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TRANSFER OF TERRITORY ANNEXED TO MUNICIPALITY—  
STATE BOARD HAS AUTHORITY TO APPROVE TRANSFER  
OF ALL, NOT A PART, OF TERRITORY ANNEXED—§3311.06,  
RC.

## SYLLABUS:

Under the provisions of Section 3311.06, Revised Code, the state board of education does not have the authority to approve the transfer for school purposes of a part but not all of the territory which has been annexed to a municipality.

Columbus, Ohio, August 7, 1957

Hon. E. E. Holt, Superintendent of Public Instruction  
Department of Education, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Sometime ago the State Board of Education authorized the Superintendent of Public Instruction, as Executive Secretary of the State Board, to secure an opinion from your office concerning a question which we anticipated at that time. The question was not submitted at that time because the problem had not actually arisen but was only anticipated. Since that time, however, the problem has become an actuality and hence I would now respectfully call your attention to the provisions of Section 3311.06 of the Ohio Revised Code and request your opinion upon the following question:

‘Does the State Board of Education have the authority to approve the transfer for school purposes of a part but not all of the territory which has been annexed to a municipality?’

“The following example will serve to clarify the situation and to illustrate the need for such an opinion. Recently a portion of Warren Township School District of Trumbull County has been annexed to the city of Warren for municipal purposes. Up to the present time the Warren City Board of Education has not filed with the State Board of Education a request for this territory to be made a part of the Warren City School District. Presumably the Warren City Board of Education is indifferent as to whether or not the territory be made part of the city school district. However, a group of patrons, representing a fractional part of this annexed territory, has petitioned the State Board of Education to approve the transfer of that portion of the annexed territory to the city of Warren for school purposes. We do not know the attitude of the patrons in the remaining portion of the annexed territory as they have not expressed themselves one way or another. It has been the policy of the State Board of Education to not recommend transfer of territory for school purposes in connection with these annexations unless and until a request for such transfer is made either by the board of education of the municipality to which the territory has been annexed or by the resident electors residing in the annexed territory.”

Section 3311.06, Revised Code, to which you refer reads in part as follows:

“The territory include within the boundaries of a city, local, exempted village, or joint vocational school district shall be contiguous except where a natural island forms an integral part of the district.

“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. \* \* \**”  
(Emphasis added.)

This statute clearly shows that the approval of the state board of education, if given, must be approval as to all of the school district territory annexed. The phrase “the said territory” refers to the territory annexed to a city or village *in toto* and nothing contained in the statute permits the interpretation that the state board of education may approve the transfer of anything less than the whole of such territory.

In this respect it should be noted that the proviso relating to the state department of education was not introduced into Section 3311.06, Revised Code, until September 29, 1955. Prior to that time, territory annexed to a city or village automatically became a part of the city school district or the school district of which the village was a part, Board of Education v. Board of Education, 48 O.O. 256. That being the case, there could be no question arising as to the transfer of only a part of the territory annexed as is here presented. The legislative intent manifested at that time was that *all* territory annexed be transferred and I do not believe that the general assembly in enacting the proviso relating to the state board of education changed this intent. Said proviso was enacted solely for the purpose of permitting the state board of education to determine the feasibility of a transfer of annexed territory which comprises a part but not all of the territory of a school district and in the absence of more explicit language I cannot see where such proviso was intended to confer upon the state board of education authority to approve the transfer of less than all the territory annexed.

The general rule of statutory construction is that provisos are to be strictly interpreted, Sutherland, Statutory Construction, Section 4933. In Lessee of Allen v. Parish, 3 Ohio 187, 193, the purpose of a proviso is described as follows:

“A proviso is generally used in a statute to qualify, limit, or restrain the operation of general terms contained in a previous part of the section or act, *and not to introduce a distinct and independent proposition.*”  
(Emphasis added.)

Following this rule of strict interpretation and recognizing the fact that an affirmative answer to your question would result in the introduction of a distinct and independent proposition into the law as compared with its operation prior to September 29, 1955, it is my opinion and you are advised that:

Under the provisions of Section 3311.06, Revised Code, the state board of education does not have the authority to approve the transfer for school purposes of a part but not all of the territory which has been annexed to a municipality.

Respectfully,  
WILLIAM SAXBE  
Attorney General