

671

BOARD OF EDUCATION—HOLDOVERS AFTER TIME DUE FOR ELECTION HELDOVER FOR ONE FULL TERM—§3311.26, R.C.

SYLLABUS:

Where at an election held in 1955, following the organization of a local school district, and in compliance with Section 3311.26, Revised Code, two members of a local board of education were elected for a period of two years and three for a period of four years, and no election was held in 1957 to fill the expiring terms of the two-year members, they will hold over until December 31, 1961; and at the election to be held in November 1959 only three members shall be elected for four-year terms to succeed those whose terms expire December 31, 1959.

Columbus, Ohio, July 10, 1959

Hon. Bernard W. Freeman, Prosecuting Attorney  
Huron County, Norwalk, Ohio

Dear Sir:

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

“I should like to have your informal opinion on the questions which are presented at the conclusion of this letter after the fact summary. The following is the factual situation:

1. The South Central Local School District of Huron County, Ohio, was created June 4, 1955, and became effective July 5, 1955. Five members were appointed to the South Central Board of Education by the Huron County Board of Education.
2. In November of 1955 the following persons were elected as members of the South Central Local Board of Education, with terms commencing January 1, 1956:

Myrl K. Fife .....	2 year term
Harold W. Keiser .....	2 year term
Philip Lewis .....	4 year term
Ralph Robson .....	4 year term
Clark Hunter .....	4 year term

“One member, Mr. Keiser, resigned in 1956 and the remaining members appointed Ray Wallrabenstein to fill out the balance of his term.

3. The Huron County Board of Education took action on May 9, 1957, to create a new local school district by the merger of the South Central Local and the Shiloh Local School Districts.

4. On July 2, 1957, the Huron County Common Pleas Court dissolved the temporary restraining order affecting the new district and the Huron County Board of Education on that date declared the new district formed by the merger of the South Central and Shiloh Local School Districts and appointed a Board of Education for the new district, such new district was known as the Iroquois Local School District.

5. In November 1957 an election was held to name five members to the Iroquois Local School Board.

6. During the period of July 2, 1957, to December 11, 1957, the members of the former South Central Board (except Robson) continued to hold meetings, and at some time during that period declared Robson's place on the board vacant and appointed Aubrey Snapp to replace Robson.

7. On December 11, 1957, the Supreme Court of Ohio ruled the transfer of Shiloh to the Huron County School District invalid and all actions concerning the Iroquois School District subsequent thereto invalid. The members of the South Central Board met on December 16, 1957, to resume operation of the South Central District.

8. The terms of Hunter, Lewis and Snapp expire on December 31, 1959; Fife and Wallrabenstein are carry-over members, there having been no election in the South Central District in November, 1957, and their terms would have expired December 31, 1957.

"My first question, based on the above facts, is this: Should the terms of all five members be voted on at the November, 1959 election, or should the terms of Hunter, Lewis and Snapp only be voted on—that is, the terms of those that expire December 31, 1959?"

"My second question is: In the event all five members should be voted on, should the terms of Fife and Wallrabenstein be for a four-year term, commencing January 1, 1960, or should they be elected only to a two-year term?"

For the purpose of this opinion we may disregard names of the present and former members of the board in question, dealing only with the offices to be filled, and considering only the matters raised by your formal inquiries, to wit, the number of members of the board of the South Central Local School District who are to be elected at the November 1959 election and the terms for which they shall be elected.

Section 3313.01, Revised Code, reads as follows :

“In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in the territory composing the respective districts and shall be elected at large in their respective districts.”

Section 3313.08, Revised Code, reads as follows :

“If the number of members of a board of education of any city school district to be elected at large as fixed by section 3313.02 of the Revised Code is even, one half thereof shall be elected in the year preceding, and the remaining one half in the year following the calendar year divisible by four. *If such number is odd*, one half of the remainder, after diminishing the number by one, shall be elected in the year preceding, and the remaining number shall be elected in the year following the calendar year divisible by four. All members to be elected from odd-numbered subdistricts shall be elected at one election and all members from even-numbered subdistricts shall be elected at the alternate election.”

Section 3313.09, Revised Code, reads :

“The terms of office of members of each board of education shall begin on the first Monday in January after their election and each such officer *shall hold his office for four years*, except as otherwise provided by law.” (Emphasis added)

In this connection and as bearing particularly on the situation set forth in your letter, to wit, that the district in question was created in June 1955, I call your attention to the provision of Section 3311.26, Revised Code, then in force, which related to the creation of a new local school district and provided as follows :

“\* \* \* A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election *two members shall be elected for a term of two years* and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as members of the board of education of a local school district.”

It will be observed, therefore, that upon the creation of a new district, two members of a board of five were to be elected for a term of two years and three for a term of four years. This is the only instance in which a

member of a board of education can be elected for any other than a term of four years. There is no provision anywhere in the law which would authorize election for a lesser period to fill the unexpired term of a member who might have died or resigned.

1. Taking up your first question whether the terms of all five members should be filled at the forthcoming November election or should only the terms of the three who regularly expire December 31, 1959 be voted on, I think it should be noted that the terms not merely of those three, but also of the entire membership of the board will have expired on or before the end of 1959. Two of them actually expired December 31, 1957 but they have been held over pursuant to the provisions of Section 3.01, Revised Code, which reads as follows:

“A person holding an office or public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state.”

If, therefore, we should conclude that five members of the board must be elected at the forthcoming election, the question would arise how can the provision above quoted as to staggering the terms, be carried out, there being no authority in law to elect anyone for less than a term of four years.

It would appear that in the organization of the South Central District the provision of Section 3311.26, *supra*, was complied with by the election in November 1955 of two members for a two-year term and three for a four-year term.

That there was no election in 1957 to fill the expiring terms of these two-year members, was obviously the result of the order of the county board of education which had transferred that district to the newly formed Iroquois District, which continued until it was dissolved by the decree of the Supreme Court on December 11, 1957.

Plainly under the provisions of Section 3.01, *supra*, the members whose successors would normally have been elected in 1957 are carry-over members and under the law they carry over until their successors are duly elected and qualified.

A similar situation arose in 1917 which gave rise to Opinion No. 596, Opinions of the Attorney General for 1917, page 1676, the syllabus of which is as follows:

"1. Where an attempt was made to elect members of a school board at the November election in 1915, but said election was invalid, the members of said board whose terms would have expired on the first Monday of January, 1916, will hold until their successors are duly elected at the November election in 1919, and begin their terms on the first Monday in January, 1920.

"2. A vacancy does not occur in office where an incumbent is duly authorized to hold over and is legally qualified to perform the duties thereof."

That opinion was referred to with approval in Opinion No. 917, Opinions of the Attorney General for 1918, page 39. A portion of the syllabus of that opinion reads as follows:

"Where there is a failure to elect a member of a board of education for the short term under the provisions of the Jung-Small school board law in 1913, no such election can be had for such short term thereafter.

"In case there is no election for a member of a board of education, the old member will hold over for the full term of four years.

"\* \* \*

In the case of *State, ex rel. McGhee v. Strawsburg*, 96 Ohio St., 576, the court had before it a proceeding in quo warranto, in which it was sought to oust certain members of the local school board of Springfield. The case grew out of the attempt of the board of education of that city to reduce its membership from seven to five, pursuant to a statute then in existence, with the result that they found themselves with five members elected for four-year terms all expiring at the same time. The court in a *per curiam*, found that there were inconsistent provisions in the law under which this operation was held, and said:

"\* \* \* *The mere order in which members are elected seems quite immaterial, and that provision might well have been regarded by the board as only directory.* In the theory that all three of the defendants were in fact elected for four-year terms that is the only provision disregarded; and, as we have seen, it is a provision in direct conflict with other and more important and essential provisions of the law.

"\* \* \*" (Emphasis added)

Accordingly, the court refused to grant the writ ousting certain members of that board. I do not regard this case as establishing a rule differ-

ing from that indicated by the statutes which I have considered and sanctioned by the opinions of my predecessor. It appears to me quite plain that the two members of the board in question whose terms expired on December 31, 1957 and for whom no successors were elected, will hold over until December 31, 1961, and that at the forthcoming election in November 1959, three members will be elected for four-year terms.

2. In view of the above, it is unnecessary to discuss or reply to your second question.

Accordingly, and in specific answer to your question, it is my opinion and you are advised that where, at an election held in 1955 following the organization of a local district, and in compliance with Section 3311.26, Revised Code, two members of a local board of education were elected for a period of two years and three for a period of four years, and no election was held in 1957 to fill the expiring terms of the two-year members, they will hold over until December 31, 1961; and at the election to be held in November 1959 only three members shall be elected for four-year terms to succeed those whose terms expire December 31, 1959.

Respectfully,

MARK McELROY

Attorney General