

1857

EDUCATION — COUNTY BOARD — DIVISION OF LOCAL SCHOOL DISTRICT—§3311.28 R.C.—VOTE REQUIRED FOR APPROVAL, §3311.26 R.C.—MAJORITY IN EXISTING LOCAL SCHOOL DISTRICT TO BE AFFECTED.

SYLLABUS:

1. Under the provisions of Section 3311.26, Revised Code, a county board of education can, if all the statutory conditions are met, effect the division of one local school district into two local school districts by creating a new district by detachment of a part of the territory comprising the existing district, and in practical effect thus to “create” two new districts; but in any such case the board’s authority to act is limited by the requirement in Section 3311.28, Revised Code, that each such district shall maintain a high school.

2. Under Section 3311.26, Revised Code, the majority vote required to approve a proposal for the creation of a new local school district is a majority in the *existing* local school district the boundaries of which are to be altered under the proposal.

Columbus, Ohio, March 18, 1958

Hon. Philip D. Brumbaugh, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

In your request for my opinion you raise the following questions:

“(1) Whether or not a county board of education may create two local school districts from one local school district under the provisions of Section 3311.26 Revised Code of Ohio?

“(2) If the answer to the first question is in the affirmative, must the approval of the proposed districts be by at least a majority of the electors residing within the existing district, or must it be by a majority of the electors residing in each of the proposed two districts?”

With regard to your first inquiry, the first sentence of the new Section 3311.26, Revised Code, which confers the power in question, reads as follows:

“A county board of education may, by resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof. * * *”

Although technically this language contemplates the “creation” of one *new* district by detachment of territory from an existing district, which latter district retains its original corporate entity, in my opinion such language is wholly adequate, as a practical matter, to confer the power to propose what is tantamount to the division of one local school district into two local school districts. Practically, the proposal will be to create two districts by dividing the territory of the presently existing district. See Opinion No. 3150, Opinions of the Attorney General for 1953, p. 534, which interpreted the analogous language of the then existing statute as authorizing the “creation” of two new districts. What the board may lawfully *propose* to create it may, of course, lawfully *create*, if the further provisions of the statute are met. It should be noted in passing, however, that by reason of the inhibition found in Section 3311.28, Revised Code, each of the two districts thus created must maintain a high school.

As to your second question, the pertinent portion of the sixth paragraph of Section 3311.26, Revised Code, reads:

“The persons qualified to vote upon either an original proposal or a modified proposal are the electors residing in the districts whose boundaries would be altered by the proposal. If the proposed district be approved by at least a majority of the electors voting on the proposal in each district whose boundary would be altered by the proposal, the county board shall then create such district effective as of the next succeeding July 1 following the election. * * *”

The district in which the majority must be had is that district the boundaries of which will be altered if the proposal is adopted. This could not refer to the new districts which will be created. Their boundaries will be established, not altered, if the proposal is adopted. The reference can, therefore, be only to the existing district.

It is my opinion, and you are advised that :

1. Under the provisions of Section 3311.26, Revised Code, a county board of education can, if all the statutory conditions are met, effect the division of one local school district into two local school districts by creating a new district by detachment of a part of the territory comprising the existing district, and in practical effect thus to “create” *two* new districts; but in any such case the board’s authority to act is limited by the requirement in Section 3311.28, Revised Code, that each such district shall maintain a high school.

2. Under Section 3311.26, Revised Code, the majority vote required to approve a proposal for the creation of a new local school district is a majority in the *existing* local school district the boundaries of which are to be altered under the proposal.

Respectfully,

WILLIAM SAXBE

Attorney General