

17

SYLLABUS:

1. A school board does not have a choice as to whether a proposed transfer of school territory shall be submitted to the voters at the next primary election or at the next general election after the expiration of the sixty-day waiting period required by Section 3311.231, Revised Code.

2. A proposed transfer of school territory under authority of Section 3311.231, Revised Code, should not be submitted to the voters at primary election time where a primary election on questions set out in Section 3501.01 (E), Revised Code, is not otherwise required to be held.

Columbus, Ohio, February 5, 1963

Hon. Fred F. Fox

Prosecuting Attorney

Nobel County

Caldwell, Ohio

Dear Sir:

You have requested the Attorney General's opinion on two

questions involving the submission to the voters of a proposed transfer of a school territory under authority of Section 3311.231, Revised Code, said questions being :

1. Is there a choice open to the board as to whether the proposal shall be submitted at a general election or a primary election ?

2. If no such choice is open, must the proposal be submitted at primary election time where no other question will be before the voters in that election ?

As to the proposed transfer of school territory, Section 3311.231, Revised Code, provides in pertinent part:

“ * * * * * * * * ”

“The county board of education shall promptly certify the proposal to the board of elections of such counties in which school districts whose boundaries would be altered by such proposal are located for the purpose of having the proposal placed on the ballot at the next general or primary election which occurs not less than sixty days after the date of such meeting or at a special election, the date of which shall be specified in the certification, which date shall not be less than sixty days after the date of such meeting.

“ * * * * * * * * ”

The answer to your first question depends upon the interpretation of the phrase “at the next general or primary election.” It is a rule of statutory construction that language should be given its plain meaning according to the usages of English grammar. *Davis v. Holter*, 79 O. App. 419, 39 O.O. 205. In applying this rule you will note that the word “next” modifies the word “election” which is further modified by the words “general” and “primary.” I must construe the phrase to mean, then, the next election of one or the other type. This construction is supported by the provision at the beginning of the paragraph, that the board “shall promptly certify * * *.” There would be little need for “prompt” certification if the board had the option of, for instance, skipping a primary election and holding the proposal for a later general election. I must conclude, therefore, that the proposal should be submitted at the next election, be it primary or general, occurring after the expiration of the sixty-day waiting period required by the statute.

In answering your second question, it is necessary to determine what constitutes a primary election. That term is defined in division (E) of Section 3501.01, Revised Code as follows:

“‘Primary’ or ‘primary election’ means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.”

My predecessor in office rendered an opinion on the effect of this section where a zoning proposal was to be submitted “at the next primary or general election” (Opinion No. 1990, Opinions of the Attorney General for 1961, issued on February 3, 1961). It was there said:

“Division (E) of Section 3501.01, *supra*, provides that primary election shall be held for certain purposes, *none of which are present in the instant case*; and although it is provided that primary elections shall be held in each year, I believe that this can only mean that such an election shall be held only when one of the stated purposes is involved. (Also see Section 3513.01 and 3513.02, Revised Code, dealing with the situation where no primary is held.)

“Section 519.25, *supra*, is quite clear that the election on the zoning question is to be held at the next primary or general election. It does not say that the election may be held at the time the next primary election *could be held* and, in view of the above, that is the interpretation which would have to be given if the election in question were to be held on the first Tuesday after the first Monday in May 1961.

***”

I am in accord with that opinion and its reasoning which I believe is completely dispositive of your second question.

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

1. A school board does not have a choice as to whether a proposed transfer of school territory shall be submitted to the voters at the next primary election or at the next general election after

the expiration of the sixty-day waiting period required by Section 3311.231, Revised Code.

2. A proposed transfer of school territory under authority of Section 3311.231, Revised Code, should not be submitted to the voters at primary election time where a primary election on questions set out in Section 3501.01 (E), Revised Code, is not otherwise required to be held.

Respectfully,

WILLIAM B. SAXBE

Attorney General