

OPINION NO. 1043

Syllabus:

1. A petition for transfer under Section 3311.24, Revised Code, must contain the signatures of seventy-five per cent of the qualified electors residing in the territory proposed to be transferred who actually voted in the last general election.

2. The determination of the sufficiency of the signatures on a petition filed pursuant to Section 3311.24, Revised Code, is a matter for the city or exempted village board of education of the district in which the proposal originates, and it is not incumbent upon the State Board of Education to ascertain whether a petition filed with it is signed by the required number of qualified electors.

3. A person signing a petition under Section 3311.24, Revised Code, may not cause his name to be removed after the petition has been filed with the State Board of Education pursuant to this section.

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To: E.E. Holt, Superintendent of Public Instruction, Department of Education, Columbus, Ohio

By: William B. Saxbe, Attorney General, May 13, 1964

Your request for my opinion reads, in pertinent part, as follows:

"The State Board of Education requests your opinion on the following questions:

1. Must a petition submitted under Section 3311.24 of the Revised Code bear the signatures of 75% of the qualified electors residing within the territory proposed to be transferred who actually voted at the last general election?
2. Is it incumbent upon the State Board of Education to ascertain whether the petition is signed by a sufficient number of qualified electors or voters?
3. If the answer to question number 2 is yes, how should the State Board of Education ascertain such facts?
4. May a person signing such a petition withdraw, by request, his name from the petition?

Section 3311.24, Revised Code, authorizes transfers of territory from a city school district or an exempted village school district to an adjoining city or exempted village school district or to a county school district. It provides in pertinent part:

"If the board of education of a city school district or of an exempted village school district deems it advisable to transfer territory from such district to an adjoining city or exempted village school district or to a county school district, or if a petition, signed by seventy-five per cent of the qualified electors residing within that portion of a city or exempted village school district proposed to be transferred voting at the last general election, requests such a transfer, the board of education of the district in which such proposal originates shall file such proposal together with a map showing the boundaries of the territory proposed to be transferred, with the state board of education prior to the first day of April in any even numbered year. The state board of education may, if it is advisable, provide for a hearing in any suitable place in any of the school districts affected by such proposed transfer of territory. The state board of education or its representatives shall preside at any such hearing."

Your first question stated in the alternative is: must a petition for transfer under Section 3311.24, *supra*, contain the signatures of 75% of the electors voting in the last general election in the territory (and who are still qualified electors of the territory), or is it sufficient if the petition is signed by qualified electors equal in number to not less than 75% of those voting in the last general election. Phrased differently, must a petitioner have voted in the last general election or is the reference to the last general election for the purpose only of determining the number of qualified electors in the territory.

A literal reading of the language in question compels the conclusion that the petition must contain the signatures of qualified electors who actually voted in the territory in the last general election. And, while the rule of literalness should not be used to defeat the obvious purpose of an enactment, I feel constrained to apply it to the language in question.

I am persuaded that this result was intended first because the General Assembly, in the enactment of comparable sections, has made it abundantly clear when a reference to the last general election is for the purpose only of a numerical determination of the number of electors in a territory. I refer to Sections 3311.22 and 3311.231, Revised Code. Section 3311.22, Revised Code, provides to the extent material:

"* * *qualified electors of the area affected equal in number to at least fifty-five

per cent of the qualified electors voting at the last general election residing within that portion of a school district or districts proposed to be transferred * * *."

(Emphasis added)

Section 3311.231, Revised Code, reads the same except that the language "not less than" is used instead of "at least."

This comparative language adds strength to the normal rule of statutory construction that the legislature must be assumed to know the meaning of words and to have used the words of a statute advisedly. See Lewis v. Petroleum County, 92 Mont. 563, 17 P (2d) 60; in Re Opinion of Justices, 303 Mass. 631, 22 N.E. (2d) 49.

Further support for this conclusion is found in Iddings v. Board of Education of Jefferson County School District, 155 Ohio St., 287, in which it was held that the language "if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election" found in Section 4831-1, General Code (Section 3311.26, Revised Code), required the signatures of persons who actually voted at the last general election. It was stated at page 290:

"It has been so frequently stated as to become axiomatic that the meaning and intent of a legislative enactment are to be determined primarily from the language itself. The plain provisions of a statute must control. If there is no ambiguity therein there is no occasion to construe or interpret. To construe or interpret what is already plain is not interpretation but legislation, which is not the function of courts. When the meaning is plain from the language employed, an attempt to construe it only tends to make ambiguous that which is simple and clear. The statute provides that to be effective the remonstrance must be by a majority of the qualified electors residing in the territory and then goes further and specifies the additional qualification, that they must be qualified electors 'voting at the last general election.'"

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"The General Assembly has thus said in language susceptible of only one meaning that to qualify and be counted as a remonstrator against the action of the board of education one must have voted at the last general election. Had the purpose of the General Assembly been otherwise there are very simple words which could have been employed therefor."

Section 3311.26, Revised Code, (Section 4831-1, General Code), has since been amended to authorize a referendum petition by "qualified electors * * * equal in number to thirty-

five per cent of the qualified electors voting at the last general election" but this does not lessen the efficacy of the decision in the Iddings case.

In answer to your question, therefore, I am of the opinion that an initiative petition filed pursuant to Section 3311.24, Revised Code, must contain the signatures of seventy-five per cent of the qualified electors residing in the territory who actually voted at the last general election.

In response to your second question, an examination of the applicable provisions of Section 3311.24, supra, makes it clear that the responsibility for determining the sufficiency of a petition filed under this section rests upon the board of education in which the proposal originates, and not upon the State Board of Education. The language itself suggests that the board of the district make the necessary determination before filing the proposal with the state board of education, and it is the local board which has greater access to the information required to determine the sufficiency of a petition. The hearing, which the state board is authorized to hold under this statute, is, in my opinion, for the sole purpose of making a substantive determination of the merits of the proposed transfer. A determination of the sufficiency of the signatures on the petition proposing the transfer should be had at the local level. In my opinion, then, and in answer to your second question, it is not incumbent upon the State Board of Education to ascertain whether a petition filed under Section 3311.24, Revised Code, is signed by the required number of eligible signers.

The negative answer to question number two renders unnecessary a consideration of question number three.

Your last question is whether a person signing a petition under this statute may withdraw his name by request. Sections 3311.22 and 3311.231, Revised Code, specifically provide for the time within which, and the conditions under which, a signature on a petition of transfer or a petition of referendum may be withdrawn. By comparison, there is no specific provision in Section 3311.24, Revised Code, and the question must be resolved from a consideration of the common law. The following statement of the common law is found in State ex rel. Kahle v. Rupert, 99 Ohio St. 17, 18 (1918):

"In the absence of statutory provisions to the contrary an elector signing a petition authorized by the statutes of this state, invoking either official or judicial action, has a right to withdraw his name from such petition * * * at any time before judgment has been pronounced, or before official action has been taken thereon."

The Kahle case was approved and followed in the case of Chadwell v. Cain, 169 Ohio St., 425. From this case authority I conclude that a person signing a petition of transfer under this section may not withdraw his signature after the petition has been filed with the State Board of Education. Whether a signature may be withdrawn before this time depends upon whether the board of education of the city or the board of education of

an exempted village, as the case may be, has taken any official action on the petition, and this in turn depends upon the peculiar facts in each case. From a consideration of your letter of request, I perceive that you are concerned only with the question of withdrawal after a petition has been filed with the State Board of Education.

In specific answer to your questions, therefore, it is my opinion and you are advised that:

1. A petition for transfer under Section 3311.24, Revised Code, must contain the signatures of seventy-five per cent of the qualified electors residing in the territory proposed to be transferred who actually voted in the last general election.

2. The determination of the sufficiency of the signatures on a petition filed pursuant to Section 3311.24, Revised Code, is a matter for the city or exempted village board of education of the district in which the proposal originates, and it is not incumbent upon the State Board of Education to ascertain whether a petition filed with it is signed by the required number of qualified electors.

3. A person signing a petition under Section 3311.24, Revised Code, may not cause his name to be removed after the petition has been filed with the State Board of Education pursuant to this section.