

July 19, 2017

The Honorable Jon Husted
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

SYLLABUS:

2017-023

For the purpose of electing members of the governing board of an educational service center, the territory of the educational service center in whose territory a local school district is located does not change when the local school district enters into an agreement under R.C. 3313.843 with the governing board of an educational service center in whose territory the school district is not located.



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OPINION NO. 2017-023

The Honorable Jon Husted
Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary of State Husted:

You have requested an opinion about the territory of an educational service center. Specifically, you ask whether, for the purpose of electing members of the governing board of an educational service center, the territory constituting the educational service center changes when a member school district enters into an agreement under R.C. 3313.843 for the provision of services with the governing board of a different educational service center in whose territory the school district does not lie.

You have explained that two local school districts in Summit County have terminated their service agreements with the Summit County Educational Service Center. Instead, one of the local school districts has entered into a service agreement with the Cuyahoga County Educational Service Center and the other local school district has entered into a service agreement with the Stark County Educational Service Center. The territory of the Summit County Educational Service Center is germane to a county board of elections' determination of whether residents of the two local school districts may vote for, or seek election as, members of the governing board of the Summit County Educational Service Center after the local school districts have entered into service agreements with the educational service centers of other counties.¹

The governing board of an educational service center consists of five members who are electors residing in the territory composing the educational service center and who "shall be elected at

¹ Your letter refers to an educational service center in a county that has adopted a home rule government. However, nothing in your request indicates that the county's charter has any effect on the issue presented. To maximize applicability of this opinion to the counties of the state, we have addressed your question with respect to statutory counties.

large” in the territory of the educational service center. R.C. 3313.01.² R.C. 3311.05(A) provides, in pertinent part:

The territory within the territorial limits of a county, or the territory included in a district formed under [R.C. 3311.053],³ exclusive of the territory embraced in any city school district or exempted village school district, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes an educational service center.⁴ (Footnotes added.)

Thus, the territory of an educational service center includes the territory of the local school districts of a county and any territory attached to the county for school purposes. The territory of an educational service center does not include the territory of city or exempted village school districts within a county and territory that is detached from the county for school purposes. The answer to your question, therefore, hinges upon whether a local school district that has entered into a service agreement under R.C. 3313.843 with the educational service center of another county has detached for school purposes from the county where the local school district is located.

² R.C. 3311.054 and R.C. 3311.056 set forth exceptions to the membership of the governing board of an educational service center set forth in R.C. 3313.01.

³ A district formed under R.C. 3311.053 is a “joint educational service center,” which may be established when up to five adjoining educational service centers combine. R.C. 3311.053(A).

⁴ The school districts of the state are denominated “city school districts,” “local school districts,” “exempted village school districts,” “cooperative education school districts,” and “joint vocational school districts,” which may alternatively be called “vocational school districts.” R.C. 3311.01. A “city school district” consists of “[t]he territory within the corporate limits of each city, excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes[.]” R.C. 3311.02. An “exempted village school district” is a school district that was designated as an exempted village school district on September 16, 1943 and that has not “lost its identity as a separate school district or ... acquired a different styling as provided by law.” R.C. 3311.04. A “joint vocational school district” or “vocational school district” may be formed by the boards of education of any local, exempted village, or city school district, or the governing board of an educational service center, within a county or within two or more adjoining counties for the purpose of establishing vocational schools. R.C. 3311.16; R.C. 3311.18; R.C. 3311.19(D). A “cooperative education school district” may be established by the boards of education of a city, local, and exempted village school district within the territory of a county school financing district following the dissolution of the county school financing district, R.C. 3311.52(A), or by the boards of education of any two or more contiguous city, exempted village, or local school districts for the purpose of operating a joint high school, R.C. 3311.521(A). A “local school district” is a school district “other than a city school district, exempted village school district, joint vocational school district, or district then known as a county school district, in existence on September 16, 1943[.]” R.C. 3311.03.

Educational service centers are part of the educational regional service system of the state, which was established by the General Assembly to “reduce the unnecessary duplication of programs and services and provide for a more streamlined and efficient delivery of educational services without reducing the availability of the services needed by school districts and schools.” R.C. 3312.01(A), (B)(3). Educational service centers provide services to school districts as required by the Revised Code or as set forth in agreements between an educational service center and a school district, which include such services as:

- (1) Assistance in improving student performance;
- (2) Services to enable a school district or school to operate more efficiently or economically;
- (3) Professional development for teachers or administrators;
- (4) Assistance in the recruitment and retention of teachers and administrators;
- (5) Any other educational, administrative, or operational services.

R.C. 3312.01(C). Several provisions of the Revised Code authorize an educational service center to enter into agreements to share services with or to provide services to a school district, another educational service center, a community school, or a political subdivision. *See* R.C. 3313.841 (agreement “for the sharing on a cooperative basis of the services of supervisory teachers, special instruction teachers, special education teachers, and other licensed personnel necessary to conduct approved cooperative classes for special education and related services and gifted education”); R.C. 3313.843 (agreement for an educational service center to provide services to a city, exempted village, or local school district); R.C. 3313.844 (agreement to provide services to a community school); R.C. 3313.845 (additional authority to enter agreement to provide services to a city, exempted village, local, or joint vocational school district); R.C. 3313.846 (agreement to provide services to a political subdivision).

Your question involves an agreement under R.C. 3313.843, which authorizes a governing board of an educational service center and the board of education of a city, exempted village, or local school district to agree that the educational service center will provide certain services to the school district. Such services include:

supervisory teachers; in-service and continuing education programs for district personnel; curriculum services; research and development programs; academic instruction for which the governing board employs teachers pursuant to [R.C. 3319.02]; assistance in the provision of special accommodations and classes for students with disabilities; or any other services the district board and service center governing board agree can be better provided by the service center and are not provided under an agreement entered into under [R.C. 3313.845].

R.C. 3313.843(B)(3). If a city, exempted village, or local school district has an average daily student enrollment of 16,000 or less, the board of education of the school district is required to enter into an agreement with an educational service center under R.C. 3313.843. R.C. 3313.843(B)(1). A city, exempted village, or local school district with an average daily student enrollment of more than

16,000 has the discretion to enter an agreement with an educational service center. R.C. 3313.843(B)(2).

A school district that receives services from an educational service center pursuant to an agreement under R.C. 3313.843 shall reimburse the educational service center for those services in accordance with R.C. 3313.843(H). R.C. 3313.843(B)(3). R.C. 3313.843(H) states:

Pursuant to [R.C. 3317.023(B)], the department annually shall deduct from each school district that enters into an agreement with an educational service center under this section, and pay to the service center, an amount equal to six dollars and fifty cents times the school district's total student count.⁵ The district board of education, or the district superintendent acting on behalf of the district board, may agree to pay an amount in excess of six dollars and fifty cents per student in total student count. If a majority of the boards of education, or superintendents acting on behalf of the boards, of the districts that entered into an agreement under this section approve an amount in excess of six dollars and fifty cents per student in total student count, each district shall pay the excess amount to the service center. (Footnote added.)

An R.C. 3313.843 agreement with an educational service center may be terminated at the option of the board of education of the school district. R.C. 3313.843(D)(1). If the school district that terminates its agreement with an educational service center is required under R.C. 3313.843(B)(1) to receive services from an educational service center, the school district "shall enter into a new agreement with any educational service center so that the new agreement is effective on the first day of July of that same year." R.C. 3313.843(D)(2).

"If all of the client school districts⁶ of an educational service center have terminated their agreements with the service center under [R.C. 3313.843(D)], upon the latest effective date of the terminations, the governing board of that service center shall be abolished and such service center shall be dissolved by order of the superintendent of public instruction." R.C. 3311.0510(A) (footnote added). Once an educational service center has been dissolved pursuant to R.C. 3311.0510, the territory of any local school district located within that educational service center "shall not constitute part of any educational service center." R.C. 3311.05(A).

⁵ As used in R.C. 3313.843, "total student count" is a school district's "average daily student enrollment reported on the most recent report card issued for the district pursuant to [R.C. 3302.03]." R.C. 3313.843(I).

⁶ For the purpose of R.C. 3311.0510, a "client school district" is "a city, exempted village, or local school district that has entered into an agreement under [R.C. 3313.843 or R.C. 3313.845] to receive any services from an educational service center." R.C. 3311.0510(D).

With this understanding of educational service centers and R.C. 3313.843 in mind, we return to the meaning of the phrases “the territory detached therefrom for school purposes” and “the territory attached thereto for school purposes” in R.C. 3311.05(A). The terms “attached” and “detached” are not statutorily defined for the purpose of R.C. 3311.05(A). Accordingly, we look to the ordinary meanings of the terms. R.C. 1.42. The ordinary meaning of “attach” is “to make ... part of; join[.]” *Webster’s New World College Dictionary* 91 (5th ed. 2014). The ordinary meaning of “detach” is “to unfasten or separate and remove; disconnect; disengage[.]” *Id.* at 401. Thus, applying those definitions to R.C. 3311.05(A), the territory of an educational service center includes territory that is part of or joined to the county for school purposes, and excludes territory that has been disconnected or removed from the county for school purposes.

R.C. 3311.05 clearly evidences the General Assembly’s intent that the territory of an educational service center is not altered by the location of a local school district to which it provides services under an R.C. 3313.843 agreement. When an educational service center is dissolved, which occurs when all of the client school districts have terminated their agreements with the educational service center, the local school districts located within the territory of that educational service center “shall not constitute part of any educational service center.” R.C. 3311.05(A). Thus, even if a school district is required by R.C. 3313.843(B)(1) to enter an agreement with another educational service center, the school district that is located within the territory of a dissolved educational service center is not part of any educational service center. In other words, a local school district located in the territory of a dissolved educational service center may obtain services from an educational service center in another county under an R.C. 3313.843 agreement and, pursuant to R.C. 3311.05(A), is not part of the territory of any educational service center. This indicates that the territory of an educational service center is not determined by the location of the local school districts served by the educational service center.

Moreover, the boards of education of city and exempted village school districts may enter into agreements under R.C. 3313.843 for an educational service center to provide services to the school districts. R.C. 3313.843(B). However, R.C. 3311.05(A) expressly excludes the territory of city and exempted village school districts from the territory of an educational service center. If entering an agreement with an educational service center under R.C. 3313.843 were to result in a city or exempted village school district constituting part of the educational service center, the express terms of R.C. 3311.05(A) would be violated. Such a result is unreasonable and contrary to canons of statutory construction. *See* R.C. 1.47(C) (“[i]n enacting a statute, it is presumed that ... [a] just and reasonable result is intended”); *Meeks v. Papadopulos*, 62 Ohio St. 2d 187, 191-92, 404 N.E.2d 159 (1980) (“the General Assembly, in enacting a statute, is assumed to have been aware of other statutory provisions concerning the subject matter of the enactment even if they are found in separate sections of the Code”).

Although the territory of an educational service center is coextensive with the territory of the county, an educational service center is an entity independent of the county. *See* 2001 Op. Att’y Gen. No. 2001-043, at 2-267 (“an educational service center is a body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. Therefore, an educational service center is a political subdivision for purposes of R.C. Chapter 2744”). When a school district

enters an agreement with an educational service center under R.C. 3313.843, the school district agrees that the educational service center will provide services to the school district. Entering such an agreement does not make a local school district part of the county of the educational service center. Likewise, when a school district enters an agreement with an educational service center of another county under R.C. 3313.843, the school district is not disconnected or removed from the county in which the school district is located. Nothing in R.C. 3313.843 indicates that an agreement to receive services from an educational service center in another county renders the local school district part of or disconnected from a county for school purposes. Therefore, entering an agreement under R.C. 3313.843 with an educational service center does not constitute attaching to or detaching from a county for school purposes within the meaning of R.C. 3311.05(A). This conclusion is confirmed by the Legislative Service Commission's analysis of Sub. H.B. 157, 129th Gen. A. (2011) (eff. Dec. 21, 2011). The analysis states, in pertinent part:

Specifically, the act requires that the per pupil payments be paid to the ESC from which a local school district actually obtains services, instead of automatically making payments to the ESC in whose territory the district is located. In other words, if a local district decides to receive services from a different ESC, the per pupil payments will follow the district to the new ESC. *While the district will remain part of the territory of the old ESC*, under the act, the district will not be paying that ESC for services it has elected to receive elsewhere.

Ohio Legislative Service Comm'n, Final Analysis, Sub. H.B. 157, at p. 6 (as passed by the General Assembly) (Dec. 14, 2011) (Footnote omitted and emphasis added).

A local school district attaches to or detaches from a county for school purposes in specific instances. An example is when part or all of the territory of a local school district is transferred to an adjoining educational service center under R.C. 3311.231 or an adjoining city, exempted village, or local school district under R.C. 3311.231 or R.C. 3311.24. R.C. 3311.231 states, in pertinent part:

Where a governing board of an educational service center adopts a resolution accepting territory transferred to the educational service center under the provisions of sections 3311.231 and 3311.24 of the Revised Code, the governing board shall, at the time of the adoption of the resolution accepting the territory, designate the school district to which the accepted territory shall be *annexed*. (Emphasis added.)

R.C. 3311.231 continues by stating:

Upon the acceptance of territory by the receiving board or boards of education the educational service center governing board offering the territory shall file with the county auditor of each county affected by the transfer and with the state board of education an accurate map showing the boundaries of the territory transferred.

See also R.C. 3311.24(A)(4)(c) (a transfer of territory under R.C. 3311.24(A) shall not be completed until “[a] map showing the boundaries of the territory transferred has been filed, by the board of education accepting the transfer, with the county auditor of each county affected by the transfer”).

Accordingly, the territory, when annexed to another school district in a county in which the territory did not lie originally, is attached to the new county, and detached from the first county, for school purposes.

Another instance of a local school district attaching to or detaching from a county occurs when a new local school district is created from part or all of the territory of an existing school district under R.C. 3311.26. “When the new district consists of territory lying in two or more counties, the state board shall determine to which educational service center the new district shall be assigned.” R.C. 3311.26. Thus, the territory of the new local school district is attached for school purposes to the county of the newly assigned educational service center.⁷

Thus, in those situations described in R.C. 3311.231, R.C. 3311.24, and R.C. 3311.26, the General Assembly has included language in the applicable statutes that clearly indicates that the territory of a school district is attached to or detached from a county for school purposes. There is no comparable language in the statutes relating to service agreements under R.C. 3313.843 between a local school district and an educational service center of a county in which the local school district is not located.

Based on the foregoing, it is my opinion, and you are hereby advised that for the purpose of electing members of the governing board of an educational service center, the territory of the educational service center in whose territory a local school district is located does not change when the local school district enters into an agreement under R.C. 3313.843 with the governing board of an educational service center in whose territory the school district is not located.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large, sweeping initial "M".

MICHAEL DEWINE
Ohio Attorney General

⁷ There may be additional instances in which a local school district attaches to or detaches from a county for school purposes. We have noted two instances as examples.