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1. EDUCATION, BOARD OF—IN ABSENCE OF LEGISLATIVE DIRECTION MAY ADOPT REASONABLE METHOD TO ASCERTAIN TOTAL NUMBER OF PERSONS WHO SATISFY QUALIFICATIONS PRESCRIBED BY SECTION 4831-1 G. C.—NEWLY CREATED LOCAL SCHOOL DISTRICT.
2. A DECEASED PERSON OR ONE WHO MOVED FROM NEWLY CREATED SCHOOL DISTRICT FAILS TO MEET QUALIFICATIONS OF ELIGIBLE SIGNER—TENDS TO REDUCE TOTAL NUMBER OF SIGNATURES.
3. SIGNERS TO A REMONSTRANCE MAY DELETE THEIR NAMES—SIGN A LATER PETITION PRIOR TO END OF THIRTY DAY PERIOD ALLOWED FOR FILING OF REMONSTRANCE.
4. DELETION OF NAMES ON REMONSTRANCE BY MEANS OF LATER PETITION WOULD TEND TO REDUCE NUMBER OF SIGNATURES ON REMONSTRANCE—POSSIBILITY OF DEFEATING PURPOSE OF REMONSTRANCE.

SYLLABUS:

1. In the absence of legislative direction, the board of education may adopt a reasonable method of ascertaining the total number of persons who satisfy all the qualifications prescribed by Section 4831-1 of the General Code.
2. A person becoming deceased or having moved from a newly created school district fails to meet the qualifications of an eligible signer, as provided for in Section 4831-1 of the General Code, and as a result thereof tends to reduce the total number of signatures.

3. Under Section 4831-1, General Code, signers to a remonstrance may delete their names by means of signing a later petition before and up to the end of the thirty day period allowed for the filing of the remonstrance.

4. The deletion of names on a remonstrance by means of a later petition would tend to reduce the number of signatures on said remonstrance with a possibility of defeating the purpose of same.

Columbus, Ohio, November 16, 1949

Hon. Jack H. Critchfield, Prosecuting Attorney
Wayne County, Wooster, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Wayne County School Board, under the authority authorized by Section 4831-1 of the General Code, consolidated three local school districts into one newly proposed district in this county and within the 30-day time period, as provided by the aforementioned section, a remonstrance petition was circulated within the new proposed district registering protest against such consolidation. Within the required time such petition was duly filed with the Board of Elections.

"This office would appreciate a formal opinion from your office as to the following questions:

"1. How is the total number of eligible voters determined under Section 4831-1?

"2. Under such section, if the amount is determined by the number of qualified electors residing in the proposed district voting at the last general election, what effect on the total number of signatures required on a petition of remonstrance does a voter being deceased or moving from such district have upon the total number of required signatures on such petition?

"3. A counter-petition was circulated by parties sponsoring such consolidation and signed by parties favoring such circulation and requested that their names be deleted from the original petition of remonstrance.

"(a) What legality is there for a petition of this type and what effect would such petition have upon the original petition of remonstrance?

"4. Is it legal for people to have their names removed from an original petition by a counter-petition?"

It is noted in your first question submitted that you use the word "voters." It is true that so far as the election laws are concerned a voter

is a qualified elector, however, for the purpose of your question I must assume that you meant the word "signers." You can readily see the necessity for such assumption in that the statute hereinafter quoted qualified the word "elector" by requiring those signers to have voted at the last general election.

Section 4831-1 of the General Code provides:

"A county board of education may create a new local school district from one or more local school districts or parts thereof, and in so doing shall make an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. When a new local school district is created within a county school district, a board of education for such newly created district shall be appointed by the county board of education. The members of such appointed board of education shall hold their office until their successors are elected and qualified. A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election two members shall be elected for a term of two years and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as is provided by law for the election of members of a board of education of a local school district."

Sutherland, in his work on Statutory Construction, Vol. 2, Section 4919, at page 424, says:

"So far as the interpretation of a statute is concerned, courts have said that there are four kinds of terms: common, technical, legal, and trade or commercial. Neither the common nor the technical nor the legal nor the trade or commercial meaning will prevail where it would be contrary to the legislative intent. * * *"

Considering the language used in Section 4831-1, supra, it becomes apparent that the word "residing" is the key to your question. What is the meaning of the word "residing"?

In Webster's New International Dictionary the word "reside" is defined as:

“To dwell permanently or continuously; to have a settled abode for a time.”

It is also true that the words “reside” and “live” are sometimes used synonymously; however, in the instant question the word “residing” is preceded by the words “qualified elector,” which clearly shows that the legislature intended that there be a permanent abode for a period of time.

It is further said in Sutherland, Statutory Construction, Vol. 2, page 468, that:

“Statutes should always be drafted in the present tense for the statute is applied not as of the date of enactment but as of the date of enforcement. * * * ”

When was Section 4831-1, supra, put into operation in so far as this school district was concerned? There can be no question that such took place at the time the county board of education took action. It is only logical, therefore, that the time to ascertain the eligible signers to a remonstrance would be during that thirty day period following such action of the county board.

It is also said in Sutherland, Statutory Construction, Vol. 2, page 414, that:

“ * * * Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act.”

It necessarily follows, therefore, that the total eligible signers must be those who have their legal residence within the transferred territory and who voted at the last general election. However, since the legislature did not prescribe the mode of determining the eligible signers, the board, in the exercise of its discretion, should adopt some reasonable method of ascertaining the total number of persons who meet those qualifications. After ascertaining the total number of persons who meet such qualifications, it then becomes a matter of checking the names of the signers of the remonstrance against such total names, and if a majority of the names of those qualified to sign appears on said remonstrance, the newly created district fails to exist.

As to your second question, and in view of what has been previously said, I can come to only one conclusion and that is, when an eligible signer dies, or moves from the district, he ceases to meet the qualifications

required by Section 4831-1, *supra*, and the total signers required by said section is reduced in like manner.

Now as to your questions relating to remonstrance and the withdrawal of names from same: Said questions have been the subject of numerous opinions from this office, and the opinions so rendered have been based on the decisions of the court in the case of County Board of Education of Putnam County, et al. v. Board of Education, 112 O. S. 108, and the case of Neiswander et al. v. Brickner, et al., 116 O. S. 249.

The general law as laid down in the case of County Board of Education of Putnam County v. Board of Education, 112 O. S. 108, at page 113, reads:

“We have no doubt that in the given case the signers to the remonstrance could have withdrawn their names before and up to the end of the 30-day period. It is only when the 30-day period has elapsed that the number of names upon the remonstrance is definitely fixed. The remonstrance must be placed in the hands of the county board of education within thirty days from the time of creation of the new school district by the county board, but the remonstrance cannot be considered as filed until the 30-day period has elapsed. Names could no doubt be added to the remonstrance within that time by qualified electors, and names could also be cancelled upon the remonstrance within that time, if such cancellations were made by the original signers. * * * ”

In the case of Neiswander, et al., v. Brickner, et al., 116 O. S. 249, Judge Allen, at page 253, said:

“It is true that the earlier Ohio cases above cited, as pointed out in County Bd. of Education of Putnam County v. Bd. of Education, 112 Ohio St., 108, * * * relate to the filing of petitions instead of to the filing of remonstrances. However, so far as the right to withdraw signatures is concerned the principle they announce directly applies. It is a right generally enjoyed by one who casts a vote to change his vote, or by one who is authorized to state in writing his position of affirmance or dissent upon public questions to withdraw from or change that statement of position. This can be done in meetings of Congress, state legislatures, city councils, and all legislative bodies, and is based upon the general proposition that the right to register an opinion in a vote includes the right to withdraw that registry of opinion. It is true that in the case of a vote cast at a general election, the complexity of the voting procedure and the vast number of names involved make it impracticable for the voter to revoke his ballot. In the instant case, however, we see no reason for departing from the general rule announced in County Board of Education of Putnam County v. Bd. of Education, 112 O. S. 108. * * * ”

It is true that there have been many changes in the school laws since the rendition of the above decisions, but in so far as same relate to the filing of remonstrance and the effect thereof, no substantial change has been made.

The counter-petition to which you make reference is not quite clear. I am assuming that when you say "circulated by parties sponsoring such consolidation" you mean the board of education; that on said petition names are found not only of those persons who signed the remonstrance but others who approved of the board's action. I am unable to find any law that provides for a "counter-petition." However, in view of what has heretofore been said, if the board in circulating or causing to be circulated such a petition is using this method to ascertain the attitude of eligible signers in the proposed district, and it is clear that those who previously signed the remonstrance are now specifically requesting that their names be deleted from same, it is my opinion that such a petition may be accepted by the board in determining a majority of eligible signers.

In so far as such petition relates to the signers of the remonstrance, the withdrawal of their names would tend to reduce the number of signatures on the remonstrance with a possibility of defeating the purpose of the same.

In view of the foregoing, it is my opinion that:

1. In the absence of legislative direction, the board of education may adopt a reasonable method of ascertaining the total number of persons who satisfy all the qualifications prescribed by Section 4831-1 of the General Code.

2. A person becoming deceased or having moved from a newly created school district fails to meet the qualifications of an eligible signer, as provided for in Section 4831-1 of the General Code, and as a result thereof tends to reduce the total number of signatures.

3. Under Section 4831-1, General Code, signers to a remonstrance may delete their names by means of signing a later petition before and up to the end of the thirty day period allowed for the filing of the remonstrance.

4. The deletion of names on a remonstrance by means of a later petition would tend to reduce the number of signatures on said remonstrance with a possibility of defeating the purpose of same.

Respectfully,

HERBERT S. DUFFY,
Attorney General.