

OPINION NO. 904**Syllabus:**

A petition for transfer filed by electors pursuant to Section 3311.231, Revised Code, takes precedence over a later resolution filed by a county board of education under authority of Section 3311.26, Revised Code.

- - - - -

To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio
By: William B. Saxbe, Attorney General, March 9, 1964

Your recent request for my opinion gives me the following chronology of facts:

1. Resident electors of local school district "A" petitioned to have the entire district transferred to an adjoining school district, which will be called "B".
2. The petitions were filed with the county superintendent of schools.

3. The superintendent took the petitions to the county board of elections.
4. The county board of education, at a special meeting resolved to consolidate local school districts "A", "C" and "D" into a new school district, which will be called "E".
5. The county board of elections removed some signatures (duplicates, etc.) from the petitions but still found the required fifty-five percent and returned the petitions to the county superintendent.
6. The county superintendent delivered the petitions to the county board of education at a meeting (which was not the earlier special meeting).
7. At this meeting, the county board of education removed some signatures from the petitions in response to affidavits of resident electors who had signed and then removed other signatures sua sponte as improper because of various reasons.

You have posed these questions:

1. Which section (3311.231 or 3501.38) of the Revised Code controls removals of signatures?
2. Which proceeding (transfer petition or consolidation resolution) takes precedence?

The rule at common law is that a person may cause his signature to be removed from a petition at any time before official action is taken on the petition. The State, ex rel. Muter, et al. v. Mercer County Board of Education, 112 Ohio App. 66, 72. This rule has been modified by statute in Ohio. Section 3501.38, Revised Code, effective January 1, 1964, reads as follows:

"All declarations of candidacy, nominating petitions, or other petitions presented to or filed with the secretary of state or a board of elections or with any other public office for the purpose of becoming a candidate for any nomination or office or for the 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:

"(A) Only electors qualified to vote on the candidacy or issue which is the subject of the petition shall sign a petition. In registration territory each signer shall be a registered elector. The facts of qualification shall be determined as of the date when the petition is filed.

"* * *

* * *

* * *

"(H) Any signer of a petition may remove his signature therefrom at any time before the petition is filed in a public office by striking his name therefrom; no signature may be removed after the petition is filed in any public office.

"(I) No alterations, corrections, or additions may be made to a petition after it is filed in a public office."

The sixth paragraph of Section 3311.231, Revised Code, first became effective July 28, 1959, and reads as follows:

"Signatures on a petition of transfer or petition of referendum may be withdrawn up to and including the above mentioned meeting of the county board of education only by order of the board upon testimony of the petitioner concerned under oath before the board that his signature was obtained by fraud, duress, or misrepresentation."

Since the removal of signatures upon request of the signers failed to meet the tests and conditions in either statute I conclude that the removals were invalid. This renders your first question academic but I do note in passing that the provision in Section 3311.231, Revised Code, is of specific application and, accordingly, would appear to control here over the provisions of Section 3501.38, Revised Code, which is a statute having general application.

As to the removals sua sponte, I can find no authority either in Chapter 3313, Revised Code, or anywhere else for such action, and I conclude that these removals, too, were invalid.

It follows from the foregoing that the petitions still contain all signatures that were present when the petitions left the county board of elections.

Consideration will now be directed to your second question.

The initial action was the filing of the petition for transfer pursuant to Section 3311.231, Revised Code, and the question is what effect, if any, this filing has on the subsequent adoption of the resolution of the county board of education. The answer requires an examination by outline of Section 3311.231, Revised Code.

Transfers of territory pursuant to Section 3311.231, Revised Code, may be commenced either by a resolution of the county board of education or by petitions of resident electors. (If the county board commences the proceeding, the proposal is effective in something over thirty days unless a referendum petition is filed, in which case there must be a vote taken.) Petitions for transfer are filed with the county superintendent of schools, and that officer causes the county board of elections to check the sufficiency of the signatures. If the petitions are approved by the board of elections, the county superintendent presents them to the county board of education within thirty days of their original receipt by him. The county board of education then "promptly" certifies the petitions to the appropriate boards of election so that the question may be put to a vote at least sixty days after the county board of education receives the petitions. If the question receives a favorable vote from a majority of those voting, the county board of education makes the transfer at any time before the next July first but subject to the approval of the receiving city or exempted village board of education (or the approval of the county board of education in the case of a transfer to a county school district). The receiving board of education has thirty days in which to accept or

reject the transfer. A rejected transfer is appealable to the state board of education; that body can reject the appeal if adequate facilities are found in the area. (That body formerly was able to assign students to other districts if inadequate facilities were found in the area, but this authority has expired by its own terms.) A rejected appeal of a rejected transfer concludes the proceeding. Likewise, the acceptance of the transfer concludes (for the purpose of this analysis) the proceeding.

The seventh paragraph of the section bears quoting in full and reads as follows:

"If a petition is filed with the county board of education which proposes the transfer of a part or all of the territory included either in a petition previously filed by electors or in a resolution of transfer previously adopted by the county board of education, no action shall be taken on such new petition as long as the previously initiated proposal is pending before the board or is subject to an election."

It will be noted from a reading of this provision that in proceedings under this section the proposal first in point of time takes precedence over later proposals. It will also be noted that the General Assembly has, throughout Chapter 3311, Revised Code, given to the electors a voice in proceedings to transfer territory or consolidate school districts thereunder -- at least equal to that of boards of education -- either by way of an initiating petition or a petition of referendum.

The resolution of the county board of education proposing a consolidation of existing school districts is pursuant to Section 3311.26, Revised Code. This is the only section on the subject of creating a new local school district from existing local school district territory, and the county board of education commences the proceeding with a resolution. Copies of the resolution go to each board of education that would be affected by the creation of a new district. The new district is created thirty days after the resolution unless the electors file a referendum petition with the county superintendent of schools. A referendum petition is certified from the next regular meeting of the county board of education to the county board of elections. That body causes the question to be put to a vote at an election which is at least sixty days after the county board of education's meeting. If the voters approve, the county board of education creates the new district before the next July first. For the purpose of our analysis it is sufficient to note that the proceeding is virtually concluded with either an approval at the election or a lack of a referendum petition.

In Opinion No. 1918, Opinions of the Attorney General for 1958, I concluded as shown by the second branch of the syllabus:

"2. If, pursuant to Section 3311.22, Revised Code, a county board of education has, by resolution duly adopted, proposed a transfer of territory from one or more local school districts to an adjoining district or districts within the county school district, and the preliminary procedure prescribed in said section looking to a

submission of the proposition to the electors of the districts affected, is still in process, and such proposition has not yet been certified to the board of elections, and a petition of electors duly signed is presented to such county board praying for a different plan of re-arrangement of part or all of such territory, the county board should give consideration to such petition and should carry out the procedure with reference thereto as prescribed in said Section 3311.22, Revised Code."

In arriving at this conclusion I reasoned: "I do detect in the law an imputation that the county board should give attention to the wishes of the electors, even though the board is given authority to proceed on its own initiative." This conclusion was approved and followed in Opinions No. 572 and 694, Opinions of the Attorney General for 1959. The second branch of the syllabus in Opinion No. 572 reads:

"2. Where a county board of education has, pursuant to the provision of Section 3311.26, Revised Code, adopted a resolution proposing to create a new school district by consolidating two or more districts, and before such proposal has been certified to the board of elections for submission to the electors, more than 55% of the electors residing in one of such districts file with said board, pursuant to the authority of Section 3311.231, Revised Code, a petition praying to be annexed to an adjoining exempted village district, it is the duty of said county board to certify the proposal of such petition to the board of elections as required by said Section 3311.231 and to disregard the original proposal of the board to create a new district. Opinion No. 1918 issued April 4, 1958 approved and followed."

If this conclusion is correct, and I have no cause to question it here, it follows a fortiori that a petition by electors filed pursuant to Section 3311.231, supra, prior in time to a resolution by a county board of education pursuant to Section 3311.26, supra, takes precedence over such resolution. Certainly there is no indication that the legislature intended to give a priority of importance to board resolutions under the one section over petitions of electors under the other section. It logically follows, therefore, that the proposal first in point of time, here, has precedence.

In specific answer to your questions, therefore, it is my opinion and you are advised that a petition for transfer filed by electors pursuant to Section 3311.231, Revised Code, takes precedence over a later resolution filed by a county board of education under authority of Section 3311.26, Revised Code.