IN THE SUPREME COURT OF OHIO

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT BOARD OF EDUCATION,	:	Supreme Court Case No. 2020-1326
Appellant,	:	
v.	:	Eighth District Court of Appeals Case No. 108253
BEACHWOOD CITY SCHOOL DISTRICT BOARD OF EDUCATION,	:	
Appellee.	:	

APPELLANT'S MERIT BRIEF

ON APPEAL FROM THE EIGHTH DISTRICT COURT OF APPEALS

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INTRODUCTION

When Ohio municipalities annex land, disputes can arise about whether the local school district's territory and tax revenues should join the annexing city's school district, or remain with the current school district. This case is about the proper procedure to resolve those disputes in a manner that protects the best interests of all the affected taxpayers and students. More specifically, this case asks whether one school district can irrevocably contract to transfer territory or tax revenue from another school district, incident to a municipal annexation, without (a) the approval of the Ohio Board of Education ("State Board") or (b) the certification of the fiscal officer from the school board that is transferring the tax revenue?

The answer is an unambiguous no. How do we know this? "Start with the text." *State v. Smith*, —Ohio St.3d—, 2020-Ohio-4441, ¶ 30. That is how this Court interprets Ohio statutes. It looks to the plain language of the statute and applies the law as written. And that is all the Court needs to do to resolve this important question of first impression.

The plain text of R.C. 3311.06 and O.A.C. Chapter 3301-89 defines the process to transfer school district territory following a municipal annexation. School districts must complete three statutory steps in R.C. 3311.06(C)(2) to obtain approval from the State Board. Each step requires school districts to send certain information to the State Board, which "must receive the following":

> (a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;
>
> (b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations; [and]
>
> (c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

R.C. 3311.06(C)(2)(a)–(c). No agreement effectuating a transfer of territory or tax revenue between school districts is enforceable unless each step is taken. R.C. 3311.06(C)(2) (requiring the State Board to receive this information "[b]efore the state board may approve any transfer of territory to a school district").

This process, and State Board approval, is required for any "transfer of school district territory **or** division of funds and indebtedness ***incident thereto***, pursuant to the annexation of territory to a city or village." R.C. 3311.06(I) (emphasis added). Here, the proposed agreement between Beachwood and Warrensville Heights[1] falls squarely into the latter category. Beachwood and Warrensville Heights agreed to share property tax revenues—*i.e.*, a "division of funds." And the tax revenues were "incident to" Beachwood's efforts to transfer school district territory following an annexation of territory from Cleveland. But it is undisputed that the State Board never received or approved the agreement. As a result, the proposed agreement is not enforceable under the plain language of the statute or the regulations promulgated under the statute. *See* O.A.C. 3301-89-02(A)(6) (now at (A)(3)) ("[T]he state board of education ***shall*** adopt a resolution of approval of the negotiated agreement . . . .") (emphasis added).

To excuse Beachwood's noncompliance, the majority below ignored some words of the statute, and added others. The majority's novel and incorrect reconstruction of the statute limited the State Board's approval to "only agreements that affect the ***physical*** school district boundaries." (R. 17, Appellate Opinion ["App. Op."], ¶ 36, Appx. 6 (emphasis added).) To get

[1] "Beachwood" refers to Appellee the Beachwood City School District Board of Education, which is distinct from the City of Beachwood. While the City of Beachwood annexed territory from Cleveland, the Beachwood School Board is the entity that signed the proposed agreement with Appellant Warrensville Heights City School District Board of Education ("Warrensville Heights").

there, the majority declared, without analysis, that a "division of funds" could not be "incident to" a territory transfer unless the physical transfer of school boundaries also occurred. (*Id.* ¶ 35.)

But that is not what the statute says, nor is it consistent with common sense. There is nothing in R.C. 3311.06 or the regulations in O.A.C. Chapter 3301-89 that limits the State Board's approval to agreements transferring the physical boundaries on a school district map. And "incident to" simply means "relating to"—not resulting from. It is evident that the division of funds here arose from, and therefore is "incident to," Beachwood's desire to acquire Warrensville Height's territory. Beachwood's request to transfer the territory triggered the mediation required by law; the division of funds agreement would not have occurred without the attempted territory transfer. The majority's contrary revision of the statute, which strips the State Board of its critical oversight role that the Ohio General Assembly assigned to it, is reason enough to reverse their decision.

The majority also overlooked the text of another statute, R.C. 5705.41(D)(3), which prohibits school districts from "mak[ing] any contract . . . involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision." Fiscal certificates require confirmation that a school district has appropriated funds for the expenditure and has adequate resources before it enters a contract. These certificates provide an extra layer of protection from "fraud and the reckless expenditure of public funds" by school boards. *See St. Marys v. Auglaize Cty. Bd. of Comm'rs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, 875 N.E.2d 561, ¶ 49 (citation omitted). It is undisputed that the proposed agreement here attached no fiscal certificate. Thus, a "contract made without a certificate shall be void." R.C. 5705.41(D)(3).

To get around this statutory requirement, the majority contrived that "expenditure" does not include the transfer of tax revenues. But in doing so, the majority did not define

"expenditure." Nor did it look to the many Ohio statutes that consistently define "expenditure" as an agreement that benefits another monetarily. *See* R.C. 121.60(A)(1); R.C. 101.90(A)(1); R.C. 101.70(D)(2). The agreement at issue in this case, which benefits Beachwood with the transfer of millions of dollars in tax revenues that would otherwise stay with Warrensville Heights, fits Ohio's definition of expenditure. Thus, the majority's failure to apply the plain text of R.C. 5705.41(D)(3) provides an independent reason to reverse the Eighth District.

Ostensibly aware of their textual problems, Beachwood also raised quasi-contract, conversion, and fraud claims. But Beachwood's tort claims run into the text of yet another statute, R.C. 2744.02, which provides immunity for a "political subdivision" from claims connected to a "government function." R.C. 2744.02(A)(1). Warrensville Heights, as a board of education trying to protect its statutory and legal rights incident to a territory transfer request, checks both boxes. R.C. 2744.01(F), (C)(1), (C)(2)(c). Warrensville Heights was acting on its interpretation of the statutory scheme that regulates it. Nothing is more fundamentally a government function than attempting to meet or enforce the statutory structure that established and governs a government subdivision. The Eighth District majority was wrong to reverse summary judgment on these tort claims, which the trial court correctly dismissed in Warrensville Height's favor.

In sum, Beachwood did not like the rules as written, so it invited the court of appeals to rewrite them, and the court accepted that invitation to err. If the majority's opinion stands, Ohio's local school boards could give away public funds and bankrupt schools—forcing school closures or mergers—with no state oversight. Or wealthy school districts (like Beachwood) could abuse territory transfer proceedings to take tax revenues from economically disadvantaged school districts (like Warrensville Heights)—again, with no state oversight. This would create

an incentive for school boards to skirt the statutory requirements in favor of bait-and-switch tax grabs.

But neither the majority below nor Beachwood can escape the text of the statutory and regulatory protections that the General Assembly created. Before a school board can agree to give away tax revenues or territory permanently to another school district, the State Board must approve the agreement. And a school board cannot contract away millions of dollars from its general fund unless that agreement includes a fiscal certificate. This Court should reverse the Eighth District and restore these protections for Ohio schools, taxpayers, and students that are enshrined in the statutory text.

STATEMENT OF THE CASE

I. Facts.

A. The Authority of the State Board.

Ohio law allows a city to expand its borders by annexing adjoining territory. *See* R.C. 709.02; *State ex rel. Xenia v. Greene Cty. Bd. of Commrs.*, 160 Ohio St.3d 495, 2020-Ohio-3423, 159 N.E.3d 262, ¶ 2. School districts are distinct from cities, so when a city annexes land, the annexation does not necessarily change school district territory. (App. Op., ¶ 9 n.1.) When a city annexes land that contains only part of a school district's territory, the land remains within the original school district's territory. R.C. 3311.06(C)(2).[2] In this scenario, property tax revenues also remain with the original school district. *See* R.C. 3311.06(I). If a neighboring school district associated with the annexing city wants to transfer the associated territory and all

[2] R.C. 3311.06 has been amended several times. Unless specified otherwise, all citations to R.C. 3311.06 refer to the version that became effective on October 2, 1989, the amendment which established the operative language in this case. A copy of that version is attached to the appendix. *See* Appx. 68.

the rights that go with that territory to its school district, it must get approval from the State Board. *Id.*; R.C. 3311.06(C)(2); O.A.C. 3301-89-02.[3]

The State Board's authority is constitutional—established in Article VI, Section 4 of the Ohio Constitution. As such, the General Assembly has tasked the State Board to "administer the educational policies of this state relating to public schools, and relating to . . . finance and organization of school districts, educational service centers, and territory." R.C. 3301.07(B)(1). The State Board's authority extends over school boards, like Beachwood and Warrensville Heights. *See* R.C. 3301.07. (*See also* R. 1, Compl., ¶¶ 1–2, Supp. 2.)

As a result, the State Board's involvement and approval is not only central to disputes between school boards following annexations, it is required. "The statutory procedures governing the creation and reorganization of school districts and the transfer of territory are specified in detail in the Revised Code, and there is no other way to change the composition of a school district." Hanna, Manoloff, Sharb & Jaffe, *Baldwin's Ohio School Law*, § 4:14, at 50 (2020–21 Ed.). In other words, a school board does not have the statutory authority to enter a contract that reorganizes a school district unless the proposed agreement is approved by the State Board. *See* R.C. 3311.06(C)(2), (I); O.A.C. 3301-89-02; O.A.C. 3301-89-04.

B. The City of Beachwood Annexed Land from Cleveland.

The City of Beachwood annexed a tract of land known as the Chagrin Highlands ("Highlands") from the City of Cleveland in 1990. (R. 23, Mills Depo., p. 24, Supp. 165.) At the time of the annexation, the Highlands was slated to become a new corporate headquarters,

[3] O.A.C. Chapter 3301-89 has been amended several times. Unless specified otherwise, all citations to O.A.C. Chapter 3301-89 refer to the version that became effective on April 27, 1990, which established the operative language in this case. A copy of that version is attached to the appendix. *See* Appx. 84.

which included a commercial development project with offices, shops, and possibly a hotel. (R. 23, Mills Depo., p. 26, Supp. 167; R. 23, Ex. WH 53, Supp. 182.) But plans for the Highlands included no residential areas. (*Id.*) Despite this municipal annexation, the Highlands remained part of the Warrensville Heights School District. (R. 1, Compl., ¶ 5, Supp. 3.) With tax-rich development of the Highlands on the horizon, the Beachwood School District wanted to change that.

C. Beachwood Petitioned the Ohio Department of Education under R.C. 3311.06.

On October 23, 1990, Beachwood unilaterally petitioned the Ohio Department of Education ("ODE") under R.C. 3311.06, to attempt to force transfer the Highlands from the Warrensville Heights City School District to the Beachwood City School District ("Request for Transfer"). (R. 1, Compl., ¶ 17, Supp. 5; R. 23, Mills Depo., pp. 23–24, 31–32, Supp. 164–65, 168–69; R. 23, Ex. WH-39, Supp. 180.) Warrensville Heights opposed the transfer.[4]

D. The School Boards Mediated under R.C. 3311.06 and O.A.C. 3301-89-04.

In order to continue pursuing its plan to force the transfer, Beachwood unilaterally followed the statutes and regulations. It notified the ODE of Warrensville Heights' disapproval of the Request for Transfer. As a result, the ODE required the two school boards to "make a

[4] The Cleveland Plain Dealer published an editorial about the Highlands entitled "Tax Grab." The editorial referred to Beachwood's proposed Request for Transfer as "over-zealous" and an "attempted tax grab." (R. 23, Mills Depo., p. 26, Supp. 167; R. 23, Ex. WH 53, Supp. 182.) The editorial noted that the tax grab would not "swell" Beachwood's pupil enrollment because the Highlands contained no residential areas, but would provide Beachwood tax revenue through the commercial development's offices, shops, and possible hotel. *Id*. The editorial noted that Beachwood's request "to snatch funds from the less-well-off Warrensville District would be a miscarriage of justice." *Id*. "The rich do not need to get richer, especially at the expense of one of the state's few predominately black districts." *Id*.

good faith effort to negotiate" an agreement about the Request for Transfer. *See* R.C. 3311.06(C)(2); O.A.C. 3301-89-04.

When Beachwood submitted the Request for Transfer, this negotiation requirement was still new. In fact, the General Assembly had just added this requirement the year before. Am.Sub.S.B. No. 140, Section 1, 143 Ohio Laws 753–57, Supp. 98. The General Assembly also instructed the State Board to "adopt rules governing [these] negotiations," which "shall encourage the realization" of specific goals. R.C. 3311.06(D). The goals of negotiation included:

> (1) A discussion by the negotiating districts of the present and future educational needs of the *pupils* in each district;
>
> (2) The educational, ***financial***, and ***territorial*** stability of each district affected by the transfer;
>
> (3) The *assurance* of appropriate educational programs, services, and opportunities for *all the pupils* in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

Id. (emphasis added). The State Board adopted these rules in O.A.C. Chapter 3301-89.

Yet despite these goals and guidance, Beachwood and Warrensville Heights could not reach an agreement at the local level. (R. 23, Mills Depo., p. 42–43, Supp. 170–71; R. 23, Ex. WH-29, Supp. 180.) As a result, the ODE provided the parties with the names of several facilitators—all of whom had a background in public education. (R. 23, Mills Depo., p. 42, Supp. 170; R. 23, Ex. WH-29, Supp. 180.) *See also* O.A.C. 3301-89-04(A)(6). Once chosen, the facilitator would mediate the dispute over the Request for Transfer. After several years of disagreement, the school boards finally chose Judge Robert M. Duncan as the facilitator. (R. 23, Burkholder Depo., p. 64–65, Supp. 135–36; R. 23, Gippin Depo., at 30–31, 34–40, Supp. 142–43, 146–52.)

In 1996, Beachwood and Warrensville Heights began meeting with Judge Duncan to mediate Beachwood's Request for Transfer. (R. 23, Mills Depo., p. 58–64, Supp. 172–78; R. 23, Gippin Depo., p. 76–77, Supp. 153–54.) After the parties' first mediation session, Judge Duncan issued a memorandum of recommendations. This memorandum memorialized the discussions between the parties—and it specifically listed R.C. 3311.06 as the legal authority under which the parties were meeting: "as you will recall, we rather painstakingly discussed legal mandates set forth in R.C. 3311.06, and each of the 17 questions which [O.A.C.] 3301-89-02(B) requires to be addressed." (R. 23, Gippin Depo., p. 78–79, Supp. 155–56.)

After a second mediation session, Judge Duncan issued a more formal written recommendation. (R. 1, Compl., ¶ 14, Supp. 4.) Judge Duncan's recommendation included two parts. First, Warrensville Heights would transfer—to Beachwood—thirty percent (30%) of the tax revenue generated by the Highlands. This transfer of taxes would start once the valuation of the Highlands' commercial properties exceeded a threshold amount of $22,258,310—and it would last indefinitely. (*Id*.) Second, the Highland's physical territory would remain in the Warrensville Heights School District. (*Id*.) But neither school board signed Judge Duncan's memorandum. (*Id.*) And when the State Board asked for an update, the school boards "responded that they had received Duncan's recommendation and were in the process of preparing 'a formal agreement between the parties.'" (App. Op., ¶ 13.)

E. The School Boards Negotiated a Proposed Agreement under R.C. 3311.06 and O.A.C. 3301-89-04.

Following Judge Duncan's recommendation in 1997, the parties drafted a proposed agreement about the Request for Transfer. (*See* R. 1, Compl., ¶ 12, Ex. E, Supp. 4, 35.) The school boards were explicit about what they were doing: the proposed agreement resulted from

Beachwood's territory "transfer request pursuant to Section 3311.06(C)(2) of the Ohio Revised Code, which request remains pending." (App. Op., ¶ 15; R. 1, Compl., ¶ 20, Ex. E, Supp. 5, 35.)

The terms of the proposed agreement tracked Judge Duncan's recommendations, which included: (1) Beachwood withdrawing the Request to Transfer; (2) a 30-70 split of the property tax revenues from the Highlands (subject to certain conditional requirements); and (3) joint educational programs and activities between the school districts. (App. Op., ¶ 16; R. 1, Compl., ¶ 21, Ex. E, Supp. 6, 35.) So while the physical territory of the Highlands remained in Warrensville Heights, the proposed agreement required Warrensville Heights annually to transfer to Beachwood millions of dollars in tax revenues from the commercial parcels in the Highlands. (R. 1, Compl., ¶ 21, Ex. E, Supp. 6, 35.). Notably, the proposed agreement had no expiration date, and could not be terminated unless both school districts agreed to such termination. This effectively meant that Beachwood would have continued to take tax revenues from Warrensville Heights in perpetuity. "The respective boards approved the [proposed] Agreement," (App. Op., ¶ 71 (Mays, J., dissenting)), but neither school board ever sent the proposed agreement to the State Board or the ODE. As a result, the State Board never approved the proposed agreement.[5] *See* R.C. 3311.06(C)(2); O.A.C. 3301-89-02.

Up until this point, for the entire seven years since Beachwood launched its tax grab scheme, Beachwood had followed the statutory and regulatory requirements. It only tried to

[5] Warrensville Heights's records confirmed that neither Beachwood nor Warrensville Heights submitted the proposed agreement to the State Board—or that the State Board ever approved it. (R. 26, Rock Aff., ¶¶ 6-8.) Beachwood's current treasurer, who has served in that capacity since 1989, did not recall giving any notice to the State Board about the proposed agreement. (R. 23, Mills Depo., p. 100, Supp. 179.) Similarly, both Dr. Paul Williams, who served as Beachwood's superintendent from 1994 to 2007, and Robert Gippin, who served as Beachwood's legal counsel during the negotiation of the proposed agreement, both testified that they had "no recollection" of submitting it to the State Board. (R. 23, Williams Depo., at 63–64, Supp. 187–88; R. 23, Gippin Depo., at 116–18, Supp. 157–59.)

avoid them when its scheme foundered. Beachwood withdrew its request to transfer the territory with the State Board, but attempted to continue seeking transfer of the tax revenues associated with that territory. (*Id.* ¶ 17.) Beachwood hoped that it could avoid the statutory process that it had triggered unilaterally in 1990 by divorcing the territory transfer from the related tax transfer.

It is also undisputed that neither school district attached a fiscal certificate to the proposed agreement.[6] (App. Op., ¶ 46.)

II. Procedural Background.

A. Twenty-eight years later, Beachwood sued Warrensville Heights. The Trial Court Sided with Warrensville Heights.

Beachwood claimed that the proposed agreement triggered the split of property tax revenues starting in 2013. (App. Op., ¶ 19.) Warrensville Heights refused to give Beachwood any of its tax revenues because no binding, approved agreement existed. So in 2018, Beachwood filed a complaint against Warrensville Heights for breach of the proposed agreement and Judge Duncan's memorandum. (*See* R. 1, Compl., Supp. 1–11.)[7] Beachwood also included quasi-contract theories and claims for conversion and fraud. (*Id.*)

After conducting discovery, Warrensville Heights moved for summary judgment on all claims. The trial court granted summary judgment for Warrensville Heights and dismissed all of Beachwood's claims with prejudice. (R. 29, Order Granting Summary Judgment.) In doing so, the trial court explained that "the parties failed to complete the required steps to finalize an

[6] Warrensville's treasurer reviewed the Warrensville Heights School District's records and there was no fiscal certificate for the proposed agreement. (R. 26, Rock Aff., ¶ 9.)

[7] Beachwood originally filed its complaint in 2017. But on the eve of trial, Beachwood dismissed that case without prejudice. *Beachwood City Sch. Dist. Bd. of Educ. v. Warrensville Heights City Sch. Dist. Bd. of Educ.*, Cuyahoga C.P. No. CV-17-880322 (Nov. 29, 2017).

agreement pursuant to ORC 3311.06." (R. 30, Opinion. at 1, Appx. 55 (explaining that "the legislature created an extensive statutory scheme in Ohio Revised Code 3311.06 and Ohio Administrative Code 3301-89 through which school districts could petition for the transfer of territory and participate in resolution with oversight and final approval by the Ohio Board of Education").) And thus, "[b]ecause the parties were without the authority to contract absent the final approval of the State Board, the court finds no valid contract was formed." (*Id.* at 2, Appx. 56.) The court also explained that "Plaintiff's remaining counts for promissory estoppel, unjust enrichment, conversion, and fraud fail." (*Id.*)

B. A Fractured Eighth District Reversed.

The Eighth District reversed the trial court with a splintered decision. (App. Op., ¶¶ 1–58 (Boyle, J.), ¶¶ 59–65 (Gallagher, J., concurring), ¶¶ 66–102 (Mays, J., dissenting).) While all three judges agreed that Beachwood's transfer request was made under to R.C. 3311.06, they disagreed whether Beachwood could avoid the "extensive statutory mechanism" and State Board approval, after Beachwood withdrew the property request that triggered the process. (*Compare id.* ¶ 10, *with* ¶ 72 (Mays, J., dissenting).) The majority read the statutes in a way that allowed Beachwood to become the first non-urban school district to unilaterally, irrevocably, and in perpetuity take real property tax revenues from another non-urban school district without approval from the State Board.

The majority erroneously decided that the first statutory safeguard—State Board approval—did not apply because the agreement did not "affect the physical school district boundaries." (*Id.* ¶ 36.) Relying only on a school district's general power to contract, and ignoring the specific limitations on that power listed in the statute, it held that "a revenue-sharing agreement without an actual transfer of territory does not require approval from the State Board."

(*Id.* ¶ 33; *see also id.* ¶ 37 ("We therefore decline to interpret the transfer of territory to mean the sharing of tax revenue separate from the transfer of physical territory.").) To reach that conclusion, however, the majority added words not found in R.C. 3311.06, such as a limitation to "physical" or "actual" school district boundaries. The majority dismissed, without explanation, the plain language of R.C. 3311.06, which distinguishes between "transfer of school district territory **or** division of funds and indebtedness incident thereto," either of which triggers the need for State Board approval. R.C. 3311.06(I) (emphasis added).

The majority tried to buttress its rewrite of the statute by citing "legislative intent and history." (App. Op., ¶ 36.) But in doing so, the majority relied on statutory history related solely to the 1986 amendment, which by its own terms, concerns only urban school districts. (*Id.* ¶ 36.) Neither Beachwood nor Warrensville Heights is an urban school district. (*Id.*) *See also* R.C. 3311.06(A)(3). The majority also ignored a core tenet of Ohio jurisprudence: a board of education, as a creature of statute, has only those express powers given to it by the General Assembly, and nowhere does Ohio law permit a non-urban school district to permanently contract away its power to tax its territory to another school district without State Board approval.

The majority then decided that the second statutory safeguard—fiscal certification—did not apply because only contracts involving "expenditures" need fiscal certificates. According to the majority, an agreement to "share tax revenue in the future" does not qualify as an "expenditure" under R.C. Chapter 5705. (App. Op., ¶¶ 50–51.) But the majority, without defining the term itself, ignored that an "expenditure of money" simply means an agreement that benefits another monetarily. (*Id.* ¶ 51.) Under the majority's opinion, Beachwood stands to take

millions of dollars from Warrensville Heights in perpetuity.[8] That such a momentous fiscal determination should not require the certification of the district's fiscal officer flies in the face of the plain language of the statute.

The majority also addressed Warrensville Heights's claim for immunity under R.C. 2744.02. The majority reversed "the trial court's grant of summary judgment to Warrensville Heights on all of Beachwood's claims." (*Id.* ¶ 57.) It remanded the tort claims and instructed the trial court to consider whether "Warrensville Heights has immunity." (*Id.*)

The concurrence was troubled by the disparities in Ohio's public-school financing system, calling this case "the very embodiment of those ongoing problems," but joined the majority "barring further action by the Supreme Court of Ohio." (*Id.* ¶¶ 64, 65 (Gallagher, J., concurring).)

The dissent would have found the proposed agreement invalid because the State Board's approval is a mandatory prerequisite for the agreement to become binding. (*Id.* ¶¶ 66-102 (Mays, J., dissenting).) It explained that "R.C. 3311.06 governs the annexation procedure for school district property," which involves much more than just the physical boundaries of the school district. (*Id.* ¶ 70.) The dissent carefully analyzed why the agreement "was governed by R.C. 3311.06 and the corresponding [O.A.C.] requirements," and is void because the parties did not comply with the "entire process." (*Id.* ¶¶ 76–93.) The dissent also explained how the majority even got the history of R.C. 3311.06 wrong. (*Id.* ¶ 95 (explaining that the majority's

[8] There is no mechanism in the proposed agreement to cause the Cuyahoga County Auditor (now "Fiscal Officer") to divide the tax revenue pursuant to any formula, as there would have been had the State Board been involved. Thus, under the majority opinion, every year, the Warrensville Heights treasurer will have to write a check to Beachwood to pay tax revenue disbursed to Warrensville Heights by the County Fiscal Office, and breach the duties of a school district treasurer—creating potential personal liability under R.C. 3313.31.

tortured "interpretation would allow a school district to petition for annexation to induce the affected district to enter into an agreement that does not comply with the legislative intent and statutory purposes, policy, and history and does not protect the welfare of the students.").) As a result, the dissent concluded that "failure to secure ODE approval is fatal to enforcement" of the proposed agreement. (*Id.* ¶ 99.)

Warrensville Heights timely sought jurisdiction in this Court on three propositions of law. On January 22, 2021, the Court took jurisdiction over all three propositions.

PROPOSITIONS OF LAW AND ARGUMENTS IN SUPPORT

<u>Proposition of Law No. I</u>: R.C. 3311.06 and O.A.C. Chapter 3301-89 require the Ohio Board of Education to receive and approve any negotiated agreement related to a school district's request to transfer territory following a city's annexation of property, regardless of whether the proposed agreement involves the physical transfer of territory or just tax revenues.

When territory has been annexed to a city for municipal purposes, it does not transfer for school purposes. Rather, the school district associated with the annexing municipality may request that territory is transferred to it for school district purposes as well. The transfer becomes effective "***only*** upon approval by the state board of education." R.C. 3311.06(C)(2) (emphasis added).[9] The path to State Board approval is long, but the text in Revised Code Chapter 3311 lays out the step-by-step process to get there.

[9] The statute does not apply to "urban school districts," but neither party is an urban school district. An "urban school district" is defined as a "city" school district with an average daily membership (student count for state funding purposes) for the 1985–86 school year in excess of 20,000. R.C. 3311.06(A)(3). *See, e.g.*, Ohio Legis. Serv. Comm'n. Analysis of 118 Gen. Ass. Am.Sub.S.B. 140 (as Reported by H. Education Committee), p. 41 ("Urban school districts are defined in law as only those districts whose average daily membership exceeded 20,000 during the 1985-1986 school year and include Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo.").

Here, the plain text of R.C. 3311.06 confirms that the purported agreement between Beachwood and Warrensville Heights is void because the school boards never completed the final statutory step: obtain State Board approval. This reading is confirmed by the definitions of the words of the statute and the canons of statutory construction. And it is consistent with OAC Chapter 3301-89 and the statutory history.

I. The plain language of R.C. 3311.06 required the State Board to approve the proposed agreement before it could become binding.

Revised Code Chapter 3311 is a comprehensive scheme of statutes governing school districts. R.C. 3311.06 specifies the "procedure when part of [a school] district is annexed by [a] municipal corporation." When a city annexes territory that contains just a part of a school district, the territory remains in the original school district under R.C. 3311.06(C)(2). That default can be altered only by adhering to the specific statutory scheme.

> When the territory so annexed to a city . . . comprises part but not all of the territory of a school district, the said territory becomes part of the city school district . . . only upon approval by the state board of education[.]
>
> Any school district . . . desiring state board approval of a transfer . . . shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district . . . it must receive the following:
>
> (a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;
>
> (b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations; [and]
>
> (c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

R.C. 3311.06(C)(2). School districts must follow these three statutory steps to obtain State Board approval. These steps apply to any negotiated agreement under R.C. 3311.06 regardless of the terms of the agreement. For example:

> No transfer of school district territory **or** division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section.

R.C. 3311.06(I) (emphasis added).

The proposed agreement falls neatly into the latter category.[10] The school districts agreed to share property tax revenues—*i.e.*, a "division of funds"—pursuant to an annexation of territory from Cleveland. As a result, Beachwood needed to complete all three statutory steps—ending with the State Board's approval. *See* R.C. 3311.06(C)(2).

Beachwood followed the first two statutory steps. Beachwood passed a resolution requesting approval from the State Board to approve the Request for Transfer. *See* R.C. 3311.06(C)(2)(a). (*See also* R. 1, Compl., ¶ 17, Supp. 5; R. 23, Mills Depo., at 23–24, Supp. 164–65.) And Beachwood engaged in good-faith negotiations with Warrensville Heights about the Request for Transfer. *See* R.C. 3311.06(C)(2)(b). (*See also* R. 1, Compl., ¶ 20, Ex. E, Supp. 35.) Indeed, the school districts told the State Board about these negotiations. (App. Op., ¶ 13 (telling the State Board that they "received Duncan's recommendation and were in the process of preparing 'a formal agreement between the parties'").)

[10] But even if it did not, the proposed agreement still required State Board approval under the first category—a "transfer of school district territory." *See* R.C. 3311.06(I). A "territory" is broader than the majority's reading, which limited "territory" to the physical boundaries of a school district. Instead, a "territory" includes a bundle of rights associated with school district territory, including real property, school facilities, students, obligations, tax revenue, and more. (*See infra*. Part V.) *See also State ex rel. Bd. of Educ. of Worthington Exempted Sch. Dist. v. Bd. of Educ. of Columbus City Sch. Dist.*, 172 Ohio St. 237, 237–38 (1961). As a result, the proposed agreement included the "transfer of school district territory" because it would transfer millions of dollars in tax revenues from the Highlands territory from Warrensville Heights to Beachwood.

The parties then drafted the proposed agreement, which was "signed by all boards that participated in the negotiations" and "list[ed] the terms agreed on." *See* R.C. 3311.06(C)(2)(c). But neither school board sent the proposed agreement to the State Board. R.C. 3311.06(C)(2) (explaining that the State Board "must receive" the agreement "[b]efore the state board may approve any transfer of territory"); *see also* O.A.C. 3301-89-02(A)(3); O.A.C. 3301-89-04(A)(7). As a result, the State Board never approved the proposed agreement, and under the plain language of the statute, it was not enforceable. R.C. 3311.06(C)(2), (I).

The majority below rescued Beachwood by deciding that it did not have to comply with the statute at all.[11] The majority justified its view with a novel and incorrect reading of the statute. It held that under "the plain language of the statute, a revenue-sharing agreement without an ***actual*** transfer of territory does not require approval from the State Board." (App. Op., ¶ 33 (emphasis added).) By using the word "actual," the majority really meant that the statute governs "only agreements that affect the ***physical*** school district boundaries." (*Id.* ¶ 36 (emphasis added).) But there is nothing in R.C. 3311.06(I) that limits the State Board's approval to agreements transferring the physical boundaries on a school district map.

[11] The General Assembly requires State Board approval for a reason: it is needed to protect Ohio taxpayers and act as a check on school boards faced with tough short-term decisions about property taxes and territory, which are often influenced by the turbulent whims of local pressures and politics. *Baldwin's Ohio School Law*, § 4:27, at 57 ("Reorganization of school districts can be a sensitive matter in any case, but it is particularly sensitive with respect to territorial transfers brought about by municipal annexations, especially in urban areas."). It also is needed to protect the school district that is subject to this process through the unilateral, and often unwanted, actions of the district hoping to annex territory. Warrensville Heights had no choice but to engage with Beachwood once Beachwood made the statutory Request to Transfer. The majority below removed the State Board as a critical safeguard, leaving no check on ill-conceived, short-sighted agreements, or the unwanted demands of neighboring districts.

To get around the plain text, the majority, without analysis, declared that a "division of funds" could not be "incident to" a territory transfer unless the physical transfer of school boundaries occurred. (App. Op., ¶ 35 (relying on R.C. 3311.06(I)).) The implication of the majority's rewrite of the statute is that a "division of funds" cannot be "incident to" a "transfer of school district territory" unless it directly results from an "actual transfer of territory."[12]

But that is not what the statute says. *See State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Off.*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶¶ 14–15 ("When there is no ambiguity, we must abide by the words employed by the General Assembly."); *State v. Rue*, —Ohio St.3d—, 2020-Ohio-6706, ¶ 77 (DeWine, J., dissenting) ("Our duty is to apply the text that we have been given, not to rewrite that text based on some vague conception of the overall character of the statutory scheme."); *State v. Taylor*, 161 Ohio St.3d 319, 2020-Ohio-3514, ¶ 9 ("[W]e are mindful that the proper role of a court is to construe a statute as written without adding criteria not supported by the text."); *State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Loc. Sch.*, —Ohio St.3d—, 2020-Ohio-5149, ¶ 11 ("This court will not insert language to modify an unambiguous statute under the guise of statutory interpretation.").

The key language, which the majority glossed over, is "incident thereto." R.C. 3311.06(I). The Generally Assembly did not define the term, so as this Court instructs, "[i]n such a situation, we generally look to a term's ordinary meaning at the time the statute was enacted." *State v. Jones*, —Ohio St.3d—, 2020-Ohio-6729, ¶ 34 (citing *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019)).

[12] Even worse, Beachwood wants this Court to add even more words to the statute based on what it thinks the "intent of the statute" covers: "annexations of ***real estate*** that ***directly impact the boundaries*** of school districts." (Memo. of Appellee in Opp'n to Jurisdiction, 10 (emphasis added).)

"Incident to" means "relating to"—not resulting from. *See Kelm v. Kelm,* 92 Ohio St.3d 223, 225, 749 N.E.2d 299 (2001) (summarizing *Kelm v. Kelm*, 68 Ohio St.3d 26, 28, 623 N.E.2d 39 (1993)). The Sixth Circuit agrees: something is "incident to" when it is "closely associated or naturally related" to it, even if it is not "directly involv[ed]" with it. *Woodside v. United States,* 606 F.2d 134, 141 (6th Cir. 1979).

Reliable dictionaries confirm this Court's and the Sixth Circuit's understanding. The word "incident," when used with "to" or "thereto," simply means "tending to arise or occur as a concomitant"—*i.e.*, something that "naturally accompanies." Webster's New Riverside Univ. Dictionary, at 618 (1984 2d Ed.) ["Webster's"]; Random House Dictionary of the English Language, at 966 (1987 2d Ed.) ["Random House"] (defining "incident" when followed by "to" as "likely or apt to happen"). And when specifically used in the legal context, "incident to" just means "related to . . . another thing." Am. Heritage Dictionary of the English Language, at 664 (1980 New College Ed.) ["Am. Heritage"]; s*ee also* Bryan A. Garner, *Garner's Modern Am. Usage*, at 453 (2009 3d Ed.) ("incident to" means "closely related to"); Black's Law Dictionary, at 610 (2000 7th Ed.) (defining "incident to" as "arising out of, or otherwise connected with").

The entire course of events here relates to Beachwood's effort to transfer territory. It arises from Beachwood's unilateral Request to Transfer. Beachwood could not lay claim to the tax revenue without first making that request and following the statutory scheme for territory transfer under R.C. 3311.06. The proposed agreement occurred solely due to Beachwood's request under the statutory process. And the "division of funds" is inextricably bound to the transfer, and would not exist without it. Even if the transfer ultimately was withdrawn, it

certainly is "incident to" the agreement negotiated under the statute governing the transfer.[13] Any contrary reading would allow Beachwood to unilaterally trigger the statutory process under R.C. 3311.06(C)(2), drag Warrensville Heights into that process, but avoid the final statutory safeguard requiring State Board review and approval in a scheme designed to grab Warrensville Height's tax revenues. Here, everything flows from Beachwood's unilateral decision to seek the transfer of territory, so everything naturally related to that decision, including the proposed agreement, is "incident to" it.

This reading matches the corresponding text in R.C. 3311.06. For example, the third statutory step toward approval, R.C. 3311.06(C)(2)(c), says nothing about "physical school district boundaries." Instead, it instructs school boards to send the State Board the "terms agreed upon" between the parties "[i]f any negotiations took place." *Id.* That means ***any*** negotiated agreement related to ***any*** request to transfer territory.

R.C. 3311.06(D) confirms that a transfer between school districts does not necessarily include the transfer of real estate, physical property, or territorial boundaries. Instead, R.C. 3311.06(D) lists examples of what a negotiated agreement could look like. School districts "***may*** agree to share revenues from the property included in the territory to be transferred, establish

[13] Ohio courts have long recognized that this language is broad and intended to be so. For example, a widow was denied insurance benefits under a life insurance policy based on an exception that excluded death that resulted from "war, or any act incident thereto." *Smith v. New York Life Ins. Co.*, 86 N.E.2d 340, 341 (Franklin C.P. 1948). The widow claimed that "incident to" war meant that the death had to result from combat. *Id.* But the court found that the exception applied to her husband's death, which occurred at a manufacturing plant in Ohio after explosive materials, that were used to make bombs during World War II, "exploded from an unknown cause." *Id.* at 340–41. The court defined "incident thereto" as "apt to occur," and explained that the bomb making would not have occurred without the war—and "such acts are incident to nothing other than war." *Id.*at 344 ("But for the war he would not have been so engaged."). The same reasoning applies here. The proposed agreement would not have occurred without Beachwood's request of the State Board to transfer territory under R.C. 3311.06. And the agreement is incident to nothing other than Beachwood's transfer request.

cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes." *Id.* (emphasis added); *see also Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 107, 271 N.E.2d 834 (1971) ("The statutory use of the word 'may' is generally construed to make the provision in which it is contained optional, permissive, or discretionary."). This text fits with the language in R.C. 3311.06(I) and shows that a transfer of territory could—or could not—include the transfer of tax revenues. The same is true for the school district's physical boundaries. Put differently, school districts have options about what a territory transfer agreement includes (or excludes). But no matter what options the school boards negotiate, the State Board must still approve the transfer before it becomes binding on the parties, which never happened here.[14]

As a result, the proposed agreement is invalid. *See State ex rel. Bd. of Educ. of Worthington Exempted Sch. Dist. v. Bd. of Educ. of Columbus City Sch. Dist.*, 172 Ohio St. 237, 241 (1961) (explaining that the failure to follow R.C. 3311.06 invalidates action under R.C. 3311.06); *see also Lathrop Co. v. City of Toledo*, 5 Ohio St.2d 165, 172, 214 N.E.2d 408 (1966) (explaining that contracts must comply with legislated requirements). Because the parties never completed the third statutory step and the State Board never received or approved the proposed agreement, the proposed agreement is no agreement at all—it is invalid and unenforceable under R.C. 3311.06(C)(2).

[14] R.C. 3311.06(G) contains the same safeguard: "***In the event*** such transferred territory ***includes real property*** owned by a school district, the state board of education . . . shall determine the true value in money of such real property and all buildings or other improvements." R.C. 3311.06(G) (emphasis added). A conditional phrase, like "in the event," means that something could—or could not—happen. Random House, at 671 (defining "in the event" as "if it should happen"); *see also Garner's Modern Am. Usage*, at 914 (explaining "protasis"). This further illustrates the flexibility in crafting negotiated agreements. A territory transfer could—or could not—include real property such as buildings and improvements.

II. The plain language of O.A.C. Chapter 3301-89 confirms that the State Board needed to approve the proposed agreement.

Chapter 3301-89 of the Ohio Administrative Code, which tracks R.C. 3311.06, confirms that the State Board must approve a negotiated agreement related to a territory transfer request. The Code lays out a comprehensive framework that school boards must follow when there is a dispute over a territory transfer request. This framework creates a structured negotiation that drives the parties through specific statutory and administrative steps. And once parties begin this process, the resolution of the dispute—whether through an agreement or a contested hearing—necessarily ends with approval (or disapproval) from the State Board. *See* O.A.C. 3301-89-02(A)(6) (now at (A)(3)).

Beachwood made its initial request to transfer the territory to the State Board under O.A.C. 3301-89-02(A)(1). *See also* O.A.C. 3301-89-04(D)(1). Then, the school districts engaged in "good faith negotiations" under O.A.C. 3301-89-04(D)(3) and O.A.C. 3301-89-01(C)(2). These negotiations began on a local level, *see* O.A.C. 3301-89-04(A)(1)–(3), and when those failed, the parties selected Judge Duncan as the "mutually agreed upon facilitator," under O.A.C. 3301-89-04(A)(6). These negotiations included discussions about the "examples of terms that school districts may agree to," O.A.C. 3301-89-04(C), many of which Beachwood and Warrensville Heights chose to include. The negotiations also discussed the questions listed in O.A.C. 3301-89-02(D). So just like Beachwood and Warrensville completed the first two statutory steps toward approval, the school districts complied with these regulatory steps as well.

But Beachwood failed to meet the final regulatory requirement. "A copy of the resolution and the negotiated agreement ***shall*** be transmitted by each board of education to the state board of education." O.A.C. 3301-89-04(A)(7) (emphasis added); O.A.C. 3301-89-01(D) (requiring school boards to send "the terms of the agreement" to the State Board "with

reasonable dispatch"). The State Board will then evaluate the negotiations and determine whether they were conducted in "good faith." O.A.C. 3301-89-01(D). And finally, "the state board of education ***shall*** adopt a resolution of approval of the negotiated agreement or may establish a hearing if approval is not granted." O.A.C. 3301-89-02(A)(6) (now at (A)(3)) (emphasis added). This text is clear: if a negotiated agreement is reached, it must be sent to the State Board, and the State Board must approve it to become binding. In other words, State Board approval is a condition precedent before the negotiated agreement can become valid. *See Transtar Elec., Inc. v. A.E.M. Elec. Servs. Corp.*, 140 Ohio St.3d 193, 2014-Ohio-3095, 16 N.E.3d 645, ¶ 22 ("A condition precedent is a condition that must be performed before obligations in a contract become effective.").

The majority made the same mistake with the text of the regulations that it made with the text of the statute. It escaped this plain language by adding words so that the negotiated agreement must include the "actual" or "physical" transfer of territory. But those words do not even exist in the applicable regulations, much less apply.[15] *See* O.A.C. 3301-89-01 through 3301-89-04. Instead, Chapter 3301-89 of the Ohio Administrative Code required the State Board to receive and approve "the negotiated agreement." O.A.C. 3301-89-02(A)(6); O.A.C. 3301-89-04(A)(7). That is exactly what the parties approved when they signed the proposed agreement

[15] In addition to ignoring the plain language in Chapter 3301-89, the majority below engaged in dangerous judicial legislation. It approved the incredible proposition that a local board of education can contract away its right to receive tax revenue in perpetuity—and without State Board oversight—if a simple majority of its members agree to do so. But tax revenues are the most important resource for a school district, such that "it would be futile to organize or maintain a district in which the tax resources cannot support its schools." *Baldwin's Ohio School Law*, § 4:14, at 52. Yet by eviscerating Chapter 3301-89's plain language, the majority below opened the door for three locally elected board of education members to permanently contract away some, most, or even all of the resources it needs to educate its students: its tax revenues. That is exactly why State Board approval is required—to prevent this type of misjudgment on a local level, whether it resulted from malintent, shortsightedness, or even just misunderstanding.

after years of negotiation. But neither Beachwood nor Warrensville Heights ever sent this proposed agreement to the State Board for approval; so it never became binding.

This result tracks the purpose of rule. "The ODE is unilaterally vested with authority to protect the best interest of the students and provide an objective body to weigh the pros and cons of such an agreement by utilizing the detailed and legislatively authorized standards and procedures set forth in R.C. 3311.06 and the Ohio Administrative Code." (*See* App. Op, ¶ 97 (Mays., J., dissenting).) There is nothing in R.C. 3311.06 or O.A.C. Chapter 3301-89 that allows school boards to contract around the required approval. And such a contract made without State Board approval is beyond the express statutory authority granted to school districts.

III. The statutory history and intent of R.C. 3311.06 and O.A.C. Chapter 3301-89 reinforces that the text means what it says.

There is no need to consider statutory history or intent here. As this Court has made clear, "we do not look at legislative intent to determine the meaning of a statute when the statute is unambiguous." *Wayt v. DHSC, LLC*, 155 Ohio St.3d 401, 2018-Ohio-4822, 122 N.E.3d 92, ¶ 29. But unsurprisingly, the words the General Assembly chose match its intent, as reflected in both the enumerated goals of and the legislative history of R.C. 3311.06.

A. The General Assembly intended for the State Board to review and approve negotiated agreements regardless of the terms.

Both the General Assembly and the State Board have enumerated their goals in this area, explaining that negotiations are intended to achieve policy goals, not specific outcomes. R.C. 3311.06(D); O.A.C. 3301-89-04(B). For example, a goal of structured negotiations is to achieve "educational, ***financial***, and ***territorial*** stability of each district affected by the transfer." R.C. 3311.06(D)(2) (emphasis added); *see also* O.A.C. 3301-89-04(B)(2) (stating the "negotiation process shall strive for . . . [a] written review the educational, financial, and territorial stability of each district affected by the transfer"). In other words, the General Assembly wants each party

to understand the interests of the other party when negotiating. *See Baldwin's Ohio School Law*, § 4:15, at 50 (explaining that any reorganization of public school districts must consider "efficiency, geography, demography, and money"). And thus, as with any negotiation, the outcome may vary given the circumstances of the situation and transfer request. *See* Kimball H. Carey, *Anderson's Ohio School Law Manual*, Section 2.22, at 49 (2021 Ed.) ("[I]n order to encourage the resolution of annexation disputes by means of interdistrict agreements, the General Assembly has given boards of education broad powers to negotiate annexation agreements which satisfy the needs of all school districts concerned."). This creates flexibility in the ultimate outcome, even if the process is driven by statutorily mandated steps.

But while the parties can negotiate any terms, the State Board retains a clear, necessary oversight of negotiations: final approval. This approval is guided by the General Assembly's expressed goals and the State Board's unique and long-standing expertise on district organization and funding. *See* R.C. 3311.06(C)(2); *see also* O.A.C. 3301-89-04(A)(3).

B. The statutory history confirms that the State Board retains exclusive, mandatory oversight of transfer requests under R.C. 3311.06.

Though unneeded here, this Court has explained that "the evolution of a statute through amendments can inform our understanding of the meaning of the text." *Jones*, 2020-Ohio-6729, ¶ 34; *see also Miracle v. Ohio Dept. of Veterans Servs.*, 157 Ohio St.3d 413, 2019-Ohio-3308, 137 N.E.2d 1110, ¶ 21 (explaining that the evolution of a statute reinforces the text of a statute). The evolution of R.C. 3311.06 point to the same conclusion as the text itself: State Board approval is required for any negotiated agreement that, as here, does not involve an "urban school district."

Beginning in 1904, Ohio law provided that when territory was annexed for municipal purposes, it automatically transferred for school purposes. 1904 S.B. No. 57, Supp. 52

(establishing automatic transfer in General Code Section 3893). This automatic transfer language remained through several amendments and restatements, including the transition to the Revised Code in 1953, when the transfer language became a part of R.C. 3311.06. *See* Am.Sub.S.B. No. 361, Section 1, 125 Ohio Laws 989, Supp. 60.

In 1955, the General Assembly eliminated R.C. 3311.06's automatic transfer language. Am.Sub.S.B. No. 322, Section 1, 126 Ohio Laws 302–03, Supp. 63–64. Instead, the General Assembly, for the first time, required the State Board to approve a territory transfer request. The State Board, which was still in its infancy,[16] had absolute oversight; transfers could occur no other way. This new oversight was so important that the General Assembly made it retroactive. *See id*. ("[N]o action with regard to the transfer of school district territory . . . shall be completed in any other manner."); s*ee also Bohley v. Patry*, 107 Ohio App. 345, 350, 159 N.E.2d 252 (9th Dist. 1958) (explaining the language was to apply to pending transfers).

In 1959, the General Assembly amended R.C. 3311.06 again. Am.Sub.S.B. No. 297, 128 Ohio Laws 328–29, Supp. 67–68. This time, the General Assembly expanded the State Board's oversight—requiring the State Board to also approve the "division of funds and indebtedness" related to the transfer. *Id.* The 1959 amendment also refined and expanded the retroactivity provision. *Id.* Since the 1959 amendment, this provision has remained unchanged; it matches the applicable language in R.C. 3311.06(I).[17]

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[16] In 1953, the Constitutional amendment creating the State Board was placed on the ballot and was approved by the voters. *See Bd. of Educ. of Aberdeen-Huntington Loc. Sch. Dist. v. State Bd. of Educ.*, 116 Ohio App. 515, 518, 189 N.E.2d 81 (4th Dist. 1962) (explaining creation). The State Board's first meeting took place in January 1956. *See Penick v. Columbus Bd. of Educ.*, 519 F. Supp. 925, 929 (S.D. Ohio 1981), *aff'd*, 663 F.2d 24 (6th Cir. 1981) (explaining the State Board's history).

[17] The history of R.C. 3311.06(I) amplifies the majority's error in interpreting it. The majority restricted the reach of R.C. 3311.06—limiting it to agreements that transfer just

Then, starting in 1980, the General Assembly issued three, two-year moratoria, prohibiting the State Board from acting on R.C. 3311.06 requests involving "urban school districts."[18] The moratoria followed a well-publicized attempt by the Columbus City School District to transfer territory from suburban school districts. *See, e.g.*, *Anderson's Ohio School Law Manual*, Section 2.22, at 54 (generally explaining the bases for the moratorium); *Unusual Settlement Ends Annexation Dispute in Ohio*, Education Week (Sept. 24, 1986), Supp. 126. Before the third moratorium ended, Columbus Schools and the suburban districts voluntarily entered into what was considered a "win-win" negotiation—leading to a proposed agreement to share revenue and academic programs. *See* Ohio Legis. Serv. Comm. Analysis of 128 Gen. Ass. Am.Sub.S.B. 502, Supp. 129–30 (explaining the win-win agreement).

Following the outcome in Columbus, the General Assembly amended R.C. 3311.06 in 1986. This time, the General Assembly created a targeted carve out for transfers affecting "urban school districts." This allowed urban school districts—and only urban school districts—to enter into a comprehensive agreement if both local school boards agreed. Am.Sub.S.B. No. 298, 141 Ohio Laws, Part I, 707, Supp. 87.[19] Essentially, the 1986 amendment codified the

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physical territory. (App. Op., ¶ 33.) But based on its history of retroactive application, Ohio courts have always seen R.C. 3311.06(I) as an expansive provision designed to ensure that school districts could not evade the State Board's oversight. *See Worthington*, 172 Ohio St. at 240 (explaining the retroactive intent); *Bohley*, 107 Ohio App. at 350 (the provision "was designed primarily to affect pending proceedings"); 1956 Ohio Atty.Gen.Ops. No. 56-6808 (same).

[18] Am.Sub.H.B. No. 385, Section 1, 138 Ohio Laws, Part II, 2702–03, Supp. 71–72 (establishing the moratorium as "emergency" legislation); Am.Sub.S.B. No. 13, Section 1, 139 Ohio Laws, Part I, 65–66, Supp. 76–77 (extending moratorium through Nov. 24, 1984); Am.Sub.S.B. No. 262, Section 2, 140 Ohio Laws 918–20, Supp. 82–84 (extending moratorium through Nov. 24, 1986).

[19] Even the majority's "legislative history" analysis is erroneous. To start, the majority "may not rewrite the plain and unambiguous language of a statute under the guise of statutory interpretation." *Pelletier v. Campbell*, 153 Ohio St.3d 611, 2018-Ohio-2121, 109 N.E.3d 1210,

successful agreement from Columbus. *See Anderson's Ohio School Law Manual*, Section 2.22, at 54. This created the first—and only—exception in which a transfer agreement could become binding and valid without State Board approval. *See* R.C. 3311.06 (C)(2) (requiring State Board approval for "[a]ny school district, except an urban school district").

In 1989, the General Assembly again amended R.C. 3311.06. Am.Sub.S.B. No. 140, Section 1, 143 Ohio Laws 753–57, Supp. 100–04. The General Assembly added the relevant negotiation language here—*i.e.*, that transfer requests involving non-urban school districts require "good faith" negotiations. R.C. 3311.06(C)(2). The General Assembly also directed the State Board to adopt rules about negotiations involving non-urban school districts, such as Beachwood and Warrensville Heights. Am.Sub.S.B. No. 140, Section 1, 143 Ohio Laws 753–57, Supp. 100–04. But unlike the previous changes for urban school districts, the General Assembly maintained State Board oversight for any agreement involving non-urban school districts. *Id.* Several months later, the State Board amended O.A.C. Chapter 3301-89 to, among other things, require its approval for ***any*** negotiated agreement. O.A.C. 3301-89-02(A)(6) (now at (A)(3)); 1989-1990 Ohio Monthly Record 1274-1276, Supp. 121 (effective Apr. 27, 1990).

In sum, R.C. 3311.06 evolved from automatically requiring transfers (1904), to requiring the State Board to approve all requests for transfer (1956), to creating a carve out for just urban school districts (1986), and finally, to requiring structured negotiations for non-urban school

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¶ 20; *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8 ("We do not have the authority to dig deeper than the plain meaning of an unambiguous statute under the guise of either statutory interpretation or liberal construction.") (internal quotation marks and citation omitted). Still, the legislative history that the majority cites was limited to the 1986 amendment and R.C. 3311.061. (App. Op., ¶ 36 (quoting *Bartchy v. State Bd. of Educ.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, ¶ 28).) But R.C. 3311.061 discusses only ***urban*** school districts. Neither Beachwood nor Warrensville Heights is an "urban" school district. (*See supra* p. 15 n.9.) Even worse for the majority, the relevant authority for non-urban school districts did not exist in 1986; it was adopted in 1989.

districts (1989) that were subject to extensive procedural rules and State Board approval (1990). As a result, the General Assembly's decision to include a limited carve out for just urban school districts shows that the General Assembly intended for agreements between non-urban school districts, like the ones here, to retain State Board approval.

At least two canons of statutory interpretation confirm this result: the negative-implication canon, and the surplusage canon. The negative-implication canon, also known as *expressio unius est exclusio alterius*, explains that "the express inclusion of one thing implies the exclusion of the other." *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Comm'rs.*, 124 Ohio St.3d 390, 2010-Ohio-169, 922 N.E.2d 945, ¶ 21. This is a "common sense" canon that recognizes that a specific mentioning of one thing naturally excludes other things. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 107 (2012). For example, a parking lot sign that reads "all cars will be towed, except for local residents," implies that *only* local residents are exempt from being towed. That makes sense. If there were other exceptions, the sign should list them too. This is exactly what the General Assembly did when it carved out an exception for urban school districts. By listing just one exception, the General Assembly showed that *only* urban school districts are exempt from obtaining State Board approval. *See* R.C. 3311.06(C)(2) (requiring "[a]ny school district, ***except for an urban school district***" to follow the three statutory steps under R.C. 3311.06(C)(2)(a)–(c) to obtain State Board approval) (emphasis added).

The surplusage canon leads to the same result. *See Reading Law: The Interpretation of Legal Texts*, at 174–79. As this Court explained, a "court should avoid [any] construction which renders a provision meaningless or inoperative." *State ex rel. Carna v. Teays Valley Loc. Sch. Dist. Bd. of Educ.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 19. This means that

the Court "must accord significance and effect to every word, phrase, sentence, and part of the statute, and abstain from inserting words where words were not placed by the General Assembly." *Id.* ¶ 18. This applies to the urban school district exception in R.C. 3311.06(C)(2), and to the text of R.C. 3311.06(I). For R.C. 3311.06(C)(2), the majority's reading below rendered the lone exception, "except an urban school district," worthless by allowing Beachwood and Warrensville Heights, both *non*-urban school districts, to skirt State Board approval. And for R.C. 3311.06(I), the majority's reading below added the words "actual" or "physical" to the first half of the statute—and it rendered the second half, "or division of funds and indebtedness incident thereto," meaningless. (*See supra* pp. 15–25.)

In sum, when the General Assembly mandated negotiations for non-urban school districts in 1989, it could have allowed the parties, like Beachwood and Warrensville Heights, to agree to terms without State Board approval, just as it did in the 1986 amendment for urban school districts. But it did not. Rather, the General Assembly instructed the State Board to continue to oversee and approve these agreements. And the State Board followed those instructions. As a result, the majority below not only abandoned the plain meaning of the statutory text, but it also neglected the intent of the General Assembly and the history behind R.C. 3311.06.[20]

[20] The General Assembly's later actions reaffirm this intent. In 1993, the General Assembly further specified that when comprehensive agreements for ***urban*** school districts were altered, modified or terminated, State Board of approval was not required. Am.Sub.H.B. No. 152, 145 Ohio Laws, Part II, 3641–44, Supp. 107–10. The General Assembly, however, declined to modify State Board oversight of negotiations for non-urban school districts. *See Gross v. FBL Fin. Services, Inc.*, 557 U.S. 167, 174, 129 S. Ct. 2343 (2009) ("[W]hen Congress amends one statutory provision, but not another, it is presumed to have acted intentionally.").

IV. The majority's rewrite of the statute, which replaced "incident thereto" with "resulting from," would upend Ohio law.

This Court's use of the phrase "incident to" in other contexts confirms its meaning in R.C. 3311.06(I)—"incident to" means "relating to." But if the majority's interpretation stands, which incorrectly made "incident to" synonymous with "resulting from," it would upend many established areas of Ohio law; including taxation, workers' compensation law, and Fourth Amendment searches—just to name a few. (*See also* p. 21 n.13 (affecting insurance law).)

In tax, for example, the phrase "incident to" has always carried a broader meaning than "resulting from." This Court established the legal justification for many Ohio excise taxes as "the privileges ***incident to*** ownership" of property. *Babcock & Wilcox Co. v. Kosydar*, 48 Ohio St.2d 251, 260, 358 N.E.2d 544 (1976) ("Ohio sales and use taxes are not taxes on property, but are excise taxes on the exercise of the privileges incident to ownership.") (emphasis added) (relying on *Celina Mut. Ins. Co. v. Bowers*, 5 Ohio St.2d 12, 16, 213 N.E.2d 175 (1965)). It is not the ownership itself that triggers the tax, but the privilege to transfer the property that relates to ownership. *See Howell Air, Inc. v. Porterfield*, 22 Ohio St.2d 32, 34, 257 N.E.2d 742 (1970) (citing *Saviers v. Smith*, 101 Ohio St. 132, 137, 128 N.E. 269 (1920)); *Cincinnati, Milford & Loveland Traction Co. v. State*, 94 Ohio St. 24, 27, 113 N.E. 645 (1916) ("An excise tax is neither on the ownership of property, nor is it with respect to such ownership . . . [i]t is a tax assessed for some special privilege or immunity.").

The distinction is critical, and Ohio's entire system of taxation would collapse without it. Direct taxes resulting from property ownership cannot exceed one percent of the true value of the property. OHIO CONST., Art. XII, § 2. But because sales and income taxes are excise taxes on the right to acquire tangible personal property ***incident to*** ownership, and not as a direct result from ownership, Ohio can levy sales and income taxes in excess of one percent. *See Howell Air*,

22 Ohio St.2d at 33 ("The Ohio sales tax is not a tax on or with respect to the ownership of property. It is not a property tax."); *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 224, 124 N.E. 134 (1919) (same).

The General Assembly included the phrase "division of funds and indebtedness incident thereto" within R.C. 3311.06(I) with full knowledge of the expanding effect of the term "incident to." *See Reading Law: The Interpretation of Legal Texts*, at 322–24 (explaining the prior-construction canon). Indeed, because this Court has used the phrase, "[t]he term has acquired . . . a technical legal sense." *Id.* at 324; *see also McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496, 111 S. Ct. 888 (1991) (discussing the presumption that legislatures act with knowledge of basic rules of statutory construction and previous interpretations of similar provisions in mind). But if the majority below is correct, and "incident to" does not carry its recognized and broader meaning, then Ohio's two largest sources of tax revenue would be unconstitutional. This would create disastrous consequences statewide, including for school districts like Beachwood and Warrensville Heights.

The reach of the majority's misinterpretation is not limited to taxes in Ohio. This Court has also distinguished between "incident to" and "resulting from" when resolving workers' compensation disputes. The Court recognized that the Worker's Compensation Act "protect[s] the employee against risks and hazards ***incident to*** the performance of his work." *Phelps v. Positive Action Tool Co.*, 26 Ohio St.3d 142, 144, 497 N.E.2d 969 (1986) (emphasis added). This means that workplace injuries are covered when either (a) the injury results directly from the performance of work, or (b) when the injury "arises out of" the employment. *See Highway Oil Co. v. State ex rel. Bricker*, 130 Ohio St. 175, 178, 198 N.E. 276 (1935); *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277–78, 551 N.E.2d 1271 (1990) (same). Under the latter and broader

category, injuries are covered if they relate to—or are causally connected to—employment. For example, this Court extended benefits to a teacher injured on the employer's property minutes before work was scheduled to begin. *Fisher*, at 278. As a result, an injury can relate to employment even if it does not directly result from the physical performance of work. *See id.*

The correct scope of "incident to" also affects the constitutionality of evidence discovered during an arrest. After an arrest, law enforcement officers can search a suspect "incident to" the arrest. But this search is not authorized simply because a physical arrest occurred. Instead, the search must relate to the "interests in officer safety and evidence preservation that are typically implicated in arrest situations." *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 11 (quoting *Arizona v. Gant*, 556 U.S. 332, 337, 129 S. Ct. 1710 (2009)). The importance, then, of distinguishing between "resulting from" and "relating to" under the Fourth Amendment is two-fold. On one hand, it protects criminal defendants from warrantless searches that "result from" the arrest, but are not "related to" officer safety. *See Smith*, 2009-Ohio-6426, ¶ 11 (explaining that an officer cannot conduct post-arrest searches of non-dangerous items, such as cell phone data, simply because the discovery of the cell phone resulted from the arrest). But on the other hand, it protects officers when conducting warrantless searches for hidden and dangerous items that are not directly tied to the underlying probable cause for the arrest. *See State v. Freeman*, 8th Dist. Cuyahoga No. 95608, 2011-Ohio-5651, ¶ 4 (Nov. 3, 2011) (discussing a valid search of a firearm and drugs after detectives arrested a defendant for "fail[ing] to observe a stop sign"). In sum, these examples (and there are more) demonstrate that the difference between "relating to" and "resulting from"—which the majority below got wrong—is an imperative distinction throughout Ohio law.

V. The majority's definition of "territory" also contradicts the text of R.C. 3311.06.

But even if the majority were correct to limit the reach of "incident thereto" to situations directly resulting from an actual territory transfer, the proposed agreement still required State Board approval. *See* R.C. 3311.06(I) (requiring State Board approval for any "transfer of school district territory"). "School district territory" is broader than the majority's reading, which artificially limited "territory" to the physical boundaries of a school district. (*See* App. Op., ¶ 37 ("We decline to interpret the transfer of territory to mean the sharing of tax revenues separate from the physical territory.").)

But school district territory, like all property, includes a "bundle of rights" that extend beyond the physical boundaries on a map. *See State ex rel. New Wen, Inc. v. Marchbanks*, 159 Ohio St.3d 15, 2020-Ohio-63, 146 N.E.3d 545, ¶ 24. "A common idiom describes property as a 'bundle of sticks'—a collection of individual rights which, in certain combinations, constitute property." *Id.* (citation omitted). State law then determines, depending on the circumstances, which "sticks are in [the] bundle." *Id.*

This Court has mentioned the "sticks" that the General Assembly gave school district territories. *See State ex rel. Bd. of Educ. of Worthington Exempted Sch. Dist. v. Bd. of Educ. of Columbus City Sch. Dist.*, 172 Ohio St. 237, 237–38 (1961). School district territory can include, among other things, "land, a school building, and equipment." *Id.* at 237 (addressing compensation for such losses related to the annexation of school district territory under R.C. 3311.06). This is consistent with the text of R.C. 3311.06 and O.A.C. Chapter 3301-89, both of which recognize school district territory as including real property, school facilities (including buildings and improvements), students, obligations, tax revenue, and more. (*See supra* Parts I–II.) Indeed, the text of R.C. 3311.06 shows that transferring territory can include some of these

"sticks," but not necessarily all of them. R.C. 3311.06(G) ("***In the event*** such transferred territory includes real property . . . .") (emphasis added).

The goals of R.C. 3311.06 confirm the breadth of property rights included within a school district territory. Negotiations about transfer requests are not limited to discussions about the physical boundaries of the territory, which is just one "stick." Instead, transfer discussions should include talks addressing all the relevant "sticks" within the territory: "the educational needs of the pupils," R.C. 3311.06(D)(1), "the educational, financial, and territorial stability of each district," R.C. 3311.06(D)(2), "education programs, services, and opportunities for all pupils," and "the facilities needed to provide these programs." R.C. 3311.06(D)(3); *see also* R.C. 3301.16 (explaining the process to dissolve and transfer school district territory, which involves "funds, property, and indebtedness of the school district").

History points to the same conclusion: school district territory has always included more than just physical property. For example, under the predecessor statute to R.C. 3311.06, this Court found that school district property included "all the taxable property within the district subject to taxation" and the indebtedness on that property, *not* just "school buildings and equipment utilized in conducting the schools." *State ex rel. Bd. of Educ. of S. Zanesville Village Sch. Dist. v. Bateman*, 119 Ohio St. 475, 478–79, 164 N.E. 516 (1928). As such, General Code §§ 4690 and 4696 required approval of an equitable division of funds related to school district property. *Id.* at 480. In other words, the transfer of tax revenue between school districts has always been subject to the procedural requirements of state law. *See also, e.g., State ex rel. Bd. of Educ. of Swanton Village Sch. Dist. v. Bd. of Educ. of Sharples Village Sch. Dist.*, 114 Ohio St. 603, 604–06, 151 N.E. 669 (1926) (applying the procedure defined by state law to resolve a dispute over funds and indebtedness of a school district even when there is no issue with respect

to the transfer of physical territory); 1959 Ohio Atty.Gen.Ops. No. 753, at 450–51 (explaining that school districts retain property rights over *all* taxable territory until proper approval is obtained under R.C. 3311.06).

Ohio commentators agree that "school district territory" includes more than just physical school district boundaries. *See Anderson's Ohio School Law Manual*, § 2:17, at 40–41 (explaining that the effects of transferring school district territory are broader than just redrawing the boundary lines of the school districts); *Baldwin's Ohio School Law Manual*, §§ 4:15, 4:19, at 50–52 (noting that money and the ability to raise revenue through property taxes is "perhaps the most important factor" in transferring school district territory).

As a result, revenue from taxes is one of the many "sticks" that together comprise a "school district territory." Thus, the State Board still needed to approve the proposed agreement because it would transfer millions of dollars in tax revenues from the Highlands, which is part of Warrensville Height's territory, to Beachwood.

The plain text of R.C. 3311.06 confirms that the purported agreement between Beachwood and Warrensville Heights is void because the State Board never approved it. That reading is confirmed by the definitions of the words of the statute and the canons of statutory construction. And it is consistent with the statutory history. The Court should reverse the Eighth District's decision and remand the case for that court to affirm the trial court's summary judgment decision in favor of Warrensville Heights.

<u>Proposition of Law No. II</u>: R.C. 5705.41 and 5705.412 apply to agreements to transfer tax revenues between school districts.

Even if the parties had the statutory authority to execute the proposed agreement without State Board approval (they did not), the proposed agreement is invalid for another reason—there was no fiscal certificate attached to it.

I. Under R.C. 5705.41 and R.C. 5705.412, the failure to attach a fiscal certificate to the proposed agreement renders it void.

R.C. 5705.41[21] and 5705.412[22] prohibit school districts from "mak[ing] any contract . . . involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision." R.C. 5705.41(D)(3). "Every such contract made without a certificate shall be void." *Id.* Fiscal certificates require confirmation that a school district has appropriated funds for the expenditure and has adequate resources before it enters a contract. This safeguard is important: it protects public schools and students from "fraud and the reckless expenditure of public funds" by school boards. *St. Marys*, 2007-Ohio-5026, ¶ 49.

The majority recognized that the lack of fiscal certificates would void the agreement. (App. Op., ¶¶ 47–49.) On this point, it was correct. Ohio courts consistently void contracts with school boards if they fail to attach a fiscal certificate. *See, e.g.*, *CADO Bus. Sys. of Ohio, Inc. v. Bd. of Educ. of Cleveland City Sch. Dist.*, 8 Ohio App.3d 385, 387, 457 N.E.2d 939 (8th Dist. 1983) (voiding a contract with a school board because it lacked a fiscal certificate); *Brownfield, Bowen, Bally & Sturtz v. Bd. of Educ.*, 56 Ohio App.2d 10, 12, 381 N.E.2d 207 (4th Dist. 1977) (holding that "the board has no legally enforcible [sic] duty to pay [the other party]" because there was no fiscal certificate); *Empire Gas Corp. v. Westerville Bd. of Educ.*, 102 Ohio App.3d 613, 618, 657 N.E.2d 790 (10th Dist. 1995) (holding that when a school board's contract with a natural gas company lacked a fiscal certificate it was void under the statute's "clear and specific" language, even though "the result is harsh"); *Chef's Pantry v. South Point Loc. Bd. of Educ.*, 4th

[21] R.C. 5705.41 has been amended several times. All citations to R.C. 5709.41 refer to the version that became effective August 19, 1974. A copy of that version is attached to the appendix. *See* Appx. 74.

[22] R.C. 5705.412 has been amended several times. All citations to R.C. 5705.412 refer to the version that became effective September 26, 1990. A copy of that version is attached to the appendix. *See* Appx. 79.

Dist. Lawrence No. 1531, 1982 WL 3398, *2 (March 12, 1982) (reversing summary judgment against a board of education because the "contract is void and unenforcible [sic] for lack of certification" under R.C. 5705.412); *Riordan v. Youngstown Bd. of Educ.*, 7th Dist. Mahoning No. 86CA33, 1986 WL 11725, *2 (Oct. 17, 1986) ("A school board shall not make a contract without attaching thereto a certificate of sufficient funding, and if a contract is made without such a certificate, then the contract is void and, without question, the board has no legally enforceable duty to pay.").

Still, the majority incorrectly defined "expenditure" in a way that excused the missing certificate. The majority tried to explain that "[t]he collection of tax revenue is used to cover the expenditure of funds; it is not an expenditure itself." (App. Op., ¶ 51.) The majority, however, did not define "expenditure." And its unsupported conclusion looks at the issue backwards. The majority focused on where the money is coming from when it should have focused on where the money is going.

Although Chapter 5705 of the Revised Code does not define "expenditure," many other statutes define it consistently. *See Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 209, 65 N.E.2d 33 (1946) ("It is proper in the construction of statutes to examine other statutory provisions of a kindred character, particularly in respect to the meaning of language employed in the definition of terms."); *State Auto Inc. Co. v. Pasquale*, 113 Ohio St.3d 11, 2007-Ohio-970, 862 N.E.2d 483, ¶¶ 20–21 (same). An "expenditure" means money (or "anything of value") that "is made to, at the request of, for the benefit of, or on behalf of" a third party. R.C. 121.60(A)(1); R.C. 101.90(A)(1); R.C. 101.70(D)(2). This includes "[a] contract, promise, or agreement to make an expenditure, whether or not legally enforceable." *Id.* As a result, an "expenditure of money" simply means an agreement that benefits another monetarily.

This definition tracks the common meaning of "expenditure." For example, "expenditure" is defined as "[t]he act or process of paying out; disbursement." Black's Law Dictionary, at 473 (2000 7th Ed.). Non-legal dictionaries from the relevant time say the same thing. "Expenditure" means "the act of expending something, especially funds; disbursement." Random House, at 680; *see also* Am. Heritage, at 462 (same); Webster's (same). So again, an "expenditure" looks at the money going out, not the money coming in.

This definition also fits with the Court's decision in *Saint Marys*, which characterized R.C. 5705.41(D)(1) as prohibiting a political subdivision from "enter[ing] into a contract that requires spending public money." 2007-Ohio-5026, ¶ 49. "Public money" is a broad term that means "***any*** money received, collected by, or due [to] a public official." R.C. 117.01(C) (emphasis added). The Court was not concerned about where the money was coming from—it could come from anywhere. But what was important is that the political subdivision was ***spending*** money—*i.e.*, that money was leaving and going to someone else. *See St. Marys*, ¶ 49 (emphasis added). As a result, fiscal certificates are required when money is paid out, no matter how it came in. This is confirmed by the textual definition of "expenditure"—as well as the common meaning and this Court's understanding of "expenditure."

This is what the majority lost focus of—the monetary benefit paid by Warrensville Heights to Beachwood. But that is exactly what the proposed agreement would do. Before the proposed agreement, Warrensville Heights received 100% of the tax revenues at issue. But after, it permanently would have paid out 30% of those revenues—totaling millions of dollars—to Beachwood.[23] (App. Op., ¶ 16.) And mechanically under the majority's opinion, every year, the

[23] The result is the same even if, at the time of the proposed agreement, the parties did not know the exact dollar amount of the expenditure. There is nothing in the Revised Code that

Warrensville Heights treasurer would have to write a check to Beachwood to pay tax revenue disbursed to Warrensville Heights by the County Fiscal Office. (*See supra* p. 14 n.8 (explaining how this would create logistical nightmares, including potential personal liability for the treasurer under R.C. 3313.31).) That is a contract that benefits Beachwood monetarily. Indeed, it would be extraordinary if a school board could contract away millions of dollars—from any funding source—with no requirement to attach a fiscal certificate. But that is exactly what the majority said school boards can now do. The Court should reverse because the proposed agreement involved the "expenditure of money," yet it lacked the required fiscal certificate.

II. Under the 1997 version on R.C. 5705.412, a fiscal certificate was required for any contract between the school districts.

Even if the majority's unsupported analysis of "expenditure" is correct, the proposed agreement still needed a fiscal certificate to be valid. The version of R.C. 5705.412 that was in effect in 1997—which indisputably applies here—is materially different from the version today. (*See* App. Op., ¶ 49 (reprinting the full text from 1997), *see also* Appx. 79.) Today, a fiscal certificate is required for "any appropriation measure, . . . any qualifying contract, or increase during any school year [of] any wage or salary schedule." R.C. 5705.412(B)(1). A "qualifying

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excuses the failure to attach a fiscal certificate on such grounds. And as a matter of policy, "[t]he purpose in requiring such certificate to be made . . . is clearly to prevent . . . the reckless expenditure of public funds [and] to preclude the creation of any valid obligation against the [school board] above or beyond the fund previously provided and at hand for such purpose." *St. Marys*, 2007-Ohio-5026, ¶ 49 (*citing State v. Kuhner*, 107 Ohio St. 406, 413, 140 N.E. 344 (1932)). In other words, fiscal certificates protect school boards from entering into contracts so uncertain that certification is impossible. Any other result contradicts the text and defeats the policy behind R.C. 5705.412 and R.C. 5705.41. What's more, if completing a fiscal certificate was in fact impossible, based on the uncertain future of the Highlands, then Beachwood should have withdrawn from the proposed agreement, or at the very least, delayed it until a fiscal certificate could be issued. *See McCloud v. City of Columbus*, 54 Ohio St. 439, 453, 44 N.E. 95, 96 (1896) ("If the preliminary steps necessary to legalize a contract, have not been taken, [the parties] can withdraw from the transaction altogether, or delay until the steps are taken.").

contract" means "any agreement for the expenditure of money." R.C. 5705.412(A). As just discussed, that plainly covers the proposed agreement—and all contracts that include an "expenditure."

But in 1997, the text of statute was much different. At that time, "no school district shall adopt any appropriation measure, ***make any contract***, give any order involving the expenditure of money, or increase during any school year any wage or salary schedule unless there is attached thereto a [fiscal] certificate." (App. Op., ¶ 49 (emphasis added).) Importantly, fiscal certificates at the relevant time were required for "any contract"—not just "any ***qualifying*** contract." The latter is limited to contracts for the expenditure of money, the former is not.

As a result, whether or not an agreement to share tax revenues is an agreement for "the expenditure of money," the parties were still required to attach a fiscal certificate to the contract under the text of R.C. 5705.412(B)(1) as it existed at that time. The proposed agreement is void because it had no fiscal certificate as required by R.C. 5705.41 and R.C. 5705.412.

Proposition of Law No. III: R.C. Chapter 2744 provides immunity from tort claims arising from a school district's negotiation of tax revenue-sharing agreements.

The majority also erred when it reversed the dismissal of the promissory estoppel, unjust enrichment, fraud, and conversion claims. In Ohio, political subdivisions have immunity under R.C. Chapter 2744, which provides a three-tiered analysis for determining whether a political subdivision is immune from liability for injury or loss. *See M.H. v. Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶ 10 (explaining that "the plain language of the statute is sufficient to guide [the Court] in reaching a decision"). Under the text of the statute, Warrensville Heights is immune from Beachwood's claims.

I. Warrensville Heights qualifies for statutory immunity.

The first tier is found in R.C. 2744.02(A)(1): "a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision . . . in connection with a governmental or proprietary function." This text raises two questions: (1) is Warrensville Heights "a political subdivision?" and (2) are Beachwood's claims for damages caused by a "government function?" The answer to both questions is yes.

First, Warrensville Heights school district is a "political subdivision." R.C. 2744.01(F). Indeed, a "school district" is one of the enumerated examples in the definition of "political subdivision." *Id.*; *see also Doe v. Marlington Loc. Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, 907 N.E.2d 706, ¶ 11 (explaining that "a political subdivision, like the school district here, is generally immune from damages").

Second, Beachwood and Warrensville Heights were engaged in "governmental functions" when they negotiated and drafted the proposed agreement. A governmental function includes "the provision of a system of public education." R.C. 2744.01(C)(2)(c). Put more simply, a board of education engages in a "government function" whenever it runs its school district. *See id.* Indeed, this requirement is so automatic for school districts that it is usually uncontested. *See, e.g.*, *Doe v. Marlington Loc. Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, 907 N.E.2d 706, ¶ 11; *Hubbard v. Canton City Sch. Bd. of Educ.*, 97 Ohio St.3d 451, 780 N.E.2d 543, ¶ 11 (2002). Such is the case here. During this negotiation process, Warrensville Heights and Beachwood were engaged in the system of public education by determining (1) the territory of the school districts, (2) student enrollment, (3) how revenue from

the Highlands would be shared, and (4) how shared educational programs would be developed. *See, e.g.*, *Anderson's Ohio School Law Manual*, Section 10.06, at 1277–78.

If that were not enough, a "government function" also includes any "function that the general assembly mandates a political subdivision to perform." R.C. 2744.01(C)(2)(x). And it encompasses the enforcement or defense of legal rights. *See* R.C. 2744.01(C)(2)(i). Beachwood and Warrensville check these boxes, too. When a territory dispute arises following a municipal annexation, the Generally Assembly mandates the steps for school districts to follow. (*See supra* pp. 15–25.) As a result, the entire route here—starting with negotiations compelled under R.C. 3311.06 and O.A.C. Chapter 3301-89 due to Beachwood's transfer request, to Warrensville Height's steps to enforce its view of the law—is a government function.

This result makes sense. Warrensville Heights should enjoy statutory immunity for following the statutorily mandated steps that the General Assembly created. Beachwood's complaint bears this out. For example, Beachwood's promissory estoppel claim turns on allegations involving the statutory negotiations with Warrensville Heights. (R. 1, Compl., ¶¶ 42–44, Supp. 8–9.) The same is true for the other claims. (*Id.* ¶¶ 47–50, Supp. 9 (unjust enrichment); *id.* ¶¶ 54–55, Supp. 10 (conversion); *id.* ¶¶ 59–62, Supp. 10–11 (fraud).) Beachwood cannot cure its failure to satisfy the statutory steps in R.C. 3311.06 by repackaging its breach of contract claim in tort.

II. None of the statutory exceptions eliminates Warrensville Heights' immunity.

The second tier is found in R.C. 2744.02(B). Once immunity is established, a school district can lose immunity if the underlying claims relate to any of the five statutory exceptions: (1) "negligent operation of any motor vehicle," R.C. 2744.02(B)(1); (2) "negligent performance . . . with respect to proprietary functions," R.C. 2744.02(B)(2); (3) "negligent

failure to keep public roads in repair," R.C. 2744.02(B)(3); (4) "negligence . . . on the grounds of, and is due to physical defects within or on the grounds of [government property]," R.C. 2744.02(B)(4); and any other "liability expressly imposed by the Ohio Revised Code." R.C. 2744.02(B)(5).

None of the five exceptions applies to strip Warrensville Heights of its immunity. Indeed, Beachwood's complaint includes no allegations of negligence, much less negligence related to one of the narrow exceptions enumerated in R.C. 2744.02(B)(1)–(4). And there is no other statutory liability that applies. R.C. 2744.02(B)(5). Warrensville Heights' immunity, then, remains intact.

If immunity remains intact, "there is no need to proceed to step three," which asks "whether immunity is reinstated under R.C. 2744.03(A)." *Elliott v. Cuyahoga Cnty. Exec. & Council*, 8th Dist. Cuyahoga No. 105773, 2018-Ohio-1088, ¶ 12 (Mar. 22, 2018). Such is the case here. As a result, Warrensville Heights is immune from the promissory estoppel, unjust enrichment, fraud, and conversion claims.

III. Ohio courts confirm that immunity protects Warrensville Heights from Beachwood's claims.

Warrensville Height's immunity aligns with cases from across Ohio. Ohio courts, including this Court, have applied immunity under R.C. 2744.03 to bar all the relevant claims here: promissory estoppel, unjust enrichment, fraud, and conversion.[24]

[24] Beachwood's alternative claims fail irrespective of R.C. 2744.03. These claims are not independent, standalone claims. Instead, Beachwood just repackaged the contract claim into various torts. (*Compare* R. 1, Compl., ¶¶ 42–44, *with id.* ¶¶ 47–50 (unjust enrichment); *id.* ¶¶ 54–55 (conversion); *id.* ¶¶ 59–62 (fraud), Supp. 8–11.) But as this Court has long recognized, a party cannot "convert contract actions into tort actions by attacking the motives of [the other] party." *Wolfe v. Continental Cas. Co.*, 647 F.2d 705, 710 (6th Cir. 1981) (analyzing *Ketcham v. Miller*, 104 Ohio St. 372, 136 N.E. 145 (1922)). Indeed, "under Ohio law[,] the existence of a contract action generally excludes the opportunity to present the same case as a tort claim." *Id.*

A. Promissory Estoppel.

To start, this Court explained "the doctrines of equitable estoppel and promissory estoppel are inapplicable against a political subdivision when the political subdivision is engaged in a governmental function." *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 25. Indeed, this Court emphasized that this rule is "well-settled" law and that the principle of estoppel does not apply against a "state or its agencies." *Id.* And lower courts routinely hold that "political subdivisions cannot be made liable upon theories of implied or quasi contract." *See, e.g., Schmitt v. Educ. Serv. Ctr. of Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 97605, 2012-Ohio-2208, ¶ 18 (May 17, 2012); *see also Rid-All Exterminating Corp. v. Cuyahoga Metro. Hous. Auth.*, 8th Dist. Cuyahoga No. 98174, 2012-Ohio-5074, ¶ 5 (Nov. 1, 2012) (the political subdivision "was entitled to promissory estoppel claim . . . and the court erred by refusing to dismiss that claim"); *Bd. of Rootstown Twp. Trustees v. Rootstown Water Serv. Co.*, 11th Dist. Portage No. 2011-P-0084, 2012-Ohio-3888, ¶ 49 (Aug. 27, 2012) ("As a political subdivision of the State of Ohio, [defendant] cannot be bound under a theory of implied or quasi-contract."). Warrensville is thus entitled to immunity on the promissory estoppel claim.

B. Unjust Enrichment.

It is also well-settled that boards of education are immune from unjust enrichment claims. As this Court explained, unjust enrichment is a quintessential quasi-contract claim, *Hughes v. Oberholtzer*, 162 Ohio St. 330, 336, 123 N.E.2d 393, 397 (1954), from which political subdivisions are immune. As a result, courts consistently dismiss unjust enrichment claims when raised against a political subdivision. *See, e.g., G.R. Osterland Co. v. City of Cleveland*, 140 Ohio App.3d 574, 748 N.E.2d 576 (8th Dist. 2000); *City of Seven Hills v. City of Cleveland*, 47 Ohio App.3d 159, 164, 547 N.E.2d 1024, 1029 (8th Dist. 1988); *Aquatic Renovations Sys., Inc. v. Village of Walbridge*, 2018-Ohio-1430, 110 N.E.3d 877, ¶ 49 (6th Dist.) (holding that a

contract was invalid and an alternative unjust enrichment claim could not be raised against a political subdivision). As a result, Warrensville is also entitled to immunity on Beachwood's unjust enrichment claim.

C. Fraud.

This Court also applies immunity to shield political subdivisions from fraud claims. *See, e.g., Wilson v. Stark Cnty. Dept. of Hum. Serv.*, 70 Ohio St.3d 450, 453, 1994-Ohio-394, 639 N.E.2d 105; *Hubbard*, 2002-Ohio-6718, ¶ 8 ("[T]here are no exceptions to immunity [under R.C. 2744.02] for the intentional torts of fraud and intentional infliction of emotional distress."); *see also Charles Gruenspan Co. LPA v. Thompson*, 8th Dist. Cuyahoga No. 80748, 2003-Ohio-3641, ¶ 48 (July 10, 2003) (affirming summary judgment granting political subdivision immunity under R.C. Chapter 2744 from plaintiff's fraud claim); *Rid-All*, at ¶ 9. Warrensville is entitled to immunity on Beachwood's fraud claim.

D. Conversion.

Like Beachwood's other tort claims, Ohio courts regularly find that political subdivisions are immune from conversion claims. *See, e.g., GMAC v. Cleveland*, 8th Dist. Cuyahoga No. 93253, 2010-Ohio-79, ¶ 14 (Jan. 14, 2010); *Kinstle v. Jennison*, 179 Ohio App.3d 291, 2008-Ohio-5832, 901 N.E.2d 830, ¶ 23 (3d. Dist.) (affirming immunity for political subdivision against plaintiff's conversion claim); *Earl v. Wood Cty. Humane Soc'y*, 6th Dist. Wood No. WD-01-061, 2002-Ohio-3156, ¶ 14 (June 21, 2002) (reversing an award of attorneys' fees as "special damages in a conversion action" because the political subdivision was immune). Warrensville is also entitled to immunity on Beachwood's conversion claim.

As a result, Warrensville Heights is immune from Beachwood's promissory estoppel, unjust enrichment, fraud, and conversion claims. All of these claims involve the same protected conduct: Warrensville Heights, as a school district, trying to defend its statutory and legal rights

incident to a territory transfer request. *See* R.C. 2744.01(F), (C)(1), (C)(2)(c). Warrensville Heights was acting on its interpretation of the statutory scheme that regulates it. And nothing is more fundamentally a government function than attempting to meet or enforce the statutory structure that established and governs a government subdivision. The Eighth District was wrong to reverse summary judgment on these tort claims, which the trial court correctly dismissed in Warrensville Height's favor.

CONCLUSION

The text of the statutes and administrative code provides a straightforward answer to this important question of first impression: a local school board of education ***cannot*** irrevocably contract to take territory or tax revenue from another board of education, incident to a municipal annexation, without the approval of the State Board and a certification of a fiscal officer. And if there were any doubt about the text, all the other tools of statutory interpretation (the General Assembly's goals and intent, the evolution of the statutory history, comparative statutory language, and common sense) all point to the same answer: the proposed agreement is invalid because the State Board did not approve it. The Court should reverse the decision of the Eighth District and order dismissal of Beachwood's lawsuit.

Respectfully submitted,

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I certify that a copy of Appellant's Merit Brief was served on the following, by email, on March 23, 2021:

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APPENDIX

Page

Procedural History

Constitutional Provisions

Statutes

Administrative Rules

Notice of Appeal to the Ohio Supreme Court
(November 2, 2020)

IN THE SUPREME COURT OF OHIO

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	Supreme Court Case No. _____
Appellant,	:	
v.	:	Eighth District Court of Appeals Case No. 108253
BEACHWOOD CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	
Appellee.	:	

NOTICE OF APPEAL OF APPELLANT WARRENSVILLE HEIGHTS CITY SCHOOL BOARD OF EDUCATION

ON APPEAL FROM THE EIGHTH DISTRICT COURT OF APPEALS

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Appellant Warrensville Heights City School Board of Education gives notice of appeal to the Supreme Court of Ohio from the judgment of the Eighth District Court of Appeals, entered in *Beachwood City Sch. Dist. Bd. of Edn. v. Warrensville Heights City Sch. Dist. Bd. of Edn.*, 8th Dist. Cuyahoga No. 108253, 2020-Ohio-4459, on September 17, 2020.

This case raises questions of public and great general interest.

Respectfully submitted,

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Journal Entry and Opinion of the
Eighth Appellate District, Cuyahoga County
(September 17, 2020)

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

SEP 17 2020

BEACHWOOD CITY SCHOOL DISTRICT BD. OF EDUCATION,

Plaintiff-Appellant,

v.

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT BD. OF EDUCATION,

Defendant-Appellee.

No. 108253

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: September 17, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-902080

Appearances:

Brindza, McIntyre & Seed, L.L.P., Daniel M. McIntyre, and David A. Rose; and Reminger Co., L.P.A., Holly Marie Wilson, and Aaren R. Host, *for appellant.*

Pepple & Waggoner, Ltd., Christian M. Williams, Donna M. Andrew, and Brian J. DeSantis; and Taft, Stettinius & Hollister, L.L.P., Thomas J. Lee, Adrian D. Thompson, and Josh M. Mandel, *for appellee.*

MARY J. BOYLE, P.J.:

{¶ 1} At the heart of this case are two 1997 agreements between plaintiff-appellant, Beachwood City School District Board of Education ("Beachwood"), and defendant-appellee, Warrensville Heights City School District Board of Education ("Warrensville Heights"). The agreements provide that the school districts would share the tax revenue from a 405-acre tract of land known as the Chagrin Highlands (the "Chagrin Land") that the city of Beachwood annexed from the city of Cleveland in 1990. Despite the disparity between the school districts and the resulting optics in which these agreements were developed and executed, the issue before us in this appeal is limited to whether the agreements that the parties spent years negotiating are valid and enforceable.

{¶ 2} Beachwood raises one assignment of error, that "the trial court erred in granting summary judgment in favor of" Warrensville Heights. Beachwood identifies three issues under its sole assignment of error: (1) whether the parties' agreements are valid without approval from the Ohio Board of Education; (2) whether their agreements are valid without fiscal certificates; and (3) whether Warrensville Heights is immune from Beachwood's tort claims.

{¶ 3} We find merit to Beachwood's sole assignment of error and hold that the 1997 agreements are valid and enforceable. We therefore reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

I. Procedural History and Factual Background

{¶ 4} In August 2018, Beachwood filed a complaint against Warrensville Heights for promissory estoppel, unjust enrichment, conversion, fraud, and two counts of breach of contract. Beachwood sought monetary damages, a declaratory judgment that the 1997 agreements between the parties are valid, and a permanent injunction to enforce the agreements. Beachwood attached the two agreements as exhibits to the complaint.

{¶ 5} In October 2018, Warrensville Heights moved to dismiss Beachwood's complaint, arguing that Warrensville Heights is statutorily immune from claims for promissory estoppel, unjust enrichment, conversion, and fraud. Warrensville Heights further maintained that Beachwood did not allege facts showing that the agreements ever became valid and enforceable. Beachwood filed an opposition, and the trial court denied Warrensville Heights' motion to dismiss.

{¶ 6} In November 2018, Warrensville Heights answered Beachwood's complaint and filed a counterclaim against Beachwood for specific performance. The counterclaim alleged that the agreements were invalid, but if the trial court found otherwise, Warrensville Heights sought an order directing Beachwood to comply with its obligation under the agreements to engage in joint educational programs. Beachwood filed an answer, and the parties engaged in discovery.

{¶ 7} In December 2018, Warrensville Heights filed a motion for summary judgment, and Beachwood filed an opposition. The following facts come from the deposition transcripts and the opposing summary-judgment motions.

{¶ 8} Both Beachwood and Warrensville Heights are political subdivisions under Chapter 2744 of the Ohio Revised Code and are public school districts organized and operating under the laws of the state of Ohio within Cuyahoga County.

{¶ 9} In March 1990, the city of Beachwood annexed the Chagrin Land from the city of Cleveland. Both parties agree that despite the municipal annexation, the Chagrin Land remained within the Warrensville Heights City School District.[1]

{¶ 10} In October 1990, Beachwood requested that the Ohio Department of Education transfer the Chagrin Land for school-district purposes from Warrensville Heights to Beachwood pursuant to R.C. 3311.06. Warrensville Heights opposed the request. An Ohio Department of Education representative instructed Beachwood that it must negotiate in good faith with Warrensville Heights pursuant to Ohio Adm.Code Chapter 3301-89 to try to reach an agreement in the best interest of the districts' educational programs. Warrensville Heights and Beachwood attempted, unsuccessfully, to resolve the dispute. In 1993, the Ohio Department of Education provided Warrensville Heights and Beachwood with names of potential mediators who had backgrounds in public education. The parties disagreed on which of the

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[1] School districts and municipalities are separate political subdivisions of the state of Ohio. Although a city school district generally consists of territory within the limits of each municipality, the school district boundaries need not coincide with the territorial limits of the municipality. 1 Anderson, *Ohio School Law Guide*, Section 2.04 (2020). "Annexation" means "annexation for municipal purposes." R.C. 3311.06(A)(1). When a municipality annexes territory of an adjoining municipality, the territory is not automatically transferred to the school district of the annexing municipality unless the territory comprises an entire school district. 1 Anderson, *Ohio School Law Guide*, Section 2.22 (2020).

mediators to select. In 1995, the parties asked the Ohio Department of Education to approve a "mediation conducted locally by a mutually acceptable facilitator" because the parties were unclear whether such action would comply with Ohio Adm.Code Chapter 3301-89. The Ohio Department of Education's response is not in the record, but in May 1996, the parties agreed to use former U.S. District Judge Robert M. Duncan ("Duncan") to facilitate the matter.

{¶ 11} The parties met with Duncan to mediate a resolution in November 1996 and January 1997. On April 8, 1997, Duncan issued a memorandum with respect to the "request of the Beachwood City School District for transfer of territory from the Warrensville Heights City School District." In his memorandum, he stated:

> The property, which is a 405-acre tract formerly owned by the City of Cleveland, but within Warrensville Heights City School District, was annexed to the City of Beachwood on March 20, 1990. In October 1990, the Beachwood City School District Board of Education authorized action to obtain the transfer of the property to the Beachwood District pursuant to R.C. 3311.06. The Warrensville Heights District has firmly and consistently opposed the transfer. All attempted efforts to settle the transfer issue have failed.

{¶ 12} Duncan then set forth the following recommendations:

1. It was agreed that the property will remain in the Warrensville Heights City School District.

2. Warrensville Heights proposed that real estate tax revenues from the property, generated from that amount of market value of the property (as determined by the Auditor) which exceeds the current amount of $22,258,310 should be shared by the parties. * * *

    a. It was agreed that Warrensville Heights shall receive 100% of tax revenue generated by portions of the property classified as residential or agricultural.

b. If no abatement of real estate taxes is granted, Warrensville Heights proposed that it should receive 70% and Beachwood should receive 30% of tax revenue generated by the portions of the property classified other than as residential or agricultural. Beachwood proposed the portions of 60% to Warrensville Heights and 40% to itself. * * * I indicated my view that the Warrensville Heights proposal was more equitable.

c. If abatement of real estate taxes is granted, Warrensville Heights proposed a graduated scale of percentage change in its favor, ranging to 100% abatement. Beachwood proposed that the scale should only vary up to 25% abatement, since any percentage in excess of that amount would require the approval of Warrensville Heights. Consensus was reached that the scale should only vary to 25% and above, as follows:

* * *

3. It was agreed that the parties shall mutually engage in joint educational programs and activities, including but not limited to those programs and activities discussed previously.

Duncan concluded his memorandum by "strongly urg[ing] both Boards of Education to act favorably on the recommendations."

{¶ 13} In April 1997, the Ohio Department of Education asked the school districts for a status update, and they responded that they had received Duncan's recommendation and were in the process of preparing "a formal agreement between the parties."

{¶ 14} In May 1997, both school boards voted to adopt Duncan's recommendations.

{¶ 15} On May 12, 1997, Beachwood and Warrensville Heights entered into an agreement, which incorporated Duncan's recommendations and stated in relevant part:

> WHEREAS, certain territory in the Warrensville Heights City School District has been annexed for municipal purposes to the City of Beachwood ("the Territory") * * *; and
>
> WHEREAS, Beachwood has requested the Ohio Board of Education to transfer the Territory to the Beachwood School District, pursuant to Section 3311.06(C)(2) of the Ohio Revised Code, which request remains pending; and
>
> * * *
>
> WHEREAS, an agreement incorporating Judge Duncan's recommendations will permit the Territory to remain in Warrensville Heights, with a sharing of tax revenues between the two School Districts on a basis of 70% to Warrensville Heights and 30% to Beachwood which will provide Beachwood with the equivalent of approximately 50% of the revenue which it would have received if the Territory were transferred to Beachwood and other cooperation of educational benefit to both School Districts[.]

{¶ 16} The agreement then stated:

> [T]he parties do hereby agree as follows:
>
> 1. Beachwood shall withdraw its request to transfer the Territory and shall not institute any further such request.
>
> 2. Real estate tax revenues from that amount of market value of the Territory (as determined by the Cuyahoga County Auditor) which exceeds the amount of $22,258,310 (the "Base Amount") shall be shared by the parties as set forth below:
>
>   a. Warrensville Heights shall receive 100% of real estate tax revenue generated by portions of the Territory classified as residential or agricultural.

b. If no abatement of real estate taxes is granted, Warrensville Heights shall receive 70% and Beachwood shall receive 30% of real estate tax revenue generated by the portions of the Territory classified other than as residential or agricultural, net revenues from the Base Amount.

c. If abatement of real estate taxes is granted, the parties shall receive the respective percentages set forth below * * *

3. The parties shall mutually engage in joint educational programs and activities which will be of benefit to both School Districts. The activities and programs contemplated include student exchanges, shared field trips, joint staff development activities and distance learning technology programs. The enumeration of specific types of programs is illustrative and not intended to limit the cooperative interaction and exchanges of students, staff and resources. These programs and services will be reviewed annually by the staff and a report given to each Board of Education.

* * *

The superintendent, treasurer, and board president of both school districts signed the agreement.[2]

{¶ 17} On July 2, 1998, the Ohio Department of Education requested a status update from the school districts. The parties' response is not in the record. On July 8, 1998, Beachwood withdrew its request to transfer the Chagrin Land from the Ohio Department of Education.

{¶ 18} Beachwood's treasurer, who has been the treasurer since 1989, testified at her deposition that she monitored the real estate value of the Chagrin Land throughout the decades as best she could. She explained that every time

[2] The parties treat Duncan's adopted memorandum and the May 12, 1997 agreement as two separate agreements (or purported agreements). Throughout the rest of this opinion, we will refer to Duncan's adopted memorandum and the May 12, 1997 agreement collectively as the "agreements."

Warrensville Heights had a new treasurer, she would reach out to the treasurer and inform him or her of the May 12, 1997 agreement.

{¶ 19} In 2013, the Chagrin Land's value reached the $22,258,310 threshold set forth in the agreements. Representatives from the school districts met several times between 2013 and 2016 to discuss the implementation of revenue sharing and joint educational programming. The school districts participated in joint educational programming in the 2013-2014 and the 2016-2017 school years. Warrensville Heights, however, refused to pay Beachwood the amounts that Beachwood claimed it was due under the agreements.

{¶ 20} In its motion for summary judgment, Warrensville Heights argued that it was entitled to judgment as a matter of law on Beachwood's claims because (1) the Ohio Board of Education did not approve the agreements as R.C. 3311.06 required, (2) the agreements did not contain the fiscal certificates pursuant to R.C. 5705.41 and 5705.412, and (3) Warrensville Heights is statutorily immune from claims of promissory estoppel, unjust enrichment, conversion, and fraud, and these claims also fail because the Ohio Board of Education did not approve the agreements. Beachwood countered each of Warrensville Heights' arguments.

{¶ 21} On February 6, 2019, the trial court granted Warrensville Heights' motion for summary judgment with a written opinion. The opinion reviewed the language set forth in R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89, and stated in relevant part:

> Though [Beachwood's] petition for transfer of territory pended with the State Board for years, the parties failed to complete the required steps needed to finalize an agreement pursuant to ORC 3311.06.
>
> An extensive statutory scheme existed specifically for resolving inter-district territorial and funding disputes, and the court finds the parties were without the capacity to contract over the transfer of tax dollars, purported by Plaintiff to be over five million dollars, without the approval of the State Board of Education.
>
> Because the parties were without the authority to contract absent the final approval of the State Board, the court finds no valid contract was formed and [Beachwood's] remaining counts for promissory estoppel, unjust enrichment, conversion, and fraud fail.

{¶ 22} Beachwood timely appeals from the trial court's February 6, 2019 judgment.

II. Summary Judgment Standard

{¶ 23} We review an appeal from summary judgment under a de novo standard. *Baiko v. Mays*, 140 Ohio App.3d 1, 10, 746 N.E.2d 618 (8th Dist.2000). Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 192, 699 N.E.2d 534 (8th Dist.1997). Civ.R. 56(C) provides that before summary judgment may be granted, a court must determine:

> (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.

State ex rel. Duganitz v. Ohio Adult Parole Auth., 77 Ohio St.3d 190, 191, 672 N.E.2d 654 (1996).

{¶ 24} Civ.R. 56(C) also provides an exclusive list of materials that parties may use to support a motion for summary judgment:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

{¶ 25} The moving party carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the movant fails to meet this burden, summary judgment is not appropriate, but if the movant does meet this burden, summary judgment will be appropriate only if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

III. Approval by the Ohio Board of Education

{¶ 26} Beachwood first argues that the trial court erred in "permitting Warrensville [Heights] to avoid its contractual settlement obligations" and granting Warrensville Heights summary judgment on its breach-of-contract claims because there "remains a genuine dispute of fact as to whether Warrensville [Heights] breached" the agreements. Beachwood argues that both parties were free to enter into the agreements and were not restricted by or required to obtain approval from the Ohio Board of Education. Beachwood further maintains that the trial court improperly interpreted R.C. 3311.06 to include a "penalty of automatic invalidation" for agreements not approved by the Ohio Board of Education.

{¶ 27} Warrensville Heights does not contest the terms of the agreements. Instead, it argues that no contract exists between the parties because the Ohio Board of Education did not review or approve the agreements as the statutory schemes set forth in R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89 required. Warrensville Heights contends that the agreements were to share tax revenue, which is part of the "bundle of rights" that comes with the transfer of territory, and the only type of agreements that do not require Ohio Board of Education approval are those involving urban school districts. Warrensville Heights maintains that the agreements resulted from Beachwood's request to transfer the Chagrin Land and subsequent negotiations pursuant to R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89, and approval from the Ohio Board of Education was therefore required even though the Chagrin Land was not actually transferred. Warrensville Heights further contends that if the agreements did not require approval from the Ohio Board of Education, they would circumvent the statutory schemes set forth in R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89 and would be contrary to the legislative intent. Warrensville Heights also implies that the agreements are not enforceable because they resulted from an improper "tax grab" by Beachwood. As a result, Warrensville Heights argues the agreements are not enforceable, and summary judgment was therefore appropriate.

{¶ 28} "School boards are creations of statute and have no more authority than what has been conferred on them by statute or what is clearly implied

therefrom." *Wolf v. Cuyahoga Falls City School Dist. Bd. of Edn.*, 52 Ohio St.3d 222, 223, 556 N.E.2d 511 (1990).

{¶ 29} The Ohio Revised Code explicitly provides that a board of education has the power to contract. R.C. 3313.17 states:

> The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

Therefore, Beachwood and Warrensville Heights had the power to contract with one another. Additionally, R.C. 3313.33 provides in pertinent part that "[n]o contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board." There is no dispute that Beachwood and Warrensville Heights voted to adopt both Duncan's recommendation and the May 12, 1997 agreement.

{¶ 30} Nevertheless, "in Ohio, political subdivisions cannot be bound by contract unless the agreement is in writing and formally ratified through proper channels." *Schmitt v. Educational Serv. Ctr.*, 2012-Ohio-2208, 970 N.E.2d 1187, ¶ 18 (8th Dist.). Beachwood argues that the "proper channels" were for both boards of education to ratify the agreements. Warrensville Heights argues that the "proper channels" were to have the boards approve the agreements and have the Ohio Board of Education approve the agreements pursuant to R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89. An examination of those provisions is necessary.

{¶ 31} A court's main objective when interpreting a statute is to determine and give effect to the legislative intent. *State ex rel. Solomon v. Bd. of Trustees of the Police & Firemen's Disability & Pension Fund*, 72 Ohio St.3d 62, 65, 647 N.E.2d 486 (1995). We first look to the language of the statute itself to determine the intent of the General Assembly. *Stewart v. Trumbull Cty. Bd. of Elections*, 34 Ohio St.2d 129, 130, 296 N.E.2d 676 (1973). When a statute's meaning is clear and unambiguous, we apply the statute as written. *Provident Bank v. Wood*, 36 Ohio St.2d 101, 105-106, 304 N.E.2d 378 (1973).

{¶ 32} R.C. 3311.06, titled "Territory of district to be contiguous; exceptions; procedure upon annexation," states (and stated in 1997) in pertinent part:

> (C)(2) When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes part of the city school district or the school district of which the village is a part only upon approval by the state board of education, unless the district in which the territory is located is a party to an annexation agreement with the city school district.
>
> * * *
>
> Any school district, except an urban school district,[3] desiring state board approval of a transfer under this division shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district, except an urban school district, under this section, it must receive the following:

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[3] An "urban school district" is "a city school district with an average daily membership for the 1985-1986 school year in excess of twenty thousand that is the school district of a city that contains annexed territory." R.C. 3311.06(A)(3). The parties agree that neither is an urban school district.

(a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;

(b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations;

(c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

(D) The state board of education shall adopt rules governing negotiations held by any school district except an urban school district pursuant to division (C)(2) of this section. The rules shall encourage the realization of the following goals:

(1) A discussion by the negotiating districts of the present and future educational needs of the pupils in each district;

(2) The educational, financial, and territorial stability of each district affected by the transfer;

(3) The assurance of appropriate educational programs, services, and opportunities for all the pupils in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

Districts involved in negotiations under such rules may agree to share revenues from the property included in the territory to be transferred, establish cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes.

* * *

(G) In the event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that board's decision shall be final. * * *

* * *

> (I) No transfer of school district territory or division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section applies to all proceedings for such transfers and divisions of funds and indebtedness pending or commenced on or after October 2, 1959.

{¶ 33} Simply put, R.C. 3311.06 applies to agreements that transfer territory from one school district to another. *See Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, ¶ 26. R.C. 3311.06(C)(2) requires approval from the state board of education for territory annexed by a municipality to "become[] part of the city school district[.]" Although R.C. 3311.06(D) provides that "[d]istricts involved in negotiations under [Ohio Adm.Code Chapter 3301-89] may agree to share revenues from the property" and "establish cooperative programs between the participating districts," this subsection is limited to "the territory to be transferred." Similarly, R.C. 3311.06(I) provides that the statute applies to the "transfer of school district territory or division of funds and indebtedness incident thereto[.]" Pursuant to the plain language of the statute, a revenue-sharing agreement without an actual transfer of territory does not require approval from the Ohio Board of Education.

{¶ 34} Contrary to Beachwood's argument that R.C. 3311.06 does not contain a "penalty of automatic invalidation," the statute and case law make clear that territory transfers pursuant to the statute are not valid unless they have approval from the Ohio Board of Education. R.C. 3311.06(C)(2) ("[T]he said territory becomes part of the city school district * * * only upon approval by the state

board of education[.]"); *State ex rel. Bd. of Edn. v. Bd. of Edn.*, 172 Ohio St. 237, 242, 175 N.E.2d 91 (1961) ("In the absence of the necessary definite approval, the [territory] transfer was not completed[.]"). However, here, the agreements are clear that no transfer of territory was to occur, and the Ohio Board of Education did not need to approve them.

{¶ 35} Warrensville Heights argues that approval from the Ohio Board of Education was required despite the lack of territory transfer because the agreements were "developed" from Beachwood's request to transfer the Chagrin Land and subsequent negotiations pursuant to R.C. 3311.06. However, the agreements explicitly required Beachwood to "withdraw its request to transfer the [t]erritory and [to] not institute any further such request." The agreements stated that instead of transferring the Chagrin Land, the Chagrin Land would remain in Warrensville Heights, and Beachwood and Warrensville Heights would share the real estate taxes generated from the Chagrin Land upon its value reaching a set amount. Pursuant to the agreements, Beachwood withdrew its request to transfer the Chagrin Land. Nothing in the record shows that the Ohio Department of Education rejected this withdrawal or requested any further action of either party. The parties in this case agreed to not transfer the Chagrin Land, and the revenue that the parties agreed to share could not be "incident to" a transfer of territory. Therefore, R.C. 3311.06 does not apply.

{¶ 36} This interpretation of R.C. 3311.06 is consistent with its legislative intent and history. Although the Ohio Board of Education is charged generally with

supervising the public education system pursuant to R.C. 3301.07, the Ohio Supreme Court has recognized that the purpose of R.C. 3311.06, in particular, is to provide stable school district boundaries to help give certainty to families and school officials:

> In R.C. 3311.061, the General Assembly expressly stated the legislative intent underlying 1986 amendments to R.C. 3311.06. The first paragraph of R.C. 3311.061 recognizes that school district boundaries are a matter of great concern to the public, that state law has generated substantial uncertainty over the stability of school district boundaries, and that this uncertainty has been particularly stressful for families with school-age children and has hindered the ability of school officials to plan for the future. The first paragraph concludes that a fair and lasting solution "can best be achieved through a cooperative effort involving school district officials, board of education members, and legislators."

Bartchy, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, at ¶ 28. The legislature intended to provide stability related to the physical school district boundaries. Requiring Ohio Board of Education approval for only agreements that affect the physical school district boundaries is consistent with this purpose.

{¶ 37} Warrensville Heights argues that we must construe R.C. 3311.06(I) broadly to include all the "bundle of rights" that come with the transfer of territory. It maintains that tax revenue is part of the bundle of rights, and that the sharing of tax revenue is therefore equivalent to the transfer of territory. But the plain language of R.C. 3311.06 is not consistent with this argument. The statute provides that the territory of a school district should be "contiguous" and is specifically concerned with the "boundaries" — the physical aspects of territory. R.C. 3311.06(I) also distinguishes between the transfer of territory and "the division of funds and

indebtedness incident thereto." We therefore decline to interpret the transfer of territory to mean the sharing of tax revenue separate from the transfer of physical territory.

{¶ 38} Warrensville Heights further maintains that when reading R.C. 3311.06 as a whole, it is "abundantly clear" that there is "only one specific class of agreements that do not require approval by the Ohio Board of Education" — those involving an "urban school district." This may be true for agreements to transfer territory. But based on the plain language of R.C. 3311.06(D)(3), revenue-sharing agreements that are not incident to a transfer of territory also do not need approval from the Ohio Board of Education. As a result, the trial court erred in concluding that R.C. 3311.06 required Beachwood and Warrensville Heights to acquire the state board of education's approval to make the agreements enforceable.

{¶ 39} We next turn to Ohio Adm.Code Chapter 3301-89, titled, "Transfers of Territory." Ohio Adm.Code 3301-89-01, titled, "General policies of the state board of education in a request for transfer of territory under [R.C.] 3311.06 or 3311.24," is the same today as it was in 1997. It states:

> (A) The rules under Chapter 3301-89 of the Administrative Code apply to the request for a transfer of territory following municipal annexation under section 3311.06 of the Revised Code.
>
> * * *
>
> (C) The department of education shall require the boards of education affected by a request for transfer of territory to enter into good faith negotiations when it is required by sections 3311.06 and 3311.24 of the Revised Code.

(D) In situations where agreement has been reached between respective boards of education, the terms of agreement should be sent to the state board of education with reasonable dispatch. * * *

{¶ 40} The 1997 version of Ohio Adm.Code 3301-89-02, titled "Procedures of the state board of education in a request for transfer of territory under section 3311.06 * * * of the Revised Code," stated in pertinent part:

(A) Initial requests

(1) A school district may request a transfer of certain territory for school purposes under section 3311.06 of the Revised Code by sending an initial letter requesting the land transfer to the state board of education[.]

* * *

(6) Upon receipt of a negotiated agreement, the state board of education shall adopt a resolution of approval of the negotiated agreement or may establish a hearing if approval is not granted.

{¶ 41} The 1997 version of Ohio Adm.Code 3301-89-04, titled "Procedures governing negotiations of school districts, other than urban school districts as defined in division (A)(3) of section 3311.06 of the Revised Code," stated in pertinent part:

(A) Negotiation Process

* * *

(7) Agreements reached shall be adopted by each board of education involved. A copy of the resolution and the negotiated agreement shall be transmitted by each board of education to the state board of education.

* * *

(C) The following are examples of terms that school districts may agree to:

(1) Share revenues from the property included in the territory to be transferred;

(2) Establish cooperative programs between the participating districts;

(3) Establish mechanisms for the settlement of any future boundary disputes; and

(4) No tax revenue to the receiving district from the territory transferred for a period of time.

(D) Before the state board of education may hold a hearing on a transfer, or approve or disapprove any such transfer, it must receive the following items:

(1) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer, if the transfer request is pursuant to section 3311.06 of the Revised Code[.]

* * *

{¶ 42} Like R.C. 3311.06, Ohio Adm.Code Chapter 3301-89 applies to the transfer of territory between school districts. Although Ohio Adm.Code 3301-89-02(A)(3) provides that "upon receipt of a negotiated agreement, the state board of education shall determine whether to approve the agreement," this section concerns requests and negotiated agreements for "a transfer of certain territory," "concerning a transfer of territory," and "the proposed transfer." Ohio Adm.Code 3301-89-04(A)(7) provides that "agreements" adopted by the parties need to be submitted to the state board of education with a resolution for approval. Although this subsection does not identify the type of agreement, subsection (C)(1) includes language referring to the "territory to be transferred." Moreover, Ohio Adm.Code Chapter

3301-89 was promulgated pursuant to R.C. 3311.06 and 3311.24, which both pertain to the transfer of territory.

{¶ 43} Warrensville Heights argues that following Beachwood's interpretation of R.C. 3311.06 and the pertinent sections of the Ohio Adm.Code — i.e., that the provisions do not apply because there was not a transfer of territory — would allow school districts to circumvent the entire statutory schemes set forth in those sections and would render those sections meaningless. Specifically, Warrensville Heights states that "Beachwood's novel rule would undermine the entire comprehensive statutory scheme that has been in place for decades." But the plain language of R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89 do not require the Ohio Board of Education's approval when there is not a transfer of territory. Beachwood did not circumvent the statutory scheme — it was simply not required to follow it.

{¶ 44} Lastly, Warrensville Heights' characterization of Beachwood's transfer request as a "tax grab" is irrelevant for the purposes of this appeal. Its citation to a newspaper article and statistical information suggesting that the transfer request was inequitable would be relevant to the Ohio Board of Education's determination of whether to approve a request for a transfer of territory. *See* Ohio Adm.Code 3301-89-02(D) (enumerating questions for the state board of education to consider). It also undoubtedly influenced the years-long negotiations and mediation that resulted in the subject agreements: that unabated real estate tax revenue generated from the amount of market value of the Chagrin Land that

exceeded $22,258,310 would be shared 30 percent to Beachwood and 70 percent to Warrensville Heights. But the "tax grab" characterization has no bearing on whether there was actually a transfer of territory, whether the statutory schemes set forth in R.C. 3311.06 and Ohio Adm.Code Chapter 3301-89 apply to the agreements, and whether the agreements are valid and enforceable.

{¶ 45} Accordingly, neither R.C. 3311.06 nor Ohio Adm.Code Chapter 3301-89 required Beachwood and Warrensville Heights to obtain the Ohio Board of Education's approval, and both parties had the ability to enter into the agreements. The trial court therefore erred in finding that Warrensville Heights is entitled to judgment as a matter of law on Beachwood's breach-of-contract claims on this basis.

IV. Fiscal Certificates

{¶ 46} Next, Beachwood argues that no fiscal certificates were necessary for the agreements to be valid because the agreements were not "qualifying contracts," did not involve the expenditure of funds, and did not involve an amount of money that was ascertainable at the time the agreements were executed. Warrensville Heights argues that R.C. 5705.41 and R.C. 5705.412 required fiscal certificates to be attached to the agreements because the agreements involved "expenditures." Warrensville Heights maintains that the absence of such certificates renders the agreements void, relying on *CADO Business Sys. of Ohio v. Bd. of Edn.*, 8 Ohio App.3d 385, 457 N.E.2d 939 (8th Dist.1983). Warrensville Heights further disputes that the speculative nature of the future tax revenue obviates the need for fiscal certificates.

{¶ 47} The fiscal certificates that R.C. 5705.41 and 5705.412 require limit the ability of public agencies to spend public funds. 1 Anderson, *Ohio School Law Guide*, Section 5.07 (2020). These statutes require educational boards to "certify the adequacy of revenues for appropriation measures, wage and salary schedule increases, and certain contracts." *Id.*; *see also State ex rel. Tele-Communications, Inc. v. McCormack*, 44 Ohio App.3d 49, 50, 541 N.E.2d 483 (8th Dist.1988) (the fiscal officer's "duty is to certify that funds required to meet the obligations are available.").

{¶ 48} R.C. 5705.41 is titled "Restriction upon appropriation and expenditure of money — certificate of fiscal officer." R.C. 5705.41 requires that a certificate of a fiscal officer be attached to each contract involving the expenditure of money. The certificate must state that the amount of funds needed to satisfy the contract have been, or are in the process of being, appropriated and free from encumbrances. R.C. 5705.41. The statute states in relevant part that "No subdivision or taxing unit shall":

> (B) Make any expenditure of money unless it has been appropriated as provided in such chapter;
>
> * * *
>
> (D)(1) * * * [M]ake any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the

> subdivision's fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. * * *

{¶ 49} R.C. 5705.412, titled "Certificate of revenue required for school district expenditures," applies specifically to educational boards and imposes certificate requirements beyond those of R.C. 5705.41. 1 Anderson, *Ohio School Law Guide*, Section 5.07 (2020). The certificate must be made not only by a fiscal officer, but also by the superintendent and the president of the board of education. R.C. 5705.412. The certificate must contain more information than the certificates pursuant to R.C. 5705.41. The version of R.C. 5705.412 that was in effect in 1997 states in pertinent part:

> Notwithstanding section 5705.41 of the Revised Code, no school district shall adopt any appropriation measure, make any contract, give any order involving the expenditure of money, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel, programs, and services essential to the provision of an adequate educational program for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in the succeeding fiscal year equal to the number of days instruction was held or is scheduled for the current fiscal year. * * * In addition, a certificate attached, in accordance with this section, to any contract shall cover the term of the contract or the current fiscal year plus the two immediately succeeding fiscal years, whichever period of years is greater. * * * Every contract made, order given, or schedule adopted or put into effect without such a certificate shall be void, and no payment of any amount due thereon shall be made. The department of education and the auditor of state jointly shall develop

> rules governing the methods by which treasurers, presidents of boards of education, and superintendents shall estimate revenue and determine whether such revenue is sufficient to provide necessary operating revenue for the purpose of making certifications required by this section.

{¶ 50} The text of R.C. 5705.41 and 5705.412 shows that both statutes apply to contracts involving the expenditure of money. *See also Grand Valley Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng., Inc.*, 2016-Ohio-716, 48 N.E.3d 626, ¶ 31 (10th Dist.) ("Because the MOU was not an agreement that authorized any particular expenditure of funds, it was not required to be accompanied by a certification of funds under either statutory provision [R.C. 5705.41 or 5705.412]."). Warrensville Heights argues that Chapters 101, 102, and 121 of the Ohio Revised Code define "expenditure" to include "a contract, promise, or agreement to make an expenditure, whether or not legally enforceable." R.C. 101.70(D)(2); 101.90(B)(2); 102.01(L); 121.60(B)(2). Warrensville Heights maintains that "an agreement to potentially share tax revenue in the future" is an "expenditure."

{¶ 51} We disagree. We note that R.C. Chapter 5705 does not define "expenditure," but even using the definition provided by Warrensville Heights, the agreements here do not involve expenditures. To the contrary, the agreements provide for the sharing of tax revenue: obtaining funds, not spending funds. Indeed, under R.C. 5705.41(D), taxes and revenue in the process of collection are "deemed" to be in the treasury or the appropriate fund that the fiscal officer certifies meets an obligation for the expenditure of money. And under former R.C. 5705.412, the

"superintendents shall estimate revenue" and determine whether it is sufficient "for the purpose of making certifications required by this section." The collection of tax revenue is used to cover the expenditure of funds; it is not an expenditure itself. Accordingly, the agreements were not required to include fiscal certificates pursuant to R.C. 5705.41 and 5705.412.

{¶ 52} Beachwood's argument that the agreements are not "qualifying contracts" pursuant to R.C. 5705.412 lacks merit because the version of R.C. 5705.412 that was in effect when the agreements were executed does not refer to "qualifying contracts." The phrase "qualifying contracts" was not added to R.C. 5705.412 until an amendment in 2000. Warrensville Heights' reliance on *CADO Business Sys. of Ohio*, 8 Ohio App.3d 385, 457 N.E.2d 939, is also misplaced because its holding that a contract is void if it fails to comply with R.C. 5705.412 is irrelevant when R.C. 5705.412 is not implicated. Moreover, the parties' dispute about whether the certificates were needed even though the amount of tax revenue to be shared was speculative at the time the agreements were executed also misses the point. R.C. 5705.41 and 5705.412 apply only to the expenditure of funds, and the collection of tax revenue, regardless of how speculative it is, is not an expenditure of funds.

{¶ 53} Accordingly, the certificate requirements of R.C. 5705.41 and 5705.412 do not apply to the agreements, and the agreements are not void for failing to include fiscal certificates. Because the parties had the authority to contract with each other and the agreements did not require Ohio Board of Education approval or

fiscal certificates, the agreements are valid and enforceable. The parties did not brief, and the trial court did not consider, whether each party breached the agreements and the amount of damages owed. Genuine issues of material fact exist regarding these topics. Warrensville Heights is therefore not entitled to judgment as a matter of law on Beachwood's breach-of-contract claims.

V. Tort Claims

{¶ 54} Lastly, Beachwood argues that the trial court erred in granting Warrensville Heights summary judgment on Beachwood's claims for promissory estoppel, unjust enrichment, fraud, and conversion. Beachwood maintains that the trial court essentially dismissed these claims as moot and failed to engage in any of the three-tiered analysis of political-subdivision immunity. Beachwood contends that Warrensville Heights is not automatically immune from these claims because there is a genuine issue of material fact regarding whether Warrensville Heights engaged in a proprietary function by entering the agreements. Warrensville Heights argues that it was engaged in a governmental function and, as a political subdivision, is thus immune from Beachwood's tort claims.

{¶ 55} In the trial court's opinion supporting its journal entry granting summary judgment, the trial court stated:

> Because the parties were without authority to contract absent the final approval of the State Board, the court finds no valid contract was formed and Plaintiff's remaining counts for promissory estoppel, unjust enrichment, conversion, and fraud fail.

{¶ 56} As previously discussed, we find that the parties had the authority to contract and that their agreements were valid without approval from the Ohio Board

of Education and without fiscal certificates. We therefore reverse the trial court's grant of summary judgment on Beachwood's claims for promissory estoppel, unjust enrichment, fraud, and conversion and remand for the trial court to consider these claims consistent with this opinion.

{¶ 57} Accordingly, we sustain Beachwood's sole assignment of error and reverse the trial court's grant of summary judgment to Warrensville Heights on all of Beachwood's claims. We remand for the trial court to consider Beachwood's tort claims and whether Warrensville Heights has immunity, and to resolve the remaining factual disputes regarding Beachwood's breach-of-contract claims.

{¶ 58} Judgment reversed and remanded.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., CONCURS WITH SEPARATE CONCURRING OPINION;
ANITA LASTER MAYS, J., DISSENTS WITH SEPARATE DISSENTING OPINION

SEAN C. GALLAGHER, J., CONCURRING:

{¶ 59} I fully concur with the majority opinion. I agree that the 1997 agreements are valid and enforceable, that R.C. 3311.06 and Ohio Adm.Code 3301-89 have no application in this matter because no transfer of territory is involved, that the agreements did not need approval by the Ohio Board of Education, and that no fiscal certificates were necessary. I concur with the entire analysis set forth in the majority opinion and agree that the trial court erred in granting Warrensville Heights' motion for summary judgment.

{¶ 60} Nonetheless, I certainly understand the concerns raised by the dissent in this matter. I also recognize that historically, there have been disparities in Ohio's public-school financing system, which impacted under-resourced school districts that serve low-income communities. These disparities were addressed by the Supreme Court of Ohio in the *DeRolph* line of cases.

{¶ 61} In *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84, 677 N.E.2d 733 (*DeRolph* I), the Supreme Court of Ohio held, at that time, that "Ohio's public elementary and secondary school financing system violates Section 2, Article VI of the Ohio Constitution, which mandates a thorough and efficient system of common schools throughout the state." *Id.* at 212. The court recognized there were wealth-based disparities among Ohio's school districts that deprived many of Ohio's public-school students of high-quality educational opportunities. *Id.* at 198. The court was cognizant of the limitations imposed upon it and was not advocating "a 'Robin Hood' approach to school financing reform" or suggesting that "funds be diverted from

wealthy districts to the less fortunate." *Id.* at 211. The court found that it was for the General Assembly to create a new school financing system, requiring a "complete systematic overhaul," and to enact remedial legislation. *Id.* at 212-213.

{¶ 62} In *DeRolph v. State*, 89 Ohio St.3d 1, 2000-Ohio-437, 728 N.E.2d 993 ("*DeRolph* II"), wherein the Supreme Court of Ohio agreed that the initial attempt to revise the school-funding system was still unconstitutional, the court recognized the problems associated with "funding systems that rely too much on local property taxes" and "the inadequacies of a system that is overreliant on local property taxes." *Id.* at 8. The court found that in order to create a thorough and efficient system of statewide common schools, that "[s]ignificant changes had to be made in the way primary and secondary public education is funded * * *." *Id.* at 11. Although the court did not give the General Assembly precise instructions on fixing the school funding system, it highlighted several areas that needed attention. The court reiterated that it was for "the General Assembly to legislate a remedy" and that it was not the role of the court to fashion a remedy. *Id.* at 12. *See also DeRolph v. State*, 97 Ohio St.3d 434, 2002-Ohio-6750, 780 N.E.2d 529 ("*DeRolph* IV") (finding that *DeRolph* I and *DeRolph* II are the law of the case and that the then existing school-funding system was unconstitutional).

{¶ 63} Post-*DeRolph* litigation, the Ohio's General Assembly has made changes to Ohio's school funding system. A statutory school funding system was implemented that specifies a per-pupil formula amount and uses that amount, along with a district's "state share index" to calculate a district's base payment, and also

includes payments for targeted assistance (based on a district's property value and income), supplemental targeted assistance (based on a district's percentage of agricultural property), as well as other considerations. *See* Ohio Legislative Service Comm., *Final Analysis for H.B. 166, 133rd General Assembly*, pg. 132, https://www.lsc.ohio.gov/documents/budget/133/MainOperating/FI/BillAnalysis/19-HB166-133.pdf (accessed Sept. 9, 2020). In H.B. 166 of the 133rd General Assembly (the budget act for fiscal years 2020-2021), the statutory school funding system was retained in existing law, but it was suspended for fiscal years 2020 and 2021. *Id.* Instead, the act provides for payments to be made based on the district's funding for fiscal year 2019 and requires use of the district's "state share index" or "state share percentage" computed for the district for fiscal year 2019. *Id.* The act also provides for the payment of student wellness and success funds and enhancement funds. *Id.* at pgs. 133-134.

{¶ 64} Consistent with the *DeRolph* litigation, the General Assembly has created a new school financing system and enacted legislation in its effort to comply with the requirement of providing a thorough and efficient system of common schools throughout the state. Nevertheless, disparities between school districts seemingly remain. This lawsuit is the very embodiment of those ongoing problems.

{¶ 65} In any event, this court cannot fashion a remedy that is not supported by the law and barring further action by the Supreme Court of Ohio, any remedy remains within the province of the legislature. I am compelled by law to fully concur with the majority opinion.

ANITA LASTER MAYS, J., DISSENTING:

{¶ 66} I respectfully dissent from the majority's opinion and would find that the trial court did not err in granting summary judgment in favor of Warrensville Heights City School District and against Beachwood City School District.

{¶ 67} The crafters of the Ohio Constitution "carried within them a deep-seated belief that liberty and individual opportunity could be preserved only by educating Ohio's citizens." *DeRolph v. State*, 78 Ohio St.3d 193, 197, 677 N.E.2d 733 (1997). It is for this reason that

> education was made part of our first Bill of Rights. Section 3, Article VIII of the Ohio Constitution of 1802. Beginning in 1851, our Constitution has required the General Assembly to provide enough funding to secure a "thorough and efficient system of common schools throughout the State."

Id. "The responsibility for maintaining a thorough and efficient school system falls upon the state." *Id.* at 210. "When a district falls short of the constitutional requirement that the system be thorough and efficient, it is the state's obligation to rectify it." *Id.*, citing *Dupree v. Alma School Dist.*, 279 Ark. 340, 349, 651 S.W.2d 90 (1983).

{¶ 68} Ohio recognizes that

> "The mission of education is to prepare students of all ages to meet, to the best of their abilities, the academic, social, civic, and employment needs of the twenty-first century, by providing high-quality programs that emphasize the lifelong skills necessary to continue learning, communicate clearly, solve problems, use information and technology effectively, and enjoy productive employment." State Board of Education, Preparing Ohio Schools for the 21st Century, Sept. 1990, ii.

Id. at 197.

{¶ 69} The Ohio Department of Education ("ODE") "is the administrative unit and organization through which the policies, directive, and powers of the State Board of Education are administered." *Cuyahoga Falls City School Dist. Bd. of Edn. v. Ohio Dept. of Edn.*, 118 Ohio App.3d 548, 554, 693 N.E.2d 841 (10th Dist.1997), citing R.C. 3301.13, paragraph one.

{¶ 70} R.C. 3311.06 governs the annexation procedure for school district property. Generally, annexation involves a transfer of title to real estate, buildings, and tax revenue. Approval of the annexation or any agreement reached to effect annexation as provided in the statute requires ODE approval where a "territory annexed to a city or village comprises part but not all of the territory of a school district." *In re Proposed Annexation by Columbus City School Dist.*, 45 Ohio St.2d 117, 118, 341 N.E.2d 589 (1976), citing R.C. 3311.06. Ohio Constitution, Article II, Section 26, "expressly sanctions both the delegation of legislative authority by the General Assembly in R.C. 3311.06 and the exercise of that authority by the State Board of Education." *Id.* at 120.

{¶ 71} It is undisputed that:

> On March 20, 1990, the Chagrin Land was annexed by the city of Beachwood but remained within the Warrensville SD;
>
> On October 23, 1990, Beachwood SD filed a petition with the ODE to transfer the Chagrin Land to Beachwood SD pursuant to R.C. 3311.06;
>
> The parties engaged in mediation with Judge Duncan as documented by the Duncan Memorandum and Duncan Recommendation issued by Judge Duncan;

The mediation was conducted as required by R.C. 3311.06(C)(2);

The parties executed the Chagrin Agreement;

The respective boards approved the Chagrin Agreement;

The Chagrin Agreement provides that the R.C. 3311.06 petition was still pending at the time the Chagrin Agreement was executed;

Beachwood SD's ratifying resolution specifically provided that the R.C. 3311.06 petition was still pending at the time of adoption; and

That Beachwood SD withdrew the petition on July 8, 1998, as provided in the Chagrin Agreement.

{¶ 72} The majority finds that the Chagrin Agreement is simply a settlement agreement subject to general contract principles that resolved the Chagrin Land transfer tax revenue dispute. I respectfully disagree and determine that R.C. 3311.06 and Ohio Admin.Code Chapter 3301-89 are applicable. I would find that ODE's approval is a mandatory prerequisite to validity of the Chagrin Agreement and the absence of a physical land transfer does not negate the application of the ODE regulations.

{¶ 73} The interpretation of a statute requires that we

> first look at its language to determine legislative intent. *Provident Bank v. Wood*, 36 Ohio St.2d 101, 105, 304 N.E.2d 378 (1973). When a statute's meaning is clear and unambiguous, we apply the statute as written. *Id.* at 105-106. We must give effect to the words used, refraining from inserting or deleting words. *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53-54, 524 N.E.2d 441 (1988). If a legislative definition is available, we construe the words of the statute accordingly. R.C. 1.42.

State v. Gonzales, 150 Ohio St.3d 276, 2017-Ohio-777, 81 N.E.3d 419, ¶ 4.

{¶ 74} In addition,

> "[T]he application of [a statute] to the facts is a 'question of law' — [a]n issue to be decided by the judge, concerning the application or interpretation of the law. *Black's Law Dictionary* (7 Ed.1999) 1260." [*Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 148, 2000 Ohio 493, 735 N.E.2d 433 (2000)]. *Accord Lang v. Ohio Dept. of Job & Family Servs.*, 134 Ohio St.3d 296, 2012-Ohio-5366, 982 N.E.2d 636, ¶ 12 ("A question of statutory construction presents an issue of law that we determine de novo on appeal").

Cleveland Clinic Found. v. Bd. of Zoning Appeals, 141 Ohio St.3d 318, 2014-Ohio-4809, 23 N.E.3d 1161, ¶ 25.

{¶ 75} As explained in Anderson's *Ohio School Law Guide*:

> A school district is a political entity created by legislative enactment and organized as an agency of the state to maintain its system of public schools. * * * A school district is a quasi-corporation. It is a political or civil division of the state; it is established as an agency or instrumentality of the state for the purpose of facilitating the administration of government. Education is a government function. A school district functions in the execution of state government or state policy. It possesses limited powers. The powers, duties, and liabilities of a school district are only such as are prescribed by statute. It has no common law powers.

Ohio School Law Guide, Section 2.01, 1-2 (2018).

{¶ 76} The corporate powers of the board of a school district are set forth in R.C. 3313.17:

> The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

Id.

{¶ 77} School districts are charged with the "constitutional mandate" "to insure a thorough and efficient system of public elementary and secondary schools." *Ohio School Law Guide*, Section 2.11, 1-2 (2018).

> [T]he procedure with reference to territorial organization in relation to changing the boundaries of school districts, the transfer of territory in connection therewith, the creation and dissolution of school districts and the consolidation of districts, is provided exclusively by the legislature. Any procedure undertaken in such matters must be in accord with the method or methods prescribed by statutory law in existence at such time. Officials authorized by the legislature to establish school districts or to change their boundaries must follow the procedure prescribed by statute.

Ohio School Law Guide, Section 2.11, 1-2 (2018).

{¶ 78} The General Assembly has legislated procedures for the various types of territorial transfers. R.C. 3311.06 governs transfers "of school district territory in conjunction with a municipal annexation, either by action of the State Board of Education or by agreement between the districts affected." *Id. Ohio School Law Guide*, Section 2.11, 1-2 (2018).

{¶ 79} Until 1955, "the transfer of school district territory to an adjoining city for municipal purposes * * * automatically resulted in a corresponding transfer of school district territory." *Id.* at § 2.22. In 1955, R.C. 3311.06 was amended "to require approval of such transfers by the newly-created" ODE and was more extensively amended in 1986. *Id. See also* Ohio Att. Gen. Op. No. 6808, July 7, 1956.

{¶ 80} Subsequent to 1986, "[i]n order to encourage the resolution of annexation disputes by means of interdistrict agreements, the General Assembly"

provided "boards of education [with] broad powers to negotiate annexation agreements which satisfy the needs of all school districts concerned." *Ohio School Law Guide*, Section 2.22, 1-2 (2018).

{¶ 81} For example, the school districts involved may negotiate for interdistrict payments to the city school district to "share the wealth" that results from development in territory annexed by the city [fn. 5., R.C. 3311.06(F). *See, e.g., Miami Trace Local School Dist. Bd. of Edn. v. Washington Court House City School Dist. Bd. of Edn.*, 12th Dist. Fayette No. CA2031-01-001, 2013-Ohio-3578 (involving interpretation of tax-sharing agreement)] and may establish mechanisms for the settlement of future boundary disputes. [Fn. 6., R.C. 3311.06(D)].

{¶ 82} "All annexation agreements adopted after the 1986 amendments *must be approved by the State Board of Education.*" (Emphasis added.) *Ohio School Law Guide*, Section 2.22, 1-2 (2018), citing R.C. 3311.06(A)(4). An "annexation agreement" is an agreement that meets the requirements of R.C. 3311.06(F) and that "has been filed with the state board." *Id.*

{¶ 83} To secure ODE approval of a transfer under R.C. 3311.06, a school district is required to

> make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district, except an urban school district, under this section, it must receive the following:
>
> (a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;

(b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations;

(c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

R.C. 3311.06(C)(2).

{¶ 84} R.C. 3311.06(D) sets forth the goals to be achieved by annexation:

The state board of education shall adopt rules governing negotiations held by any school district except an urban school district pursuant to division (C)(2) of this section. The rules shall encourage the realization of the following goals:

(1) A discussion by the negotiating districts of the present and future educational needs of the pupils in each district;

(2) The educational, financial, and territorial stability of each district affected by the transfer;

(3) The assurance of appropriate educational programs, services, and opportunities for all the pupils in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

Districts involved in negotiations under such rules may agree to share revenues from the property included in the territory to be transferred, establish cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes.

{¶ 85} In addition, R.C. 3311.06(I) provides in critical part that:

No transfer of school district territory *or division of funds and indebtedness incident thereto*, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section applies to all proceedings for such transfers and divisions of funds and indebtedness pending or commenced on or after October 2, 1959.

(Emphasis added.) *Id. See also Bartchy*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, ¶ 20.

{¶ 86} The rules promulgated to implement R.C. 3311.06 are codified at Ohio Adm.Code Chapter 3301-89 that was first adopted in 1987. Ohio Adm.Code 3301-89-01 addresses the general policies of the ODE and applies to "requests for a transfer of territory following municipal annexation under section 3311.06." *Id.*[4] The parties are required to "enter into good faith negotiations when it is required under R.C. 3311.06." Ohio Admin.Code 3301-89-01(C).

{¶ 87} "In situations where agreement has been reached between respective boards of education, the terms of agreement should be sent to the state board of education with reasonable dispatch." Ohio Adm.Code 3301-89-01(D). "A request for transfer of territory shall be considered upon its merit with primary consideration given to the present and ultimate good of the pupils in the affected districts." Ohio Admin.Code 3301-89-01(F).

{¶ 88} Ohio Admin.Code 3301-89-02(A)(1)(a)-(e) lists the procedure and requirements for filing initial transfer requests. Pertinent here,

> (3) Upon receipt of a negotiated agreement, the state board of education *shall* determine whether to approve the agreement and adopt a resolution. The state board of education may conduct a hearing before determining whether to approve or disapprove the negotiated agreement.

(Emphasis added.) Ohio Admin.Code 3301-89-02(A)(3).

---

[4] Ohio Admin.Code 3301-89 also applies to R.C. 3311.24 for transfers from and to an adjoining city board of education, exempt village, or school district under the listed circumstances.

{¶ 89} Where negotiations "have failed to produce an agreement, the [ODE] shall send" a request to both school districts that contains twenty-five questions for the ODE and, if necessary, a hearing officer, to consider.

{¶ 90} If the ODE determines that a hearing is required, Ohio Admin.Code 3301-89-03 contains a nonexclusive list of factors for hearing officer consideration of a transfer request. While the students affected are the paramount concern, "the *fiscal resources* acquired should be commensurate with the educational responsibilities assumed." (Emphasis added.) Ohio Admin.Code 3301-89-03(B)(9).

{¶ 91} Ohio Admin.Code 3301-89-04 sets forth the "[p]rocedures governing negotiations of school districts" to reach an annexation agreement. Ohio Admin.Code 3301-89-04(A) provides eight steps for the negotiation of an agreement, and subsection (B) lists the goals that the process should "strive for." Subsection (C) contains "[e]xamples of terms that school districts may agree to include sharing property revenue in the transfer territory, establishing cooperative educational programs and mechanisms for the settlement of future boundary disputes and that [n]o tax revenue" will give provided "to the receiving district" "for a period of time." Subsection (D) lists items that ODE must receive for approval, denial or a hearing on the transfer.

{¶ 92} Once an agreement has been reached, it "*shall* be adopted by each board of education" by resolution and both shall be forwarded to the ODE for approval. (Emphasis added.) Ohio Admin.Code 3301-89-04(A)(7).

{¶ 93} The parties' records reflect that the entire process was governed by R.C. 3311.06 and the corresponding Ohio Administrative Code requirements. This conclusion is affirmed by the ODE's response to Beachwood SD's initiating petition and subsequent correspondence. The Beachwood SD resolution approving the Chagrin Agreement, as well as the preamble to the Chagrin Agreement itself, state that the R.C. 3311.06 petition was still pending at that time.

{¶ 94} The Chagrin Agreement cites the R.C. 3311.06 negotiation procedure and states that "such an agreement will thus clearly be in the best interests of Beachwood and Warrensville Heights" and not that the best interest of the students would be served. Beachwood SD agrees to "withdraw its request to transfer" the Chagrin Land and "shall not institute any further such request." Thus, the Chagrin Land remained with Warrensville SD and Beachwood SD agreed that it would not attempt to annex the Chagrin Land again if the Warrensville Heights SD agrees to share revenue.

{¶ 95} Beachwood SD offers that without a transfer of the Chagrin Land, the statute does not apply. I find that such an interpretation would allow a school district to petition for annexation to induce the affected district to enter into an agreement that does not comply with the legislative intent and statutory purposes, policies, and history and does not protect the welfare of the students.

{¶ 96} Under R.C. 3301.07, the ODE is charged by the General Assembly with supervision of the public education system. The ODE "shall administer the

educational policies of this state relating to public schools, * * * finance and organization of school districts * * * and territory." R.C. 3301.07(B)(1).

{¶ 97} The ODE is unilaterally vested with the authority to protect the best interests of the students and provide an objective body to weigh the pros and cons of such an agreement by utilizing the detailed and legislatively authorized standards and procedures set forth in R.C. 3311.06 and the Ohio Administrative Code.[5] I would find the fact that parties may agree to retain all or part of the land in issue in exchange for revenue or services evidences the ODE intent that such provisions may be part of the R.C. 3311.06 negotiations. *See* Ohio Admin.Code 3301-89-04(C) that lists examples of terms the parties may agree to.

{¶ 98} The ODE is uniquely empowered to approve the Chagrin Agreement to ensure that the statutory goals are met. ODE approval is a condition precedent that must be met to create an enforceable and binding agreement as a matter of law.

> "The entire legislation regulating school districts, and especially that part regulating the establishment of public school districts in territory annexed to a city, is indeed remedial. There is no vested right in the establishment or transfer of a school district in, or to, a particular territory. The entire matter is subject to legislative control; and legislation treating these problems is remedial in the sense that it is directed solely to the advancement of the public welfare. *See* 50 American Jurisprudence, 420, Statutes, Section 395; 82 Corpus Juris Secundum, 918, Statutes, Section 388; and cases cited."

---

[5] Warrensville SD provides statistical information intended to address some of the factors the ODE contemplates in entertaining annexation requests, such as that the transfer of revenue without the Chagrin Land would reportedly allow Beachwood SD to realize additional tax revenue from the Chagrin Land without potential future liabilities. The information is indicative of the factors the ODE considers; however, it is merely informational for the purposes of this appeal.

State ex rel. Bd. of Edn. v. Bd. of Edn., 172 Ohio St. 237, 240, 175 N.E.2d 91 (1961), quoting *Bohley v. Patry*, 107 Ohio App. 345, 159 N.E.2d 252 (9th Dist.1958).

{¶ 99} The failure to secure ODE approval is fatal to enforcement. A finding that the specific statutory provisions may be bypassed by relabeling the Chagrin Agreement to pull it outside of the realm of ODE governance contravenes the purpose of the statutory scheme and legislative intent and renders the Chagrin Agreement void and unenforceable.

{¶ 100} As this court has previously recognized,

> "[i]t is a long-standing principle of Ohio law that 'all governmental liability ex contractu must be express and must be entered into in the prescribed manner, and that a municipality or county is liable neither on an implied contract nor upon a quantum meruit by reason of benefits received.'" *Kraft Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio App.3d 33, 44, 713 N.E.2d 1075 (8th Dist.1998), citing 20 Ohio Jurisprudence 3d, Counties, Townships and Municipal Corporations, Section 278, at 241 (n.d.); *Shampton v. Springboro*, 98 Ohio St.3d 457, 2003-Ohio-1913, 786 N.E.2d 883 (holding that city was not liable on the basis of promissory estoppel even though tenant was induced by city's promise of a long term lease to invest in a restaurant on city property).

Sylvester Summers, Jr. Co., L.P.A. v. E. Cleveland, 8th Dist. Cuyahoga No. 98227, 2013-Ohio-1339, ¶ 25.

{¶ 101} In addition,

> [t]he Ohio Supreme Court has held that an individual or entity entering into a contract with a municipality bears the burden of "'ascertain[ing] whether the contract complies with the Constitution, statutes, charters, and ordinances so far as they are applicable. If he does not, he performs at his peril.'" *Shampton* at ¶ 28, quoting *Lathrop Co. v. Toledo*, 5 Ohio St.2d 165, 173, 214 N.E.2d 408 (1966). Therefore, Summers's quasi-contract claims of promissory estoppel, unjust enrichment, and quantum meruit are not actionable against the City.

Id. at ¶ 26.

{¶ 102} In this case, the parties are school districts equally charged with responsibility for statutory compliance. I determine, construing the evidence most strongly in favor of Beachwood SD, the trial court did not err in finding there is no genuine issue of material fact and Warrensville SD is entitled to judgment as a matter of law. *Harless*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978); Civ.R. 56(C).

Decision of the
Cuyahoga County Court of Common Pleas
(February 6, 2019)
(Supp. February 7, 2019)

107333119

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BEACHWOOD CITY SCHOOL DISTRICT, ETC.
Plaintiff

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT, ETC.
Defendant

Case No: CV-18-902080

Judge: NANCY MARGARET RUSSO

JOURNAL ENTRY

89 DIS. W/PREJ - FINAL

DEFENDANTS MOTION FOR SUMMARY JUDGMENT IS GRANTED. SUPP JE TO FOLLOW. CASE IS DWP AT PLAINTIFFS COSTS. NO JUST CAUSE FOR DELAY.
THIS COURT RETAINS JURISDICTION OVER ALL POST-JUDGMENT MOTIONS.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Nancy Margaret Russo

Judge Signature 02/06/2019

- 89
02/06/2019

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107360032

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BEACHWOOD CITY SCHOOL DISTRICT, ETC.
Plaintiff

WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT, ETC.
Defendant

Case No: CV-18-902080

Judge: NANCY MARGARET RUSSO

JOURNAL ENTRY

SUPP JE ISSUED OSJ.

2/7/19

Judge Signature Date

FILED
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CLERK OF COURTS
CUYAHOGA COUNTY

02/07/2019

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BEACHWOOD CITY SCHOOL DIST., ETC.	)	**CASE NO.** 18-902080
Plaintiff	)	**JUDGE NANCY MARGARET RUSSO**
vs.	)	
WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT, ETC.	)	**OPINION**
Defendant	)	

The court finds Defendant is entitled to summary judgment as a matter of law in its favor on the claims set forth in the complaint, as there are no genuine issues of material fact.

The court finds that the legislature created an extensive statutory mechanism in Ohio Revised Code 3311.06 and Ohio Administrative Code 3301-89 through which school districts could petition for the transfer of territory and participate in resolution with the oversight and final approval by the Ohio Board of Education.

The OAC 3301-89-02 directs the Board to consider important issues relating to the "ultimate good of the pupils concerned" including the reasons for the request, possible racial-isolation issues, fiscal effects of a transfer, harm caused by the transfer, and whether a "tax grab" might be involved.

These statutes provide a framework for a hearing in front of a designated hearing officer, and then for appeal, first to the common pleas court of Franklin County, then to the Tenth Appellate District, and finally to the Ohio Supreme Court. Though Plaintiff's petition for transfer of territory pended with the State Board for years, the parties failed to complete the required steps needed to finalize an agreement pursuant to ORC 3311.06.

An extensive statutory scheme existed specifically for resolving inter-district territorial

and funding disputes, and the court finds the parties were without the capacity to contract over the transfer of tax dollars, purported by Plaintiff to be over five million dollars, without the approval of the State Board of Education.

Because the parties were without the authority to contract absent the final approval of the State Board, the court finds no valid contract was formed and Plaintiff's remaining counts for promissory estoppel, unjust enrichment, conversion, and fraud fail.

The court grants Defendant's motion for summary judgment and dismisses all claims with prejudice. This is a final appealable order and there is no just cause for delay.

So ordered.

JUDGE NANCY MARGARET RUSSO

2/7/19

DATE

CERTIFICATE OF SERVICE

The court hereby certifies that on the 7th day of February 2018 a copy of the foregoing ruling was served by regular mail upon:

Daniel McIntyre
David A. Rose
Brindza McIntyre & Seed LLP
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JUDGE NANCY MARGARET RUSSO

2/7/19
DATE

Article VI, Section 4 of the Ohio Constitution

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article VI. Education (Refs & Annos)

OH Const. Art. VI, § 4

O Const VI Sec. 4 State board of education; superintendent of public instruction

Currentness

There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law.

CREDIT(S)

(125 v 1088, am. eff. 11-3-53; 1912 constitutional convention, adopted eff. 7-14-13)

Const. Art. VI, § 4, OH CONST Art. VI, § 4
Current through Files 1 to 115 of the 133rd General Assembly (2019-2020) and File 1 of the 134th General Assembly (2021-2022).

End of Document

Ohio Revised Code 2744.01

2744.01 Political subdivision tort liability definitions.

As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)

(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform under Chapter 1724. or 5722. of the Revised Code;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)

(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)

(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

Amended by 131st General Assembly File No. TBD, HB 158, §1, eff. 10/12/2016.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 04-09-2003; 04-27-2005; 10-12-2006

Ohio Revised Code 2744.02

2744.02 Governmental functions and proprietary functions of political subdivisions.

(A)

(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in

connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.

Effective Date: 04-09-2003; 2007 HB119 09-29-2007 .

Ohio Revised Code 3311.06

PAGE'S

Ohio Revised Code

ANNOTATED

Containing the text of the Official Ohio Revised Code, effective October 1, 1953, with the addition of all statutes of a general nature enacted by the General Assembly up to an including November 1, 1985, and notes construing the laws.

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1989 SUPPLEMENT

for use in 1990

Including *ALL NEW LAWS* passed by the 118th Ohio General Assembly and filed through December 31, 1989

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§ 3311.06 Territory of district to be contiguous; exceptions; procedure upon annexation.

(A) As used in this section:

(1) "Annexation" and "annexed" mean annexation for municipal purposes under sections 709.02 to 709.37 of the Revised Code.

(2) "Annexed territory" means territory that has been annexed for municipal purposes to a city served by an urban school district, but on September 24, 1986, has not been transferred to the urban school district.

(3) "Urban school district" means a city school district with an average daily membership for the 1985-1986 school year in excess of twenty thousand that is the school district of a city that contains annexed territory.

(4) "Annexation agreement" means an agreement entered into under division (F) of this section that has been approved by the state board of education or an agreement entered into prior to September 24, 1986, that meets the requirements of division (F) of this section and has been filed with the state board.

(B) The territory included within the boundaries of a city, local, exempted village, or joint vocational school district shall be contiguous except where a natural island forms an integral part of the district, where the state board of education authorizes a noncontiguous school district, as provided in division (E)(1) of this section, or where a local school district is created pursuant to section 3311.26 of the Revised Code from one or more local school districts, one of which has entered into an agreement under section 3313.42 of the Revised Code.

(C)(1) When all of the territory of a school district is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part.

(2) When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes part of the city school district or the school district of which the village is a part only upon approval by the state board of education, unless the district in which the territory is located is a party to an annexation agreement with the city school district.

Any urban school district that has not entered into an annexation agreement with any other school district whose territory would be affected by any transfer under this division and that desires to negotiate the terms of transfer with any such district shall conduct any negotiations under division (F) of this section as part of entering into an annexation agreement with such a district.

Any school district, except an urban school district, desiring state board approval of a transfer under this division shall make a good faith effort to negotiate the terms of transfer with any other school district whose territory would be affected by the transfer. Before the state board may approve any transfer of territory to a school district, except an urban school district, under this section, it must receive the following:

(a) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer;

(b) Evidence determined to be sufficient by the state board to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations;

(c) If any negotiations took place, a statement signed by all boards that participated in the negotiations, listing the terms agreed on and the points on which no agreement could be reached.

(D) The state board of education shall adopt rules governing negotiations held by any school district except an urban school district pursuant to division (C)(2) of this section. The rules shall encourage the realization of the following goals:

(1) A discussion by the negotiating districts of the present and future educational needs of the pupils in each district;

(2) The educational, financial, and territorial stability of each district affected by the transfer;

(3) The assurance of appropriate educational programs, services, and opportunities for all the pupils in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

Districts involved in negotiations under such rules may agree to share revenues from the property included in the territory to be transferred, establish cooperative programs between the participating districts, and establish mechanisms for the settlement of any future boundary disputes.

(E)(1) If territory annexed after September 24, 1986, is part of a school district that is a party to an annexation agreement with the urban school district serving the annexing city, the transfer of such territory shall be governed by the agreement. If the agreement does not specify how the territory is to be dealt with, the boards of education of the district in which the territory is located and the urban school district shall negotiate with regard to the transfer of the territory which shall be transferred to the urban school district unless, not later than ninety days after the effective date of municipal annexation, the boards of education of both districts, by resolution adopted by a majority of the members of each board, agree that the territory will not be transferred and so inform the state board of education.

If territory is transferred under this division the transfer shall take effect on the first day of July occurring not sooner than ninety-one days after the effective date of the municipal annexation. Territory transferred under this division need not be contiguous to the district to which it is transferred.

(2) Territory annexed prior to September 24, 1986, by a city served by an urban school district

shall not be subject to transfer under this section if the district in which the territory is located is a party to an annexation agreement or becomes a party to such an agreement not later than ninety days after September 24, 1986. If the district does not become a party to an annexation agreement within the ninety-day period, transfer of territory shall be governed by division (C)(2) of this section. If the district subsequently becomes a party to an agreement, territory annexed prior to September 24, 1986, other than territory annexed under division (C)(2) of this section prior to the effective date of the agreement, shall not be subject to transfer under this section.

(F) An urban school district may enter into a comprehensive agreement with one or more school districts under which transfers of territory annexed by the city served by the urban school district after September 24, 1986, shall be governed by the agreement. Such agreement must provide for the establishment of a cooperative education program under section 3313.842 [3313.84.2] of the Revised Code in which all the parties to the agreement are participants and must be approved by resolution of the majority of the members of each of the boards of education of the school districts that are parties to it. An agreement may provide for interdistrict payments based on local revenue growth resulting from development in any territory annexed by the city served by the urban school district.

An agreement entered into under this division may be altered, modified, or terminated only by agreement, by resolution approved by the majority of the members of each board of education, of all school districts that are parties to the agreement, except that with regard to any provision that affects only the urban school district and one of the other districts that is a party, that district and the urban district may modify or alter the agreement by resolution approved by the majority of the members of the board of that district and the urban district.

If an agreement provides for interdistrict payments, each party to the agreement, except any school district specifically exempted by the agreement, shall agree to make an annual payment to the urban school district with respect to any of its territory that is annexed territory in an amount not to exceed the amount certified for that year under section 3317.029 [3317.02.9] of the Revised Code. The agreement may provide that all or any part of the payment shall be waived if the urban school district receives its payment with respect to such annexed territory under section 3317.029 [3317.02.9] of the Revised Code and that all or any part of such payment may be waived if the urban school district does not receive its payment with respect to such annexed territory under such section.

With respect to territory that is transferred to the urban school district after September 24, 1986, the agreement may provide for annual payments by the urban school district to the school district whose territory is transferred to the urban school district subsequent to annexation by the city served by the urban school district.

(G) In the event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that board's decision shall be final. Such division shall not include funds payable to or received by a school district under Chapter 3317. of the Revised Code or payable to or received by a school district from the United States or any department or agency thereof. In the event such transferred territory includes real property owned by a school district, the state board of education, as part of such division of funds and indebtedness, shall determine the true value in money of such real property and all buildings or other improvements thereon. The board of education of the school district receiving such territory shall forthwith pay to the board of education of the school district losing such territory such true value in money of such real property, buildings, and improvements less such percentage of the true value in money of each school building located on such real property as is represented by the ratio of the total enrollment in day classes of the pupils residing in the territory transferred enrolled at such school building in the school year in which such annexation proceedings were commenced to the total enrollment in day classes of all pupils residing in the school district losing such territory enrolled at such school building in such school year. The school district receiving such payment shall place the proceeds thereof in its sinking fund or bond retirement fund.

(H) The state board of education, before approving such transfer of territory, shall determine that such payment has been made and shall apportion to the acquiring school district such percentage of the indebtedness of the school district losing the territory as is represented by the ratio that the assessed valuation of the territory transferred bears to the total assessed valuation of the entire school district losing the territory as of the effective date of the transfer, provided that in ascertaining the indebtedness of the school district losing the territory the state board of education shall disregard such percentage of the par value of the outstanding and unpaid bonds and notes of said school district issued for construction or improvement of the school building or buildings for which payment was made by the acquiring district as is equal to the percentage by which the true value in money of such building or buildings was reduced in fixing the amount of said payment.

(I) No transfer of school district territory or division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section applies to all proceed-

ings for such transfers and divisions of funds and indebtedness pending or commenced on or after October 2, 1959.

*HISTORY: 141 v S 298 (Eff 9-24-86); 142 v H 708 (Eff 4-19-88); 142 v H 549 (Eff 6-24-88); 143 v S 140. Eff 10-2-89.

Cross-References to Related Sections

Definitions relative to school districts making payments following annexation, RC § 3317.02.9.
Intent of General Assembly, RC § 3311.06.1.

Research Aids

Districts generally:
C.J.S.: Schools and School Districts § 23 et seq
West Key No. Reference
Schools 21–44

[§ 3311.06.1] § 3311.061 Legislative intent of S 298 amendment to section 3311.06

The general assembly recognizes that the citizens of this state consider public education to be one of the most important functions of both state and local government and that the matter of school district boundaries is of great concern to them, as it is to school officials and the general assembly. The general assembly also recognizes that, as the result of state law dealing with the transfer of school district territory following municipal annexation, a great deal of uncertainty has arisen, particularly in the state's larger urban areas, over whether particular school district boundaries will be subject to extensive change in the future. This uncertainty has been particularly stressful for families of school age children and has hindered the ability of school officials in the affected districts to plan for the future. Finally, the general assembly recognizes that a lasting solution, fair to all of the school children, families, and school districts affected, can best be achieved through a cooperative effort involving school district officials, board of education members, and legislators.

It is the intent of the general assembly by the amendments to section 3311.06 of the Revised Code made in Substitute Senate Bill No. 298 of the 116th general assembly to provide a mechanism whereby urban area school officials and boards of education that are willing to work together to establish cooperative education programs for the benefit of the school children in their districts may, through a process of negotiation and compromise, jointly resolve some of the issues related to the treatment of school territory annexed for municipal purposes.

HISTORY: 141 v S 298. Eff 9-24-86.

Text Discussion

Cooperative education programs. Baker 3.70

§ 3311.09 Exempted village or city school district may opt for supervision by county board of education or status as local school district.

(A) The board of education of any exempted village or city school district may, by a majority vote of the full membership of such board of education, declare that such exempted village or city school district shall be supervised by the county board of education.

When the board of education of an exempted village or city school district notifies the county board of education, on or before the first day of May in any year, that it has adopted by a majority vote of its full membership, a declaration that such exempted village school district or city school district shall be supervised by the county board of education, such exempted village school district or city school district shall, upon the approval of the county board of education, become part of the county school district and subject to the supervision of the county board of education commencing the first day of July following the date of such notification.

An exempted village or city school district upon declaring that it is to be supervised by the county board of education, shall be known as a "local school district" until its status as such local school district has been changed.

(B) If there is no county board of education the board of education of an exempted village or city school district may, by a majority vote of the full membership of such board, adopt a resolution declaring that such exempted village or city school district shall become a local school district, and file such resolution with the state board of education. An exempted village or city school district that has thus approved and filed such resolution on or before the first day of May of any year becomes and shall be known as a local school district commencing the first day of July of that year. The board of education of such exempted village or city school district, on the effective date of such district's becoming a local school district, becomes a county board of education with the powers and duties of such board as provided in section 3311.051 [3311.05.1] of the Revised Code. Notwithstanding section 3311.052 [3311.05.2] of the Revised Code, the members of an exempted village or city board of education that becomes a county board of education, in accordance with this division shall serve as members of such county board for the remainder of their respective terms. The members of such county board of education shall thereafter be elected and qualified in the manner provided by law for the election of members to a county board of education.

(C)(1) As used in this division, "other administrator" has the meaning given in section 3319.02 of the Revised Code.

(2) All contracts in effect in a city or exempted village school district immediately prior to such district's becoming a local school district under division (B) of this section shall become the legal obligations of the county board of education governing the new local district in accordance with section 3311.051 [3311.05.1] of the Revised Code.

(3) For the purpose of determining eligibility for

Ohio Revised Code 5705.41

PAGE'S
OHIO REVISED CODE

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1994 SUPPLEMENT

for use in 1995

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work with respect to a tax budget it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the tax commissioner, except that the certification by a board of education shall be made by the first day of April or at such later date as is approved by the commissioner, and except that a township board of park commissioners that is appointed by the board of township trustees and oversees a township park district that contains only unincorporated territory shall authorize only those taxes approved by, and only at the rate approved by, the board of township trustees as required by division (C) of section 511.27 of the Revised Code. If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47 of the Revised Code; if the rate of a school district tax is increased due to the repeal of a school district income tax and property tax rate reduction at an election held pursuant to section 5748.04 of the Revised Code; or if refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision or school library district for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

HISTORY: GC § 5625-25; 112 v 391(403), § 25; 115 v Pt II, 412; 116 v 377, § 8; Bureau of Code Revision, 10-1-53; 136 v H 920 (Eff 10-11-76); 137 v H 1 (Eff 8-26-77); 140 v H 260 (Eff 9-27-83); 140 v H 747 (Eff 1-1-86); 143 v S 60 (Eff 7-18-90); 144 v H 680. Eff 10-28-92.

§ 5705.36 Certification of available revenue; additional revenue; amended official certificate.

CASE NOTES AND OAG

1. (1992) When a township, pursuant to RC § 133.10, borrows money in anticipation of the distribution of second half real property taxes and, pursuant to RC § 5705.36, obtains an amended official certificate of estimated resources from the county budget commission, the township's budget, as determined for purposes of RC § 505.24, increases to the amount of the amended official certificate of estimated resources. In that case, the township trustees are, from the date of the amended official certificate, entitled to compensation based upon the amount set forth in the amended official certificate: OAG No.92-003.

§ 5705.37 Appeal to board of tax appeals.

CASE NOTES AND OAG

1. (1994) Neither RC § 5747.51(J) nor RC § 5747.62(I) provides for an alternative method of compliance with the mandatory notice requirement: Girard v. Trumbull Cty. Budget Comm., 70 OS3d 187, 638 NE2d 67.

2. (1994) Revised Code § 5705.37 requires a political subdivision to file its notice of appeal within thirty days of receiving the official certificate of resources: N. Perry v. Lake Cty. Budget Comm., 70 OS3d 46, 635 NE2d 1264.

§ 5705.38 Annual appropriation measures; classification.

Cross-References to Related Sections

Conditions for issuing general obligations or expending tax moneys, RC § 176.04.

Determination of funds needed; budget request; tax, RC § 5901.11.

Levy of additional sales tax by county; resolution; referendum; reduction, RC § 5739.02.1.

Proposal for acquisition or maintenance of micrographic or other equipment or for contract services, RC § 317.32.1.

CASE NOTES AND OAG

1. (1994) Pursuant to RC § 5705.40, transfers from one appropriation item to another appropriation item within the annual appropriation measure passed by a board of county commissioners under RC § 5705.38 must be made by resolution of the board: OAG No.94-007.

[§ 5705.39.2] § 5705.392 County spending plan.

Cross-References to Related Sections

Restriction upon the appropriation and expenditure of money, RC § 5705.41.

§ 5705.40 Amending or supplementing appropriation; transfer; unencumbered balance; contingencies.

Cross-References to Related Sections

County credit cards, RC § 301.27.

CASE NOTES AND OAG

1. (1994) Pursuant to RC § 5705.40, transfers from one appropriation item to another appropriation item within the annual appropriation measure passed by a board of county commissioners under RC § 5705.38 must be made by resolution of the board: OAG No.94-007.

§ 5705.41 Restriction upon the appropriation and expenditure of money.

No subdivision or taxing unit shall:

(A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code;

provided, that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the bond issue for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

(B) Make any expenditure of money unless it has been appropriated as provided in such chapter;

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

(D)(1) Except as otherwise provided in division (D)(2) of this section, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the subdivision's fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. If no certificate is furnished as required, upon receipt by the taxing authority of the subdivision or taxing unit of a certificate of the fiscal officer stating that there was at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the drawing of a warrant in payment of amounts due upon such contract, but such resolution or ordinance shall be passed within thirty days from the receipt of such certificate; provided that, if the amount involved is less than one hundred dollars in the case of counties or one thousand dollars in the case of all other subdivisions or taxing units, the fiscal officer may authorize it to be paid without such affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

(2) Annually, the board of county commissioners may adopt a resolution exempting for the current fiscal year county purchases of seven hundred fifty dollars or less from the requirement of division (D)(1) of this section that a certificate be attached to any contract or order involving the expenditure of money. The resolution shall state the dollar amount that is exempted from the certificate requirement and whether the exemption applies to all purchases, to one or more specific classes of purchases, or to the purchase of one or more specific items. Prior to the adoption of the resolution, the board shall give written notice to the county auditor that it intends to adopt the resolution. The notice shall state the dollar amount that is proposed to be exempted and whether the exemption would apply to all purchases, to one or more specific classes of purchases, or to the purchase of one or more specific items. The county auditor may review and comment on the proposal, and shall send any comments to the board within fifteen days after receiving the notice. The board shall wait at least fifteen days after giving the notice to the auditor before adopting the resolution. A person authorized to make a county purchase in a county that has adopted such a resolution shall prepare and file with the county auditor, within three business days after incurring an obligation not requiring a certificate, a written document specifying the purpose and amount of the expenditure, the date of the purchase, the name of the vendor, and such additional information as the auditor of state may prescribe.

(3) Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of five thousand dollars, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not exceeding three months and not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed; provided, that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

In addition to providing the certification for expenditures of five thousand dollars or less as provided in this division, a county also may make expenditures, issue orders for payment, and make contracts or obligations calling for or requiring the payment of money made and assumed for specified permitted purposes from a specific line-item appropriation account in a specified fund for a sum of money exceeding five thousand dollars upon the certification by the county auditor that this sum of money has been lawfully appropriated, authorized, or directed for a permitted purpose and is in the treasury or in the process of collection to the credit

of the specific line-item appropriation account in the specified fund free from previous and then-outstanding obligations or certifications; provided that the aggregate sum of money included in and called for by the expenditures, orders, and obligations shall not exceed the certified sum. The purposes for which a county may lawfully appropriate, authorize, or issue such a certificate are the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority; fuel oil, gasoline, food items, roadway materials, and utilities; and any purchases exempt from competitive bidding under section 125.04 of the Revised Code and any other specific expenditure that is a recurring and reasonably predictable operating expense. Such a certification shall not extend beyond the end of the fiscal year or, if the board of county commissioners has established a quarterly spending plan under section 5705.392 [5705.39.2] of the Revised Code, beyond the quarter to which the plan applies. Such a certificate shall be signed by the county auditor and may, but need not, be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such a certificate shall be rendered to the county auditor for each certificate issued. More than one such certificate may be outstanding at any time.

In any case in which a contract is entered into upon a per unit basis, the head of the department, board, or commission for the benefit of which the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the fiscal officer of the subdivision. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the fiscal officer based upon the estimate shall be a sufficient compliance with the law requiring a certificate.

Any certificate of the fiscal officer attached to a contract shall be binding upon the political subdivision as to the facts set forth therein. Upon request of any person receiving an order or entering into a contract with any political subdivision, the certificate of the fiscal officer shall be attached to such order or contract. "Contract" as used in this section excludes current payrolls of regular employees and officers.

Taxes and other revenue in process of collection, or the proceeds to be derived from authorized bonds, notes, or certificates of indebtedness sold and in process of delivery, shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. This section applies neither to the investment of sinking funds by the trustees of such funds, nor to investments made under sections 731.56 to 731.59 of the Revised Code.

No district authority shall, in transacting its own affairs, do any of the things prohibited to a subdivision by this section, but the appropriation referred to shall become the appropriation by the district authority, and the fiscal officer referred to shall mean the fiscal officer of the district authority.

HISTORY: GC §§ 5625-33, 5625-34; 112 v 391, §§ 33, 34; 113 v 670; 122 v 559; 123 v 495; Bureau of Code Revision, 10-1-53; 132 v S 378 (Eff 4-29-68); 136 v H 8 (Eff 8-11-75); 138 v H 371 (Eff 3-14-80); 139 v S 172 (Eff 7-21-82); 139 v S 530 (Eff 6-25-82); 141 v H 201 (Eff 7-1-85); 145 v H 300 (Eff 7-1-94); 145 v S 81. Eff 8-19-94.

The provisions of § 4 of SB 81 (145 v –) read as follows:

SECTION 4. The amendments to section 5705.41 of the Revised Code made by this act are intended to supersede the amendments made to such section in Sub. H.B. 300 of the 120th General Assembly.

Cross-References to Related Sections

Proposal for acquisition or maintenance of micrographic or other equipment or for contract services, RC § 317.32.1.

Text Discussion

Unfair labor practices; employer practices. O'Reilly. § 9.02

CASE NOTES AND OAG

1. (1990) An attorney cannot recover fees pursuant to a contract with a city absent compliance with mandatory legislative requirements for an expenditure of money: Wolery v. Portsmouth, 67 OApp3d 16, 585 NE2d 955.

2. (1993) Mandamus will not issue to compel an expenditure where the appropriation for it has lapsed: Oregon v. Dunsack, 68 OS3d 1, 623 NE2d 20.

[§ 5705.41.3] § 5705.413 Repealed, 145 v S 81, § 2 [139 v S 172; 141 v H 201]. Eff 8-19-94.

This section permitted certain townships to make expenditures up to $750 without certificate.

See now section 5705.41.

§ 5705.44 Contracts running beyond fiscal year; contracts payable from utility earnings.

Cross-References to Related Sections

Assistance in providing educational technology and infrastructure and school security equipment, RC § 3318.41.

§ 5709.04 Exemption of intangible property.

Law Review

The donative theory of the charitable tax exemption. Mark A. Hall and John D. Colombo. 52 OSLJ 1379 (1991).

Ohio Revised Code 5705.412

PAGE'S

Ohio Revised Code

ANNOTATED

Containing the text of the Official Ohio Revised Code, effective October 1, 1953, with the addition of all statutes of a general nature passed and filed by the General Assembly up to and including November 1, 1991, and notes construing the laws.

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This 1991 Replacement Volume Contains

TITLE 57: TAXATION

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surety company in conformity with GC § 2365-1 (RC § 153.54) et seq, creates an independent right in favor of a materialman, and his right to recover upon such bond is not affected by the invalidity of the improvement contract due to the failure of the fiscal officer to file the certificate required by GC § 5625-33 [RC § 5705.41]: Metropolitan Paving Brick Co. v. Federal Surety Co., 50 OApp 143, 3 OO 475, 197 NE 603.

96. (1935) One who has entered into a contract with a political subdivision without having a certificate of the fiscal officer of the available funds attached to the contract, is not thereafter entitled to a writ of mandamus to compel the attachment of such a certificate: State ex rel. Welker v. Hart, 20 OLA 621 (App).

97. (1934) A city's contract for purchase of materials for bridge repair, not authorized by city council and executed without director of finance certifying that money required for contract was in treasury to credit of fund from which it was to be drawn, and in absence of certificate that money was in treasury applicable to such purpose, was void, entitling taxpayer to have city's payment of money thereunder enjoined, though materials had been used for purposes intended: Hawley v. Toledo, 47 OApp 246, 191 NE 827, 40 OLR 255.

98. (1973) The certificate of financial resources required of school officials by RC § 5705.41.2 is mandatory in respect to employment contracts for the year next ensuing, and is not to be confused with the certificate required of fiscal officers under the provisions of RC § 5705.41: Bd. of Education v. Maple Heights Teachers Assn., 41 OMisc 27, 70 OO2d 73, 322 NE2d 154 (CP).

99. (1987) Unless a contract is necessary for compliance with RC § 3317.13(B) or comes within the exception set forth in RC § 5705.41.2 for certain contracts requiring certificates under RC § 5705.41, no school district shall make the contract unless there is a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to enable the district to operate an adequate educational program for the current fiscal year and the succeeding fiscal year, regardless of when goods or services are to be provided under the contract and regardless of when payment is to be made: OAG No.87-069.

100. (1982) If a board of county commissioners has the authority, either express or implied, to charge for services rendered to a public office by an office of county government and if the office receiving such services is otherwise subject to the requirements of RC § 5705.41(D) with respect to certification of availability of funds to pay the county, such certification is a prerequisite to payment by the office receiving the services: OAG No.82-011.

101. (1957) Contracts made by subdivisions or taxing units to which no certificate of availability of funds is attached as required by RC § 5705.41, subsection (D) are void and no warrant may be issued in payment of amounts due thereon: 1957 OAG No.985.

102. (1953) A board of township trustees is without authority to let a contract for the construction of a fire house as provided in GC § 3298-54 [RC § 505.37] unless a certificate as to the present availability of funds therefor can be supplied in conformity with the requirements of GC § 5625-33 (RC § 5705.41): 1953 OAG No.2839.

Misconduct of officials

103. (1930) County auditor, as ministerial and distributing official, is limited in issuing warrant by GC § 5625-33 [RC § 5705.41], and penalized for mispayment by GC § 5625-37 [RC § 5705.45]: State ex rel. Justice v. Thomas, 35 OApp 250, 172 NE 397.

104. (1940) A county auditor who pays a claim contrary to law is liable for all damages and loss sustained by the county to the extent of such payment. He would not be liable, however, for issuing a warrant in payment of a claim ordered paid as a moral obligation if such claim be lawfully allowed: 1940 OAG No.3199.

105. (1933) The liability of a fiscal officer of a subdivision for issuing a false certificate, ostensibly in pursuance of GC § 5625-33 [RC § 5705.41], is fixed by GC § 5625-37 [RC § 5705.45], and his acting on the advice of his duly constituted legal adviser or the orders of his superior officer will not exonerate him from the liability imposed by this statute: 1933 OAG No.974.

Pleading

106. (1948) An amended petition which fails to allege either an appropriation by the city council of the amount of money due plaintiff as provided in the city ordinance or that an appropriation has been made in conformity to GC § 5625-33 [RC § 5705.41], is demurrable: Industrial Rescue Mission v. Columbus, 83 OApp 188, 38 OO 264, 81 NE2d 254.

107. (1948) An amended petition which fails to allege that the city auditor had certified to the city council that the money, for which plaintiff sues to recover, was in the city treasury and not appropriated for any other purpose, as provided in the city charter and GC § 5625-33 [RC § 5705.41], is demurrable: Industrial Rescue Mission v. Columbus, 83 OApp 188, 38 OO 264, 81 NE2d 254.

[§ 5705.41.1] § 5705.411 Appropriation of anticipated proceeds from county levy for permanent improvement.

Upon the approval of a tax levy by the electors of a county under section 5705.191 [5705.19.1] of the Revised Code for the purpose of providing funds for the acquisition or construction of a specific permanent improvement or class of permanent improvements for the county, the total anticipated proceeds from such levy are deemed appropriated for such purpose by the taxing authority of the county and are deemed in process of collection within the meaning of section 5705.41 of the Revised Code.

HISTORY: 129 v 437. Eff 9-29-61.

As enacted this section was numbered 5705.421; however the number was changed to 5705.411 by the director of the legislative service commission.

Research Aids

Appropriation of anticipated proceeds:
O-Jur3d: Pub Sec § 34

CASE NOTES AND OAG

1. (1963) Revised Code §§ 505.37, 5705.29, 5705.31, 5705.41, and 5705.41.1 are in pari materia: 1963 OAG No.167.

[§ 5705.41.2] § 5705.412 Restriction upon school district expenditures; certification of adequate revenues; penalty.

Notwithstanding section 5705.41 of the Revised

Code, no school district shall adopt any appropriation measure, make any contract, give any order involving the expenditure of money, or increase during any school year any wage or salary schedule unless there is attached thereto a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to operate an adequate educational program for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in the succeeding fiscal year equal to the number of days instruction was held or is scheduled for the current fiscal year, except that a certificate attached to an appropriation measure under this section shall cover only the fiscal year in which the appropriation measure is effective and shall not consider the renewal or replacement of an existing levy as the authority to levy taxes that are subject to appropriation in the current fiscal year unless the renewal or replacement levy has been approved by the electors and is subject to appropriation in the current fiscal year. If the board of education has not adopted a school calendar for the school year beginning on the first day of the fiscal year in which a certificate is required, the certificate attached to an appropriation measure shall include the number of days on which instruction was held in the preceding fiscal year and other certificates required under this section shall include that number of days for the fiscal year in which the certificate is required and the succeeding fiscal year. Every contract made, order given, or schedule adopted or put into effect without such a certificate shall be void, and no payment of any amount due thereon shall be made. The auditor of state shall be responsible for determining whether school districts are in compliance with this section. This provision shall not preclude any court from making a determination regarding compliance with this section. If noncompliance is determined, the provisions of section 117.28 of the Revised Code shall have effect.

The treasurer shall forward a copy of each certificate of available resources required under this section to the auditor of any county in which a part of the district is located. The county auditor shall not distribute property taxes or any payment under Chapter 3317. of the Revised Code to a school district that has not forwarded copies of all such certificates. If a county auditor determines that a copy of a certificate has not been forwarded as required, or has reason to believe that a certificate for which a copy has been forwarded contains false statements or that a certificate has not been signed and attached to an appropriation measure, contract, order, or wage and salary schedule as required by this section, the auditor shall provide immediate written notification to the superintendent of public instruction. In the case of a certificate which the auditor has reason to believe contains false information or the failure to sign and attach a certificate as required, the auditor shall also provide immediate written notification to the auditor of state and the county prosecuting attorney, city director of law, or other chief law officer of the district.

This section does not apply to any contract, order, or increase in any wage or salary schedule that is necessary in order to enable a board of education to comply with division (B) of section 3317.13 of the Revised Code, provided the contract, order, or increase does not exceed the amount required to be paid to be in compliance with such division.

Any officer, employee, or other person who knowingly expends or authorizes the expenditure of any public funds or knowingly authorizes or executes any contract, order, or schedule contrary to this section, knowingly expends or authorizes the expenditure of any public funds on the void contract, order, or schedule, or knowingly issues a certificate under this section which contains any false statements is liable to the school district for the full amount paid from the district's funds on the contract, order, or schedule. The officer, employee, or other person is jointly and severally liable in person and upon any official bond that he has given to the school district to the extent of any payments on the void claim, not to exceed twenty thousand dollars. However, no officer, employee, or other person shall be liable for a mistaken estimate of available resources made in good faith and based upon reasonable grounds. The prosecuting attorney of the county, the city director of law, or other chief law officer of the district shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the school district. If the prosecuting attorney, city director of law, or other chief law officer of the district fails, upon the written request of any taxpayer, to institute action for the enforcement of the liability, the taxpayer may institute the action in his own name in behalf of the subdivision.

This section does not require the attachment of an additional certificate beyond that required by section 5705.41 of the Revised Code for any purchase order, for current payrolls of, or contracts of employment with, regular employees or officers.

This section does not require the attachment of a certificate to a temporary appropriation measure if all of the following apply:

(A) The amount appropriated does not exceed twenty-five per cent of the total amount from all sources available for expenditure from any fund during the preceding fiscal year;

(B) The measure will not be in effect on or after the thirtieth day following the earliest date on

which the district may pass an annual appropriation measure;

(C) An amended official certificate of estimated resources for the current year, if required, has not been certified to the board of education under division (B) of section 5705.36 of the Revised Code.

HISTORY: 134 v H 475 (Eff 12-20-71); 134 v H 1029 (Eff 6-29-72); 137 v H 219 (Eff 11-1-77); 137 v S 221 (Eff 11-23-77); 137 v H 1285 (Eff 6-30-78); 138 v H 288 (Eff 5-23-79); 138 v H 44 (Eff 1-16-80); 138 v H 1237 (Eff 9-30-80); 140 v H 747 (Eff 1-1-86); 141 v H 201 (Eff 1-1-86); 143 v S 257. Eff 9-26-90.

Cross-References to Related Sections

Certification of available revenue; additional revenue; amended official certificate, RC § 5705.36.

Minimum salary schedule for teachers, RC § 3317.13.

Shared savings contract for purchase of energy savings measure, RC § 3313.37.3.

Text Discussion

Certification of adequate revenues. **Baker** § 5.07

Forms

Certificate of available resources of board of education. **Baker** No. 3.05, 5.07

Research Aids

Certification of adequate revenue:
O-Jur3d: Sch §§ 138, 241

CASE NOTES AND OAG

INDEX

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1. (1989) A certificate of adequate funding is not required on a contract made by a school board where the debt contracted for is to be paid by the proceeds from a bond issue, combined with state school building assistance funds, and which is to be kept in an account separate from the operating revenues of the school district: Tri-County N. Local Sch. Bd. v. McGuire & Shook Corp., 748 FSupp 541 (S.D.).

2. (1983) The provisions of RC § 5705.41.2 take precedence over the provisions in RC § 5705.41 and are mandatory and controlling: CADO Business Systems of Ohio, Inc. v. Bd. of Edn., 8 OApp3d 385, 8 OBR 499, 457 NE2d 939.

3. (1983) Under RC § 3313.20, boards of education have authority to make rules and regulations necessary for their government. In order to expedite the volume of routine purchases in a large school district, it is the duty of boards of education to adopt a purchase policy which clearly delineates types of routine purchases to be handled under RC § 5705.41 and RC § 5705.41.2, respectively: CADO Business Systems of Ohio, Inc. v. Bd. of Edn., 8 OApp3d 385, 8 OBR 499, 457 NE2d 939.

4. (1977) Revised Code §§ 5705.41 and 5705.41.2 are quite specific. A school board shall not make a contract without attaching thereto a certificate of sufficient funding, and if a contract is made without such a certificate that contract is void and no warrant of payment will be issued: Brownfield, Bowen, Bally & Sturtz v. Bd. of Education, 56 OApp2d 10, 10 OO3d 20, 381 NE2d 207.

5. (1985) Revised Code § 5705.41.2 does not require a certification of adequate revenues before the board of education passes a resolution awarding a contract; as long as the certification is signed before the contract is executed, the board's action is valid: Hines v. Cleveland Bd. of Edn., 26 OMisc2d 15, 26 OBR 348, 499 NE2d 39 (CP).

6. (1973) Revised Code § 5705.41.2 prohibits a board of education from entering into contracts of employment for the following school year without first receiving a certificate signed by the clerk and president of the board of education and superintendent that the school district has in effect for the remaining of the school year and the first six months of the succeeding school year the authorization to levy taxes including renewal of existing levies which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to provide the operating revenues necessary to enable the district to operate an adequate educational program: Board of Education v. Maple Heights Teachers Association, 41 OMisc 27, 70 OO2d 73, 322 NE2d 154 (CP).

7. (1987) Unless a contract is necessary for compliance with RC § 3317.13(B) or comes within the exception set forth in RC § 5705.41.2 for certain contracts requiring certificates under RC § 5705.41, no school district shall make the contract unless there is a certificate signed by the treasurer and president of the board of education and the superintendent that the school district has in effect for the remainder of the fiscal year and the succeeding fiscal year the authorization to levy taxes which, when combined with the estimated revenue from all other sources available to the district at the time of certification, are sufficient to enable the district to operate an adequate educational program for the current fiscal year and the succeeding fiscal year, regardless of when goods or services are to be provided under the contract and regardless of when payment is to be made: OAG No.87-069.

8. (1981) A school district may attach the certificate required by RC § 5705.41.2 to a collective bargaining agreement that sets forth alternative teacher salary schedules that are expressly made contingent upon the passage of an operating levy or the receipt of some other contingent revenue: OAG No.81-070.

9. (1980) The treasurer of a school board may not delegate to another the authority to certify contracts or orders for expenditures pursuant to RC §§ 5705.41(D) and 5705.41.2: OAG No.80-060.

10. (1976) Pursuant to RC § 5705.41.2, a board of education may not legally expend public funds to increase teachers' salaries without first obtaining a certification that there are sufficient funds available to cover such increases: OAG No.76-033.

[§ 5705.41.3] § 5705.413 Certain townships may make expenditures up to $750 without certificate.

(A) A township with total receipts for the prior fiscal year of three hundred fifty thousand dollars or less may make any purchase, order, or contract and give any order involving the expenditure of money without obtaining the certificate otherwise required under division (D) of section 5705.41 of

O.A.C. Chapter 3301-89

mirrors must be controlled from the driver compartment and may include the day/night option.

(T) Roof ventilators—roof ventilators are permissible. Such ventilators shall be adjustable and of sufficient capacity to provide adequate fresh air under operating conditions without the opening of windows, except in extremely warm weather. This ventilator shall have multi-positions and shall be static-type with exhaust ventilation that cannot be reclosed. The ventilator shall have a release handle or handles permitting operation as an emergency exit which can be opened from inside or outside the school bus. A buzzer shall sound when the ventilator is opened in the escape position. These ventilators/emergency exits are required on buses for the handicapped, "Transpec Safety Vents" or equivalent.

(U) Safety lugs—the use of safety lugs and clamps are permitted on wheels that use multipiece rims. Lugs must be rimlock or equivalent.

(V) School bus crossing control arms—school bus crossing control arms shall be designed to work in conjunction with the opening of the service door.

(W) Spray-suppressant skirting—a system for suppressing flying spray on a wet surface is permitted. Such a system shall consist of filament-type plastic which is installed around the front fender wells. Rear installation shall include a full width filament-type plastic skirt.

(X) Standard transmission—six-speed transmissions are permitted.

(Y) Stop arms equipped with strobe lights—a stop arm with two red flashing strobe lights is permitted.

(Z) Tinted side windows—tinted windows are permitted on school buses for the handicapped. Such tinting shall meet the applicable state laws.

(AA) Vehicle use monitors—the use of various types of monitoring devices to record vehicle movement, speed, RPM, and other measurements are permitted.

(BB) Vinyl lettering—vinyl stick-on lettering is permitted in lieu of painted-on letters, either on original equipment or as replacement letters.

HISTORY: 1989-90 OMR 525 (A), eff. 1-1-90
1987-88 OMR 1541 (E), eff. 7-1-88

CROSS REFERENCES

RC 4511.76, School bus regulation by departments of education and highway safety

Chapter 3301-89

Transfers of Territory

Promulgated pursuant to RC Ch 119

NOTES ON DECISIONS AND OPINIONS

51 OS(3d) 189, 555 NE(2d) 931 (1990), Union Title Co v State Bd of Ed. The act of the state board of education disapproving a transfer of territory request pursuant to RC 3311.06 is a quasi-judicial act and, as such, is appealable under RC 119.12, where the affected parties are provided with notice, a hearing, and the opportunity to present evidence pursuant to OAC Ch 3301-89.

3301-89-01 General policies of the state board of education in a request for transfer of territory under section 3311.06 or 3311.24 of the Revised Code

(A) The rules under Chapter 3301-89 of the Administrative Code apply to the request for a transfer of territory following municipal annexation under section 3311.06 of the Revised Code or a petition for transfer of territory under section 3311.24 of the Revised Code.

(B) The rules under Chapter 3301-89 of the Administrative Code do not apply to the transfer of territory following municipal annexation when the district in which the territory is located is a party to an annexation agreement with a city school district under section 3311.06 of the Revised Code. Further, the use of the term "agreement" in Chapter 3301-89 of the Administrative Code does not mean "annexation agreement" as defined in division (A)(4) of section 3311.06 of the Revised Code.

(C) The department of education shall require the boards of education affected by a request for transfer of territory to enter into good faith negotiations pursuant to sections 3311.06 and 3311.24 of the Revised Code.

(D) In situations where agreement has been reached between respective boards of education, the terms of agreement should be sent to the state board of education with reasonable dispatch. In those situations where agreement

does not exist, the state board of education will thoroughly examine the facilitator's report, pursuant to paragraph (A)(8) of rule 3301-89-04 of the Administrative Code. If the state board of education determines that the negotiations were not held in good faith, the transfer request shall be remanded back to the districts for further negotiations for a period not to exceed one year. However, no transfer request will be remanded more than once to the districts. If the state board determines that negotiations were held in good faith, but no agreement reached; or if negotiations were held the second time on the same transfer request and no agreement reached, then the state board of education will thoroughly examine the stated reasons for and against the requested transfer and provide due process to all parties involved as set forth in paragraph (E) of rule 3301-89-02 of the Administrative Code.

(E) A request for the transfer of territory for school purposes which previously has been disapproved by the state board of education will be reconsidered only if significant change has taken place subsequent to the filing of the original request.

(F) A request for transfer of territory will be considered upon its merit with primary consideration given to the present and ultimate good of the pupils concerned.

(G) The file at the department of education concerning a requested transfer will be made available to any affected party or interested person at all reasonable times for inspection. Upon request, copies of documents from the file will be made available at cost and within a reasonable period of time.

HISTORY: 1989-90 OMR 1274 (A), eff. 4-27-90
1986-87 OMR 839 (E), eff. 2-1-87

CROSS REFERENCES

RC 3311.06, Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds

RC 3311.24, Transfer of territory to an adjoining city, exempted village, or county school district; negotiation with affected school districts

3301-89-02 Procedures of the state board of education in a request for transfer of territory under section 3311.06 or 3311.24 of the Revised Code

(A) Initial requests

(1) A school district may request a transfer of certain territory for school purposes under section 3311.06 of the Revised Code by sending an initial letter requesting the land transfer to the state board of education and including copies of:

(a) The resolution of the requesting board of education;

(b) Each annexation ordinance identified by number; and

(c) A map showing the area(s) being considered for transfer.

(2) Under the provisions of section 3311.24 of the Revised Code, if the board of education of a city or exempted village school district deems it advisable to transfer territory from such district to an adjoining city, exempted village, or county school district, then the board of education of the district in which the proposal originates shall file the request, along with a map showing the boundaries of the territory proposed to be transferred, with the state board of education prior to the first day of April in any even-numbered year.

(3) A person(s) interested in requesting a transfer of territory from one school district to another, for school purposes, pursuant to section 3311.24 of the Revised Code, may petition to do so through the resident board of education.

(a) The board of education of the district in which such a proposal originates, regardless of its position on the proposed transfer, shall file the proposal, together with a map showing the boundaries of the territories proposed to be transferred, with the state board of education prior to the first day of April in any even-numbered year.

(b) The board of education of the district in which the proposal originates by petition of qualified electors residing within the portion of the school district proposed to be transferred shall determine the sufficiency of the signatures on the petition and shall notify the state board of education of its determination.

(4) A school district or a party initiating a request for transfer of territory shall serve a copy of the request on the school district(s) affected by the proposed transfer and shall indicate such service on the request which is filed with the state board of education.

(5) Upon receipt of a request for transfer under paragraph (A)(1) or (A)(2) of this rule, the department of education shall notify all school districts involved of their responsibilities for negotiations under rule 3301-89-04 of the Administrative Code.

(6) Upon receipt of a negotiated agreement, the state board of education shall adopt a resolution of approval of the negotiated agreement or may establish a hearing if approval is not granted.

(B) Upon receipt of the initial request for a transfer of territory under section 3311.06 or division (A) of 3311.24 of the Revised Code, or upon determination by the state board of education that negotiations pursuant to rule 3301-89-04 of the Administrative Code have failed to produce an agreement, the department of education shall send to each of the school districts involved in the proposed land transfer a request for information. This request includes seventeen questions. The answers to these questions, along with other considerations, will be considered. The seventeen questions are:

(1) Why is the request being made?

(2) Are there racial isolation implications?

(a) What is the percentage of minority students in the relinquishing district?

(b) What is the percentage of minority students in the acquiring district?

(c) If approved, would the transfer result in an increase in the percentage of minority pupils in the relinquishing district?

(3) What long-range educational planning for the students in the districts affected has taken place?

(4) Will the acquiring district have the fiscal and human resources to efficiently operate an expanded educational program?

(5) Will the acquiring district have adequate facilities to accommodate the additional enrollment?

(6) Will both the districts involved have pupil population and property valuation sufficient to maintain high school centers?

(7) Will the proposed transfer of territory contribute to good district organization for the acquiring district?

(8) Does the acquiring district have the capacity to assume any financial obligation that might accompany the relinquished territory?

(9) Will the loss of either pupils or valuation be detrimental to the fiscal or educational operation of the relinquishing school district?

(10) Have previous transfers caused substantive harm to the relinquishing district?

(11) Is the property wealth in the affected area such that the motivation for the request could be considered a tax grab?

(12) Are there any school buildings in the area proposed for transfer?

(13) What are the distances between the school buildings in:

(a) The present area?

(b) The proposed area?

(14) If approved, will the requested transfer create a school district with noncontiguous territory?

(15) Is the area being requested an isolated segment of the district of which it is a part?

(16) Will the municipal and school district boundary lines become coterminous?

(17) For both the districts:

(a) What is the inside millage?

(b) What is the outside operating millage?

(c) What is the bonded indebtedness millage?

(C) When a school district completes the questionnaire and forwards the same to the department of education, the school district shall serve a copy on the other school district(s) affected by the proposed transfer and shall indicate such service on the questionnaire which is filed with the department of education.

(D) Upon receipt of completed questionnaires from both school districts concerned, the department of education will analyze the information and present its analysis to the state board of education for consideration.

(E) Upon receipt of the data from the department of education, the state board of education may declare its intention to consider the request for transfer of certain territories from one school district to another by passing a resolution of intention to consider the matter and providing the parties an opportunity for a hearing.

(F) If a request for a hearing is subsequently received by the department of education, a referee shall be appointed and a hearing date shall be established by the department.

(G) The data and documents received by the department of education under this chapter shall become part of the record of the hearing for consideration by the referee.

(H) In making a report and recommendation to the state board of education, the referee shall be governed by the provisions of Chapter 3301-89 of the Administrative Code.

(I) When the referee's report is received with its recommendation to approve or disapprove the transfer of territory, the department of education will mail such report to the school districts and any other affected parties.

(2) Upon their receipt of the referee's report, the affected parties will have ten days in which to submit written objections to the report to the department.

(3) Any party that files objections shall file a copy of the objections with the other affected parties.

(4) Any affected party may file a response to the objections. Such response must be filed with the department of education within ten days after the objections are mailed to the department of education.

(I) After the time for filing objections and responses has ended, the state board education will then consider the referee's report, objections, and responses, and adopt a resolution which approves, disapproves, or modifies the recommendation of the referee. The decision of the state board of education will be made solely on the record of the hearing, the report of the referee and any objections or responses filed by the parties.

(J) When a determination concerning a transfer of territory will be made by the state board of education, the department of education shall notify the school districts and other affected parties of the time and place the matter will be considered by the state board of education.

HISTORY: 1989-90 OMR 1274 (A), eff. 4-27-90
1987-88 OMR 1296 (A), eff. 5-1-88; 1986-87 OMR 840 (E), eff. 2-1-87

CROSS REFERENCES

RC 3311.06, Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds

RC 3311.24, Transfer of territory to an adjoining city, exempted village, or county school district; negotiations with affected school districts

NOTES ON DECISIONS AND OPINIONS

46 OS(3d) 55, 544 NE(2d) 924 (1989), State ex rel Harrell v Streetsboro City School Dist Bd of Ed. A board of education need only file transfer of territory petitions with the state board of education when the petitions have been determined to contain sufficient signatures.

3301-89-03 Factors to be considered by a referee appointed to hear a request for transfer of territory under section 3311.06 or 3311.24 of the Revised Code

(A) A referee appointed to hear a transfer request under section 3311.06 or 3311.24 of the Revised Code shall consider the information provided by the school districts under paragraph (B) of rule 3301-89-02 of the Administrative Code and shall be governed by the provisions of Chapter 3301-89 of the Administrative Code.

(B) Other factors that a referee shall consider in hearing any request for a transfer of territory for school purposes include, but are not necessarily limited to:

(1) Documented agreements made by public agencies involved in municipal annexation proceedings should be honored;

(2) A previous agreement entered into by the school districts concerned should be honored unless all concerned districts agree to amend it;

(3) The statement signed by the school district boards of education after negotiations as required by paragraph (D)(4) of rule 3301-89-04 of the Administrative Code;

(4) There should not be undue delay in requesting a transfer for school purposes after a territory has been annexed for municipal purposes;

(5) The transfer shall not cause, preserve, or increase racial isolation;

(6) All school district territories should be contiguous unless otherwise authorized by law;

(7) School district boundary lines that have existed for a long period of time should not be changed if substantial upheaval results because of long-held loyalties by the parties involved;

(8) The pupil loss of the relinquishing district should not be such that the educational program of that district is severely impaired;

(9) The fiscal resources acquired should be commensurate with the educational responsibilities assumed; and

(10) The educational facilities of districts should be effectively utilized.

HISTORY: 1989-90 OMR 1275 (A), eff. 4-27-90
1987-88 OMR 1297 (A), eff. 5-1-88; 1986-87 OMR 841 (E), eff. 2-1-87

CROSS REFERENCES

RC 3311.06, Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds

RC 3311.24, Transfer of territory to an adjoining city, exempted village, or county school district; negotiation with affected school districts

3301-89-04 Procedures governing negotiations of school districts, other than urban school districts as defined in division (A)(3) of section 3311.06 of the Revised Code

(A) Negotiation process

(1) Unless negotiations have been initiated, the first negotiation session shall be set within thirty days of the receipt of notification of responsibility to negotiate from the department of education.

(2) The date, time, and place of the negotiation sessions shall be mutually agreed upon by the participating districts.

(3) A record of at least the time, place, and date of each session shall be kept by each school district represented.

(4) Any board of education may request assistance from the department of education. Upon request, the superintendent of public instruction shall designate one or more department employees to provide assistance.

(5) District superintendents and/or their designees shall comprise the negotiating teams. Teams shall be limited to three persons each. By mutual consent, up to three observers for each team may be present.

(6) If agreements are not reached within one hundred twenty days, a mutually agreed upon facilitator with a public education background and/or experience shall be selected within thirty days. The cost of the facilitator shall be shared equally by the parties involved. If the parties fail to agree upon a facilitator, the superintendent of public instruction shall name one.

(7) Agreements reached shall be adopted by each board of education involved. A copy of the resolution and the negotiated agreement shall be transmitted by each board of education to the state board of education.

(8) In the event agreements are not reached within a year from the initial negotiation session, the facilitator shall issue to the state board of education a record of the good faith efforts of all parties involved in the negotiations.

(B) The negotiations process shall strive for the realization of the following goals:

(1) Written delineation of the present and future educational needs of the pupils in each of the school districts.

(2) A written review of the educational, financial, and territorial stability of each district affected by the transfer.

(3) A statement of assurance of appropriate educational programs, services, and opportunities for all the pupils in each participating district, and adequate planning for the facilities needed to provide these programs, services, and opportunities.

(C) The following are examples of terms that school districts may agree to:

(1) Share revenues from the property included in the territory to be transferred;

(2) Establish cooperative programs between the participating districts;

(3) Establish mechanisms for the settlement of any future boundary disputes; and

(4) No tax revenue to the receiving district from the territory transferred for a period of time.

(D) Before the state board of education may hold a hearing on a transfer, or approve or disapprove any such transfer, it must receive the following items:

(1) A resolution requesting approval of the transfer, passed by at least one of the school districts whose territory would be affected by the transfer, if the transfer request is pursuant to section 3311.06 of the Revised Code;

(2) A resolution requesting approval of the transfer, passed by the school district submitting the proposal, if the transfer request is initiated by a board of education pursuant to section 3311.24 of the Revised Code;

(3) Evidence determined to be sufficient by the state board of education to show that good faith negotiations have taken place or that the district requesting the transfer has made a good faith effort to hold such negotiations; and

(4) If any negotiations took place, a signed statement is required by every school district board of education that has participated in the negotiations, listing the terms agreed upon and the points on which no agreement could be reached.

HISTORY: 1989-90 OMR 1276 (E), eff. 4-27-90

CROSS REFERENCES

RC 3311.06, Definitions; territory must be contiguous; procedure when part of district is annexed by municipal corporation; annexation of territory by municipal corporation served by urban school district; division of funds

RC 3311.24, Transfer of territory to an adjoining city, exempted village, or county school district; negotiation with affected school districts