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1. MERGER—PORTIONS OR ALL OF TERRITORY, TWO OR MORE SCHOOL DISTRICTS — REORGANIZATION — SUBMITTED BY CITIZENS COMMITTEE—EVERY DISTRICT “INVOLVED”—ALL ELECTORS IN DISTRICTS ENTITLED TO VOTE ON APPROVAL OF PLAN—SECTION 3311.31 RC.
2. PROPOSAL TO MERGE TWO LOCAL SCHOOL DISTRICTS WITH EXEMPTED VILLAGE DISTRICT TO FORM NEW DISTRICT—ELECTORS OF THREE DISTRICTS SHOULD VOTE ON SINGLE PROPOSITION TO CONSOLIDATE THREE DISTRICTS, NOT ON SEVERAL SEPARATE ISSUES INVOLVING TWO DISTRICTS.
3. TERMS “MERGE,” “CONSOLIDATE” ARE SYNONYMOUS —SECTION 3311.31 RC.
4. PLAN OF REORGANIZATION OF SCHOOL DISTRICTS—PREPARED BY CITIZENS COMMITTEE—IF ENTIRE TERRITORY OF EXEMPTED VILLAGE INCLUDED AND PLAN APPROVED BY ELECTORS, NEW DISTRICT SO FORMED CAN NOT BE OR BECOME EXEMPTED VILLAGE DISTRICT—SECTION 3311.34 RC.

SYLLABUS:

1. When it is proposed under the provisions of Section 3311.31, Revised Code, to merge portions or all of the territory of two or more school districts, pursuant to a plan of reorganization submitted by a citizens committee, every such district is “involved” within the purview of said section, and all of the electors in such districts are entitled to vote on the approval of such plan.

2. Where it is proposed under the provisions of Section 3311.31, Revised Code, to merge two local school districts with an exempted village district to form a new district, the electors of the three districts involved will vote on the single proposition of consolidating all three of such districts, and not on several separate issues involving only two districts.

3. The terms "merge" and "consolidate" as used in Section 3311.31 are synonymous.

4. If a plan of reorganization of school districts prepared by a citizens committee pursuant to Section 3311.31, Revised Code, includes the entire territory of an exempted village, and such plan is approved by the electors, the new district so formed cannot, under the provisions of Section 3311.34, Revised Code, be or become an exempted village district.

Columbus, Ohio, September 7, 1955

Hon. Dorothy Kennedy, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Miss Kennedy:

I have before me your communication, requesting my opinion and reading in part as follows:

"The county citizen's committee, duly organized under Section 3311.30 of the Revised Code of Ohio, has filed with the superintendent of public instruction a plan for the reorganization of certain school districts, which has been duly approved by the superintendent. The plan proposes to consolidate Local School District A and Local School District B with Exempted Village District C. In other words, the children of Districts A and B would go to the Exempted Village District C School.

* * * * *

"Our problem is not the same situation as where, for example school districts A, B, and C would *consolidate* and an entirely new building, centrally located, would be built to accommodate the pupils.

"This situation is where two local school districts merely want to go in with an *existent* exempted village school district. In other words, the two local school districts are *merging* with the exempted village school district, that is, if the electors approve it at this fall's election.

"Is there a distinction in the two situations that is, 'consolidation' and 'merger' under Section 3311.31? I note that in the first paragraph of this section 'merger of districts' is specifically mentioned with regard to the suggestions the superintendent may

make as to a reorganization plan. In our situation, where the two *local* school districts want to merge with the *exempted village* school district, the exempted village school district is the passive party; it is merely receiving the pupils from the local schools. The exempted village school's children will not be affected (except indirectly) at all, and will continue attending the same school in the same building. It would appear, under the wording of Section 3311.31, however, that the electors of the exempted village school district C would have the right to vote on such issue.

* * * * *

“My specific questions are :

“1) Where the issue of whether Local School A and Local School B shall merge or consolidate with Exempted Village School District C is to be voted on at the next election, do the electors of the Exempted Village School District vote on this issue?

“2) If so, do the electors of the Exempted Village School District vote on the merger of Local School District A and Local School District B as a single question or as two issues?

“3) Does it make any difference which word is used on the ballot—merge or consolidate?

“4) If such reorganization plan is approved by the people, is the Exempted Village School District then a new district, therefore coming within the prohibition of Section 3311.34, and if so, is it proceeding properly, within the exception contained in Section 3311.34, by creating its new district in the manner set forth under Section 3311.31?”

Sections 3311.30 and 3311.31 of the Revised Code, to which reference is made, were part of an act passed by the 100th General Assembly, which became effective June 1, 1954. Section 3311.30 authorizes the appointment in each county of a citizens committee “to study the need and recommend proposals for the reorganization of the school districts of the county.” The appointment of this committee is to be initiated by the county board of education or upon petition filed with said board, containing the names of 3% of the electors of the county, or four hundred electors, whichever number is smaller. This committee, as the section was originally enacted, was to consist of *nine* persons resident of the county and the members of the committee are to be selected by a county convention consisting of one member each of the county board of education and the board of education of each local district and exempted village district in the county.

By subsequent amendment of Section 3311.30, city districts are to be included at their option and the citizens committee may consist of "nine or more." That amendment has no bearing on the questions which you raise, which pertain strictly to the proceedings under Section 3311.31, Revised Code, following the appointment of the citizens committee.

Section 3311.31, Revised Code, reads as follows:

"A county citizens committee shall within one year after it shall have been created file with the superintendent of public instruction a report approving *existing organization* or a plan for the *reorganization of school districts* within the county. Copies of such reports shall also be filed with the county board of education and with each board of education whose territory is involved. All boards receiving such report may register approval or disapproval with the state superintendent of public instruction. The superintendent of public instruction may approve or disapprove any such plan, and may make any suggestions or modifications which he deems necessary. Specific proposals for *merging of districts* involving only a portion of the county area may also be made.

"Upon the approval of the superintendent of public instruction and the county citizens committee, the county board of education at its next regular meeting shall by resolution request the county board of elections to submit the plan of reorganization *to the electors, of the districts involved*. If the superintendent of public instruction disapproves the plan and the citizens committee after reconsideration re-submits said plan in original or modified form, and the superintendent of public instruction continues to disapprove such plan, then a public meeting of the *electors of the districts involved* shall be called by the county superintendent of schools. If a majority vote of the electors present shall approve then the county board of education shall be authorized to arrange to place the issue on the ballot. If any proposed *plan of reorganization is approved by at least 55% of all the qualified electors voting on such reorganization in the new district proposed to be created, the reorganization shall be accomplished* as provided by sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code but with no right of remonstrance nor limitation as to the year in which territory can be transferred. If, however, seventy-five per cent of *all the qualified electors* voting on such reorganization *in any one of the districts* involved vote in opposition to the reorganization, then that district shall not be included in such reorganization.

"Whenever attendance units are *consolidated* as a result of the creation of a new school district or the transfer of territory from one school district to another, the total apportionment

of funds to the affected districts under sections 3317.02, 3317.04, and 3317.05 of the Revised Code for the year in which such consolidation takes place and for the next succeeding calendar year shall not be reduced on account of such consolidation.

“The failure of any plan submitted for such a vote shall not preclude the submission of a new plan for such reorganization at a later date.” (Emphasis added.)

1. Dealing with your first question as to the right of the electors in the exempted village to vote in the situation presented, I deem it necessary for an understanding of the purposes of the legislature in enacting this rather vague and cumbersome law to analyze somewhat at length the provisions of the section just quoted. A careful examination of its contents shows repeated reference to “reorganization of school districts.” It is to be observed that the plan of reorganization submitted by the committee may be for the entire county or for only portions thereof. It seems evident that the committee might at one time submit a plan for reorganization of certain districts in one part of the county and a wholly independent plan for like reorganization in a wholly disconnected portion of the county. In one sentence of the section the expression “merger of districts” is used and in another portion we find the expression “attendance units are consolidated.” I do not consider that the legislature intended any distinction between “merger” and “consolidation.” As a matter of fact these two words are defined by Webster’s New International Dictionary as synonymous; and further attention to that portion of the statute to which I shall later refer, relating to the action of the electors, convinces me that they were so regarded by the General Assembly.

It will be noted that after the preparation by the citizens committee of the plan of reorganization, its submission to the boards of education of the several districts affected and its approval or disapproval by the superintendent of public instruction, such proposed plan of reorganization is to be placed on the ballot.

The key to the entire purpose and effect of the statute appears to me to be found in the following sentence:

“If any proposed plan of reorganization is approved by at least 55% of *all the qualified electors* voting on such reorganization in *the new district proposed to be created*, the reorganization shall be accomplished as provided by sections” * * *

(Emphasis added.)

This is the only part of the law that offers any means of carrying into effect the proposed plan of reorganization and it sets forth the one and only proposition that is to be submitted to the electors, to wit: whether the new district set out in the plan of reorganization submitted by the citizens committee shall be created.

I conclude, therefore, that every change that may be proposed by the citizens committee under this act results in the creation of a "new district" whether it be by merger or consolidation of two or more districts in their entirety, or by attaching portions of one or more districts to some other district. It is to be observed that the electors whose votes are to be counted in making up this 55% are "all the qualified electors voting on such reorganization *in the new district* proposed to be created." In other words, if there is added to an existing district a part of an adjacent district, a new district is thereby formed. If on the other hand, two or more entire districts are combined, they in their entirety will constitute a new district.

Accordingly, it must be very evident that if as in the case you present, exempted village C district is to be combined with local districts A and B, then the combination will form a new district and the electors in all of the districts thus brought together, including those in the exempted village district, will vote on the ratification of the plan.

If, however, only portions of districts are to be combined, or portions of one or more districts are to be added to another entire district, then the new district thus created consists only of the portions thus consolidated, and the electors of that combined area are the only ones whose votes are considered *in arriving at the 55%*.

However, attention should also be directed to the next following provision of the law, to wit: "If, however, seventy-five per cent of *all the qualified electors* voting on such reorganization in any one of the districts involved vote in opposition to the reorganization, then that district shall not be included in such reorganization." This provision leads me to the conclusion that in the election on any proposed reorganization all of the electors in any district, a portion of which is to be taken and added to another district, have a right to a vote, whether the portion of the district in which they reside is or is not included in the newly proposed consolidation. Clearly, all of the residents in that district are seriously affected, and their entire district is "involved" if it is proposed either to add to

their district territory taken from other districts, or to take away from them a portion of their district and add it to some other district. For example, if it were proposed that a *portion* of exempted village district C is to be added to local district A, then certainly district C is "involved," and the electors of that entire district would have the right to vote in protest. The votes of the electors residing in the portion of C proposed to be taken from it would count in arriving at the 55%, but the votes of the entire district would count in arriving at the 75%.

I am strengthened in my conclusion that the law intends the electors in the entire "involved" district to have a right to vote by the repeated reference in the statute to the submission of the plan of reorganization to the "electors of the districts involved," which can only mean "all of the electors."

It is further provided that after this vote has been taken and the new district has been approved, and in the absence of an adverse vote of 75% of the electors in one of the districts involved, then the reorganization shall be accomplished as provided by Sections 3311.22, 3311.23, 3311.24 and 3311.26 of the Revised Code. These sections relate to the procedure whereby county boards of education have authority to make changes in the territorial boundaries of local school districts which are under their jurisdiction. A county board has no such authority as to exempted village districts, whereas Sections 3311.30 and 3311.31, Revised Code, as we have noted, give the citizens committee the power to deal not only with local districts but also with exempted village districts.

Under the situation presented in your letter there will be created, if the votes are favorable, a new district consisting of exempted village C and local districts A and B. This new district will be without a board of education having jurisdiction over its entire area. Accordingly Section 3311.33, Revised Code, provides that the county board of education shall assign the assets and liabilities of the original district to the newly created district and shall proceed to appoint a board of education for the new district in the manner provided in Section 3311.26, Revised Code. That section relates to a situation where a county board of education has created a *new* local school *district* from one or more local school districts or parts thereof. When this has been done, it is manifest that the new district would be without a board of education. Accordingly, it is there provided:

* * * "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 are to hold their office until their successors are elected and qualified.

2. The plan of reorganization as presented in your letter does not contemplate two different propositions for the electors of such exempted village to vote on, but rather the single question as to the approval of the proposed plan which includes both local districts. Plainly, the electors in either of the districts involved might not be willing to have a combination of any two of the three involved, but would welcome a consolidation of the three. The proposed plan of reorganization which the citizens committee has presented is for a union of all or none, and that is the only proposition on which the electors may vote.

3. I have already touched on the use of the words "merge" and "consolidate." As I have tried to point out, regardless of what course the proposed reorganization takes, it results in the creation of a new district and the submission to the electors of the approval of that proposition. Furthermore, the only place in Section 3311.31, so far as I can find, where the word "merge" is used, is in the first paragraph, which merely provides that a specific proposal for merging of districts involving only a portion of the area of the county may be made. That proposition does not seem to me to have any bearing on the procedure set out in the statute.

4. Your fourth question calls for an examination of Section 3311.34, Revised Code, which reads as follows:

"After the effective date of Sections 3311.28 to 3311.33, inclusive, of the Revised Code, no exempted village school districts shall be created under section 3311.08 of the Revised Code; provided, however, that the remonstrance provisions of sections 3311.22 and 3311.26 of the Revised Code, shall not apply where such reorganization has been approved by a vote of the electors as hereinbefore provided."

That provision, while a part of the same act, does not appear to me to have been intended to have any bearing on the proceedings of the citizens committee or the approval of its recommendations. It is intended to do away for the future with the creation of exempted village school districts. However, as I have already indicated, when an exempted village district is included in a proposed reorganization whereby it is combined

with other territory, the result would be the creation of a new district, and in the light of Section 3311.34, it could not be an exempted village district.

Accordingly, in specific answer to your questions, it is my opinion:

1. When it is proposed under the provisions of Section 3311.31, Revised Code, to merge portions or all of the territory of two or more school districts, pursuant to a plan of reorganization submitted by a citizens committee, every such district is "involved" within the purview of said section, and all of the electors in such district are entitled to vote on the approval of such plan.

2. Where it is proposed under the provisions of Section 3311.31, Revised Code, to merge two local school districts with an exempted village district to form a new district, the electors of the three districts involved will vote on the single proposition of consolidating all three of such districts, and not on several separate issues involving only two districts.

3. The terms "merge" and "consolidate" as used in Section 3311.31 are synonymous.

4. If a plan of reorganization of school districts prepared by a citizens committee pursuant to Section 3311.31, Revised Code, includes the entire territory of an exempted village, and such plan is approved by the electors, the new district so formed cannot, under the provisions of Section 3311.34, Revised Code, be or become an exempted village district.

Respectfully,

C. WILLIAM O'NEILL
Attorney General