

OPINION NO. 68-074**Syllabus:**

A petition of transfer circulated pursuant to the provisions of Section 3311.231, Revised Code, is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by Section 3501.38, Revised Code.

To: George J. Demis, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William B. Saxbe, Attorney General, April 23, 1968

Your request for my opinion reads as follows:

"A group of residents of one of our local school districts has filed a petition of transfer, asking that certain territory of Indian Valley Local School District be transferred to another school district. Said petition was filed in accordance with Section 3311.231 of the Revised Code of Ohio.

"Said petition was not notarized or signed by the circulators as such as required by Section 3501.38 of the Revised Code.

"Your Opinion 65-1 specifically requires that a referendum petition must be executed in accordance with Section 3501.38.

"My question is whether the initiating petition for transfer, as set forth in Section 3311.231 of the Revised Code, must also meet the requirements of Section 3501.38 of the Revised Code, as set forth by Opinion 65-1."

The applicable portions of Section 3311.231, Revised Code, pertaining to petitions of transfer of territory provides:

"A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five percent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.

" * * * * * * * * *

"Any petition of transfer or petition of referendum 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.

"The county superintendent shall cause the board of elections to check the sufficiency of signatures on any such petition, and, if found to be sufficient, he shall present the petition to the county board of education at a meeting of said board which shall occur not later than thirty days following the filing of said petition.

"The county board of education shall promptly certify the proposal to the board of elections of such counties in which school districts whose boundaries would be altered by such proposal are located 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.

"Signatures on a petition of transfer or petition of referendum may be withdrawn up to and including the above mentioned meeting of the county board of education only by order of the board upon testimony of the petitioner concerned under oath before the board that his signature was obtained by fraud, duress, or misrepresentation.

"If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included either in a petition previously filed by electors or in a resolution of transfer previously adopted by the county board of education, no action shall be taken on such new petition as long as the previously initiated proposal is pending before the board or is subject to an election.

"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."

*(Emphasis Added)

I note that Section 3311.231, *supra*, establishes the same procedure to be followed for both petitions of transfer and petitions of referendum.

Section 3501.38, Revised Code, provides:

"All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code

relating thereto, be governed by the following rules:

* * * * *

"(E) Every petition paper shall bear the affidavit of the circulator that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be."

With regard to referendum petitions filed under Section 3311.231, *supra*, I stated in Opinion No. 1, Opinions of the Attorney General for 1965 in Syllabus 1:

"1. A referendum petition circulated pursuant to the provisions of Section 3311.231, Revised Code, is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by Section 3501.38, Revised Code."

In that Opinion I stated:

"Although Section 3501.38, Revised Code, does not specify that a petition is invalid where the circulators fail to affix their affidavit, it must be assumed that a petition not fulfilling the requirements of that section is invalid. If this were not so, there would be little reason for establishing such requirements."

Therefore it is my opinion and you are hereby advised that a petition of transfer circulated pursuant to the provisions of Section 3311.231, Revised Code, is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by Section 3501.38, Revised Code.