

## OPINION NO. 71-036

**Syllabus:**

The filing of a referendum petition pursuant to Section 3301.161, Revised Code, against the transfer of a local school district suspends not only the transfer order made by the Department of Education, pending the outcome of the vote thereon, but also the companion order of dissolution of such district.

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**To: Russell J. McMaster, Paulding County Pros. Atty., Paulding, Ohio**  
**By: William J. Brown, Attorney General, July 23, 1971**

You have requested my opinion regarding the effect of the filing of a petition of referendum on the status of school districts which the State Board of Education has ordered dissolved and transferred pursuant to Sections 3301.16 and 3301.161, Revised Code.

The questions arise in connection with the powers of the Department of Education to formulate and prescribe minimum standards for all elementary and high schools within the State, pursuant to Section 3301.07 (D), Revised Code, and to classify and charter school districts and individual schools in relation to such standards. Where it finds that a district or school fails to meet standards, it is empowered to revoke the applicable charter. As discussed in greater detail hereafter, a revocation may be followed by dissolution of a district and transfer of its territory but affected electors then become entitled to file a referendum petition to test the acceptability of the transfer, in which event the transfer order is held in abeyance pending the outcome of the election. Sections 3301.16 and 3301.161, supra. In this context, your questions are as follows:

"(1) Does the filing of the petition of referendum suspend the effect of both the order to dissolve the districts and the order to transfer the territory until after the results of the election, or does it suspend the transfer of territory alone until after the results of the election? (Do the words '. . . the order shall become void', in Revised Code 3301.16.1 refer to ". . . the issuance of an order to dissolve" or to the 'transfer order', or do they refer to both?)

"(2) If the filing of the petition of referendum is effective only to suspend the transfer of territory until after the election results, what is the present status of local school districts A, B and C pending the election outcome?

"(3) If local school districts A, B and C are deemed to be presently dissolved pending the outcome of the election on the transfer, do the present Boards of Education of A, B and C have any authority to act regarding matters concerning their respective local school districts which require board action, or are the Boards of Education dissolved also?

"(4) If the Boards of Education of A, B and C presently have no status or authority to act, who presently has the authority and status to act in their place and who must assume the responsibility?"

The principal issue you present is whether, under Section 3301.16<sup>1</sup>, supra, a referendum on transferring the territory of a school district also includes referendum on the dissolution of those districts, so that the filing of the referendum petition suspends the dissolution as well as the transfer.

The pertinent portions of Section 3301.16, supra, reads as follows:

"\* \* \* In case a school district charter is revoked pursuant to this section, the state board of education may dissolve the school district and transfer its territory to one or more adjacent districts. \* \* \* Except as provided in section 3301.161 [3301.16.1] of the Revised Code, the transfer ordered by the state board of education shall become effective on the date specified by the state board, but the date shall be at least thirty days following the date of issuance of the order.

"\* \* \*

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(Emphasis added)

Section 3301.161, supra, provides as follows:

"Within thirty days following the issuance of an order to dissolve a school district pursuant to section 3301.16 of the Revised Code, qualified electors residing in the area to be transferred and equal in number to a majority of the qualified electors voting at the last general election may file a petition of referendum against the transfer. A petition of referendum filed pursuant to this section shall be filed, processed, and voted upon as provided in section 3311.231 [3311.23.1] of the Revised Code. If a petition of referendum has been filed pursuant to this section, a transfer order issued pursuant to section 3301.16 of the Revised Code shall take effect thirty days after the

election on the petition of referendum if a majority of the qualified electors voting on the question vote in favor thereof. If a majority of the qualified electors voting on the question do not vote in favor thereof, the order shall become void." (Emphasis added)

The language of Section 3301.16, supra, indicates, by use of the conjunction "and", that a transfer is dependent upon a dissolution and that dissolution cannot occur without a simultaneous transfer. That relationship is continued in the first sentence of Section 3301.161, supra, which links "an order to dissolve a school district" with the referendum "against the transfer". It appears, therefore, from a consideration of Sections 3301.16 and 3301.161, supra, together, that the order to dissolve and transfer constitute a unitary transaction since the dissolution and transfer order follows the order to revoke and since neither could exist practicably without the other.

To construe the language of the Sections otherwise, as restricting the referendum to the transfer order only, would create an anomalous situation in which the district affected would be dissolved, yet the district obligations would remain as indebtedness; the property and funds would remain as an asset of the district and all would be in limbo. Substantial question would arise respecting the power of the board of education of the affected district to deal with the funds, property and indebtedness of the dissolved district during the interim. Students, teachers and citizens could not possibly be benefited but, rather, would be harmed.

Essentially, the problem is one of mechanics. An existing school district cannot just disappear. Some disposition must be made of its functions and transfer of them is a prerequisite consideration. Thus, in Section 3311.231, Revised Code, referred to in Section 3301.161, supra, careful provision is made for transfer of assets and liabilities, where school district lines are changed and where entire districts are transferred. In part, this is as follows:

"Upon the acceptance of territory by the receiving board or boards of education the county board of education offering the territory shall file with the county auditor of each county affected by the transfer and with the state board of education an accurate map showing the boundaries of the territory transferred.

"Upon the making of such transfer, the net indebtedness of the former district from which territory was transferred shall be apportioned between the acquiring school district and the portion of the former school district remaining after the transfer in the ratio which the assessed valuation of the original school district as of the effective date of the transfer. As used in this section 'net indebtedness' means the difference between the par value of the outstanding and unpaid bonds and notes of the school

district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption.

"Upon the making of such transfer, the funds of the district from which territory was transferred shall be divided equitably by the county board, between the acquiring district and that part of the original district remaining after the transfer.

"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."

In substance the dissolution procedure cannot be effectuated until after transfer has been determined. Since the mechanics of Section 3311.231, supra, are referred to in Section 3301.161, supra, it is reasonable to conclude that the latter was drafted in contemplation of the mechanical necessities delineated in the former. It follows that the critical issue for determination by the electorate in the referendum election is the issue of transfer. Dissolution, therefore, must depend on that decision.

Thus, in terms of the language of the operative statutory provisions, the avoidance of anomaly and related statutory procedures, I must conclude that a referendum petition suspends the order of the dissolution of a school district as well as the order of transfer of the district. In the light of this conclusion, it is unnecessary to discuss questions numbered two, three and four, above.

In specific answer to your questions, it is my opinion and you are so advised that the filing of a referendum petition pursuant to Section 3301.161, Revised Code, against the transfer of a local school district suspends not only the transfer order made by the Department of Education, pending the outcome of the vote thereon, but also the companion order of dissolution of such district.