

**OPINION 65-1**

**Syllabus:**

1. A referendum petition circulated pursuant to the provisions of Section 3311.231, Revised Code, is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by Section 3501.38, Revised Code.

2. In a referendum election held pursuant to Section 3311.231, Revised Code, all the resident electors of the district from which territory is proposed to be transferred are eligible to vote. (Opinion No. 1973, Opinions of the Attorney General for 1958, approved and followed).

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**To: Dennis J. Callahan, Lawrence County Pros. Atty., Ironton, Ohio**  
**By: William B. Saxbe, Attorney General, January 7, 1965**

Your request for my opinion poses two questions as follows:

"1. The referendum petition presented and accepted as valid by the Lawrence County Board of Education and circulated by three (3) circulators was not notarized or signed by the circulators as such. Does this invalidate the petition?

"2. Since this proposal has been certified to the Board of Election in Lawrence

and Gallia Counties, who is eligible to vote on the issue?

"a. The people of the area to be transferred?

"b. The people of the entire Fairland School District?

"c. The people of the Hanna Trace Local School District, Gallia County, who would be receiving this territory?"

The answer to your first question is found in Section 3501.38, Revised Code. That section reads, in pertinent part, as follows:

"All declarations of candidacy, nominating petitions, or other petitions presented to or filed with \* \* \* a board of elections or with any other public office for the purpose of \* \* \* holding of an election on any issue shall, in addition to meeting the other specific requirements prescribed in the sections of the Revised Code relating thereto, be governed by the following rules:

"\* \* \* \* \*"

"(E) Every petition paper shall bear the affidavit of the circulator that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

"\* \* \* \* \*"

Although Section 3501.38, Revised Code, does not specify that a petition is invalid where the circulators fail to affix their affidavit, it must be assumed that a petition not fulfilling the requirements of that section is invalid. If this were not so, there would be little reason for establishing such requirements.

The answer to your second question is found in the provisions of Section 3311.231, Revised Code, which provides the general authority for transfers of territory from local school districts to city, exempted village or adjoining county districts and which sets forth the procedures to be followed in making such transfers. This was noted in Opinion No. 1973, Opinions of the Attorney General for 1958, page 225. Branch 2 of the Syllabus of Opinion No. 1973, supra, reads as follows:

"In an election held pursuant to the provisions of Section 3311.231, Revised Code, the electors qualified to vote are all of the electors residing in the districts, part or all of

whose territory is proposed to be transferred."

(Emphasis added)

In your letter you have set forth the text of a resolution adopted by the Lawrence County Board of Education, which resolution states that the territory to be transferred is now a part of the Fairland School District. Following the statement in Branch 2 of the Syllabus of Opinion No. 1973, supra, I must conclude that the electors of the entire Fairland Local School District are entitled to vote in the proposed election.

Therefore, it is my opinion, and you are advised that:

1. A referendum petition circulated pursuant to the provisions of Section 3311.231, Revised Code, is invalid if it does not bear the affidavit of the circulator or circulators as prescribed by Section 3501.38, Revised Code.

2. In a referendum election held pursuant to Section 3311.231, Revised Code, all the resident electors of the district from which territory is proposed to be transferred are eligible to vote.

(Opinion No. 1973, Opinions of the Attorney General for 1958, approved and followed).