

1152

EDUCATION ; COUNTY BOARD, STATE BOARD

1. ELECTION TO CONSOLIDATE—§ 3311.37 RC—ELECTORS ELIGIBLE TO VOTE, ELECTORS IN ANY DISTRICT ALTERED BY SUCH PROPOSAL.
2. PROPOSAL TO TRANSFER MADE BY STATE BOARD—§ 3311.38 RC—ELECTORS ELIGIBLE TO VOTE, THOSE RESIDING IN DISTRICT A PART OR ALL OF WHICH IS TO BE TRANSFERRED—PROVIDED BOARD OF DISTRICT HAS APPROVED.
3. CREATION OF A NEW SCHOOL DISTRICT—§ 3311.37 RC—EFFECTIVE DATE MAY BE SET BY STATE BOARD EXERCISING ITS DISCRETION.

SYLLABUS:

1. In an election held under the provisions of Section 3311.37, Revised Code, at which there is submitted a proposal initiated by the state board of education, to consolidate school districts, the electors eligible to vote are those residing in any local, exempted village, or city school district the boundaries of which would be altered by such proposal.

2. In an election held under the provisions of Section 3311.38, Revised Code, at which there is submitted a proposal, initiated by the state board of education, to transfer a part or all of a local, exempted village, or city school district, to a contiguous local, exempted village, or city school district, the electors eligible to vote on such proposal are those residing in the district a part or all of the territory of which is to be transferred; but such transfer may not be made by the state board of education without the approval of the board of education of the district to which the transfer has been proposed.

3. In creating a new school district under the provisions of Section 3311.37, Revised Code, following the election and the approval by the board of education of the "receiving district" as therein provided or in effecting a transfer of territory between school districts as provided in Section 3311.38, Revised Code, the state board of education may exercise a reasonable amount of discretion in fixing the effective date of its own actions.

Columbus, Ohio, October 11, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Amended Substitute Senate Bill 112 provides for the consolidation of school districts upon the initiation of a proposal by the State Board of Education (Section 3311.37 and Section 3311.38 of the Revised Code).

“Under the law, the State Board of Education must file a copy of the proposal with each district whose boundaries would be altered by the proposal or the modified proposal if it chooses to modify its original proposal.

“The law further provides for certification of either the original proposal or the modified proposal with the Board of Elections of the county or counties in which any of the territory of the proposed district is located for the purpose of having the proposal placed on the ballot at the next general election.

“The electors qualified to vote upon an original proposal or a modified proposal are the electors residing in the local, exempted village or city school districts whose boundaries would be altered by the proposal.’

“Since the school district, which would be transferred in whole or in part to another district, would have its boundaries altered by the proposal, there is no question but what the electors of such a district under this section of the law would be entitled to vote. But how about the receiving district? Are the electors of a receiving district entitled to vote on the matter of a transfer since the boundaries of the receiving district would be altered by the inclusion of the transferring school district or a part of such transferring school district? Your formal opinion on this question is respectfully requested.

“When a new district is created by a proposal of the State Board in which there is a consolidation of two or more districts, are we correct in assuming that the electors of each of such districts are entitled to a vote on the consolidation.

“Under the provisions of Section 3311.38 in determining which electors are qualified to vote upon an original or modified proposal, the Statute says these are to be :-

“‘the electors residing in the local, exempted village or city school districts, a portion of whose territory is proposed to be transferred. If the proposed transfer be approved by a majority of the electors voting on the proposal, the State Board, *subject to the approval of the board of education of the district to which the territory would be transferred shall make such transfer.*’

“Under the language cited, are we correct in assuming that in addition to the approval of the voters of the district, or that portion of the district to be transferred, the only other approval

necessary is the approval of the Board of Education of the receiving school district but not of the voters of such receiving school district.

“While Sections 3311.22 and 3311.23 provide for the effective date when the transfer of territory or the transfer of a local school district shall go into effect, namely, the next succeeding July 1st following the election, there is no such effective date provided for by Sections 3311.37 and 3311.38 for those consolidations or transfers initiated by the State Board of Education. Are we correct in assuming that when the provisions of the law, namely, Section 3311.37 or 3311.38 of the Revised Code, have been complied with that the consolidation or transfer is in effect? A formal opinion on this question is respectfully requested.”

In Section 3311.37, Revised Code, enacted effective August 27, 1957, provision is made for the *consolidation* of local, exempted village, and city school districts into *new* districts, and a procedure is provided which involved proposals therefor to be initiated by the state board of education, as follows:

“* * * After the adoption of recommendations growing out of any such study, the state board may proceed as follows:

“Propose by resolution the creation of a new school district which may consist of all or a part of the territory of two or more contiguous local, exempted village, or city school districts, or any combination of such districts. * * *”

Such proposals, after reference to the several boards of education affected, must thereafter be submitted to an election for approval, the statute providing in this respect:

“* * * The electors qualified to vote upon an original proposal or a modified proposal are the electors residing in the local, exempted village, or city school districts whose boundaries would be altered by the proposal. If a majority of those voting on the proposal vote in favor thereof in each district whose boundaries would be altered by the proposal, the state board shall create the proposed school district. * * *”

Obviously, where two or more districts are consolidated, the boundaries of each “would be altered by the proposal,” and the electors of all such districts would be eligible to vote in such election.

In Section 3311.38, Revised Code, provision is made for the *transfer* of school districts, or parts thereof, to contiguous districts, such proposals to be initiated by the state board of education. This section provides in part:

“* * * After the adoption of recommendations growing out of any such study the state board shall propose by resolution the transfer of territory, which may consist of part or all of the territory of a local, exempted village, or city school district to a contiguous local, exempted village, or city school district.

“The state board shall thereupon file a copy of such proposal with the board of education of each school district whose boundaries would be altered by the proposal and with the board of education of each county in which such school district is located.
* * *”

As to the electors eligible to vote on such proposals as are thereafter certified by the state board to the local board of elections, the statute provides:

“* * * The electors qualified to vote upon an original or a modified proposal are the electors residing in the local, exempted village, or city school district, a portion of whose territory is proposed to be transferred. If the proposed transfer be approved by a majority of the electors voting on the proposal, the state board, subject to the approval of the board of education of the district to which the territory would be transferred, shall make such transfer.
* * *”

Here again it is obvious that only those electors residing in the districts, “a portion of whose territory is proposed to be transferred,” are eligible to vote on such proposal; and it is obvious also that the “receiving district” in such case will necessarily act on such proposal only through the approval or rejection of the proposal by the board of such district.

As to the effective date of these actions, we have already noted in Section 3311.37, Revised Code, that when a consolidation has been approved by the electors “the state board shall create the proposed district.” We have noted too, in Section 3311.38, Revised Code, that where the electors of the district, a portion of which is being transferred, have approved the proposal and when it has been approved also by the board of the “receiving district,” “the state board * * * shall make such transfer.”

I find no provision in the law prescribing the date as of which such creation or transfer, as the case may be, shall be made by the state board, and there is no time limit within which such board must act. In this situation, I conclude that the state board has a reasonable amount of discretion in the matter; and specifically I conclude that if the state board should decide that administrative convenience requires that such creation or trans-

fer should be made effective on July 1 next succeeding the date of such approval by the electors, or approval by the board of the "receiving district," such decision could not be deemed an abuse of its discretion.

As to the provisions in Sections 3311.22 and 3311.23, Revised Code, for transfers and consolidations to become effective on the next succeeding July 1 "following such election", Section 3311.22, Revised Code, or after "the requirements provided herein have been met", Section 3311.23, Revised Code, both quite clearly refer to actions initiated by *county* boards of education, and they can have no application to actions initiated by the state board.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. In an election held under the provisions of Section 3311.37, Revised Code, at which there is submitted a proposal, initiated by the state board of education, to consolidate school districts, the electors eligible to vote are those residing in any local, exempted village, or city school district the boundaries of which would be altered by such proposal.

2. In an election held under the provisions of Section 3311.38, Revised Code, at which there is submitted a proposal, initiated by the state board of education, to transfer a part or all of a local, exempted village, or city school district, to a contiguous local, exempted village, or city school district, the electors eligible to vote on such proposal are those residing in the district a part or all of the territory of which is to be transferred; but such transfer may not be made by the state board of education without the approval of the board of education of the district to which the transfer has been proposed.

3. In creating a new school district under the provisions of Section 3311.37, Revised Code, following the election and the approval by the board of education of the "receiving district" as therein provided or in effecting a transfer of territory between school districts as provided in Section 3311.38, Revised Code, the state board of education may exercise a reasonable amount of discretion in fixing the effective date of its own actions.

Respectfully,

WILLIAM SAXBE

Attorney General