

**OPINION NO. 80-105****Syllabus:**

A board of education of an exempted village school district may vote to become a local school district pursuant to R.C. 3311.09; however, such school district may not thereafter regain "exempted village school district" status by vote pursuant to R.C. 3311.08 because R.C. 3311.34 prohibits the creation of exempted village school districts under R.C. 3311.08 after June 1, 1954.

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**To: J. David Webb, Paulding County Pros. Atty., Paulding, Ohio**  
**By: William J. Brown, Attorney General, December 31, 1980**

I have before me your request for an opinion concerning an apparent conflict between R.C. 3311.08 and 3311.34. You ask, in particular:

"Could the Board of Education of an Exempted Village School District vote to become a local school district, pursuant to Section 3311.09 of the Ohio Revised Code; and then sometime thereafter regain its 'Exempted Village School District' status by vote pursuant to Section 3311.08 of the Ohio Revised Code; or would Section 3311.34 prohibit the resumption of the status as an Exempted Village School District?"

R.C. 3311.09 explains how an exempted village or city school district may become a local school district. By a majority vote of the full membership of a board of education of an exempted village school district and upon the approval of the county board of education, such exempted village school district may become part of the county school district and subject to the supervision of the county board of education. R.C. 3311.09. Once an exempted village school district has declared that it will be supervised by the county board of education, it shall be known as a "local school district" until such status has been changed. Therefore, as contemplated by the first part of your request, a board of education of an exempted village school district may vote to become a local school district pursuant to R.C. 3311.09.

R.C. 3311.08 makes provision for the exemption of a local school district from the supervision of the county board of education and states that a school district so exempted shall be known as an "exempted village school district." This general scheme has been in existence since the enactment in 1943 of G.C. 4830-7, which was the predecessor to R.C. 3311.08. 1943-1944 Ohio Laws 475, 504 (H.B. 217, eff. May 28, 1943). R.C. 3311.08 currently provides in pertinent part:

When the board of education of a local school district notifies the county board of education on or before the first day of May in any year, that it has adopted, by a majority vote of its full membership, a declaration that such local school district shall be exempt from the supervision of the county board of education, such local school district shall be exempt from the supervision of the county board of education for the school year commencing the first day of July following the date of such notification.

The local school district so exempted from the supervision of the county board of education shall be known as an "exempted village school district" until its status as an exempted village school district has been changed.

In apparent conflict with R.C. 3311.08, R.C. 3311.34 prohibits the creation of exempted village school districts after June 1, 1954. R.C. 3311.08 states that "[a]fter June 1, 1954 no exempted village school district shall be created under section 3311.08 of the Revised Code." Am. H.B. 128, 100th Gen. A. (1953) (eff. June 1, 1954) enacted R.C. 3311.34, which was "intended to do away for the future with the creation of exempted village school districts." 1955 Op. Att'y Gen. No. 5736, p. 441, 448. One of my predecessors said of R.C. 3311.34: "[u]ntil the enactment of Section 3311.34, Revised Code, which provides in substance that after June 1, 1954, no exempted village districts may be created, such districts were created pursuant to Section 3311.18, Revised Code." 1958 Op. Att'y Gen. No. 1973, p. 225, 231.

R.C. 3311.34 clearly nullifies the provisions of R.C. 3311.08 which permitted the exemption of a local school district from the supervision of a county board of education prior to June 1, 1954, and seemingly repeals by implication the provisions of R.C. 3311.08 on the basis that R.C. 3311.34 is the later expression of the legislative will.<sup>1</sup> R.C. 1.52(A) (later expressions of the legislature will control

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<sup>1</sup>It should be noted that R.C. 3311.08 was amended by Am. Sub. H.B. 44, 113th Gen. A. (1979) (eff. Jan. 16, 1980). However, the stated purposes of Am. Sub. H.B. 44 have no significant relation to the provisions of R.C. 3311.08. The extent of the amendment to R.C. 3311.08 was to eliminate the reference to "clerk" of the board of education by substituting "treasurer" in its stead. This mere change in phraseology was part of a comprehensive scheme to upgrade the qualifications of the position of school board treasurer, pursuant to which all references to "clerk" of a school board throughout the chapters of the Ohio Revised Code are being replaced with the term "treasurer." Therefore this systematic substitution of phraseology within the last paragraph of R.C. 3311.08 made no substantive change in the law, and did not indicate a legislative intent to nullify the implied repeal.

where two statutes are in irreconcilable conflict). The language of R.C. 3311.34 is obviously irreconcilable with any attempt to utilize the provisions of the earlier statute, R.C. 3311.08, to create an exempted village school district after June 1, 1954.

It is, therefore, my opinion, and you are so advised, that a board of education of an exempted village school district may vote to become a local school district pursuant to R.C. 3311.09; however, such school district may not thereafter regain "exempted village school district" status by vote pursuant to R.C. 3311.08 because R.C. 3311.34 prohibits the creation of exempted village school districts under R.C. 3311.08 after June 1, 1954.