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1. CITIZENS COMMITTEE, COUNTY—WITHOUT AUTHORITY TO EMPLOY SECRETARY OR OTHER ASSISTANTS—BOARD MAY APPOINT COUNTY SUPERINTENDENT OF SCHOOLS TO ACT AS SECRETARY—SECTION 3311.30 ET SEQ., RC.
2. NO AUTHORITY FOR COMMITTEE TO EMPLOY LEGAL COUNSEL.
3. MEETING OF ELECTORS CALLED—SECTION 3311.31 RC—PLAN FOR ORGANIZATION OF SCHOOL DISTRICTS OF COUNTY—ALL ELECTORS RESIDING IN DISTRICT AFFECTED BY PLAN ENTITLED TO ATTEND MEETING—VOTE ON APPROVAL OF PLAN AT MEETING AND AT ELECTION.
4. IF ANY PART OF DISTRICT AFFECTED BY PLAN, ELECTORS OF ENTIRE DISTRICT ENTITLED TO VOTE AT ELECTION HELD TO APPROVE PLAN.
5. MODE OF PROCEDURE FOR ELECTION—NOT PROVIDED FOR BY LAW—ELECTORS MAY DETERMINE MODE OF PROCEDURE.
6. COUNTY CITIZENS COMMITTEE—IF PLAN OF ORGANIZATION DISAPPROVED BY SUPERINTENDENT OF PUBLIC INSTRUCTION—DUTY OF COUNTY SUPERINTENDENT TO CALL MEETING—DUTIES OF COUNTY SUPERINTENDENT AND COUNTY BOARD OF EDUCATION.
7. NINE MEMBERS OF COUNTY CITIZENS COMMITTEE SHALL BE LEGAL RESIDENTS OF COUNTY.
8. SECTIONS 3311.22, 3311.23 RC REMAIN IN FORCE—COUNTY BOARD OF EDUCATION AUTHORIZED TO MAKE TRANSFERS OF TERRITORY FROM ONE DISTRICT TO ANOTHER—AUTHORITY TO MAKE TRANSFERS SUSPENDED PENDING FINAL ACTION ON PLAN OF COUNTY WIDE REORGANIZATION.

## SYLLABUS:

1. A county citizens committee appointed pursuant to the provisions of Section 3311.30 et seq. of the Revised Code, is without authority to employ a secretary or other assistants; but the board may appoint the county superintendent to act as its secretary.

2. A county citizens committee appointed pursuant to Section 3311.30, Revised Code, has no authority to employ legal counsel.

3. When a meeting of electors is called as provided in Section 3311.31, Revised Code, to consider the plan for organization of the school districts of a county, as prepared by the county citizens committee, all of the electors residing in the districts affected by the plan are entitled to attend such meeting, and to vote on the approval of such plan at such meeting and at an election therefor held pursuant thereto.

4. If any part of a district is affected by such plan, the electors in the entire district are entitled to participate in such meeting, and to vote at an election thereafter held on the approval of such plan.

5. The procedure for voting at the meeting of electors provided for in Section 3311.31, not being provided for by law, the electors present may determine for themselves the mode of procedure.

6. In case the plan of organization of the schools of a county district, as recommended by the county citizens committee, pursuant to Section 3311.31, Revised Code, is disapproved by the superintendent of public instruction, it is the duty of the county superintendent to call a meeting of the electors of the districts affected by such plan, regardless of whether they voted at the last general election. However, such superintendent has no further responsibility in regard to such meeting and is not charged with the duty of ascertaining whether the persons attending and voting at such meeting are in fact electors of such districts, nor whether a majority has voted to approve such plan. The duty of so determining, and, in case the vote was favorable, of arranging for submission of the question at a formal election, devolves upon the county board of education.

7. Section 3311.30, Revised Code, provides that the nine members of the county citizens committee shall be legal residents of the county. Accordingly, where a local district of a county district includes territory in an adjoining county, a person residing in that portion of such local district which is in such other county, is ineligible for membership on such committee.

8. Sections 3311.22 and 3311.23, Revised Code, authorizing a county board of education to make transfers of territory from one district to another, remain in force, but the authority to make such transfers is suspended pending final action on a plan of county wide reorganization prepared and filed pursuant to Section 3311.31, Revised Code.

Columbus, Ohio, July 27, 1954

Hon. G. L. Fenton, Prosecuting Attorney  
Williams County, Bryan, Ohio

Dear Sir:

I have before me your letter in which you request an interpretation of the provisions of Sections 3311.30 and 3311.31 of the Revised Code, re-

lating to the reorganization of the school districts of a county, and particularly to the powers of the county citizens committee created pursuant to the provisions of Section 3311.30, Revised Code. The questions raised are as follows:

“Question 1: Section 3311.36 provides that the county board of education fund shall pay the mileage allowance to members of the county citizen committee: What authority, if any would the county board of education have for payment of the salary of a secretary for the county citizens committee and for the payment of postage and other expenses for said committee?”

“Question 2: A suit is filed by a local board of education or by a resident elector against the county citizens committee: What authority, if any, would the county citizens committee have to employ legal counsel? If legal counsel were employed by the county citizens committee, who would pay for the legal counsel for the county citizens committee?”

“Question 3: If the superintendent of public instruction disapproves the plan \* \* \* then a public meeting of the electors of the districts involved shall be called by the county superintendent of schools. \* \* \* The county superintendent calls the electors of District A and District B together: What electors should be called together—only those resident electors who voted in the last general election or all the electors?”

“Question 4: Only part of District A is involved: Shall all the electors of District A be called together or only those electors living in that portion of District A which is involved?”

“Question 5: What provisions should be made for the electors involved to vote? Should the voting be done by written ballot?”

“Question 6: How would the county superintendent of schools determine whether or not the electors present are involved?”

“Question 7: Each county committee shall consist of nine persons who are legal residents of the county. Approximately one-half of Milford Township, Defiance County, has been a part of the Edgerton-St. Joseph Local School District for fifteen years. Could a legal resident of the above named Edgerton school area, Defiance County, be named a member of the Williams County citizens committee?”

“Question 8: Sections 3311.22, transfer school district territory, and Section 3311.23, transfer of territory from local school districts, have not been repealed. Is the authority of the county board of education limited in making transfers after the county citizens committee has been created?”

Sections 3311.30 and 3311.31, Revised Code, formed a part of an act passed by the One Hundredth General Assembly effective by its terms on June 1, 1954, H.B. 125, page 128. According to the title of the act its purpose was to "provide for a county citizens committee to facilitate the reorganization of school districts." While some other new provisions were embodied in the act, the provisions of Sections 3311.30 and 3311.31 alone relate to the questions presented. Section 3311.30 provides in part, as follows:

"There shall be created in each of the counties of this state a county citizens' committee to study the need and recommend proposals for the reorganization of the school districts of the county when the county board of education shall adopt a resolution providing for a citizens committee, or when a petition is filed with the county board of education containing the names of three per cent of the electors voting in the last general election in the county or 400 electors whichever number is smaller. The jurisdiction of the citizens committee shall include all school districts in the county except city districts.

"Each county committee shall consist of nine persons who are legal residents of the county and who are not elected officials or paid employees of the public school system.\* \* \*."

This section further proceeds to provide the method by which the nine members of this committee are to be selected, to wit, by the appointment of one member of each village, local and county board, as a delegate to a convention which makes the selection of the citizens' committee. The section further provides that the citizens committee is to hold regular meetings at least once a month, and is to elect its officers from its own members, with the proviso that "the county superintendent of schools may serve as secretary of the committee, but shall have no vote."

Section 3311.31 contains the entire procedure for the county citizens committee, and reads in part as follows:

"A county citizens committee shall within one year after it shall have been created file with the superintendent of public instruction a report approving existing organization or a plan for the reorganization of school districts within the county. Copies of such reports shall also be filed with the county board of education and with each board of education whose territory is involved. All boards receiving such report may register approval or disapproval with the state superintendent of public instruction. The superintendent of public instruction may approve or disapprove any such plan, and may make any suggestions or modifications which he

deems necessary. Specific proposals for merging of districts involving only a portion of the county area may also be made.

“Upon the approval of the superintendent of public instruction and the county citizens committee, the county board of education at its next regular meeting shall by resolution request the county board of elections to submit the plan of reorganization to the electors, of the districts involved. If the superintendent of public instruction disapproves the plan and the citizens committee after reconsideration re-submits said plan in original or modified form, and the superintendent of public instruction continues to disapprove such plan, then a public meeting of the electors of the districts involved shall be called by the county superintendent of schools. If a majority vote of the electors present shall approve then the county board of education shall be authorized to arrange to place the issue on the ballot. If any proposed plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization in the new district proposed to be created, the reorganization shall be accomplished as provided by sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code but with no right of remonstrance nor limitation as to the year in which territory can be transferred. If, however, seventy-five per cent of all the qualified electors voting on such reorganization in any one of the districts involved vote in opposition to the reorganization, then that district shall not be included in such reorganization. \* \* \* .”

All of your questions seem to arise out of the portions of the sections above quoted, and they will be considered in order.

I. There is no provision in the statute authorizing the employment of a secretary for the committee or other assistants. It is true that Section 3311.36 grants the members of the committee mileage at the rate of ten cents per mile in going to and from meetings of the committee, payable out of the county board's fund, but it is significant that the legislature refrained from making any further allowances. No funds whatever are provided by the law for the operations of the committee either by way of employment of a secretary or for any other purpose. Nor does it appear that the superintendent of schools is under any obligation to act as secretary of the committee unless he sees fit to do so. If he does, the law authorizes the county board of education to give him such stenographic or clerical assistants as he requires, and I think it may be assumed that he might use such clerical assistants as he has, in the performance of his work as secretary of the committee.

2. As to the right of the county citizens committee to employ an attorney in the case of litigation, it may be said that the statutes make no provision whatever authorizing such employment nor do I find in the duties devolved by law upon the prosecuting attorney any obligation to furnish the committee with legal service. Again, it may be noted that the committee is entirely without funds, and has no right to look to anyone for an appropriation to pay such an expense as the employment of an attorney.

In this connection, I call attention to the fact that the law creating this committee, does not in any way purport to constitute it a body corporate or authorize it to sue or be sued as is usually done in setting up a public or quasi public body.

Furthermore, I find it difficult to conceive that such a committee would have any occasion to employ an attorney or be involved in litigation. None of its duties as outlined by the law, include the exercise of any power whatsoever or any discretion which could result in affirmative action in any way involving the rights of others. Its sole function is by way of recommendation.

3. Your third question is as to the meaning of that portion of Section 3311.31 supra, whereby the county superintendent is required to call a "public meeting of the *electors of the districts involved.*" The statute provides that if a majority of the electors present at such meeting approves the recommendations of the committee which the superintendent of public instruction has failed to approve, then "the county board of education shall be *authorized* to arrange to place the issue on the ballot." The question you raise about the electors who are to be called to this informal public meeting, is whether the call should be only to those resident electors who voted at the last general election, or should include all the electors. There is certainly nothing in the language of the statute that suggests such limitation, and plainly the plan of the statute in this respect suggests nothing more than a meeting attended by such of the electors as choose to come, whose action can have no legal effect except to authorize the county board to set in motion a formal vote of the electors at some future election.

As showing the informality of the whole procedure relating to this meeting of the electors, it is to be noted that while the duty is placed upon the county superintendent to call the meeting, there is no provision whatsoever as to the manner of the call, or for any notice of the meeting; or for the conduct of the meeting.

There does appear to be an obligation placed upon the county board, in view of the disagreement between the superintendent and the people of the districts involved, to see that the issue is placed on the ballot for approval or disapproval. The statute does not make it clear as to the electors who are to be entitled to vote at the formal election. It is stated that if "any proposed plan of organization is approved by at least 55% of all the qualified electors voting on such organization in the *new district* proposed to be created" then the reorganization shall be accomplished as provided by Section 33II.22, 33II.23, 33II.24 and 33II.26, Revised Code, but with no right of remonstrance.

In view of the obvious fact that this reorganization plan recommended by the citizens committee may involve changes all over the county, I find it difficult to determine what is meant by "55% of all the qualified electors voting on such reorganization in *the new district* proposed to be created." Manifestly, there may be a dozen new districts created, or there may be none; and there may be any number of districts whose boundaries are merely to be changed by subtraction and addition.

In undertaking to resolve the doubt as to the meaning of this provision of the law, we must consider the general purpose intended by the legislature. Plainly it was to supplement the specific powers given to county boards, by providing for a county wide survey and reorganization, brought about by a survey by a county wide citizens committee and by a consideration of its recommendations. Assuming that the plan recommended involved a number of the local and village districts, it seems to me certain that every district which would have its territory changed in any way either by adding or subtracting or perhaps by being entirely split up and given to other districts, would be "affected" and that the electors of every such district should be entitled to express themselves, both in the informal meeting and in the election which might follow.

There is no provision in the law for holding special meetings in each district. The county superintendent is required to call "a public meeting," and the vote of a majority of "the electors present" at such meeting will determine whether the disapproval of the superintendent of public instruction shall be acquiesced in or the issue put on the ballot. At this election a vote of 55% of the electors voting will result in the approval of the plan for *the entire county organization*, as submitted by the citizens committee.

At this point, enters the first reference to any separate voice that may be raised by a single district. It is provided :

“ \* \* \* If, however, seventy-five per cent of all the qualified electors voting on such reorganization in any one of the districts involved vote in opposition to the reorganization, then that district shall not be included in such reorganization.”

Plainly the reorganization would go into effect as to every other district involved in the plan.

4. Your fourth question is closely related to the one last considered. Here, you say that only part of district “A” is involved. If it is proposed by the plan to take any part away from district “A” and add it to some other district, it appears to me that it could hardly be said that only *part* of district “A” is involved. That certainly would involve all of district “A”, and should give the right to all the electors in the entire district to participate in the public meeting and the election referred to. Accordingly, it would be my answer to this question that the electors of the entire district would be entitled to be invited to the meeting in question, and to take part therein.

5. As to the provisions for voting and the manner of voting at the popular meeting, the statute is entirely silent. This meeting of the electors is, as I have already indicated, an informal meeting and it would appear that any mode it may choose to adopt would answer the purpose of the statute. In most informal organizations voting is commonly by voice or by raising hands, or by standing up. In some cases, if especially requested or ordered, it is by written ballot. In view of the obscurity of the law, this question is not capable of any direct answer.

6. As to the provisions by which the county superintendent is to determine whether or not the electors present at the meeting are entitled to participate, it may be said that while the statute requires the county superintendent to call the meeting, it does not impose upon him any duty or discretion to determine whether the persons present are electors or whether they are electors of the district involved nor is he authorized or required to take any action after they have expressed their will.

However, it does appear that that responsibility is cast upon the county board. Notwithstanding the language of the statute that the county board “shall be authorized” to arrange to have the issue placed on the ballot, I



consider that it becomes the duty of the board to do so. Otherwise, the county board by mere inaction could render all of the work of the citizens committee fruitless, and defeat the expressed desire of the electors of the entire county district. As a principle of statutory construction, it is well settled that directory provisions of a statute are to be considered as mandatory, if holding it to be merely directory would destroy or render ineffectual the obvious intent of the law. Sutherland on Statutory Construction, Sec. 5806; *Miller v. Lakewood*, 125 Ohio St., 152.

Accordingly, it would devolve upon the county board to determine by whatever means it may devise, that the persons voting at the meeting in question were electors and that a majority of them voted to approve the plan proposed by the citizens committee.

7. Question 7 involves a situation where a portion of one of the local districts of the Williams County district is located in Defiance County. I quote one of the paragraphs in Section 3311.30 *supra*, to this effect:

“Each county committee shall consist of nine persons *who are legal residents of the county* and who are not elected officials or paid employes of the public school system.”

(Emphasis added.)

This appears to limit the membership of the Williams County citizens committee to persons who are legal residents in Williams County, and therefore legal residents of Defiance County are not qualified. It should be noted, however, that this limitation would not extend to the rights of the electors residing in Defiance County who are within the Williams County school district.

In the case you present, it appears that the local district in question, though containing part of a township in Defiance County, is actually a part of the Williams County district. That being the case, it was presumably attached to Williams County district by proceedings had under Section 4831-13 of the General Code, now Section 3311.23, Revised Code. That section provides that the board of the county district to which such transfer is made may accept the transfer “and annex such territory to a contiguous local school district of the county school district.” Accordingly, the territory which you mention is a part of the Williams County district and if the proposed changes affect it, its electors would have a voice in the reorganization of the Williams County district, even though residing in Defiance County.

8. Your question is whether the enactment of this new law would deprive the county board of education from proceeding under the existing statutes which are left undisturbed, to make transfers of territory without awaiting the recommendation of a county citizens committee and without the procedure set out in Section 3311.31 *supra*. It will be noted that in the portion of Section 3311.31 which I have quoted, there is a provision that when the proposed plan of reorganization has been approved by a vote of 55% of the qualified electors, reorganization "shall be accomplished as provided in Sections 3311.22 *et seq.*" The new statute embodied in House Bill No. 125 certainly did not repeal those sections. On the contrary, it recognized them and required proceedings under them, but *after* the conclusion of the formal vote of the electors on the general plan.

Section 3311.22 authorizes the county board of education to transfer part or all of the territory comprising a local school district within the county school district to an adjoining local school district, and provides that if within thirty days after such action a majority of the qualified electors residing in the territory transferred voting at the last general election, file with the county board of education a written remonstrance, such transfer shall not take effect.

Section 3311.23 relates to a proceeding by the county board to transfer part or all of the territory of a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and provides in like manner that such procedure may be blocked by the filing of a similar protest.

If we concede to a county board the authority to take the actions last referred to while a proceeding under Section 3311.31 *supra* is in process of completion, then it is manifest that such board could virtually destroy that process by altering or abolishing local districts in a way that would confuse and perhaps destroy the general plan. Accordingly, I must conclude that pending the conclusion of action on such general plan, the powers of the county board would be suspended. If such plan should be defeated by vote of the electors, then of course, the board would have free right of action. And if such plan is adopted, I cannot see that the county board would be limited in its rights under the general laws to make further changes. There is nothing in the law that makes the general plan inviolate for any period.

In specific answer to the questions submitted, it is my opinion:

1. A county citizens committee appointed pursuant to the provisions of Section 3311.30 et seq. of the Revised Code is without authority to employ a secretary or other assistants; but the board may appoint the county superintendent to act as its secretary.

2. A county citizens committee appointed pursuant to Section 3311.30, Revised Code, has no authority to employ legal counsel.

3. When a meeting of electors is called as provided in Section 3311.31, Revised Code, to consider the plan for organization of the school districts of a county, as prepared by the county citizens committee, all of the electors residing in the districts affected by the plan are entitled to attend such meeting, and to vote on the approval of such plan at such meeting and at an election therefor held pursuant thereto.

4. If any part of a district is affected by such plan, the electors in the entire district are entitled to participate in such meeting, and to vote at an election thereafter held on the approval of such plan.

5. The procedure for voting at the meeting of electors provided for in Section 3311.31, not being provided for by law, the electors present may determine for themselves the mode of procedure.

6. In case the plan of organization of the schools of a county district, as recommended by the county citizens committee, pursuant to Section 3311.31, Revised Code, is disapproved by the superintendent of public instruction, it is the duty of the county superintendent to call a meeting of the electors of the districts affected by such plan, regardless of whether they voted at the last general election. However, such superintendent has no further responsibility in regard to such meeting and is not charged with the duty of ascertaining whether the persons attending and voting at such meeting are in fact electors of such districts, nor whether a majority has voted to approve such plan. The duty of so determining, and, in case the vote was favorable, of arranging for submission of the question at a formal election, devolves upon the county board of education.

7. Section 3311.30, Revised Code, provides that the nine members of the county citizens committee shall be legal residents of the county. Accordingly, where a local district of a county district includes territory in an adjoining county, a person residing in that portion of such local dis-

trict which is in such other county, is ineligible for membership on such committee.

8. Sections 3311.22 and 3311.23, Revised Code, authorizing a county board of education to make transfers of territory from one district to another, remain in force, but the authority to make such transfers is suspended pending final action on a plan of county wide reorganization prepared and filed pursuant to Section 3311.31, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General