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COUNTY CITIZEN'S COMMITTEE—SCHOOL—TIME OF FORMATION—3311.30 R. C. ; DIRECTORY RATHER THAN MANDATORY.

SYLLABUS:

The provision in Division (A) of Section 3311.30 Revised Code, that the convention therein provided for be held "within ninety days after the effective date of this act" is directory rather than mandatory, and such provision does not render such section nugatory or inoperative after such date.

Columbus, Ohio, January 14, 1957

Hon. J. L. MacDonald, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 3311.30 of the Revised Code of Ohio provides for a county citizens’ committee and sets forth the method to be followed in selecting the members of such committee.

“Paragraph (A) of Section 3311.30 reads as follows: “Each city, exempted village, local and county board of education shall authorize one of its members to serve as a delegate to a convention which shall be held at the county seat at a time fixed by the county superintendent of schools *within ninety days after the effective date of this act.*” (Underlining the writers.)

“The effective date of Section 3311.30 (Amended House Bill No. 498, 101st General Assembly of Ohio) was October 5, 1955.

“Do the words ‘within ninety days after the effective date of this act’ contained in paragraph (A) of Section 3311.30 preclude the formation of the county citizens’ committee after January 3, 1956 (end of ninety-day period) in a county which had not created and has not yet created such a county citizens’ committee, but which now desires to do so?”

Prior to the 1955 amendment of Section 3311.30 Revised Code, no provision was made therein for the inclusion of city school districts. In the section as amended it is now provided in part:

“* * * * * * * * * * * * * * *”

The jurisdiction of the citizens committee shall include all school districts in the county except city districts which did not join such citizens committee. * * *”

You have quoted in your letter of inquiry Division (A) of this section as amended. Prior thereto Division (A) read as follows:

“* * * * * * * * * * * * * * *”

(A) Each exempted village, local and county board of education shall authorize one of its members to serve as a delegate to a convention which shall be held at the county seat at a time fixed by the county superintendent of schools. * * *”

It is thus apparent that the effect of the amendment, so far as Division (A) is concerned, was (1) to permit but not require the inclusion of city school districts in the citizens committee processes, and (2) to add the "ninety days" provision you have emphasized in your inquiry.

It is an accepted rule of statutory construction that effect should be given to all parts of a statute if it is reasonably possible to do so. In the case here at hand, it is obvious, however, that if we give effect to the "ninety days" provision, and regard it as mandatory, it would have the effect of virtually repealing outright this entire section ninety days after its effective date.

It is a well known rule of statutory construction that absurd consequences of interpretation are to be avoided, and that the nullification of a law is the last extremity to which construction of a statute should go. 37 Ohio Jurisprudence 614, Section 339. There is also the rule that repeals by implication are not favored, and in my opinion this could properly be extended to include a rule that repeals by indirection, especially by ambiguous provisions, should be avoided if reasonably possible.

Such an indirect, or unintended, repeal can reasonably be avoided, in my opinion, in the instant case by regarding the "ninety days" provision, *supra*, as directory rather than mandatory. That such a view is permitted in special cases despite the use of the word "shall" in a statute is evident from the following passage found in 37 Ohio Jurisprudence 327, Section 30:

"CONVERTIBILITY OF TERMS 'MAY' AND 'SHALL' GENERALLY—The literal meaning of the words 'may' and 'shall' is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other where the manifest sense and intent of the statute require one to be substituted for the other or where such substitution is required to give effect to other language found in the statute or to carry out the purpose of the legislature as it may appear from a general view of the statutes under consideration."

It is my view that in the instance here involved it was not the legislative purpose to repeal the statute in question, but to continue it in effect as a permanent law; and that such purpose permits us to regard the provision as directory only.

Accordingly, in specific answer to your inquiry (A) it is my opinion that the provision in Division (A) of Section 3311.30 Revised Code, that the convention therein provided for be held "within ninety days after the effective date of this act" is directory rather than mandatory, and such provision does not render such section nugatory or inoperative after such date.

Respectfully,

C. WILLIAM O'NEILL

Attorney General