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1. DISSOLUTION, SCHOOL DISTRICT WHICH DOES NOT MAINTAIN PUBLIC SCHOOLS WITHIN ITS AREA—DUTY COUNTY BOARD OF EDUCATION TO SELECT DISTRICT OR DISTRICTS TO WHICH TERRITORY OF DISSOLVED DISTRICT IS TO BE JOINED—PLAN OF DISTRIBUTION—SHOULD BE SUBMITTED TO ELECTORS FOR APPROVAL—SECTION 3311.22, 3311.29 RC.
2. FORM OF BALLOT—SECTIONS 3311.29, 3505.08 RC.

## SYLLABUS:

1. Upon the dissolution as provided in Section 3311.29, Revised Code, of a school district which does not maintain public schools within its area, it is the duty of the county board of education, under the authority of Section 3311.22, Revised Code, to select the district or districts to which the territory of such dissolved district is to be joined, and the plan of distribution of territory so made is to be submitted to the electors of such dissolved district for their approval.

2. The form of ballot for submission to the electors of a school district dissolved pursuant to Section 3311.29, Revised Code, of a plan for the distribution of the territory of such district is governed by Section 3505.08 of the Revised Code.

Columbus, Ohio, April 20, 1954

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

“The first paragraph of Section 3311.29 of the Revised Code reads as follows:

‘No school district shall be created in this state which does not maintain public schools within such district, and any such existing school district shall be dissolved and its territory joined with another school district or districts selected and approved by a vote of the district so dissolved.’

“My question is: Do the words ‘selected and approved by a vote of the district so dissolved’, mean by a vote of the electors of the district or by a vote of the board of the district?

"If you determine that the section refers to a vote by the electors of the district, a further question is as follows: How shall the issue be placed on the ballot as to which district or districts the dissolved district shall join?"

Section 3311.29, Revised Code, from which you have quoted, is a part of an act passed by the General Assembly on July 14, 1953, and consisting of an amendment of Sections 3311.07 and 3311.09, and the enactment of supplemental Sections 3311.28 to 3311.36, inclusive. The act, by its terms is to take effect on June 1, 1954.

These sections form a part of Chapter 3311, of the Revised Code, which relates in its entirety to county planning of school districts. Thus, these new sections became a part of the general plan for the setting up, altering and dissolving of school districts. The two sections amended have no bearing on the question here under consideration. The particular section in question undertakes to bring about the dissolution of a district which does not maintain any public schools within its area.

Section 3311.29, Revised Code, in its entirety, reads as follows:

"No school district shall be created in this state which does not maintain public schools within such district, and any such existing school district shall be dissolved and its territory joined with another school district or districts *selected and approved by vote of the district* so dissolved.

"The superintendent of public instruction shall be without authority to distribute funds under sections 3317.02, 3317.04 and 3317.12 of the Revised Code to any school district which does not maintain schools." (Emphasis added.)

Standing alone, it would appear to be somewhat difficult to discover the intention of the legislature in using the language, "*selected and approved by a vote of the district so dissolved.*" Your letter indicates the difficulty of determining whether "*vote of the district*" means a vote of the electors or of the board of education. The questions arise: Who is to do the selecting, and who is to do the voting?

I recognize the well established rule that in undertaking to construe a particular provision of the statutes, regard must be had to the entire law of which it is a part.

Generally speaking, the primary authority for changes in the boundaries of school districts, or transfer of parts or all of a local school dis-

trict to another district or to another county district, is vested in the county board of education. Provisions for such action are found in Sections 3311.22 and 3311.23 of the Revised Code. Section 3311.22 provides in part:

“A county board of education may, by resolution adopted by majority vote of its full membership, transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. \* \* \*”

Note that the language of this provision is very broad and may apply to any local district, and the authority to “transfer” is positive. It is further provided in the same section:

“If an entire district is transferred the board of education of such district is thereby abolished or if a member of the board of education lives in that part of a school district transferred the member becomes a nonresident of the school district from which the territory was transferred and he ceases to be a member of the board of education of such district. The legal title of all property of the board of education in the territory transferred shall become vested in the board of education of the school district to which such territory is transferred. The county board of education shall make an equitable division, between the districts involved, of the funds and indebtedness of the school district from which territory is transferred.”

The action of the county board ordering such transfer, is however, not necessarily final, because under a further provision of the same section a transfer so ordered may be blocked by the filing, within a time limited, of a protest by a majority of the qualified electors residing in the territory sought to be transferred.

In the case of a proposed transfer of a part or all of a local district to an adjoining county district, or to an adjoining city or exempted village district, a like authority is conferred on the county board by Section 3311.23 Revised Code, where it is provided:

“If a county board of education deems it advisable to transfer a part or all of the territory comprising a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. \* \* \*”

This order may also be blocked by the filing within a time limited, of a similar protest by the electors residing in the territory proposed to be

transferred. It is highly significant that in each of these two cases, the statute gives the board of education of the district which is dismembered or destroyed no voice in the matter, and in the first instance, the board of the local district to which the transfer is made has no power to accept or reject. In case, however, of a transfer to another county or to an exempted village or city district, the consent of the receiving board is required.

It will thus be seen that as a matter of general policy, the county board of education is the sole authority in all matters relating to the rearrangement of local school districts, and its order is final unless a protest of a majority of all of the electors in the district transferred is presented.

Coming now to a more critical examination of Section 3311.29, which is the basis of your inquiry, we note that where a district has no schools, it must be dissolved and its territory joined with another school district or districts "selected and approved by a vote of the district so dissolved." This plainly involves two processes: (a) the selection of the district or districts to which the territory of the defunct district is to be joined, and (b) the approval of the plan selected. It must be very obvious that the selection could not be made by the electors. In a division of the territory the number of possible apportionments is practically infinite. It could all be awarded to one adjoining district, or divided into two parts, and given to two districts, or it might be divided in an endless variety of proportions and set off to as many of the districts as join its territory. The selection, therefore, must be by some body capable of deliberating and weighing the various possibilities, and deciding on the best. In view of the general powers conferred on the county board relative to rearrangement of school districts in the county, I have no hesitancy in concluding that the legislature intended this duty of selecting the plan of division to be performed by the county board. All of the statutes to which I have called attention, together with the one under consideration, are to be read in *pari materia*, and all point to the conclusion above indicated.

Section 3311.22 *supra*, even without the enactment of the new section mentioned in your letter, would in my opinion have afforded abundant authority for the county board to dissolve a district which maintained no schools, by transferring its territory to one or more adjoining districts. The only thing that the new Section 3311.29 does, is to make such action mandatory.

I am fortified in the conclusion which I have indicated, by an examination of the history of this legislation, particularly Section 3311.22, which is a substantial rewriting of Section 4831 of the General Code. In the new School Code of 1943, 120 O. L., 475, there was contained in Section 4831 et seq., a somewhat elaborate procedure for county planning. In the next session of the General Assembly, Section 4831 was amended to read as follows:

“On or before the first Monday in February in the year 1946 and on or before the first Monday in February in every even numbered year thereafter each county board of education may, by a majority vote of its full membership, adopt a new plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will provide a more economical or efficient county school system; and to this end, *the county board of education of each county in which there are one or more local school districts which operate no schools, shall take immediate steps for the dissolution of such school districts* and for the attachment of the territories thereof to adjoining school districts which do operate schools. The distribution of the territories of such dissolved school districts shall be shown in the plan of district organization which such county boards of education shall adopt in 1946.”

(Emphasis added.)

Here, it will be seen was substantially the same procedure which we find in the present law, with the addition of the provision that the plan of apportionment and distribution of the territory of the dissolved district, as “selected” by the county board, is to be submitted for approval to a vote of the district.

When the statute says, “approved by a vote of the district,” I find it impossible to reach any other conclusion than that the General Assembly meant, approved by a vote of the electors of the district. I can think of no other vote of the district except a vote of the electors. The failure to insert the words “electors of” was doubtless inadvertent, but the meaning is certainly not clouded, so as to require resort to any particular rules of interpretation. If we should refer to a village as having “voted a bond issue,” or to a district as having “voted dry,” there would be no possible doubt that we meant that the persons entitled to vote in such village or district had voted favorably.

We only need to keep in mind the general rule that the purpose of interpretation or construction of a statute is to ascertain the intent of the legislature, and give it effect. In this case there can be no possible doubt about the general purpose of the legislature in this enactment; it was to complete the dissolution of the district and annex its territory to one or more adjoining districts, by having a plan of distribution prepared, and having such plan submitted to the people directly concerned, for their approval by vote.

It is stated by Crawford, on *The Construction of Statutes*, Section 161:

“Consequently, when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it.”

I have already indicated that I regard the provisions of Sections 33II.22 and 33II.23 *supra*, which make the county board of education the active agent generally, in ordering the transfer of part or all of the district to one or more other districts, as having a strong bearing on the interpretation of the particular statute under consideration. I have stated that these statutes are in *pari materia* with the section to which you refer. As to statutes which have this relation to each other it is said by Crawford, on *The Construction of Statutes*, Section 231:

“Statutes in *pari materia*, that is, those which relate to the same matter or subject, although some may be special and some general, in the event one of them is ambiguous or uncertain, are to be construed together, even if the various statutes have not been enacted simultaneously, and do not refer to each other expressly, \* \* \*.

“The rule which thus allows the court to resort to statutes in *pari materia* finds its justification in the assumption that statutes relating to the same subject matter were enacted in accord with the same legislative policy; that together they constitute a harmonious or uniform system of law; and that, therefore, in order to maintain this harmony, every statute treating the same subject matter should be considered. \* \* \*”

As to the form in which the issue is to be placed on the ballot for submission to the electors, recourse should be had to the general election laws. It is provided in Section 3505.08 that issues to be submitted, including school district questions, shall have printed on the ballot a “brief title

descriptive of the question," together with a "brief statement of the percentage of affirmative votes necessary for passage." There is to be either the text of the question, or a condensed statement of the same; and if such condensed statement is used, the full text shall be posted in each polling place.

So far as concerns the percentage of votes required for approval, it is my opinion that the law assumes a majority as sufficient, in the absence of any legal requirement of a larger percentage. *Bean v. Prudential Committee*, 38 Vt., 177; *Bryan v. Lincoln*, 50 Neb., 620; *Sauk Center v. Moore*, 17 Minn., 412.

In specific answer to the questions submitted, it is my opinion and you are advised:

1. Upon the dissolution as provided in Section 3311.29, Revised Code, of a school district which does not maintain public schools within its area, it is the duty of the county board of education, under the authority of Section 3311.22, Revised Code, to select the district or districts to which the territory of such dissolved district is to be joined, and the plan of distribution of territory so made is to be submitted to the electors of such dissolved district for their approval.

2. The form of ballot for submission to the electors of a school district dissolved pursuant to Section 3311.29, Revised Code, of a plan for the distribution of the territory of such district is governed by Section 3505.08 of the Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General