

3150

1. SCHOOL DISTRICT, LOCAL—NO LEGAL PROCESS FOR ELECTORS OF DISTRICT, OR ANY PORTION THEREOF, TO REQUIRE DIVISION OF TERRITORY INTO SMALLER DISTRICTS OR TO ERECT NEW DISTRICT OUT OF ANY PORTION OF EXISTING DISTRICT.
2. COUNTY BOARD OF EDUCATION MAY CREATE ONE OR MORE NEW LOCAL SCHOOL DISTRICTS FROM ALL OR PARTS OF EXISTING LOCAL SCHOOL DISTRICT—ACTION SHALL NOT TAKE EFFECT IF MAJORITY OF QUALIFIED ELECTORS RESIDING IN TERRITORY INCLUDED WITHIN NEWLY CREATED DISTRICT VOTING AT LAST GENERAL ELECTION SHALL FILE WITHIN THIRTY DAYS FROM TIME ACTION TAKEN A WRITTEN REMONSTRANCE AGAINST ACTION—SECTIONS 3311.26 RC, 4831-1 GC.

## SYLLABUS:

1. There is no process provided by the law whereby the electors of a local school district or of any portion thereof, may require the division of such territory into smaller districts or the erection of a new district out of any portion of the existing district.
2. Under the provisions of Section 3311.26, Revised Code, Section 4831-1 G.C., a county board of education may create one or more new local school districts from all or parts of an existing local school district; but such action of the board shall not take effect if a majority of the qualified electors residing in the territory included within such newly created district voting at the last general election shall within thirty days from the time such action is taken, file with said board a written remonstrance against such action.

Columbus, Ohio, October 21, 1953

Hon. Charles W. Ayers, Prosecuting Attorney  
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have in Knox county a new centralized school district known as the Kokosing Valley School District. This is composed of the formed Gambier, Howard, Amity and Bladensburg

School Districts. This new school district was created pursuant to Ohio General Code Section 4831, and being Section 3311.22 of the Revised Code.

"Is it possible under the present School Code, to decentralize and go back to the former school districts? This procedure was provided for in Ohio General Code Section 4727 but this was repealed by H. B. No. 217, 95th General Assembly. Section 3311.23 of the Revised Code sets forth a procedure by which qualified electors residing in the Kokosing Valley School District may petition to transfer a part of, or all of the Kokosing Valley School District to another *existing* county school district but I am unable to find any procedure in the School Code which will restore the Gambier, Howard, Amity and Bladensburg School Districts."

Your letter speaks of the restoration of certain named districts which you state were at one time consolidated into what is known as the Kokosing Valley School District, and you indicate that it is desired to decentralize this district and restore the constituent districts.

In the adoption of the School Code of 1947, 120 O. L., 475, somewhat elaborate provisions were made for district planning. Section 4831 et seq. of the General Code, required each county board of education biennially to adopt a plan of territorial organization of the school districts under its supervision. Provisions were made for publication of the proposed plan and for protests by groups of electors affected by the changes in boundary lines of the local districts. Under those provisions it is manifest that the changes desired in the territory mentioned in your letter, could readily have been accomplished.

However, by subsequent legislation, Sections 4831 to 4831-12, General Code, covering district planning were repealed and there were substituted new provisions, found in Sections 4831 and 4831-1. In the first of these sections authority was given to the county board to transfer part or all of a school district of the county district to an adjoining district or districts, and by Section 4831-1 to create new school districts from one or more local districts or parts thereof.

The only section of the present law which appears to me to provide a process whereby the desired end may be accomplished is Section 3311.26 Revised Code, Section 4841-1 G. C. This section reads as follows:

*"A county board of education may create a new local school district from one or more local school districts or parts thereof,*

and in so doing shall make an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the board *shall not take effect* if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election shall, within thirty days from the time such action is taken, file with the board a written remonstrance against such action. When a new local school district is created within a county school district, a board of education for such newly created district shall be appointed by the county board of education. The members of such appointed board of education shall hold their office until their successors are elected and qualified. A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election two members shall be elected for a term of two years and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as members of the board of education of a local school district.”  
(Emphasis added.)

It will be noted that the power to create a new local school district from one or more local districts is vested in the county board of education. While the language of the statute seems to suggest that it is intended to provide a method whereby a *new* district may be created by adding together one or more local districts or parts thereof, yet it appears to me that it is equally capable of a construction that would authorize the creation of several local districts out of an existing district and thereby in effect accomplish a decentralization into districts that formerly constituted the present larger district. However, it would not follow that if action were taken under this section, the several districts thus to be created would correspond in their boundaries with the original districts. The power and discretion of the county board in this respect would appear to be unlimited, except for the further provision of the section providing for a formal protest by a majority of the electors.

The statute provides that “such action of the board shall not take effect if a majority of the qualified electors residing in the territory included *in such newly created district* voting at the last general election shall, within thirty days from the time such action is taken, file with the board a written remonstrance against such action.” It is plain that this procedure reserved to the electors can only be applied by way of blocking

the action of the board and affords no process whatsoever by which they may either compel action by the county board or produce the desired result by proceedings initiated by the electors.

It is to be noted that this action on the part of the electors is available only to a majority of the qualified electors residing "in the newly created district." Accordingly, it would appear to me that if the county board of education should undertake to create several districts out of the territory of an existing district, the protest if any, might come from the electors in one or more of the districts so created, acting independently, but would not affect the action of the board as to any other newly created districts which do not protest. Also it may be observed that the electors of the entire district which is to be divided, have no right as a whole to make any protest against the proposed division.

In your letter you refer to Section 3311.23 of the Revised Code, Section 4831-13 G. C., as affording a method whereby qualified electors in the present Kokosing Valley School District might petition to transfer a part or all of the territory of that district to an adjoining *county* school district or to an *adjoining city or exempted village* school district. In that section authority is given to the electors to file with the county board a petition praying for such transfer signed by seventy-five percent of the qualified electors residing in the territory which they seek to have so transferred. The filing of such petition will force the board to take action either transferring the territory as requested by the petition, or adopting a resolution objecting to the requested transfer. If the latter action is taken their objection must be certified to the superintendent of public instruction, who has authority to veto the objections of the board, which is then required to adopt a resolution transferring the territory as prayed for.

As I understand the facts set forth in your letter this section could not in any way apply to the situation there set forth.

Accordingly, in specific answer to your question, it is my opinion and you are advised that:

1. There is no process provided by the law whereby the electors of a local school district, or of any portion thereof, may require the division of such territory into smaller districts, or the erection of a new district out of any portion of the existing district.

2. Under the provisions of Section 3311.26, Revised Code, Section 4831-1 G.C., a county board of education may create one or more new local school districts from all or parts of an existing local school district; but such action of the board shall not take effect if a majority of the qualified electors residing in the territory included within such newly created district voting at the last general election, shall within thirty days from the time such action is taken, file with said board a written remonstrance against such action.

I call your attention to House Bill 218 passed by the General Assembly on July 14, 1953, which amends Sections 3311.07 and 3311.09, and enacts several supplementary sections dealing with reorganization of school districts. Inasmuch, however, as this act by its terms does not take effect until June 1, 1954, I do not consider it necessary to discuss its provisions at this time.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General

3151

HOSPITAL, COUNTY—MONEYS RECEIVED FOR OPERATION OF HOSPITAL—PUBLIC MONEYS WITHIN MEANING OF UNIFORM DEPOSITORY ACT—BOARD OF TRUSTEES OF COUNTY HOSPITAL SHALL RECEIVE AS SECURITY FOR DEPOSITS FROM DESIGNATED DEPOSITORY, BOND IN AMOUNT EQUAL TO FUNDS SO DEPOSITED—SECTIONS 135.01, ET SEQ., 339.06 RC, 2296-1 ET SEQ., GC—AM. HB 355, 100 GA, EFFECTIVE OCTOBER 13, 1953.

SYLLABUS:

Under the provisions of the Amended House Bill No. 355, 100th General Assembly, effective October 13, 1953, appearing as section 339.06, Revised Code, moneys received for the operation of a county hospital created and organized under the provisions of sections 339.01, et seq., Revised Code, are public moneys within the meaning of the Uniform Depository Act, section 135.01, et seq., Revised Code, section 2296-1, et seq., General Code, and must be deposited as provided in the Uniform Depository Act; provided, however, that the board of trustees of the county hospital shall receive as security for such deposits from the designated depository, a bond in an amount equal to the funds so deposited, as provided in Section 339.06, Revised Code.