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BOARD OF EDUCATION—VILLAGE OR LOCAL SCHOOL DISTRICT MAY BE DECLARED TO BE A CITY SCHOOL DISTRICT WHEN VILLAGE ADVANCES TO CITY STATUS—DECISION TO DECLARE SUCH CHANGE DISCRETIONARY WITH BOARD—§3311.07 R.C.

SYLLABUS:

Where a village had advanced to city status and where the major portion of the territory of such municipal corporation lies within the boundaries of a local or exempted village school district, the board of education of such district may declare, as provided in Section 3311.07, Revised Code, that such district shall become a city school district, but decision to do so is discretionary with such board.

Columbus, Ohio, March 6, 1958

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Westlake Board of Education has requested me to refer the questions listed below to you for an opinion.

“Westlake became a city with 5000 population on January 1, 1958. Immediately prior thereto it was a village and the village school district was an exempted village school district. Under Ohio Revised Code Sec. 3311.07 the board of education of such a school district may, by majority vote of its board of education, change to a city school district if and when the municipality has become a city. The statute cited uses the word ‘may’ in regard to the majority vote.

“First question: if such vote is not taken what kind of school district results?

“Second Question: if the required majority is not attained on vote taken, what result?

“Third Question: does such vote have to be taken under such facts?”

Prior to June 1, 1954, Section 3311.07, Revised Code, read in part:

“When a local or exempted village school district contains within its territorial boundaries the major portion of the territory lying within the corporate limits of a village advanced to a city, such school district shall become a city school district. * * *”

By the enactment of House Bill No. 128, 100th General Assembly, this language was changed to read as follows :

“When a local or exempted village school district contains within its territorial boundaries the major portion of the territory lying within the corporate limits of a village advanced to a city, such school district *may by a majority vote of the full membership of such board of education, declare that such local or exempted village school district shall become a city school district.* * * *” (Emphasis added)

It is thus to be seen that under the earlier statute the transition to a city school district was automatically effected by operation of law upon the advancement of a village to city status. Some effect must be given the new enactment noted above, and the only possible effect which can be given it is by regarding it as providing the board concerned with a choice of becoming a city school district or remaining a local or exempted village district. I conclude that this was the legislative intent, and is the legal effect of such enactment.

Although the point was not discussed in Opinion No. 5852, Opinions of the Attorney General for 1955, p. 523, the writer of that opinion evidently entertained a similar view of this provision, for in the second paragraph of the syllabus therein is the following statement :

“* * * 2. The right of the electors of a city which has passed from its status as a village by virtue of Section 703.06, Revised Code, to vote at all township elections, is in no way affected by such transition. The right of such electors to vote for members of a county board of education is in no way affected *until the board of education of the district in which it is situated proceeds under the authority of Section 3311.07, Revised Code, to declare such district to be a city district.* * * *” (Emphasis added)

Concluding as I do that action under this section is discretionary with the board, it follows (1) that if the board fails to act, whether by ignoring the matter or by failure to attain a majority vote for the change, the school district remains *in statu quo ante*, and (2) that there is no necessity for the board to put the matter to a vote.

Accordingly, in specific answer to your query, it is my opinion that where a village has advanced to city status and where the major portion of the territory of such municipal corporation lies within the boundaries of a local or exempted village school district, the board of education of such district may declare, as provided in Section 3311.07, Revised Code, that such district shall become a city school district, but decision to do so is discretionary with such board.

Respectfully,
WILLIAM SAXBE
Attorney General