

OPINION NO. 71-015**Syllabus:**

A local school district is not entitled to representation on the board of a joint vocational school district; the opinion of my predecessor, Opinion No. 662, Opinions of the Attorney General for 1963, is reaffirmed; and the conclusion of my predecessor in Opinion No. 70-163, Opinions of the Attorney General for 1970, is overruled.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, February 23, 1971

You have called to my attention an apparent conflict between two Opinions issued by my predecessors and have requested review or clarification of them, in the following language:

"Opinion No. 70-163 issued on December 16, 1970, regarding the application of R. C. 3311.19 of the Ohio Revised Code has created some management concerns. The syllabus indicated that '* * * it is mandatory that each participating school district be represented on the joint vocational school district board of education. * * *'

"This opinion appears to be in conflict with O.A.G. Opinion No. 63-662 which held '* * * only persons who are members of exempted village, city and county boards of education are eligible for appointment to a board of education of a joint vocational school district'."

A joint vocational school district is one that embraces more than one geographic school district whereas the latter is either county, city, exempted village or local district. (Section 3311.18, Revised Code.) The law is clear that boards of education of county, city or exempted village districts must be represented on the joint vocational district board. Thus, the only question in issue is whether or not boards of education of local school districts also must be represented on the board of education of a joint vocational school district.

The governing statute omits mention of boards of local school districts from the list of boards that must be represented on the joint vocational district board. The pertinent provisions of Section 3311.19, Revised Code, are underlined in the following excerpt:

"The management and control of a joint vocational school district shall be vested in the joint vocational school district board of education.

"Where a joint vocational school district is composed only of two or more local school districts located in one county, or when all the participating districts are in one county and the boards of such participating districts so choose, the county board of education of the county in which the joint vocational school district is located shall serve as the joint vocational school district board of education. Where a joint voca-

tional school district is composed of local school districts of more than one county, or of any combination of county, local, city, or exempted village school districts, unless administration by the county board of education has been chosen by all the participating districts in one county pursuant to this section, then the board of education of the joint vocational school district shall be composed of one or more persons who are members of the boards of education from each of the city, exempted village, or county school districts affected to be appointed by the boards of education of such school districts. In such joint vocational school district the number and terms of members of the joint vocational school district board of education and the allocation of a given number of members to each of the city, exempted village, and county districts shall be determined in the plan for such district, provided that each such joint vocational school district board of education shall be composed of an odd number of members.

"* * *

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* * *"

(Emphasis added.)

Because the words "local district" are omitted from the mandatory phrase in this section, the question becomes one of determining whether the overall legislative intent was effected by the omission or whether an intent to the contrary was so clearly evidenced elsewhere that the omission should be considered to have been inadvertent. Three considerations lead me to the conclusion that the omission was intentional.

First, the other quoted language ascribes a role of lower importance to local district boards than to the other types of board. For instance, the county board is designated as the joint vocational board where two or more local districts constitute the joint vocational district. In contrast, other types of districts, city and exempted village, when included in the joint vocational district, are entitled to choose, or not to choose, the county board as the joint vocational board (second paragraph, first sentence). In other words, local boards alone are given no choice. (Inclusion of the other boards in the group may bestow a right of choice on a local board but that question is not involved here).

Second, related sections establish that residents of the local district are represented by the county board because the qualified residents elect members of both the local and county boards. This results from the relationship between Sections 3311.05 and 3313.01, Revised Code.

Section 3311.05, supra, excludes city and exempted village districts from the county district and, thus, establishes

that local districts are within the county district. It reads as follows:

"The territory within the territorial limits of a county, exclusive of the territory embraced in any city school district, exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a 'county school district.'"

Section 3313.01, supra, provides that electors of each district shall elect the board members in each, as follows:

"In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in territory composing the respective districts and shall be elected at large in their respective districts."

Thus, local district electors are also county district electors. Consequently, it follows that residents of local districts are represented through the county board on the board of a joint vocational district.

Third, another related section, Section 3311.213, Revised Code, provides, that on the expansion of a joint vocational district by the inclusion of an additional local district, the membership of the joint board may be increased by adding one or more members of the county board to the joint one, as follows:

"* * * On the addition of a local school district to the joint vocational school district, pursuant to this section, the board of education of such joint vocational school district may submit to the state board of education a proposal to enlarge the membership of such board by the addition of one or more persons who are members of the county board of education of such additional local school district.* * *"

No mention is made of adding a local board member to the joint vocational board in that situation.

It follows from the foregoing that the statutory scheme appears to be consistent throughout in adhering to the approach that local districts obtain representation on a joint vocational district board through the county board. Accordingly, I must conclude that local school district boards are not entitled to representation on a joint vocational school board.

This conclusion requires examination of the two Opinions of my predecessors, cited in your letter, namely Opinion No.

662, Opinions of the Attorney General for 1963 and Opinion No. 70-163, Opinions of the Attorney General for 1970. The views expressed above are consonant with the earlier Opinion and further comment thereon is not required.

As to the latter, the stated interpretation of the statute is more restrictive than the conclusion. The two pertinent paragraphs are as follows:

"From the underlined portion of the statute [Section 3311.19, Revised Code], it is apparent that the legislature has made it mandatory that the board of education of the joint vocational school district shall be composed of one or more members of the boards of education from each of the city, exempted village or county school districts involved. The statute uses the word 'shall' and thus makes this requirement mandatory.

"I am of the opinion, therefore, and you are so advised that where there is a joint vocational school district composed of three city school districts and four local school districts and the participating school districts have not chosen the county board of education to serve as the joint vocational school district board of education, it is mandatory that each participating school district be represented on the joint vocational school district board of education."

The stated interpretation is consonant with the view expressed herein, but the conclusion or opinion itself is not supported by such interpretation. Thus, while a careful review of the Opinion would indicate that no difference with the earlier Opinion was intended, the conclusion was erroneous. To that extent, I must respectfully overrule my predecessor's Opinion No. 70-163, supra, insofar as the conclusion expressed is inconsistent with this Opinion and the earlier Opinion.

Accordingly, I am of the opinion that a local school district is not entitled to representation on the board of a joint vocational school district and I concur in the Opinion of my predecessor, Opinion No. 662, Opinions of the Attorney General for 1963, but overrule the conclusion of my predecessor in Opinion No. 70-163, Opinions of the Attorney General for 1970.