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A COUNTY BOARD OF EDUCATION HAS ADOPTED A RESOLUTION PROPOSING THE CREATION OF A NEW LOCAL SCHOOL DISTRICT, THE CREATION OF THE DISTRICT IS EFFECTIVE AT THE EXPIRATION OF THE THIRTIETH DAY AFTER THE ADOPTION OF THE RESOLUTION, UNLESS A PETITION OF REFERENDUM HAS BEEN FILED WITHIN THAT PERIOD—§3311.26, R.C. OAG NO. 6354, 1956.

SYLLABUS:

Where pursuant to Section 3311.26, Revised Code, a county board of education has adopted a resolution proposing the creation of a new local school district, the creation of the district is effective at the expiration of the thirtieth day after the adoption of the resolution, unless a petition of referendum has been filed within that period.

Columbus, Ohio, April 5, 1961

Hon. James Estill, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“The question which has arisen is concerning the proper interpretation of Section 311.26 R.C. and more specifically at what time under the language of this section does the newly proposed district become effective and in existence.”

The pertinent part of Section 3311.26, Revised Code, presently reads as follows:

“* * * The creation of a new local school district, as proposed by a county board of education under the provisions of this section, shall become effective on the thirtieth day after the adoption by the county board of the resolution proposing such creation unless, prior to the expiration of such thirty-day period, qualified electors residing in the area included in such proposed new district, equal in number to thirty-five per cent of the qualified electors voting at the last general election, file a petition of referendum against the creation of the proposed new district. * * *”

Accordingly, the creation of the new school district becomes effective *on* the thirtieth day after the resolution is adopted, unless a referendum petition is filed prior to the expiration of *such* thirty day period.

In the case described in your letter, the resolution was adopted by the board of education on February 9th. Thus, in that case, February 10th was the first day and March 11th the thirtieth day. (See Section 1.14, Revised Code.)

On reading the provisions of Section 3311.26, *supra*, it appears that there is a conflict as to the effective date of the creation. I say this because, under the computation above noted, the creation would become effective at the outset of the thirtieth day, while at the same time the section provides that the referendum petition may be filed within a thirty-day period. Obviously, the thirty-day period would not end until the expiration of the thirtieth day; in this case, at the expiration of March 11th. The question to decide, therefore, is which provision takes precedence.

Opinion No. 6354, Opinions of the Attorney General for 1956, page 185, to which you refer, dealt with the then existing language of Section 3311.26, Revised Code. At that time the pertinent language read:

“* * * Such action of the board shall not take effect if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election shall, within thirty days from the time such action is taken, file with the board a written remonstrance against such action.”

Regarding this provision, my predecessor held in the first paragraph of the syllabus:

“1. Where pursuant to the provisions of Section 3311.26, Revised Code, a new local school district is created by the county board of education, the newly created district becomes effective on the thirty-first day after the action of the county board provided no remonstrance as provided in said section has been filed.”

Since the rendering of the 1956 opinion, Section 3311.26, *supra*, was amended in 1957 (127 Ohio Laws, 204) and in 1959 (128 Ohio Laws, 510). The contents of the section have been changed considerably since 1956 and the pertinent language as to effective date of creation of a new district now reads as set forth at the outset of this opinion.

Admittedly, the present language is not as clear as that which my predecessor had before him in the 1956 opinion. As stated earlier, there now is some doubt as to which of two provisions should prevail. In reviewing the language used, however, I discern the clear cut intention of the legislature to allow a thirty day period in which a petition of referendum may be filed. Thus although there is doubt as to which provision should be followed, I am of the opinion that such doubt should be resolved in favor of the right of the qualified electors to file a petition of referendum within a thirty day period. Applying this conclusion to the instant case, it follows that the creation of the district in question was not effective until March 11, 1961 had expired.

In answer to your specific question, therefore, it is my opinion and you are advised that where pursuant to Section 3311.26, Revised Code, a county board of education has adopted a resolution proposing the creation of a new local school district, the creation of the district is effective at the expiration of the thirtieth day after the adoption of the resolution, unless a petition of referendum has been filed within that period.

Respectfully,

MARK McELROY

Attorney General
