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EDUCATION — TRANSFER OF TERRITORY BY COUNTY BOARD OF EDUCATION — SINGLE RESOLUTION CAN EFFECT TRANSFER OF NO MORE TERRITORY THAN ONE SCHOOL DISTRICT—§3311.23 RC.

SYLLABUS:

Under the provisions of Section 3311.23, Revised Code, a county board of education can effect by a single, non-severable resolution the transfer of no more territory than that comprising one local school district.

Columbus, Ohio, June 19, 1957

Hon. Theodore Lutz, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

Your request for my opinion involves the transfer of two local school districts from the Richland County School District to the Huron County School District under the provisions of Section 3311.23, Revised Code. In your letter you state, and the resolutions of transfer and acceptance clearly indicate, that it was the intention of the county boards of education

involved to effect a single, non-severable transfer of the two local school districts. One resolution of transfer and one resolution of acceptance were passed for this purpose. Thereafter some of the electors of one of the two local school districts began to circulate a petition of remonstrance, as provided in Section 3311.23, Revised Code, and several questions thus arise upon which you have asked the opinion of the Attorney General. Before considering any of your specific questions, it is necessary first to inquire into the validity of the resolution of transfer.

The pertinent portion of Section 3311.23, Revised Code, reads:

“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. Such a transfer shall not take effect if, within thirty days after the filing of the map showing boundaries as required by paragraph (C) of this section, a majority of the qualified electors residing in the territory transferred voting at the last general election file with the county board of education a written remonstrance against such transfer. A county board of education may accept a transfer of territory from another county school district or from a city or exempted village school district and annex such territory to a contiguous local school district of the county school district.”

You will observe that the statutory language just quoted is all in the singular; it speaks of the transfer of *a* local school district or part of *a* local school district. If the legislature had intended that the transfer of more than one local school district should be effected by a single, non-severable transaction, it would have been quite simple so to indicate by words in the plural. Application of the maxim *expressio unius est exclusio alterius* leads me to believe that it was the intention of the legislature that passage of one resolution should effect the transfer of all or a part of the territory of only *one* local school district. A local school district is a political or governmental entity, a subdivision which affords its residents and electors certain rights and liabilities peculiar to them. If it was the intention of the legislature to authorize plural transfers of these districts, cutting across their boundaries and ignoring the fact of their entity, I believe that intention would have been clearly expressed. I think rather it was the intention that no more territory than that com--

prising one local school district should be transferred in one non-severable transaction so that the right of remonstrance provided in Section 3311.23, Revised Code, should not be diminished in its effect of preserving the rights of the residents of a local school district by lumping them together as electors with the electors of other districts having other interests. It is my opinion, therefore, that the non-severable transfer of two local school districts undertaken by your county board of education is not authorized by statute and is invalid.

Having reached this conclusion concerning the purported act of transfer, it is not necessary to consider your specific questions with respect to remonstrance procedures.

It is my opinion, and you are advised, that under the provisions of Section 3311.23, Revised Code, a county board of education can effect by a single, non-severable resolution the transfer of no more territory than that comprising one local school district.

Respectfully,
WILLIAM SAXBE
Attorney General