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“AREA AFFECTED” REFERS TO THE PORTION OF A SCHOOL DISTRICT TO BE TRANSFERRED—A PETITION FILED PROPOSING THE TRANSFER OF A SCHOOL DISTRICT TERRITORY MAY CONTAIN ONLY THE SIGNATURES OF QUALIFIED ELECTORS—§§3311.22, 3311.231, R.C., OPINIONS 3336, OAG 1962.

SYLLABUS:

1. The words “area affected” as appearing in the first paragraph of Section 3311.22, Revised Code, and of Section 3311.231, Revised Code, refer to the portion of the school district or districts proposed to be transferred.

2. A petition filed under either Section 3311.22 or 3311.231, Revised Code, proposing the transfer of school district territory may contain only signatures of qualified electors of the area proposed to be transferred.

Columbus, Ohio, November 9, 1962

Hon. Edward D. Mosser, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is respectfully requested with respect to the following matter:

“Sections 3311.22 and 3311.231 of the Ohio Revised Code provide in part as follows:

“‘. . . or qualified electors of the *area affected* equal in number to not less than 55% of the qualified electors voting at the last general election residing within that portion of a school district may propose. . .’ (emphasis added)

“The problem arises out of the meaning of the phrase ‘area affected’. Is the usage of the term ‘area affected’ synonymous with or equivalent in meaning to ‘that district or districts from which the territory is sought to be transferred’.

“I can appreciate that literal reading of the Statute would indicate that the phrase ‘area affected’ refers only to that part of a district which is sought to be transferred. However, analysis of this reasoning would indicate that situations could arise along

the border of districts whereby a very few, or perhaps even one elector, signing a petition could require the expense of an election, and that such an interpretation might lead to a futile but expensive balloting procedure, especially along the border of districts which had a substantial tax differential.

“If the Statute is to be read literally, can you inform me as to whether or not there is any other Statute of the school laws which would prevent the occurrence of the situation contemplated in the last paragraph.”

The first paragraph of Section 3311.22, Revised Code, reads as follows :

“A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to at least fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district, or districts proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts to an adjoining local school district or districts within the county school district.”

The first paragraph of Section 3311.231, Revised Code, reads as follows :

“A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.”

Your main question appears to be concerned with whether under the above provisions of law the petition may contain only signatures of qualified electors residing in the area to be transferred, as opposed to signatures from the district or districts from which the transfer is to be made.

As you state, where part of a school district is transferred the part not transferred could be said to be “affected” by the transfer. Reading all of the language of the paragraphs concerned, however, it appears to me that the words “area affected” as used therein should be construed to refer only to that part of the district sought to be transferred.

The intent of Sections 3311.22 and 3311.231, *supra*, as to a petition for transfer, appears to be to allow persons of a certain area to petition to

be moved to another district, and not to provide a method where petitioners of one area of a district could attempt to force another area of the district out of said district.

Also, in both sections concerned, it is clearly spelled out that the persons qualified to vote upon a proposal are the electors residing in the district or districts containing territory that is proposed to be transferred. It is significant that the legislature deemed it necessary to use this specific language in these instances rather than merely the words "area affected," as if those words were intended to refer to the entire district or districts involved, such specific language would have been unnecessary.

I thus conclude that the words "area affected" refer only to the portion proposed to be transferred, and that a petition under either Section 3311.22 or Section 3311.231, Revised Code, may thus contain only signatures of qualified electors of the area sought to be transferred.

As to whether very few (or even one) electors might present a proposal for transfer by petition, such is indeed possible under the statutes in question since the number of signatures required is based solely upon the number of qualified electors voting at the last general election *in the area proposed to be transferred*. Such an area might possibly contain only one such qualified elector, in which case his signature would constitute the necessary fifty-five per cent. On this point, I stated in the second paragraph of the syllabus of Opinion No. 3336, Opinions of the Attorney General for 1962, issued on October 9, 1962:

"2. Where under Section 3311.22 or Section 3311.231, Revised Code, a petition of transfer of part of a school district is filed with the county superintendent of schools, and the petition is signed by one person, the petition is sufficient if the one signature is equal in number to at least fifty-five per cent of the qualified voters voting at the last general election within that portion of the school district proposed to be transferred."

I might note in passing that even if I were to adopt the construction that the words "area affected" refer to the entire school district or districts from which the transfer would be made, such construction would not prevent the filing of petitions with few, or even one, signatures in certain cases. The *number* of signatures required would still be only fifty-five per cent of the qualified electors voting at the last general election *residing within the portion proposed to be transferred*.

Concluding, therefore, it is my opinion and you are advised:

1. The words "area affected" as appearing in the first paragraph of Section 3311.22, Revised Code, and of Section 3311.231, Revised Code, refer to the portion of the school district or districts proposed to be transferred.

2. A petition filed under either Section 3311.22 or 3311.231, Revised Code, proposing the transfer of school district territory may contain only signatures of qualified electors of the area proposed to be transferred.

Respectfully,

MARK McELROY

Attorney General