

1973

EDUCATION—TRANSFER OF TERRITORY—SUBMISSION TO ELECTORS—§§3311.38, 3311.231, 3311.37, 3311.09 R.C.—ELECTORS ENTITLED TO VOTE— STATUS OF DISTRICTS—CREATION OF NEW DISTRICT.

SYLLABUS:

1. If a proposal for transfer of school territory comprising all or part of one or more school districts is submitted to the electors, pursuant to the provisions of Section 3311.231 or Section 3311.38, Revised Code, the proposal, in order to be approved, must receive the vote of a majority of the electors voting in each entire district whose territory is proposed to be transferred, and must also be approved by the board of education of the district to which such territory is to be transferred; if such approval by all of the districts so affected is not given the entire proposal will fail.

2. In an election held pursuant to the provisions of Section 3311.231, Revised Code, the electors qualified to vote are all of the electors residing in the districts, part or all of whose territory is proposed to be transferred.

3. Where, under the provisions of Section 3311.231, Revised Code, or Section 3311.23, Revised Code, repealed as of January 1, 1958, but operative as to proceedings then pending, or pursuant to the provisions of Section 3311.38, Revised Code, territory of a school district is transferred to an exempted village school district, such transfer will not affect the continuance of such district as an exempted village school district.

4. Section 3311.37, Revised Code, authorizes the state board of education to submit to the electors of each of the school districts affected, a proposal to create a new school district by consolidating territory of parts or all of several contiguous local, exempted village or city school districts. At such election, all of the electors residing in the districts whose boundaries would be affected by the proposed consolidation, are entitled to vote, and the proposal in order to be approved, must have the affirmative votes of a majority of the electors in each district whose boundaries would be altered by the proposal.

5. Where a proposal is made, under either Sections 3311.231, 3311.37 or 3311.38, Revised Code, to transfer or consolidate school territory involving in any way an exempted village school district, the adoption of a resolution by the board of education of such district favoring such proposal, would not have the effect of causing such district to lose its exempted status. The only process whereby it may lose such status is by the adoption of a resolution, as prescribed by Section 3311.09, Revised Code, declaring its desire to be supervised by the county board of education.

Columbus, Ohio, April 17, 1958

Hon. James H. Estill, Prosecuting Attorney  
Holmes County, Millersburg, Ohio.

Dear Sir :

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

“The matter of consolidation or merger of several of our Holmes County, Ohio, school districts is presently under discussion by an unofficial study committee composed of two members from each board of education which has expressed some interest in such a plan including an EXEMPTED VILLAGE DISTRICT. The County Board of Education has also expressed interest in this matter and in fact the committee aforesaid was the result of a meeting called by the county board.

“During the course of these discussions several questions have arisen concerning the interpretation of several of the sections of the Ohio School Laws relating to county planning and also the present effect of former Attorney General's Opinions rendered prior to the time when certain changes were made in the county planning sections. I have been requested by this committee to ask of your office an opinion which might clarify for us matters of interpretation of the law as presented by the following questions:

(1) If a transfer or consolidation proposal made under Sections 3311.231 ; 3311.37 ; or 3311.38 R.C. is placed upon the ballot for election as therein provided, and at the election receives a majority vote for the proposal of all electors voting therein, and also receives a majority vote for the proposal in all districts voting thereon, EXCEPT ONE, wherein the vote is a majority of the district against, will the proposal then fail, and if it does fail, will it then fail as to all the districts involved or only as to the one which voted a majority against?

(2) Does Section 3311.231 R.C. determine that the qualified electors are those residing in the ENTIRE district whose partial territory may be proposed to be transferred or would only those people residing in the PARTIAL TERRITORY proposed to be transferred be qualified to vote on the issue?

(3) Where, under Sections 3311.231 or 3311.23 R.C. and by action and initiative of a County Board or district residents, a territory, being a part of a school district, is proposed to be transferred into an exempted village district

and such transfer is accepted by the exempted village board, will such a transfer create a 'new district' under Section 3311.34 R.C. and the interpretation thereof made by 1955 OAG No. 5736, as will destroy the exempted village district status of the receiving district?

(4) If a proposal to transfer or consolidate districts is made under Sections 3311.231, 3311.37 or 3311.38 R.C. which involves an exempted village district, and if the board of said exempted village district, by resolution, favors the transfer or consolidation and expresses its desire that the question be submitted for election and the proposal then fails at election, would this favoring resolution result in a loss of the exempted village status of said district?

"As you can see some of the complications arise by reason of the fact that an exempted village district is involved. The question of how much of an addition to an exempted village district will cause the loss of exempted village status under Section 3311.34 R.C. is a very important consideration of the exempted village board."

An answer to your request requires a brief analysis of the provisions of Sections 3311.231, 3311.37, 3311.38 and former Section 3311.23, Revised Code, to which you refer.

Section 3311.231, Revised Code, reads in part as follows:

"A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, *the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.*" (Emphasis added)

It will be observed that this section does not contemplate a *consolidation* of school districts, but is limited to the "*transfer* of part or all of one or more local school districts \* \* \* *to an adjoining county school district or to an adjoining city or exempted village school district.*" Such proposed transfer may be initiated either by the action of a county board or by petition of qualified electors "of the area affected." In either case, after preliminary proceedings set forth in the statute, the proposal is to be presented to the board of elections "of such counties as will be affected," for submission to the electors.

Said Section 3311.231, *supra*, then provides :

“The persons qualified to vote upon an original or a modified proposal are the *electors, residing in the district or districts whose territory is proposed to be transferred*. If the proposed transfer be approved by at least a majority of the electors voting on the proposal *in each district* whose territory is proposed to be transferred, the county board subject to the approval of the receiving county board of education *and the board or boards of education to which territory would be transferred* shall make such transfer and notify the state board of education of its action, such transfer shall be made effective as of the next succeeding July 1 following the election. \* \* \*” (Emphasis added)

It is very clear that all of the electors, who reside in the district or districts whose territory is proposed to be transferred, shall have the right to vote on the proposal. This right of voting is not limited to the persons who reside in that portion of a district which is proposed to be transferred, but to all of the electors of the district *whose territory would be affected* by the proposed transfer. This clearly means all of the electors in the district. This statute further makes it very clear that the proposed transfer, in order to become effective, must be approved by a majority of the electors *in each district* whose territory is proposed to be transferred.

If the proposal is to transfer territory to another county, the electors in that other county would not have a vote. Likewise, if the proposal is to transfer territory to a city district, or to an exempted village district, the electors of said city or exempted village district would have no right to vote. However, the transfer can only become effective in either case if it is approved by the county board, where the proposal is to transfer territory to another county, and by the board of education of the city or exempted village to which transfer is proposed.

Turning to the proceedings under Section 3311.37, Revised Code, we have a different situation. That section reads in part as follows :

“The state board of education may conduct studies where there is evidence of need for *consolidation of contiguous local, exempted village, or city school district or parts of such districts*.

“After the adoption of recommendations growing out of any such study, the state board may proceed as follows :

“Propose by resolution the creation of a new school district which may consist of all or a part of the territory of two or more contiguous local, exempted village, or city school districts, or any combination of such districts.” (Emphasis added)

Here there is no proposition of *transfer* of territory to another county district, or to a city or exempted village district, but rather a *consolidation* of existing districts, or parts thereof, which may be local, exempted village, or city school districts or parts of the same.

After the adoption of the recommendation by the state board of education for such consolidation and a creation thereby of a new school district, that proposition is to be submitted to the board of elections of the county or counties in which any of the territories of the proposed new district is located for the purpose of having the proposal placed on the ballot. This section makes the following provision as to the electors qualified to vote:

“The electors qualified to vote upon an original proposal or a modified proposal are *the electors residing in the local, exempted village, or city school districts whose boundaries would be altered by the proposal*. If a majority of those voting on the proposal vote in favor thereof *in each district* whose boundaries would be altered by the proposal, the state board shall create the proposed school district.” (Emphasis added)

Here it will be noted that all of the electors residing in the local exempted village or city districts whose boundaries would be “altered” by the proposal, shall have the right to vote. In case the proposal contemplates the absorption of an entire local district, exempted village, or city district, into the proposed consolidated district, then it is plain that the boundaries of such districts would be altered because they would in effect cease to exist as such.

Consequently, it is clear that all of the electors in each of the districts whose territory would be altered either by taking a portion thereof or by absorbing the whole district, would be qualified to vote.

It will be noted further that in order for the proposal to become effective, it must secure a majority of the vote in *each district* whose boundaries would be altered by the proposal. This section further provides that when the local district is so created, the state board of education shall appoint a new board of education of the newly created district.

Section 3311.38, Revised Code, which is also referred to in your letter, provides a third possible procedure, differing in some important aspects from either of the foregoing. That section, after authorizing the state board of education to make certain studies, provides:

“After the adoption of recommendations growing out of any such study the state board shall propose by resolution the transfer of territory, 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.” (Emphasis added)

Let it be noted that the state board is here limited to a proposal to transfer part or all of a *single local, exempted village or city school district* to a contiguous local, exempted village or city school district. No transfer to another county district is contemplated nor may all or parts of several districts be included.

When the proposal is submitted to the electors, the statute provides:

“The electors qualified to vote upon an original or a modified proposal are the electors residing in the local, exempted village, or city school district, *a portion of whose territory is proposed to be transferred*. If the proposed transfer be approved by a majority of the electors voting on the proposal, 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.” (Emphasis added)

It is plain that the electors in the entire district, all or part of which is to be transferred, are entitled to vote on the proposal. The transfer can only become effective if it receives the approval of the board of the local, exempted village or city district to which the transfer is proposed to be made.

As to the effect of a favorable result on either of the proposals above referred to on the continued status of an exempted village district, it seems to me clear that if the proceeding is had under either Section 3311.231 or 3311.38, *supra*, and therefore contemplates the *transfer* of part or all of one or more districts *to an exempted* village district, then the status of such village district as an exempted district would remain unaffected. Nothing has happened to it except that its territory has been enlarged.

On the contrary, if it is proposed under Section 3311.37, *supra*, to create a new consolidated district including the entire territory of an exempted village district, then its existence as such exempted district will cease. However, if the new consolidated district includes only a portion of the territory of an exempted village district, we are confronted with a somewhat complex problem. This involves an examination of the procedure

whereby a village district could have become exempted from the supervision of the county board of education.

Until the enactment of Section 3311.34, Revised Code, which provides in substance that after June 1, 1954, no exempted village districts may be created, such districts were created pursuant to Section 3311.08, Revised Code, by action of the board of education, the principal requirement being that a local village district must have a population of three thousand or more. The statute contains no provision for withdrawal of the exemption as a result of the decrease in the population, and the only process set out in the law whereby it may lose that character is found in Section 3311.09, Revised Code, whereby its board of education may declare its desire to have the district return to the supervision of the county board of education.

In the absence of any further provision of the statutes, it is my opinion that an exempted village district once constituted as such would preserve its character, notwithstanding a diminution in its territory or population.

Opinion No. 5736, Opinions of the Attorney General for 1955, p. 441, to which you refer, grew out of a consideration of Section 3311.30, *et seq.*, Revised Code, relating to action by a "citizens committee," and it was there held that since those sections only contemplated the creation of a new district, an exempted village, which was included in the new district, would lose its exempted character. The same principle would apply here and that opinion while relating to another set of statutes, would support my conclusion above indicated that upon a consolidation and creation of a new district, including the whole of an exempted village district, such district would lose its exempted character.

You refer in your third question to Section 3311.23, Revised Code. This section, so long as it was in force, gave the county board of education the authority to accomplish by its own action, but subject to the right of an effective remonstrance by a majority of the electors, precisely the same result which they may now *propose*, subject to approval of the electors, to-wit, the *transfer* of territory from a local school district to an adjoining county school district or to an exempted village or city district.

You will observe that in House Bill 278, *supra*, whereby Section 3311.231, *supra*, was enacted, said Section 3311.23, *supra*, was repealed but with a saving clause embodied in Section 3311.341, Revised Code, to the effect that :

“Nothing herein shall nullify or affect any proceedings or action pending under the provisions of present Sections 3311.22, 3311.23 and 3311.26 of the Revised Code.”

But whether the transfer referred to in your third question was pending under said Section 3311.23, *supra*, on January 1, 1958, when House Bill 278, *supra*, which also enacted Section 3311.231, Revised Code, became effective, or whether the proceeding was had under the new Section 3311.231, *supra*, neither procedure would have any effect on the exempted character of the exempted village district which was simply enlarged by the addition of new territory.

Your letter suggests that Section 3311.34, Revised Code, to which I have already referred, may have an important bearing on the questions submitted. That section, which in its original enactment became effective June 1, 1954, 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.”

The sections referred to became effective on June 1, 1954. Section 3311.34, Revised Code, did nothing but forbid the future *creation* of exempted village school districts. In my opinion it has no bearing on the application of the procedural statutes which we have been considering.

In specific answer to the questions submitted, it is my opinion:

1. If a proposal for transfer of school territory comprising all or part of one or more school districts is submitted to the electors, pursuant to the provisions of Section 3311.231 or Section 3311.38, Revised Code, the proposal, in order to be approved, must receive the vote of a majority of the electors voting in each entire district whose territory is proposed to be transferred, and must also be approved by the board of education of the district to which such territory is to be transferred; if such approval by all of the districts so affected is not given the entire proposal will fail.

2. In an election held pursuant to the provisions of Section 3311.231, Revised Code, the electors qualified to vote are all of the electors residing in the districts, part or all of whose territory is proposed to be transferred.

3. Where, under the provisions of Section 3311.231, Revised Code, or Section 3311.23, Revised Code, repealed as of January 1, 1958, but



operative as to proceedings then pending, or pursuant to the provisions of Section 3311.38, Revised Code, territory of a school district is transferred to an exempted village school district, such transfer will not affect the continuance of such district as an exempted village school district.

4. Section 3311.37, Revised Code, authorizes the state board of education to submit to the electors of each of the school districts affected, a proposal to create a new school district by consolidating territory of parts or all of several contiguous local, exempted village or city school districts. At such election, all of the electors residing in the districts whose boundaries would be affected by the proposed consolidation, are entitled to vote, and the proposal in order to be approved, must have the affirmative votes of a majority of the electors in each district whose boundaries would be altered by the proposal.

5. Where a proposal is made, under either Sections 3311.231, 3311.37 or 3311.38, Revised Code, to transfer or consolidate school territory involving in any way an exempted village school district, the adoption of a resolution by the board of education of such district favoring such proposal, would not have the effect of causing such district to lose its exempted status. The only process whereby it may lose such status is by the adoption of a resolution, as prescribed by Section 3311.09, Revised Code, declaring its desire to be supervised by the county board of education.

Respectfully,

**WILLIAM SAXBE**

**Attorney General**