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## SYLLABUS:

1. A county board of education may by resolution propose a prospective transfer of territory under Section 3311.231, Revised Code, where reasonable to an orderly transition from one school district to another.

2. Territory which is the subject of a resolution or petition of transfer under Section 3311.231, Revised Code, does not pass or vest in the acquiring school district for any purpose until the effective date of the transfer.

Columbus, Ohio, March 13, 1963

Hon. Robert O. Hamilton  
Prosecuting Attorney  
Union County  
Marysville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A local school district *N* was proposed for transfer to exempted village school district *M* by the county board of education in November with the ‘effective date’ to be July 1, 1963. In December at the expiration of thirty days the board of education of *M* exempted village district accepted said transfer with the effective date of July 1, 1963. Districts *M* and *N* are adjoining.

“A petition is now being presented to the county board under Section 3311.231 with the requisite number of signatures from local school district *W*, which is adjoining

to local school district *N* but does not adjoin the original boundaries of exempted village school district *M*.

“My question is whether exempted village school district *M* is now an ‘adjoining’ school district to local school district *W* as required in the first paragraph of Section 3311.231, Revised Code.”

From the facts you have related in your letter of request I assume the proposed transfer of local school district *N* to exempted village school district *M* was made under Section. 3311.231, Revised Code.

I also assume that the proposal was by resolution of the county board and the thirty day period to which you refer is the period given electors to file a petition of referendum against such transfer.

Section 3311.231, Revised Code, provides in material part:

“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.

“A county board of education adopting a resolution proposing a transfer of school territory under this section shall file a copy of such resolution together with an accurate map of the territory described in the resolution, with the board of education of each school district whose boundaries would be altered by such proposal. Where a transfer of territory is proposed by a county board of education under the provisions of this section the county board shall, at its next regular meeting that occurs not earlier than the thirtieth day after the adoption by the county board of the resolution proposing such transfer, adopt a resolution making the transfer as originally proposed unless, prior to the expiration of such thirty-day period, qualified electors residing in the area proposed to be transferred, equal in number to a majority of the qualified electors voting at the last general election, file a petition of referendum against such transfer.

As you have observed the first requirement to a transfer of school territory under this section is that the school districts affected be adjoining. Whether or not, in the situation you have outlined in your request, school district *M* adjoins school district *W* (a question considered below) would seem to depend upon whether the county board can by resolution effect a transfer to take place at a future date.

The statute is not explicit on this point. Section 3311.231, *supra*, does provide with regard to proposed transfers advanced by petition that if approved by a majority of the electors voting "the county board of education shall make such transfer at any time prior to the next succeeding July 1."

While arguably this expression of specific authority in the case of transfer by petition can be construed as excluding like authority where the proposal is by resolution of the county board of education, I do not think this was intended by the legislature. Rather I think the specific authority to make a transfer anytime prior to the July 1 next succeeding an election was intended to give to a county board of education a degree of control otherwise lacking in transfers proposed by petition. Control which is impliedly not lacking in transfers by resolution.

I can see no other reason for such expression of authority in the one instance and not the other and I would assume that an orderly transition would dictate that the county board of education and the receiving board of education together have some control of the situation.

The tenor of the statute in its entirety lends support to this construction. Both the division of the funds and the division of the indebtedness are pro-rated between the acquiring district and the district remaining after the transfer "upon the making of such transfer." Language more compatible with discretionary action than with an automatism actuated by some procedural occurrence.

I therefore conclude that a county board of education may by resolution propose a transfer of territory under Section 3311.231, *supra*, to be effective at a future date. I further conclude however, that a prospective transfer is limited to a reasonable time in which



Code, where reasonable to an orderly transition from one school district to another.

2. Territory which is the subject of a resolution or petition of transfer under Section 3311.231, Revised Code, does not pass or vest in the acquiring school district for any purpose until the effective date of the transfer.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General