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ANNEXATION PETITIONS—PENDING—SECTION 3311.06, R.C. AMENDED — NOT AFFECTED BY AMENDMENT — SCHOOL DISTRICT TRANSFERRED UNDER SECTION 3311.06, R.C. AS IT STOOD WHEN ANNEXATION PROCEEDINGS WERE BEGUN.

SYLLABUS:

By reason of the provisions of Section 1.20 Revised Code, the amendment effective September 29, 1955, of Section 3311.06 Revised Code, did not affect annexation petitions pending when such amendment became effective; and territory of a school district included in the territory sought to be annexed would be transferred in accordance with the provisions of said Section 3311.06 as it stood when such annexation proceedings were begun.

Columbus, Ohio, July 7, 1956

Hon. Forrest B. Ashcraft, Prosecuting Attorney
Licking County, Newark, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"The Auditor of this county has requested me to obtain your opinion concerning the following situation:

"Petitions were filed with the Board of County Commissioners of Licking County, Ohio, on April 4, 1955, June 20, 1955, and September 1, 1955. These petitions each sought annexation of certain territory to the City of Newark, Ohio. Each petition sought annexation of territory which comprised *part but not all* of the territory of the Newark Local School District. Neither did the combined territory in all three petitions take all of the territory comprising Newark Local School District. Annexation proceedings were completed on said petitions, through acceptance by the City, on October 3, 1955, November 21, 1955, and January 16, 1956, respectively. No action has been taken by or through the State Board of Education.

"The Auditor's problem and his question is that of listing the territory in the proper district for taxation, but the underlying question, of course, is as to the effect of the amendment of Section 3311.06, Revised Code, as enacted in Amended Senate Bill Number 322, One Hundred First General Assembly, which became effective September 29, 1955, while these proceedings were pending.

"Therefore, may I have your formal opinion as to whether those parts of the territory annexed which comprised part of the Newark Local School District remain part of the Newark Local School District or become part of the Newark City School District. Also I am calling your attention in this connection to an informal opinion you gave the Hon. Samuel L. Devine, Prosecuting Attorney of Franklin County, on November 14, 1955."

Prior to its amendment by the 101st General Assembly, effective September 29, 1955, Section 3311.06, Revised Code, in so far as pertinent, read as follows:

> * * * "When territory is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part. An equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the superintendent of public instruction, whose decision shall be final."

The three petitions for annexation of territory to the City of Newark were filed on April 4, 1955, June 20, 1955, and September 1, 1955, respectively. Your letter states that each of these petitions sought annexa-

tion of territory which comprised part but not all of the territory of the Newark Local School District. It will be observed that under the statute above quoted, no distinction was made as to the effect of annexation, whether the territory annexed formed *part or all* of a school district. Regardless of such condition, the effect of annexation to the municipality under that statute, was to carry the territory annexed into the city school district.

In the amendment of Section 3311.06, the portion of the statute quoted was changed to read as follows:

> "* * * When territory is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part; *provided, that when the territory* so annexed to a city or village *comprises part but not all of the territory of a school district,* the said territory shall become a part of the said city school district or the school district of which the village is a part *only upon approval* by the state board of education. In event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that board's decision shall be final. After the effective date of this section, *no action* with regard to the transfer of school district territory pursuant to annexation to a municipality *shall be completed* in any other manner than that prescribed by this section." (Emphasis added.)

If, therefore, the proceedings for annexation which were then pending are to be governed by the statute as amended, then the territory of the Newark Local School District which was included in the annexation proceedings would not become a part of the Newark City School District unless by the approval of the state board of education. Lacking such approval it would remain as a part of the territory of the Newark Local School District. That these annexation proceedings had not been completed when the amendment of the statute became effective, is shown by your statement that the ordinances accepting them were passed on October 3, 1955, November 21, 1955, and January 10, 1956, respectively. Since all of these dates are subsequent to the effective date of the amendment, the annexation proceedings obviously were all pending when the law was changed. In view of that fact, it is unnecessary to raise any question as to the actual effective date of the ordinances accepting the annexation.

The effect of this amendment upon these pending annexation proceedings leads us to a consideration of Section 1.20 of the Revised Code, which reads as follows:

> "When a statute is repealed or amended, such repeal or amendment does not affect pending actions, prosecutions, or proceedings, civil or criminal. When the repeal or amendment *relates to the remedy,* it does not affect pending actions, prosecutions, or proceedings, unless so expressed, nor does any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise *expressly provided* in the amending or repealing act." (Emphasis added.)

As pointed out in Opinion No. 2287, Opinions of the Attorney General for 1947, p. 519, the courts have been quite liberal in their views as to what shall be regarded as a "pending proceeding," and many instances are found in which this term was held to include purely administrative proceedings. I conclude, therefore, that municipal annexation proceedings fall within the scope of this term as used in Section 1.20, supra.

The question thus presented is whether Section 3311.06, Revised Code, "expressly" removes the proceedings in question from the operation of the saving provisions of Section 1.20, Revised Code. In this connection attention is invited to the final sentence in Section 3311.06, supra, providing that "no action * * * shall be *completed*" except as therein provided.

This provision quite strongly *implies* that such section as amended is to govern such proceedings as have been begun but not yet completed; and it is difficult to conceive of any legislative purpose other than this for the inclusion of this language in the act.

But however this may be, the question presented is whether this provision can be said "expressly" to provide an exception to the operation of Section 1.20, Revised Code.

In State ex rel. Andrews v. Zangerle, 101 Ohio St., 235, it was held:

> "1. * * *
>
> "2. Section 26, General Code, is a rule of legislative interpretation and is to be construed as a part of any amended act, unless such amendment otherwise expressly provides.
>
> "3. The word 'expressly', as used in the statute, carries its usual and customary meaning, to-wit: Clear, definite, plain, direct; as stated or written in the statute, and not left to inference or implication."

In Kelley v. State, 94 Ohio St., 331, it was said (pp. 338, 339):

> "* * * The language of Section 26 General Code, is not that such repeal or amendment shall not affect pending actions, prosecutions or proceedings unless *such inference may be gathered from the repealing statute,* but it is that such repeal or amendment shall not affect pending actions, prosecutions or proceedings unless *so expressed.* When, therefore, the intention of the legislature is to give to such repealing or amending act a retroactive effect such intention must not be left to inference or construction, but must be manifested by express provision in the repealing or amending act." (Emphasis added.)

One of the evident purposes in the enactment of Section 1.20, Revised Code, is to avoid giving retroactive effect to new legislation in any pending proceedings whatever, where other than remedial matters are concerned. Accordingly, although such effect may be given as to remedial matters, when the intent to do so is plainly stated, it would seem that the courts have been quite strict in testing the language in which such intent is "expressed," being motivated to some extent with the notion of avoiding an unconstitutional application of new legislation.

In the case at hand, although I recognize the implication in Section 3311.06, Revised Code, that it shall apply to pending proceedings, it becomes necessary to conclude, in harmony with the rule in the Zangerle case, supra, that "inference and implication" in a statute are not enough to avoid the application of Section 1.20, Revised Code. I conclude, therefore, that the provisions of this section do not apply to municipal annexation proceedings wherein an annexation petition was pending before the board of county commissioners for consideration on September 29, 1955, the effective date of the enactment of Section 3311.06, Revised Code.

It is therefore my conclusion that those parts of the territory annexed which comprised part of the Newark Local School District became a part of the Newark City School District, pursuant to the provisions of Section 3311.06, Revised Code, as it stood when such annexation proceedings were commenced.

I reached the same conclusion in the informal opinion to which you refer in your letter.

In specific answer to your question, it is my opinion that by reason of the provisions of Section 1.20 Revised Code, the amendment effective September 29, 1955, of Section 3311.06 Revised Code, did not affect

annexation petitions pending when such amendment became effective; and territory of a school district included in the territory sought to be annexed would be transferred in accordance with the provisions of said Section 3311.06 as it stood when such annexation proceedings were begun.

Respectfully,
C. William O'Neill
Attorney General