

OPINION NO. 961**Syllabus:**

1. An exempted village school district may not, pursuant to the provisions of Section 3311.24, Revised Code, accept a petition requesting transfer of territory prior to the effective date of receiving such territory from an adjoining local school district.

2. A county board of education may not, pursuant to the provisions of Section 3311.22, Revised Code, accept a petition for transfer of territory or transfer territory of a local school district when such territory is a part of territory previously accepted by, but prior to the effective date of transfer to, an adjoining exempted village school district.

To: Everett Fahrenholz, Preble County Pros. Atty., Eaton, Ohio
By: William B. Saxbe, Attorney General, April 3, 1964

Your request for my opinion reads as follows:

"In December, 1963, the Preble County Board of Education transferred all of Dixon-Israel Local School District to Eaton Exempted Village School District. This action was taken after the November, 1963, election in which such transfer was approved by the voters of the district. The Eaton Board of Education accepted the transfer effective June 30, 1964. The Dixon-Israel School District is a part of the Preble County system and operates under the local board until the effective date of transfer.

"The residents of the portion of the Dixon-Israel District most distant from Eaton indicate desire to file a petition for transfer of their area to the adjacent College Corner School District.

"There is considerable question as to whether or not a petition for transfer may be filed in the present status of the District. Section 3311.24 provides for the transfer contemplated and stipulates a filing time, prior to April 1st of even numbered years. Dixon-Israel is not a part of the Eaton District until June 30, 1964. If a petition for transfer cannot be filed because the transfer to Eaton School District has not been completed, a difficult problem cannot seek a solution until 1966.

"I will appreciate your early opinion respecting the following question.

"May the Eaton Exempted Village School District accept a petition for the transfer of a part of the Dixon-Israel District to an adjoining School District and proceed in accordance with R.C. 3311.24 even though the effective date of merger is June 30, 1964?"

"In the event your answer to the first question is in the negative, 'may the Preble County Board of Education accept a petition for transfer, or proceed to make the transfer, under Ohio Revised Code 3311.22?'"

Section 3311.24, Revised Code, states in pertinent part:

"If the board of education of a city school district or of an exempted village school district deems it advisable to transfer territory from such district to an adjoining city or exempted village school district or to a county school district, or if a petition, signed by seventy-five per cent of the qualified electors residing within that portion of a city or exempted village school district proposed to be transferred voting at the last general election, requests such a transfer, the board of education of the district in which such proposal originates shall file such proposal together with a map showing the boundaries of the territory proposed to be transferred, with the state board of education prior to the first day of April in any even numbered year. The state board of education may, if it is advisable, provide for a hearing in any suitable place in any of the school districts affected by such proposed transfer of territory. The state board of education or its representatives shall preside at any such hearing.

"When such transfer is complete the legal title of the school property in the territory transferred shall be vested in the board of education of the school district to which the territory is transferred."

Your letter of request states the effective date of transfer of Dixon-Israel Local School District to Eaton Exempted Village School District is June 30, 1964. The Dixon-Israel Local School District will remain in existence until completion of the transfer on June 30, 1964. Section 3311.24, Revised Code, *supra*, relates only to city school districts and exempted village school districts. Until June 30, 1964, therefore, Eaton Exempted Village School District is without authority to transfer the territory of Dixon-Israel Local School District or to act upon petitions requesting the transfer of such territory.

I have been informed the proceedings to transfer all of Dixon-Israel Local School District were initiated by petition under the provisions of Section 3311.22, Revised Code. Section 3311.22, Revised Code, states, in pertinent part:

"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.

"If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included in a petition previously filed by electors no action shall be taken on such new petition.

"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."

In view of the pending transfer of all of Dixon-Israel Local School District territory, it is my opinion that no action can now be taken on a petition submitted pursuant to the provisions of Section 3311.22, Revised Code, proposing the transfer of part of such territory. In order to assure orderly transfers of territory, it is my opinion that the county board of education is also precluded from proposing such a transfer prior to June 30, 1964.

In answer to your questions, it is my opinion and you are so advised:

1. An exempted village school district may not, pursuant to the provisions of Section 3311.24, Revised Code, accept a petition requesting transfer of territory prior to the effective date of receiving such territory from an adjoining local school district.

2. A county board of education may not, pursuant to the provisions of Section 3311.22, Revised Code, accept a petition for transfer of territory or transfer territory of a local school district when such territory is a part of territory previously accepted by, but prior to the effective date of transfer to, an adjoining exempted village school district.