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1. SIGNATURES—PERSONS ACTUALLY VOTING IN LAST GENERAL ELECTION—VALID—PETITION TO TRANSFER TERRITORY FROM LOCAL SCHOOL DISTRICT OF COUNTY SCHOOL DISTRICT TO ADJOINING COUNTY SCHOOL DISTRICT OR ADJOINING CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT—PROPER PETITION—SEVENTY-FIVE PER CENT OF QUALIFIED ELECTORS RESIDING IN TERRITORY TO BE TRANSFERRED—SECTION 4831-13 G. C.
2. “GENERAL ELECTION”—ANY ELECTION HELD ON FIRST TUESDAY AFTER FIRST MONDAY IN NOVEMBER—SECTIONS 4785-3, 4831-13 G. C.

SYLLABUS:

1. Under the provisions of Section 4831-13, General Code, in the case of a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, the only signatures that are valid, so as to constitute a proper petition containing the names of 75% of the qualified electors residing in the territory sought to be transferred, are those of persons actually voting in the last general election.

2. By virtue of Section 4785-3, General Code, as contained in the Election Laws of this state, the term “general election” means any election held on the first Tuesday after the first Monday in November. Such meaning must be ascribed to said term in construing the provisions of Section 4831-13, General Code.

Columbus, Ohio, January 30, 1948

Hon. Oscar O. Raberding, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

Your request for my opinion reads:

“Kindly refer to Section 4831-13, second paragraph quoting: ‘and such petition is signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred voting at the last general election.’ Kindly advise me whether in your opinion this means that if a number of qualified electors amounting to 75% of the number voting at last general election or whether it means that you have to have 75% of the people who actually did the voting? And are we right that a general election is any November election? Or is it the even year election or is it the quadrennial presidential election?”

Attention will first be directed to the fact that on June 13, 1947 the 97th General Assembly, by virtue of Amended Senate Bill No. 75, passed an act which provides, as stated in part in the title thereof, “for the transfer of school district territory and for the creation of new school districts.” Under the terms thereof then Section 4831-13, General Code, underwent substantial revision and other related sections were also amended and in such amended form became effective September 25, 1947.

Section 4831-13, General Code, as it heretofore existed provided as follows:

“If the county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, or if a petition, signed by 75% of the *qualified electors* residing within the territory proposed to be transferred, requests such a transfer, and such petition is filed with the county board of education on or before *February first in an even numbered year*, the proposed transfer of territory shall be included in a forthcoming plan of territorial organization of the school districts to be made and adopted under the provisions of section 4831 of the General Code.”
(Emphasis added.)

Said section 4831-13, as amended, is somewhat lengthy and need be quoted only in part. At the outset thereof it is provided:

“If a county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. A county board of education may accept a transfer of territory from another county school district or from a city or exempted village school district and annex such territory to a contiguous local school district of the county school district.

“If there is filed with a county board of education prior to the first day of February in any even numbered year a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and such petition is signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred *voting at the last general election*, such county board of education shall, prior to the first day of April next following the filing of such petition with the county board of education, either adopt a resolution transferring the territory as requested by such petition or adopt a resolution objecting to the requested transfer.”

(Emphasis added.)

It is noteworthy that the new section, when referring to the petition therein provided for which is to be signed by 75% of the qualified electors, contains this phrase, to-wit: “voting at the last general election.” No such condition is to be discovered in the former section. It is manifest said words must have been used for a specific purpose. In respect of said new language you have asked whether it refers to “a number of qualified electors amounting to 75% of the number voting at the last general election or whether it means that you have to have 75% of the people who actually did the voting.”

Before answering this above question it might be pointed out that the phraseology above mentioned differs in meaning from that which, for example, will be found in Section 4785-91, General Code, as contained in the Election Laws, viz.:

“* * * Each nominating petition herein provided for shall be signed by qualified electors of the state, district, county, township, municipality or other subdivision of the state in which the candidate designated therein would be a candidate for election as an officer thereof, *not less in number than one per cent of the number of electors who voted for governor* at the next preceding

general election for the office of governor in the state or in the respective district, county, township, municipality or other subdivision; * * *

In passing it might also be observed that the provisions of Section 4785-90, General Code, are substantially to the same effect.

In view of this aforesaid express provision "voting at the last general election" it must necessarily follow the General Assembly meant precisely what it said so that the requirement of Section 4831-13 is, to use your language, "that you have to have 75% of the people who actually did the voting."

It may be suggested the General Assembly did not intend for the situation to be as has just been pointed out. In response to this suggestion it is pertinent to observe that the second paragraph of the syllabus in *Slingluff v. Weaver*, 66 O. S. 621, reads:

"But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

The Supreme Court has not thus far seen fit to depart from this rule of statutory construction. See *State, ex rel. Shaffer v. Defenbacher*, 148 O. S. 465, decided November 19, 1947.

The other phase of your inquiry is with regard to what constitutes a general election. Section 4785-3, General Code, is dispositive thereof as evidenced by paragraph "a." which states:

"a. The term 'general election' shall mean any election held on the first Tuesday after the first Monday in November."

Therefore, in specific answer to your inquiry you are advised as follows:

1. Under the provisions of Section 4831-13, General Code, in the case of a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, the only signa-

tures that are valid, so as to constitute a proper petition containing the names of 75% of the qualified electors residing in the territory sought to be transferred, are those of persons actually voting in the last general election.

2. By virtue of Section 4785-3, General Code, as contained in the Election Laws of this state, the term "general election" means any election held on the first Tuesday after the first Monday in November. Such meaning must be ascribed to said term in construing the provisions of Section 4831-13, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.