisdiction of the action of the superintendent, and Section 4831-8, General Code, provides that either the county board or any of the local boards may within fifteen days, notify the superintendent that they “object to the modifications to the plan of organization made by the superintendent of public instruction, and request a hearing thereon”. The sections following provide for a hearing before the superintendent on these objections, and Section 4831-11, General Code, provides in part:

“Within sixty days after such hearing the superintendent of public instruction shall approve a plan of organization of the local school districts under the jurisdiction of such county board of education. Such approved plan may be the original plan as submitted by the county board of education or any modification thereof, and such plan shall be final and no territory shall be transferred except in accordance with such plan of organization.”

It will be observed that the procedure last above outlined does not contemplate any notice to the public or any right of protest by the citizens of the districts affected, but is limited to such objections as the boards may have to the modifications injected by the superintendent of public instruction, which strengthens my conviction that the superintendent cannot override the will of the people of a district or districts directly affected, when evidenced by a protest signed by 51% or more of the electors therein.

Accordingly, in specific answer to your inquiries, it is my opinion :

1. Under the provisions of Sections 4831 and 4831-13 of the General Code, a county board of education is authorized to include in a plan of territorial organization of the county school district, the transfer of part or all of a local district which operates no schools, to an adjoining county school district or to an adjoining city or exempted village school district.

2. When a county board of education has provided, in a plan of territorial organization of the local school districts under its supervision adopted on or before the first Monday in February, 1946, for the transfer of part or all of the territory of a local district which is operating no schools to another school district, and a protest against such transfer has been filed by 51% or more of the electors of the local school district or districts so affected, the said county board may, but is not required again to propose such transfer and include it in a plan which it may adopt in any following even numbered year.

3. The protest mentioned in Section 4831-3, General Code, in order to be effective to deprive the superintendent of public instruction of authority to adopt a plan of reorganization proposed by a county board of education must be signed by 51% or more of all the electors residing in the combined territory of the local district from which and the local district or districts within the county district to which the proposed transfer is to be made. However, in case the transfer is to be made to another county district or to a city or exempted village district, such protest need only be signed by 51% of the electors residing in the local district proposed to be transferred, there being no provision in the law for a protest by the electors in the district to which such transfer is proposed.

4. The county board of education with whom protests of electors have been filed pursuant to Section 4831-3, General Code, is not required

to determine the validity or sufficiency of such protests but is required by Section 4831-4 of the General Code, to file copies of all such protests with the superintendent of public instruction, and it is the duty of such superintendent to determine the validity and sufficiency of such protests.

5. The superintendent of public instruction has authority under Section 4831-6, General Code, to approve, with such modifications as he deems proper, a plan of territorial organization submitted to him by a county board of education, but he may not inaugurate by way of modification, changes affecting any local district or districts, as to which changes protests have been filed by 51% or more of the electors residing in the local district or districts affected.

Respectfully,

HUGH S. JENKINS

Attorney General