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## SYLLABUS:

Where a member of a county board of education submits his unconditional resignation to the board at a meeting thereof, a vacancy on the board exists under Section 3313.11, Revised Code, upon such submission, and the resignation may not thereafter be withdrawn. Opinion No. 822, Opinions of the Attorney General for 1923, approved and followed.

Columbus, Ohio, February 6, 1963

Hon. Dennis J. Callahan  
Prosecuting Attorney  
Lawrence County  
Ironton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have received a request from the Lawrence County Board of Education wherein they ask whether a written resignation submitted to the board and later withdrawn by the member shall be considered as accepted or actually withdrawn. The facts as stated by the Clerk of the Board are as follows:

‘A member of the Lawrence County Board of Education at a special meeting on December 10th, 1962, sub-

mitted his resignation to the board, and the resignation was read by the clerk. The Board of Education did not take any action on the resignation, and the clerk of the board filed the resignation in the safe.

'On December 20th, 1962, the board member who resigned on December 10, requested his written resignation, and the clerk of the Lawrence County Board of Education gave the member his written resignation.

'On December 22nd, 1962, at the regular meeting of the Lawrence County Board of Education the question was raised as to whether a board member could hand in a resignation on December 10th, and then at a later date on December 20th withdraw his resignation, prior to the the regular board meeting of December 22nd.'

"From further inquiry I have determined that the member concerned was attending a special meeting of the board, called for the purpose of appointing a member to fill a vacancy in the unexpired term of a deceased member. The special meeting was called to order by the President, and at that time the board member in question was appointed to act as President. Motion was made to appoint a new member to the Board to fill the aforementioned vacancy, and after a second was received and upon roll call the majority of the members present voted approval of the new member. At this time the member in question handed to the actual President a letter of resignation as a member of the Lawrence County Board of Education and the clerk read the resignation to members present. Thereafter, the member who submitted the written resignation made motions and participated in further actions by the board during this meeting. At a later meeting the member in question was present and participated in the meeting. Although the clerk had read the letter of resignation, it apparently was not made a part of the permanent records of the board.

"Now the question has arisen as to whether the resignation could be withdrawn, and whether or not this member in question is at present a member of the board. After reading Section 3313.11, together with 1923 OAG, page 668 and 1951 OAG, #851, and also 44 O.J. 2nd, 164 through 167, together with footnotes, it would seem that a conflict might arise as to the situation as herein before mentioned. I should therefore, appreciate your clarifying by an opinion stating whether the member herein concerned is actually a member of the board, and should appreciate an answer at your earliest convenience. If further information is desired, please contact me by phone or letter."

Section 3313.11, Revised Code, deals with vacancies in any board of education and provides that a vacancy may be caused by resignation. That section reads as follows:

“A vacancy in any board of education *may be caused* by death, nonresidence, *resignation*, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district, or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, not earlier than ten days after such vacancy occurs. A majority vote of all the remaining members of the board may fill any such vacancy for the unexpired term.” (Emphasis added)

In Opinion No. 851, Opinions of the Attorney General for 1951, page 631, the then attorney general considered the question whether a resignation by a member of a board of education must be accepted by the board in order to create a vacancy. The first paragraph of the syllabus of that opinion answers that question, stating:

“1. Unless otherwise provided by statute, the resignation of a public officer, whether or not such resignation be accepted, creates a vacancy, at least to the extent of giving jurisdiction to appoint or elect a successor. *Reiter v. State*, 51 Ohio St., 74.”

The instant case has an added element, however, in that the person who resigned attempted to withdraw the resignation after it was submitted. Also, that person participated in the meeting at which he submitted his resignation, after the same was submitted, and also participated as a member at a later meeting.

In considering a somewhat similar situation, one of my predecessors held in Opinion No. 822, Opinions of the Attorney General for 1923, page 668:

“An unconditional resignation submitted by a member of a county board of education to take effect immediately, being fully transmitted and filed with such board, the remaining members of which are authorized to fill any vacancies therein, will become effective immediately upon its filing and a vacancy then exists.

“When such resignation has been fully transmitted and filed and a vacancy created, such resignation cannot thereafter be withdrawn.”

At page 669 of the 1923 opinion, it is said:

“The rule of law in Ohio relative to the acceptance of a resignation from office has been clearly defined in the case of *Reiter v. State, ex rel. Durell*, 51 Ohio State, p. 74, the first paragraph of the syllabus being as follows:

‘By the rules of the common law, a resignation of an office does not take effect, so as to create a vacancy, until such resignation is accepted by the proper authority; but the common law in this regard is not in force in this state, to its full extent, and here a resignation without acceptance creates a vacancy to the extent at least of giving jurisdiction to appoint or elect a successor, unless otherwise provided by statute.’

“It is assumed from the statement you submit that the resignation was an unconditional one to take immediate effect and was fully transmitted and duly filed with the county board of education, the remaining members of which board are authorized to fill any vacancy therein (General Code section 4748). There being in the instant case no other provision by statute, it is believed such resignation became effective immediately upon its filing, without acceptance or other affirmative action.”

Your request for opinion does not specifically state that the resignation was unconditional to take immediate effect, but in the absence of any information to the contrary, I assume that said resignation did not provide that it would take effect at some future date and, therefore, was to take effect immediately. Also, although the person in question did continue to serve as a member after his resignation was submitted, he obviously did this on the assumption that the resignation was not effective until formally accepted; but under the rule of the *Reiter* case, *supra*, the resignation was effective upon its submission. Further, although the letter of resignation was not made a part of the permanent records of the board, there appears to be no doubt that it was submitted to the board.

As to the instant case, therefore, I can only conclude that upon the submission of the resignation on December 10, 1962, a vacancy occurred on the board of education, which vacancy the board was authorized to fill at its next regular or special meeting,

held not earlier than ten days after the occurrence of the vacancy, and the attempt of the person concerned to withdraw said resignation was without validity.

In summary, therefore, it is my opinion and you are advised that where a member of a county board of education submits his unconditional resignation to the board at a meeting thereof, a vacancy on the board exists under Section 3313.11, Revised Code, upon such submission, and the resignation may not thereafter be withdrawn. Opinion No. 822, Opinions of the Attorney General for 1923, approved and followed.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General