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DUTY OF DETERMINING THE SUFFICIENCY OF FORMS CONTENT, AND SIGNATURES OF A PETITION OF REFERENDUM—FILING A PETITION OF REFERENDUM AGAINST CREATING A NEW DISTRICT; BOARD OF EDUCATION SHOULD SEE THAT BOARD OF ELECTION OF EACH COUNTY CERTIFIES THE PROPOSAL—FURNISHING BALLOTS FOR A CERTIFIED REFERENDUM—§§3311.26, R.C., AMENDED H. B. 994, 104TH OPINION 893, OAG, 1959, 3505.071, R.C.

SYLLABUS:

1. The duty of determining the sufficiency of the form, content and signatures of a petition of referendum filed under Section 3311.26, Revised Code, is invested in the county board of education.

2. Where under section 3311.26, Revised Code, a petition of referendum is filed against the creation of a new district, the county board of education should certify the proposal to the board of elections of each county in which the proposed district is to be located. (Opinion No. 893, Opinions of the Attorney General for 1959, page 602, followed.)

3. Where under Section 3311.26, Revised Code, a board of education certifies a proposal to the board of elections, the board of elections has the duty to prepare the ballot to be submitted to the electors, and such ballot should be in accord with the provisions of Section 3505.06, Revised Code, pertaining to questions and issues ballots. If more than one county is involved, the board of elections of the county containing the most populous portion of the proposed district should, under Section 3505.071, Revised Code, prepare and furnish all necessary ballots.

Columbus, Ohio, August 8, 1962

Hon. James L. Frey, Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“Certain members of the County Board of Education, Fulton Ohio, have consulted me with problems concerning School Consolidation and Re-organization. For your information on July 11, 1962, Fulton County Board of Education by resolution, created two new school districts comprising Fulton and Lucas Counties for one district and Fulton and Henry Counties for the

other district, from thirteen existing school districts under Section 3311.26. Petitions of referendum are now in circulation by citizens of the districts to be created. It will be necessary for the board of Education to act upon these petitions at their next regular meeting on August 8, 1962, to place a proposal on the ballot for the general election in November, 1962. Specifically, we are desirous of your formal opinion to the following questions:

- “1. Who determines the sufficiency of the referendum petitions as to form, content and signatures?”
- “2. If the proposed new districts are situated in more than one county, which county board of elections does the County Board of Education certify the proposal?”
- “3. Who is responsible for the preparation of the proposal to be placed on the ballot and is this proposal a vote for the resolution creating the districts or a vote in favor of the petition of referendum against the resolution?”

Section 3311.26, Revised Code, as amended by the 104th General Assembly, Amended House Bill No. 994, and effective June 15, 1961, provides in pertinent part:

“A county board of education may, by resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof. Such proposal shall include an accurate map showing the territory affected. After the adoption of the resolution, the county board shall file a copy of such proposal with the board of education of each school district whose boundaries would be altered by such proposal.

“The creation of a new local school district, as proposed by a county board of education under the provisions of this section, shall become effective on the thirtieth day after the adoption by the county board of the resolution proposing such creation *unless prior to the expiration of such thirty-day period, qualified electors residing in the area included in such proposed new district, equal in number to thirty-five per cent of the qualified electors voting at the last general election, file a petition of referendum against the creation of the proposed new district.*

“A petition of referendum filed under the provisions of this section shall be filed at the office of the county superintendent of schools. The person presenting the petition shall be given a receipt containing thereon the time of day, the date, and the purpose of the petition.

“If a petition of referendum is filed, the county board of education shall, at the next regular meeting of the county board,

certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than sixty days after the date of such meeting, or at a special election, the date of which shall be specified in the certification, which date shall not be less than sixty days after the date of such meeting.

“Upon certification of a proposal to the board or boards of elections pursuant to this section, the board or boards of elections shall make the necessary arrangements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and canvassed and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

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(Emphasis added)

As to your first question, Section 3311.26, *supra*, provides that a certain number of qualified electors may petition for a referendum against the proposed district. The petition is filed at the office of the county superintendent and is then certified by the county board of education to the board of elections for the purpose of having the proposal placed on the ballot.

The law is silent as to what body determines whether the petition is sufficient. Ordinarily, that is the duty of the board of elections (See division (K) of Section 3501.11, Revised Code), but Section 3311.26, *supra*, gives the board of elections only the duty to make arrangements for the election *upon certification of the proposal*. Further, where more than one county is involved, which appears to be the present case, no one board of elections could ascertain the validity of the petition, as each board could attest only to the electors in its county.

The county board of education does not, of course, have immediately available the necessary records to ascertain the validity of a petition. The board could, however, inquire of all boards of elections involved as to the validity of the signatures on the petition, and could thereby arrive at a decision as to the whole petition.

In view of the language used, therefore, and in order that one body may have the duty of ruling on the validity of the whole petition, I am constrained to conclude that the duty of determining the sufficiency of the petitions as to form, content and signatures is invested in the county board of education.

Coming to your second question, Section 3311.26, *supra*, provides that the board of education shall certify the proposal to the board of elections. Later, however, the section provides:

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“Upon certification of a proposal to the board *or boards* of elections the board or boards of elections shall make the necessary announcements for the submission of such question to the electors of the county or counties qualified to vote thereon, and the election shall be conducted and the results shall be certified in the same manner as in regular elections for the election of members of a board of education.

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(Emphasis added)

In view of the above-noted provision of law I am of the opinion that where the area of the proposed district covers more than one county the county board of education must certify the proposal to the board of elections of each county involved. In this regard, in my opinion No. 893, Opinions of the Attorney General for 1959, page 602, in considering similar language in the then existing Section 3311.26, Revised Code, I held in the second paragraph of the syllabus:

“2. In an election held pursuant to a petition of referendum under Section 3311.26, Revised Code, on the question of the creation of a new local school district, where parts of the school districts involved are located in different counties, a separate certification of the proposal should be made by the county board of education to the board of elections in each county involved, and all electors residing in the area included in the proposed new districts are eligible to vote at such election.”

Regarding your third question, the proposal referred to in Section 3311.26, *supra*, is the proposal to create the new local school district. Such proposal is adopted by resolution of the county board of education. Where a referendum petition is properly filed and certified to the board (or boards) of elections, said board or boards has the duty of placing the proposal on the ballot. The question then can only be whether the proposal of the board of education should be adopted.

Under the law, the board or boards of elections must make the necessary arrangements for the submission of the question to the electors, including the form of the ballot. Where only one board of elections is involved, then that board of elections should prepare the ballot, posing the question in accord with the standards prescribed by Section 3505.06,

Revised Code, which section deals with the form of ballots on questions and issues. Where more than one board of elections is involved, a question arises as to which board should prepare the ballot. On this point, there is no question, I believe, but what the ballot should be the same in each county. As to this, however, Section 3505.071, Revised Code, provides:

“In the event that a school district extends into one or more counties, upon the filing of any resolution or candidate’s petitions in the county containing the most populous portion of the school district, such county board of elections shall, within ten days after such filing, send to all other boards of elections of counties having territory within the school district, notice of such filing. The county containing the most populous portion of the school district shall furnish all ballots for school questions and issues for the school district.”

In view of the provisions of Section 3505.071, *supra*, I am of the opinion that where more than one county is involved in the election the board of elections of the county containing the most populous portion of the proposed district should prepare and furnish all ballots for the question.

In conclusion, it is my opinion and you are advised:

1. The duty of determining the sufficiency of the form, content and signatures of a petition of referendum filed under Section 3311.26, Revised Code, is invested in the county board of education.

2. Where under Section 3311.26, Revised Code, a petition of referendum is filed against the creation of a new district, the county board of education should certify the proposal to the board of elections of each county in which the proposed district is to be located. (Opinion No. 893, Opinions of the Attorney General for 1959, page 602, followed.)

3. Where under Section 3311.26, Revised Code, a board of education certifies a proposal to the board of elections, the board of elections has the duty to prepare the ballot to be submitted to the electors and such ballot should be in accord with the provisions of Section 3505.06, Revised Code, pertaining to questions and issues ballots. If more than one county is involved, the board of elections of the county containing the most populous portion of the proposed district should, under Section 3505.071, Revised Code, prepare and furnish all necessary ballots.

Respectfully,
MARK MCELROY
Attorney General