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ORDER OF SEQUENCE IN VOTING ON THE CREATION OF A NEW SCHOOL DISTRICT WHEN A QUESTION ON PART OF SAID TERRITORY IS PENDING—PETITION TO TRANSFER PART OF A SCHOOL DISTRICT IS SUFFICIENT IF THE NUMBER OF SIGNATURES IS EQUAL TO 55 PER CENT OF THE REGISTERED VOTERS OF THE LAST GENERAL ELECTION—§§3311.37, 3311.22, 3311.231, 3311.26, R.C.

SYLLABUS:

1. Where pursuant to Section 3311.37, Revised Code, the state board of education has proposed the creation of a new school district, and before the question is placed on the ballot for consideration by the electors concerned, a proposal is filed with a county superintendent of schools under Section 3311.22 or Section 3311.231, Revised Code, affecting any of the territory affected by the proposal of the state board, the proposal of the state board may not be placed on the ballot while the other proposal is subject to an election.

2. Where under Section 3311.22 or Section 3311.231, Revised Code, a petition of transfer of part of a school district is filed with the county superintendent of schools, and the petition is signed by one person, the petition is sufficient if the one signature is equal in number to at least fifty-five per cent of the qualified voters voting at the last general election within that portion of the school district proposed to be transferred.

Columbus, Ohio, October 9, 1962

Hon. Robert E. Dunlap, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Sir:

Your request for my opinion contains a fact situation posed by a local school district and reading as follows:

“Subject: Creation of a new school district composed of Buckeye Local, Mt. Victory-Dudley Local and Ridgeway Local.

“State Department of Education made a survey, then recommended to the State Board of Education, that such a district be created, subject to approval of a majority of the voters at next election. The State Board of Education at its next meeting approved this recommendation and proposed the creation of a new district.

“Law states thirty day waiting period before certification to Board of Elections. During the thirty day period a farmer resident in the district petitioned for transfer and the State Board understood from the sixth (6) paragraph of Section 3311.37, Ohio Revised Code, that this stopped state action.”

The request then states :

“The question, quite simply, is can one person by asking that his own property be transferred to a different school district stop the election on the question as to whether or not an entire school district should be transferred to an adjoining school district or adjoining county system.”

Section 3311.37, Revised Code, as effective July 28, 1959, reads, in part, as follows :

“The state board of education may conduct studies where there is evidence of need for consolidation of contiguous local, exempted village, or city school districts or parts of such districts. The possibility of making improvements in school district organization as well as the desires of the residents of the affected districts shall be given consideration in such studies and in any recommendations growing out of such studies.

“After the adoption of recommendations growing out of any such study, the state board may proceed as follows :

“Propose by resolution the creation of a new school district which may consist of all or a part of the territory of two or more contiguous local, exempted village, or city school districts, or any combination of such districts.

“The state board shall thereupon file a copy of such proposal with the board of education of each school district whose boundaries would be altered by the proposal and with the board of education of each county in which such school district is located.

“The state board may, not less than thirty days following the adoption of the resolution proposing the creation of a new school district certify the proposal to the board of elections of the county or counties in which any of the territory of the proposed district is located, for the purpose of having the proposal placed on the ballot at the next general election, or at a primary election occurring not less than sixty days after the adoption of such resolution.

“If any proposal has been previously initiated pursuant to section 3311.22, 3311.231, or 3311.26 of the Revised Code which affects any of the territory affected by the proposal of the state board, the proposal of the state board shall not be placed on the

ballot while the previously initiated proposal is subject to an election.

“Upon certification of a proposal to the board of elections of any county pursuant to this section, the board of elections of such county shall make the necessary arrangements for the submission of such question to the electors of the county 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)

Section 3311.22, Revised Code, referred to in Section 3311.37, *supra*, reads, in part, as follows:

“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 at least fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district, or districts proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts to an adjoining local school district or districts within the county school district.

“* * * * * * * * *”

“Any petition of transfer or 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.

“* * * * * * * * *”

Section 3311.231, Revised Code, referred to in Section 3311.37, *supra*, reads, in part, as follows:

“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 per cent 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.

“* * * * * * * * *”

Section 3311.26, Revised Code, referred to in Section 3311.37, *supra*, reads, in part, as follows:

“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 facts given do not state under what provision the petition in the instant case was filed. Since it was a person who petitioned, not the county board, Section 3311.26, *supra*, is clearly not involved. I assume, therefore, that the person in question petitioned that his property, located in a local school district, be transferred to an adjoining local school district in the county (Section 3311.22, *supra*), or that said property be transferred to an adjoining county school district, or to an adjoining city or exempted village school district (Section 3311.231, *supra*). I also assume that the petition contained signatures of not less than fifty-five per cent of the qualified electors voting at the last general election residing within the area proposed to be transferred, which would be a sufficient number under either Section 3311.22 or Section 3311.231, *supra*.

Under Section 3311.37, *supra*, the proposal of the state board to create a new local school district may not be placed on the ballot if any other proposal has been *previously initiated* pursuant to Section 3311.22 or Section 3311.231, *supra*. In Webster's New International Dictionary, Second Edition, the word “initiate” is defined as follows:

“1. To introduce by a first act; to make a beginning with; to originate, begin, * * *”

The official beginning in a proposal by petition under either Section 3311.22 or Section 3311.231, *supra*, would be the filing of the petition with

initiated (Section 3311.231, *supra*, being newly added). While the intention of the legislature in making the change is less than clear, in reading the new provision with the old, "previously initiated" would appear to imply that if the proposal under Section 3311.22, Section 3311.231, or Section 3311.26, *supra*, is initiated prior to the time when the proposal of the state board could be, and would be, placed on the ballot, said state board proposal may not be placed on the ballot while the other proposal is subject to an election.

Returning to the present fact situation, the petition was filed with the county superintendent of schools (initiated) previous to the time when the state board proposal could have been, and would have been, placed on the ballot. Although only one person appears to have signed the petition, I assume that the one signature constitutes fifty-five per cent of the electors required under either Section 3311.22 or Section 3311.231, *supra*, and that the petition is thus in compliance with the appropriate section. It follows, therefore, that during the period that the proposal initiated by petition is subject to an election, the proposal of the state board may not be placed on the ballot.

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

1. Where pursuant to Section 3311.37, Revised Code, the state board of education has proposed the creation of a new school district, and before the question is placed on the ballot for consideration by the electors concerned, a proposal is filed with a county superintendent of schools under Section 3311.22 or Section 3311.231, Revised Code, affecting any of the territory affected by the proposal of the state board, the proposal of the state board may not be placed on the ballot while the other proposal is subject to an election.

2. Where under Section 3311.22 or Section 3311.231, Revised Code, a petition of transfer of part of a school district is filed with the county superintendent of schools, and the petition is signed by one person, the petition is sufficient if the one signature is equal in number to at least fifty-five per cent of the qualified voters voting at the last general election within that portion of the school district proposed to be transferred.

Respectfully,
MARK MCELROY
Attorney General