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EDUCATION—TRANSFER OF TERRITORY PROPOSED BY  
STATE BOARD—§§3311.37, 3311.38 R.C.—COSTS OF ELECTION,  
§3501.17 R.C.

SYLLABUS:

Where a proposal for change of territory of school districts is presented by the state board of education pursuant to the provisions of Section 3311.37 or 3311.38, Revised Code, the cost and expense of submission of such proposal to the electors is, under the provisions of Section 3501.17, Revised Code, to be paid by the subdivisions voting at such election, and apportioned as therein provided for general and primary elections.

Columbus, Ohio, January 7, 1959

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Recently the Ohio State Board of Education authorized the transfer of certain school districts in Noble County. The election to transfer resulted in a defeat of the transfer.

“Of the seven districts involved, five requested the State Board of Education to place this issue on the ballot and two, namely the Fulda and the Caldwell Exempted Districts, made no such request. Subsequently, the State Board eliminated the Fulda District so that at the election only the Caldwell Exempted Village School District protested the placing of the issue on the ballot. The State Board no doubt acted under the provisions of Section 3311.38 of the Revised Code. The County Board of Elections of Noble County has incurred certain expenses by reason of such special election and must apportion such expenses, pursuant to the provisions of Revised Code Section 3501.17 to ‘the various subdivisions as provided in this section’.

“The Caldwell Exempted Village School District, which vehemently resisted the transfer, is equally vigorous in its protest to pay the apportioned share which the Noble County Board of Elections has allocated to it as a result of the election on the ground that it did not request the election and for the further reason that its opposition to the transfer proposed by the State Board of Education was voiced before the State Board took such action ordering the transfer.

“The Noble County Board of Elections has asked the Secretary of State to issue a directive on this matter so that it can proceed according to such a directive. The Secretary of State has referred this matter to the State Auditor since he, as Chief Inspector of the Bureau of Inspection and Supervision of Public Offices, will have to report on this matter when an examination and report is made of the Noble County Board of Elections.

“A formal opinion is, therefore, respectfully requested as to:

- (a) Whether or not the Board of Elections of a county may, pursuant to the provisions of Section 3501.17, apportion a part of the expense involved in an election in the matter of the transfer of school districts where the receiving school district protests such transfer and is on record before the State Board of Education protesting such an election.
- (b) Whether or not the cost of such elections is chargeable to the State Board of Education.”

Section 3311.38, Revised Code, to which you refer, authorizes the State Board of Education to conduct a study of the “need for transfer of local, exempted village, or city school districts, or parts of any such districts,” to contiguous districts.

The State Board is authorized to make recommendations for transfer which may consist of “part or all of the territory of a local, exempted village, or city school district to a contiguous local, exempted village or city school district.”

This language would appear to limit the scope of the plan contemplated by this section to a transfer of a single district or part thereof to another district.

The section then provides for filing a copy of such proposed plan with “the board of education of each school district whose boundaries would be altered by such proposals, and with the board of education of each county in which such school district is located.”

The districts “whose territory would be altered,” evidently comprise only the district from which the transfer is proposed, and the district to which the transfer is to be made. After opportunity for approval or disapproval of the proposed plan by the boards of the districts affected, the state board is required to certify the proposal to the board of elections, and “the electors qualified to vote upon an original or modified proposal

are the electors residing in the \* \* \* district, a portion of whose territory is proposed to be transferred." If approved by a majority of those voting, the state board, "subject to the approval of the board of education of the district to which the territory would be transferred, shall make such transfer."

It thus becomes evident that you have been misinformed as to the nature of, or the authority for, the proceedings, because your letter refers to an action of the state board of education involving the transfer of parts or all of seven districts. You state that of these seven districts, five *requested* the State Board to place this issue on the ballot and two, namely, Fulda and Caldwell exempted districts, made no such request.

I find nothing in the statute whereby the proceeding under the section referred to could be initiated by request of any school district. The initiative appears to rest exclusively in the state board of education. For the same reason, a protest by a district would have no effect. Your letter states that the Fulda district was dropped from the proposal, and that the proposal was defeated at the election, which would indicate that the vote was taken in six of the seven districts, and the majority of the entire electorate in this combined area voted adversely to the proposal.

There is nothing in Section 3311.38, *supra*, whereby the adverse vote of one district could defeat the proposal.

All in all, your statement of facts suggests that the proceedings may have been had under Section 3311.37, Revised Code, which authorizes the state board of education to *create a new district* out of several contiguous districts or parts of the same, and in the election which follows the formal proceedings, an adverse vote by any one of the districts would defeat the entire proceeding. However, we may disregard the evident confusion, since your real question is directed to the matter of the payment of the costs of holding the election in question, and if that cost is to be charged against the local districts, then as to the proper basis of allocation.

This brings us to consideration of Section 3501.17, Revised Code, which provides that the expense of the board of elections is to be borne initially by the county. This section further provides:

"Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement."

Dealing specifically with the apportionment of such expense, the same section provides :

“The charge for each primary or general election in odd-numbered years for each subdivision shall be determined in the following manner : first, the total cost of all chargeable items used in conducting such elections shall be ascertained ; second, the total charge shall be divided by the number of precincts participating in such election, in order to fix the cost per precinct ; third, the cost per precinct shall be prorated by the board of elections to the subdivisions conducting elections for the nomination or election of officers in such precinct ; fourth, the total cost for each subdivision shall be determined by adding the charges prorated to it in each precinct within the subdivision.”

As to the cost of special elections, said section further provides :

“The entire cost of special elections held on a day other than the day of a primary or general election, both in odd-numbered or in even-numbered years, shall be charged to the subdivision. Where a special election is held on the same day as a primary or general election in any even-numbered year, the *subdivision submitting the special election* shall be charged only for the cost of ballots and advertising. Where a special election is held on the same day as a primary or general election in an odd-numbered year, the *subdivision submitting the special election* shall be charged for the cost of ballots and advertising for such special election, in addition to the charges prorated to such subdivision for the election or nomination of candidates in each precinct within the subdivision, as set forth in the preceding paragraph.” (Emphasis added)

Note that in the first sentence of the last quotation, the entire cost of special elections held on a day other than the day of a primary or general election, is to be “charged to the subdivisions;” and in my opinion, such cost should be apportioned as is provided for general elections.

The general question of apportionment of the expenses of elections, was discussed in my Informal Opinion No. 112, Informal Opinions of the Attorney General for 1958, dated October 21, 1958. After quoting the relevant portions of Section 3501.17, *supra*, it was said :

“Here is a somewhat definite plan of division but it is not wholly so. To prorate means to divide proportionally. Proportionally to what? Here the statute is silent, and in the absence of any definite basis for prorata division we can only infer the legislative intent that there should be an equal division of the expense of operating the precinct polling place among the several subdivisions conducting elections therein for the nomination or election of their officers.

“As to the cost of printing ballots, whether township, school or municipal, it will be seen that this cost is not paid by any *one* subdivision but is (1) included in the aggregate cost of the election, (2) apportioned (equally, we must assume) among the precincts in which the ballots are used, and (3) apportioned, as to each precinct, along with any other expense chargeable to such precinct, equally among the subdivisions which have utilized its facilities for the nomination or election of officers.”

Accordingly, it is my opinion and you are advised, that where a proposal for change of territory of school districts is presented by the state board of education pursuant to the provisions of Section 3311.37 or 3311.38, Revised Code, the cost and expense of submission of such proposal to the electors is, under the provision of Section 3501.17, Revised Code, to be paid by the subdivisions voting at such election, and apportioned as therein provided for general and primary elections.

Respectfully,

WILLIAM SAXBE

Attorney General