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EDUCATION, ANNEXATION—STATE BOARD OF EDUCATION REQUIRED TO APPROVE TRANSFER OF SCHOOL DISTRICT TO CITY SCHOOL DISTRICT WHEN BOUNDARY CONTIGUITY IS INVOLVED AS PROVIDED IN §3311.06 RC.

SYLLABUS:

In the course of municipal annexation proceedings involving an area located in a school district other than that of the city concerned, where the boundaries of the annexed area, and those of the two school districts involved, are such that in one such district the boundaries are not contiguous, and where contiguity as to both school districts can be attained by a transfer of such isolated annexed area to the school district of the city concerned, it becomes the duty of the state board of education, under Section 3311.06, Revised Code, to approve such transfer.

Columbus, Ohio, November 19, 1957

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

Dear Sir:

Your request for my opinion reads as follows:

“Where there is annexed to a city in a single proceeding, three areas, and where two of the areas are part of a city school district other than that of the annexing city and are not contiguous to the remainder of said city school district, and where the third area, also a part of said city school district, other than that of the annexing city, is connected to the remainder of said school district by means of a creek, and where the school district of the annexing city completely surrounds the first two areas and lies between the third and the remainder of said school district, under such circumstances and in view of the requirement of Section 3311.06, R. C., that “the territory included within the boundaries of a city * * * school district shall be contiguous,” can the State Board of Education withhold their approval of the transfer of said territory to the school district of the annexing city upon the matter being submitted to them as required by said Section 3311.06, R. C.?”

Section 3311.06, Revised Code, under which the action here in question is sought, reads as follows:

“The territory included within the boundaries of a city, local, exempted village, or joint vocational school district shall be con-

tiguous 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. In event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that board’s decision shall be final. After the effective date of this section, no action with regard to the transfer of school district territory pursuant to annexation to a municipality shall be completed in any other manner than that prescribed by this section.”

Initially, I note your statement regarding a portion of the annexed territory being connected by a creek to the main portion of the school district from which a transfer is sought. It is probable that this cannot be deemed contiguous territory in view of the decision in Board of Education of Warren Township Rural School District v. Board of Education of Warren City School District, 121 Ohio St., 213, in which it was held that where one area was “connected” to another by a strip two feet long and three miles wide, there was no contiguity of territory within the meaning of then Section 4685, General Code, the prior statutory provision analogous to Section 3311.06, *supra*.

In any event it is clear that any action taken by the state board under authority of Section 3311.06, *supra*, to approve or deny the transfer here in question is a single action, and it must follow that even if that action includes one area which is, in fact, contiguous and two others which are not contiguous, even then the question would be raised, as to the whole action, whether it would be lawful for the board to act so as to continue a situation where the territory of a school district would not be contiguous. The question of the “connection” of such areas “by means of a creek” may, therefore, be disregarded in the resolution of your problem.

In the Warren Township Rural School case, *supra*, the court had for consideration the legality of the action of the county board of education

in making a certain transfer of territory from the rural district to a city district under authority of a statute which required contiguity of territory within the district. In that case, the county board had made the transfer in such a way as to leave in the rural district an area of some 80 acres, upon which valuable industrial properties were located, incidentally, which area was "connected" with the rest of the rural district only by the two-foot, three-mile-long strip referred to above. In that case, in the *per curiam* opinion the following statement appears, p. 217 :

"* * * Section 5685, General Code, provides: 'The territory included within the boundaries of a city, village or rural school district shall be contiguous except where an island or islands form an integral part of the district.'

"The county board of education in 1916 clearly violated that section in making changes in the boundaries of the districts, which left an 81-acre tract of land segregated from the township district and only connected therewith by a two-foot strip of ground nearly three miles in length. *The county board of education had no more right to leave that tract of land segregated from the main body of the township district than it would have had to take it away from the city district by direct and affirmative action. * * **"

(Emphasis added.)

In the case at hand, although the statute does not, with any great degree of clarity, provide any rules or standards to guide the state board, it would seem to be the duty of the board to observe the positive requirement of the statute that contiguity of territory within a school district be preserved. In this connection we may well paraphrase the language of the *per curiam* opinion in the Warren County School District case, *supra*, by concluding that "the state board has no more right to leave that tract of land segregated from the main body of the existing district than it would have to take it away from the district of the annexing city by direct and affirmative action."

In other words, it seems clear to me that the language which the court used in the Warren Township case makes it the duty of the board which is authorized to approve or reject, in cases of transfer of school territory, to preserve or attain contiguity of territory as to each district, to the extent that it has the power to do so; and that it matters not at all whether it is by affirmative action of approval or rejection, by omission, or otherwise.

Although you do not mention the matter, I am informed that the circumstances in the instant case, absent an approval of the transfer which

is sought, will involve an application of the rule stated in Opinion No. 7421, Opinions of the Attorney General for 1956, page 813. The syllabus in that opinion is as follows :

“When by a combination of taxing districts the minimum levies prescribed by Section 5705.31 (D), Revised Code, exceed the constitutional ten mill limitation, it becomes the duty of the budget commission to reduce these levies proportionately to bring the aggregate of them within the constitutional limitation.”

I am informed that the application of this rule in the case at hand will result in the loss of tax revenue of nearly \$35,000.00 to one of the school districts involved, and will result in tax revenue losses to the City of Columbus and Franklin County in a sum of nearly \$1,000,000.00 annually. It seems to me that the state board has some obligation to the city school district which would lose this annual revenue. Although I have indicated above that the standards and rules by which the board is to be guided are not too clearly set out in the statute, there are, nevertheless, definite standards in one respect. It will be noted, under the provisions of Section 3301.07, Revised Code, that the state board is required to exercise “policy forming, planning and evaluative functions for the public schools,” and that “it shall exercise leadership in the improvement of public education in Ohio.”

Moreover, under the provisions of Section 4, Article VI, Ohio Constitution, it would appear that the state board is the constitutional agency which is expected to execute the state’s policy on public education as set out in the constitution. One important point in that policy is stated in Section 2, Article VI, as follows :

“The general assembly shall make *such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state;* but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.” (Emphasis added.)

In the case at hand, the General Assembly has provided for a system of taxation for the support of the public schools, and a part of that system is the provision in Section 5705.31 (D), Revised Code, of a formula for the division of revenues from the real property tax among municipal, county, township and school subdivisions. That formula, as pointed out in Opinion No. 7421, *supra*, involves what are commonly referred to as the

mandated levies, a serious loss in which would be involved in the event the transfer here in question is not approved. Where the state board, either by approving a transfer, or withholding its approval, invokes the application of the rule in Opinion No. 7421, *supra*, and thereby throws a substantial tax revenue loss upon a school district, a serious question is raised whether the board is complying with the constitutional mandate to secure a "thorough and efficient system of common schools."

Where any action is taken by the board, relative to changes in the boundaries of school districts, that involves very considerable tax losses to other subdivisions which share these revenues, and where there is no showing that the efficiency of the schools in either district compellingly requires such losses to such other subdivisions, a very serious question is raised whether the board is not, in bringing about such tax revenue losses, abusing its discretion in the matter; and if the validity of the board's action should be challenged in litigation, I should not relish the task of defending its action in such a situation.

However this may be, it appears to me that the rationale of the decision in the Warren Township case must be considered dispositive of the question at hand; and the effect of that decision seems to be that the statutory requirement that the boundaries of a school district shall be contiguous makes unlawful any act or omission of a county or state board which would result in the violation of that requirement. In this view of the matter, it being clearly the duty of the board to act in conformity with the laws, it would seem that no discretion is given the board to deny the approval here in question.

Accordingly, in specific answer to your inquiry, it is my opinion that in the course of municipal annexation proceedings involving an area located in a school district other than that of the city concerned, where the boundaries of the annexed area, and those of the two school districts involved, are such that in one such district the boundaries are not contiguous, and where contiguity as to both school districts can be attained by a transfer of such isolated annexed area to the school district of the city concerned, it becomes the duty of the state board of education, under Section 3311.06, Revised Code, to approve such transfer.

Respectfully,
WILLIAM SAXBE
Attorney General