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ANNEXATION OF SCHOOL DISTRICTS — ELECTION — COUNTY BOARD OF EDUCATION MUST CHANGE PROPOSAL IF 55% OF ELECTORATE SO PETITION — ANNEXATION MUST BE IN CONTIGUOUS SCHOOL DISTRICTS—§§ 3311.06, 3311.23, 3311.231, and 3311.26, R.C.

SYLLABUS:

1. Former Section 3311.23, Revised Code, was repealed by Senate Bill 278 (127 v. 204) effective January 1, 1958.

2. Where a county board of education has, pursuant to the provision of Section 3311.26, Revised Code, adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than 55% of the electors residing in one of such districts file with said board, pursuant to the authority of Section 3311.231, Revised Code, a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections as required by said Section 3311.231 and to disregard the original proposal of the board to create a new district. Opinion No. 1918 issued April 4, 1958 approved and followed.

3. Under the provisions of Sections 3311.06 and 3311.231, Revised Code, a school district may not be annexed to another district with which it is not contiguous.

Columbus, Ohio, June 5, 1959

Hon. Richard L. Davis, Prosecuting Attorney
Highland County, Hillsboro, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Pursuant to the respective requests of the Highland County Board of Education and of the Board of Education of Paint No. 2 Local School District, both of which I represent in my capacity as Prosecuting Attorney of Highland County, Ohio, I submit the following inquiry:

“April 8, 1959, the Highland County Board of Education passed a resolution proposing consolidation of certain districts in Highland County including Paint No. 2 Local School District and Paint No. 3 Local School District.

“April 16, 1959, a number of Point No. 2 district residents (which for the purposes herein shall be assumed to be in excess

of 75% of the qualified electors of said district) petitioned the Highland County Board of Education pursuant to 3311.231 R.C. to have placed upon the ballot at the forthcoming general election in November the issue of transfer of all of said district to the Greenfield Exempted Village District. Paint No. 2 District does not adjoin the Greenfield Exempted Village District, but the territory separating the two districts, Paint No. 1 District is submitting to the voters at the forthcoming general election the issue of transfer of their district to the Greenfield Exempted Village District.

“April 24, 1959, a number of Paint No. 3 district residents (which for the purposes herein shall be assumed to be in excess of 75% of the qualified electors of said district) petitioned the Highland County Board of Education pursuant to 3311.231 R.C. to have placed upon the ballot at the forthcoming general election in November the issue of transfer of all of said district to the Hillsboro City School District. Paint No. 3 District adjoins the Hillsboro City School District.

“Both of the above petitions have been checked for sufficiency of signatures by the Board of Elections and the proper boards have been notified of the proposed transfers as required by 3311.231 R.C. The Highland County Board of Education has informed me it is their intention to certify to the Board of Elections the proposal for consolidation before certifying either of the proposals of Paint No. 2 District or Paint No. 3 District residents.

“The following questions are presented.

“1. Is Section 3311.23 R.C. in effect or has said section been repealed?

“If said section has been repealed, the following questions become pertinent.

“2. If a County Board of Education certifies a proposal for consolidation to the Board of Elections pursuant to Section 3311.26 R.C., what are its legal duties with respect to petitions filed pursuant to Section 3311.231 by residents of a territory affected by such proposed consolidation?

“3. Can the residents of a school district which does not presently adjoin an exempted village school district petition to transfer to such exempted village school district pursuant to Section 3311.231 R.C.?”

1. Your first question may be promptly answered. Section 3311.23, Revised Code, clearly was repealed by Senate Bill 278 (127 v. 204) passed May 5, 1957. See Opinion No. 282, issued March 31, 1959.

2. Your second question is based on a rather involved statement of facts. The county board of education, acting under authority of Section 3311.26, Revised Code, and effective January 1, 1958, resolved to create a new school district including the territory of Point No. 2 and Paint No. 3 local districts. That section provides in part as follows:

“A county board of education may, by resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof. * * *”

There follows a required set of steps leading to the certification to the board of elections and submission to the electors of the several districts whose boundaries would be altered by the proposal. Said Section 3311.26 then proceeds as follows:

“* * * If the proposed district be approved by at least a majority of the electors voting on the proposal in each district whose boundary would be altered by the proposal, the county board shall then create such district effective as of the next succeeding July 1 following the election. * * *”

Your question as stated assumes that this proposition has already been certified to the board of elections, but the letter of the clerk of the county board attached to your communication, indicates that the proceeding has not reached that stage.

We look then at Section 3311.231, Revised Code. Here it is provided:

“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 not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district. Said petition shall be filed at the office of the county superintendent of schools. The county superintendent shall cause the board of elections to check the sufficiency of signatures on said petition and shall present the petition to the county board of education *at the next meeting of said board which occurs not later than thirty days following the filing of the petition. If no meeting is scheduled within that period, the superintendent shall call a special meeting of the board in accordance with section*

3313.16 of the Revised Code for the purpose of receiving the petition. * * *

“* * *

“If the proposal was initiated by petition and affects one or more entire districts *the county board shall, within sixty days following the filing of the petition, certify the proposal to the county board of elections* of such counties as will be affected by the proposal in the manner and for the purposes hereinafter stated. (Emphasis added)

Note that in every paragraph the duty of the board on receipt of the petition is emphasized by the word “shall.” Note too, that the procedure under Section 3311.26, *supra*, is based solely on the initiative of the board, while that under said Section 3311.231 is the expression of the wish of a substantial majority of all of the electors; your letter says “more than 75%,” in this particular case.

Bearing in mind that the board’s plan, if submitted to an election, must be approved by a majority in *each of the districts affected*, it would appear that that plan is doomed to almost certain defeat.

In answering a similar question, in Opinion No. 1918, Opinions of the Attorney General for 1958, issued April 4, 1958, my predecessor held that the county board should give consideration to the petition, and carry through the proceedings provided by law in reference thereto. In the course of that opinion, the writer gave the following excellent reason for his conclusion:

“After all, a petition of this character would represent the will of more than the majority of the entire electorate of the territory directly to be affected and should be entitled to consideration in preference to the arbitrary action of the board itself.”

The present statutes relating to transfers and changes of the territory of school districts, most of which underwent amendment in 1951, carry out the policy that was manifest in the laws in existence prior thereto. Then it was usually provided that changes might be made by order of the county board of education, but *subject to veto* by the filing, within a time limited, of a remonstrance signed by a majority of the electors. Under the amended laws the same principle is retained in that the changes, in order to become effective, must be approved by the electors in a referendum vote.

3. As to your third question, I call attention to Section 3311.06, Revised Code, reading in part:

“The territory included 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.”

I direct attention also to the opening sentence of Section 3311.231, *supra*, which authorizes only transfer of territory to an “*adjoining district*.” Since, according to your statement, Paint No. 2 district does not adjoin the Greenville Exempted Village District, the petition of its electors to be annexed thereto is without legal sanction and of no effect.

In specific answer to your inquiry, it is my opinion and you are advised:

1. Former Section 3311.23, Revised Code, was repealed by Senate Bill 278 (127 v. 204) effective January 1, 1958.

2. Where a county board of education has, pursuant to the provision of Section 3311.26, Revised Code, adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than 55% of the electors residing in one of such districts file with said board, pursuant to the authority of Section 3311.231, Revised Code, a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections as required by said Section 3311.231 and to disregard the original proposal of the board to create a new district. Opinion No. 1918 issued April 4, 1958 approved and followed.

3. Under the provisions of Sections 3311.06 and 3311.231, Revised Code, a school district may not be annexed to another district with which it is not contiguous.

Respectfully,

MARK McELROY

Attorney General