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1. SCHOOL DISTRICTS — MAJORITY OF ELECTORS — DISTRICT HAVING NO SCHOOLS — VOTED IN FAVOR OF GAINING TERRITORY OF DISTRICT TO ADJOINING CITY SCHOOL DISTRICT—FAVORABLE VOTE IS FINAL ACT TO DISSOLVE DISTRICT AND TRANSFER TERRITORY TO CITY DISTRICT—CONSENT OF BOARD OF EDUCATION OF CITY DISTRICT NOT REQUIRED—SECTION 3311.29 R. C
2. TERRITORY OF DISSOLVED SCHOOL DISTRICT—JOINED TO TERRITORY OF CITY SCHOOL DISTRICT—CITY DISTRICT SUCCEEDS TO ALL PROPERTY AND RIGHTS OF DISSOLVED DISTRICT—ENTITLED TO RECEIVE FROM COUNTY TREASURER PROCEEDS OF ALL CURRENT TAXES LEVIED ON PROPERTY IN DISSOLVED DISTRICT.

**SYLLABUS:**

1. Where, pursuant to the provisions of Section 3311.29, Revised Code, a majority of the electors in a district having no schools have voted in favor of joining the territory of such district to an adjoining city school district, such favorable vote is the final act in dissolving such district and transferring its territory to the city district and the consent of the board of education of such city district is not required.

2. When pursuant to the provisions of Section 3311.29, Revised Code, the territory of a dissolved school district has been joined to the territory of a city school district, such city district succeeds to all the property and rights of such dissolved district, and is entitled to receive from the county treasurer the proceeds of all current taxes levied on the property in such dissolved district.

Columbus, Ohio, December 16, 1954

Hon. Frank H. Kearns, Prosecuting Attorney  
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your communication, in which you request my opinion, your letter reading as follows:

“On November 16, 1954, I received the following request from Mr. Fred C. Dunn, County Auditor of Franklin County, Ohio:

“On August 18, 1954, the Perry Local School District was dissolved by a Resolution of the Board of Education.

“On November 2, 1954, a vote was held in the dissolved district on the question of

“Shall the territory formerly comprising Perry Local School District, Franklin County, Ohio, which school district was dissolved by resolution of the Board of Education of Franklin County, Ohio, on August 18, 1954, be joined to Upper Arlington City School District?”

“This office is in receipt of the official certification of the Franklin County Board of Elections. The vote on the question was as follows: For—120, Against—115.

“This office has received a letter dated November 12, 1954, signed by the members of the Perry Local Board of Education of Franklin County, Ohio, which reads as follows:

‘As a result of the election of November 2, 1954, the dissolved portion of the Perry Local School District became a part of the school district of the City of Upper Arlington. For this reason the former members of Perry Local Board of Education direct that any moneys which otherwise would have come to them for school purposes should now be given to the Upper Arlington Board of Education.’

“Will you therefore ask the Attorney General of the State of Ohio if in his opinion, that, under the provisions of Section 3311.29 R. C., this office shall abide by the request of the dissolved Perry Local School District?”

“I would appreciate an opinion from you in answer to the following question:

“The Perry Local School Districts having been dissolved by action of the Franklin County Board of Education

and said dissolved territory having been selected by said Franklin County Board to be joined to the Upper Arlington City School District subject to a vote, does the subsequent majority vote of the electors of the dissolved district, cast in favor of such joinder, constitute the final statutory step required to be taken to complete the said joinder under and pursuant to Section 3311.29, R. C., or are there any other sections that may be applicable in the determination of this question?

“Said Section 3311.29, R. C., makes it mandatory that any existing school district which does not maintain public schools therein shall be dissolved and its territory joined with another school district or districts selected and approved by vote of the district so dissolved. This section became effective on June 1, 1954.

“I call your attention to the Attorney General’s Opinion #3732, dated April 20, 1954, in which said Section 3311.29, R. C. was considered and interpreted.

“The county auditor is withholding from the Upper Arlington City School District the dissolved Perry Local School District’s share of the current tax settlement. When the payment of such share can be made, current bills of the dissolved district may then be paid out of said settlement.”

Section 3311.29, Revised Code, reads as follows:

“No school district shall be created in this state which does not maintain public schools within such district, and any such existing school district shall be dissolved and its territory joined with another school district or districts selected and approved by vote of the district so dissolved.

“The superintendent of public instruction shall be without authority to distribute funds under sections 3317.02, 3317.04 and 3317.12 of the Revised Code to any school district which does not maintain schools.”

In addition to the facts stated in your communication I am informed that the following factual situation exists: The south portion of what was formerly the South Perry Local School District, was politically annexed to the City of Upper Arlington early in 1954. The effect of that annexation under the provisions of Section 3311.06, Revised Code, was to carry the territory annexed into the Upper Arlington city school district. This proceeding left the north portion of the South Perry Local School District without any school building, since the only building possessed by the district is located in the portion annexed.

Thereupon, proceeding under the provisions of Section 3311.29, Revised Code, the Franklin County Board of Education, by resolution adopted on August 18, 1954, submitted to the electors of the South Perry Local School District at the November election of 1954, its recommendation that the district be joined to the Upper Arlington City School District and that recommendation was approved by the requisite vote of the electors of said district voting thereon.

The Board of Education of the Upper Arlington District have indicated their unwillingness to accept the territory of the Perry Local School District, and are claiming that the transfer of that territory to the Upper Arlington District cannot become effective without their acceptance.

Accordingly, the underlying question involved in an answer to your request is whether the consent of the board of education of a city district to the receipt of territory of a school district which has been dissolved under the provisions of Section 3311.29, Revised Code, is essential to the transfer of such territory. Stated in another way, where a school district is dissolved because it maintains no school, and it is recommended by the county board of education that its territory be annexed to an adjoining city district, and the electors residing in such district have voted to approve such recommendation, is the city district forced to accept such transfer of territory?

In my opinion No. 3732, dated April 20, 1954, the meaning of the language used in the first paragraph of this section was interpreted, as shown by the first paragraph of the syllabus, as follows:

“Upon the dissolution as provided in Section 3311.29, Revised Code, of a school district which does not maintain public schools within its area, it is the duty of the county board of education, under the authority of Section 3311.22, Revised Code, to select the district or districts to which the territory of such dissolved district is to be joined, and the plan of distribution of territory so made is to be submitted to the electors of such dissolved district for their approval.”

Section 3311.29 *supra*, is a part of an act passed by the 100th General Assembly, known as Substitute House Bill No. 128. An examination of this act will show that it deals with a variety of subjects relating to changes in school districts.

Section 3311.30 provides for the creation of a county citizens committee, which is to study the need and recommend a plan for the reorgani-

zation of the school districts of the county. The jurisdiction of this committee is to include all of the school districts in the county including exempted village districts but excluding city districts.

Section 3311.31 outlines the procedure of this county citizens committee and the process by which their recommendation as to change of districts may become effective.

In my opinion No. 4585 issued December 2, 1954, I discussed the procedure under Sections 3311.30 and 3311.31 supra, and held that the law made it clear that a change of districts or creation of a new district under that procedure eliminated the necessity of any acceptance by an exempted village district of territory transferred to it. Unfortunately the legislature in enacting Section 3311.29 supra, failed to make its intention so clear as to the finality of the procedure therein set forth.

Some color would be added to the contention of the Upper Arlington Board as to its right to reject the proposed transfer, by reference to the provisions of Section 3311.23 of the Revised Code, which section has not been repealed or amended by the new act under consideration. That section provides in part, as follows:

“If a county board of education deems it advisable to transfer a part or all of the territory comprising a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. \* \* \*”

This section further provides:

“\* \* \* Such transfer of territory shall not be complete until:

“(A) A resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the county, city, or exempted village school district to which the territory is transferred.

“(B) An equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer;

“(C) A map showing the boundaries of the territory transferred has been filed, by the board of education accepting the transfer, with the county auditor of each county affected by the transfer.

“When such transfer is complete the legal title of the school

property in the territory transferred shall be vested in the board of education of the school district to which the territory is transferred.”

It may be noted in this connection that throughout the entire history of school legislation, the law has always prior to the enactment of Section 3311.29 supra, recognized the right of a city district to refuse to accept a transfer to it of territory from another district. If, therefore, the dissolution and transfer under consideration had been carried out under the authority of Section 3311.23 supra, by action of the county board of education, as it might have been, it would appear very clear that the action of that board in ordering a part or all of the local district to be transferred to the city district would be of no effect unless and until the board of education of the city district passed a resolution accepting the transfer. The new procedure, however, authorized and required by Section 3311.29 has no connection with Section 3311.23, which section lodges certain authority in the county board of education. It is a mandatory order emanating directly from the legislature, in which no power is conferred upon and no discretion is left to the county board of education. The legislature has apparently seen fit to decree that when a district maintains no schools it *must* be dissolved and its *territory annexed to a district or districts approved “by vote of the district so dissolved.”*

The legislature in this section put no limitations upon the character of the district to which this territory should pass, nor did it in the language used suggest any requirement of consent of the district to which the territory was to be joined. Furthermore, it did not mention a city district or by any specific words give to such city district any voice in the matter.

As a matter of fact, the only thing in the entire school law which gives a city district a preferred classification is found in the definition of a school district as laid down by Section 3311.05, which reads:

“The territory within the territorial limits of a county, exclusive of the territory embraced in any city school district, exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a ‘county school district.’”

The only effect of this exclusion as to city and exempted village districts is that they are not subject to the control of the county board of education. That exemption certainly does not relieve them from control

by the legislature. Under the provisions of the Constitution of Ohio, the entire organization of the public schools of the state is left to the discretion of the legislature, with the express mandate that provision shall be made by law for the organization, administration, and control of the same. See Article VI, Section 3. In a very early case, *State ex rel. Garnes v. McCann*, 21 Ohio St., 198, it was said by the Supreme Court, at page 205,

“It is left to the discretion of the general assembly, in the exercise of the general legislative power conferred upon it, to determine what laws are ‘suitable’ to secure the organization and management of the contemplated system of common schools, without express restriction, except that ‘no religious or other sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of the State.’ (Art. 6, sec. 2.)”

Accordingly, a city school district enjoys no special prerogative or immunity except to the extent that the legislature has seen fit expressly to confer it. I am therefore impelled to the conclusion that in the matter of dissolution of a district which has no schools and the transfer of its territory to another district, in the absence of any words to that effect the legislature has granted no special favor or immunity to a city district and that its consent to such transfer to it is not necessary.

The necessity for finality in this new procedure is illustrated by the situation which exists in the present case. If the city board may refuse and does refuse to accept the transfer, then the county board must suggest another district to which the local district should be transferred, in which case the electors being determined to go to the city district might vote adversely on that recommendation, and this situation might go on indefinitely. This would leave the district up in the air with no school building, and the children with no certain place to go. It is my opinion that the legislature must have realized this, and therefore determined that the final decision must rest with the electors in the dissolved district.

Coming then to the specific question raised by your inquiry, as to the disposition of tax collections, it seems clear that since the South Perry Local School District has been dissolved and its entire territory transferred to the Upper Arlington City School District, all the property of such dissolved district, together with the proceeds of all current tax levies thereon passes to said city district and it becomes the duty of the County Auditor to transfer, and of the County Treasurer to pay to said city district all such taxes where collected.

Accordingly, it is my opinion and you are advised :

1. Where, pursuant to the provisions of Section 3311.29, Revised Code, a majority of the electors in a district having no schools have voted in favor of joining the territory of such district to an adjoining city school district, such favorable vote is the final act in dissolving such district and transferring its territory to the city district and the consent of the board of education of such city district is not required.

2. When pursuant to the provisions of Section 3311.29, Revised Code, the territory of a dissolved school district has been joined to the territory of a city school district, such city district succeeds to all the property and rights of such dissolved district, and is entitled to receive from the county treasurer the proceeds of all current taxes levied on the property in such dissolved district.

Respectfully,

C. WILLIAM O'NEILL

Attorney General