

September 26, 1995

OPINION NO. 95-029

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 North Detroit Street
Xenia, Ohio 45385

Dear Prosecutor Schenck:

You have submitted an opinion request in which you ask:

1. May the Board of Trustees of a County Law Library Association, under Section 3375.54 of the Ohio Revised Code, expend public monies to employ a systems operations analyst/research specialist to operate computerized legal research for the Law Library?
2. May a Board of Trustees of a County Law Library Association expend public funds to pay the chairman of the Law Library Trustees to oversee and supervise the operation of the Law Library Association and in the purchase, lease or rental of law books, computerized legal research equipment and other equipment used to facilitate legal research?

Funding of County Law Library Associations

A county law library association is a private organization that may be organized either as a private association or as a non-profit corporation under R.C. 1713.28. 1989 Op. Att'y Gen. No. 89-070. County law libraries receive funding from both private and public sources. *Id.* With respect to moneys received from private sources, county law libraries are limited in the use of such moneys to those uses permitted by the law library association's charter, by-laws, or other governing regulations. *See Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 8, 94 N.E.2d 32, 45 (C.P. Van Wert County 1949) ("[i]f the law library association receives private donations, in respect to such monies it is like any other private association and may use such private funds for any proper purpose of the association, even though it is prohibited by law from expending funds received from a public source for such purposes").

Public support for county law libraries is provided in two ways. Certain expenses are paid by the county from the county treasury. R.C. 3375.49 requires the board of county commissioners to provide to the county law library association at the expense of the county, suitable rooms, sufficient and suitable bookcases, and heating and lighting for the rooms, and, pursuant to R.C. 3375.48, the compensation of the law librarian and up to two assistants shall be paid from the county treasury.

In addition, county law library associations receive public moneys from various court fines, penalties, and forfeited bail in accordance with R.C. 3375.50-.53. These moneys may be used only for the purposes enumerated in R.C. 3375.54. 1988 Op. Att'y Gen. No. 88-104 (syllabus, paragraph two). Separate provision is made in R.C. 3375.56 for a law library association to retain a portion of the excess funds it receives under R.C. 3375.50-.53. Having originated as moneys received under R.C. 3375.50-.53, "[m]oneys retained pursuant to R.C. 3375.56 retain their character as public moneys and may be expended, at the discretion of the trustees, only for the purposes set forth in R.C. 3375.54." 1992 Op. Att'y Gen. No. 92-012 at 2-42.

Expenditures Authorized by R.C. 3375.54

R.C. 3375.54, which specifies the purposes for which public moneys distributed to a county law library may be expended, states:

The money that is paid to the board of trustees of a law library association under [R.C. 3375.50-.53] shall be expended in the support and operation of the law library association and in the purchase, lease, or rental of lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and other services, materials, and equipment that provide legal information or facilitate legal research.

The expenditures that a board of law library trustees may make under R.C. 3375.54 have been found to be limited to expenditures for the law library other than those paid by the county from the county treasury under either R.C. 3375.48 or R.C. 3375.49. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-104 at 2-513 ("[i]t does appear...that R.C. 3375.54 continues to exclude authorization for expenditure for bookcases, rent, *librarian's compensation*, and heat and lights, since those expenditures are delegated to the county elsewhere in the statute. R.C. 3375.48; R.C. 3375.49" (emphasis added)); 1985 Op. Att'y Gen. No. 85-030 at 2-110 ("R.C. 3375.54 is still aimed toward the provision of a system of legal research, while R.C. 3375.49 requires the county to provide the county law library with suitable physical facilities"); 1951 Op. Att'y Gen. No. 554, p. 298, 303 ("there is the clear implication that expenditure of funds accruing under [G.C. 3056 to 3056-3 (now at R.C. 3375.50-.53)] is not authorized to provide for services which are within the usual duties of a librarian").

Source of Payment for Services Provided by Librarian or Assistant Librarian

You specifically question whether the board of trustees of a law library association may, pursuant to R.C. 3375.54, use the moneys it receives under R.C. 3375.50-.53 to "employ a systems

operations analyst/research specialist to operate computerized legal research for the Law Library." In the case of *Greene County Law Library Ass'n v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported), the court considered a question similar to yours. In that case, moneys retained by the law library association under R.C. 3375.56 were used to pay for the performance of certain services in connection with the operation of the law library. In considering whether such expenditure was proper, the court framed the issue as follows: "since the compensation of a law librarian and assistant law librarians must be paid from the county treasury (Section 3375.48), the question...is whether the duties actually performed by the trustee were those which normally would have been performed by a law librarian." *Id.*, slip op. at 7. The Greene County Court of Appeals then concluded:

While the maintenance of the library might require the assistance of additional personnel to perform services which could be paid for under the authority of Section 3375.54, we are of the opinion that the duties shown to have been performed by the [person] in the present case were those ordinarily performed by a law librarian, and for this reason, the finding of the trial court that the [person] was properly compensated for his services from funds retained in accordance with Section 3375.56 is against the manifest weight of the evidence.

Id., slip op. at 8. Having found the particular duties performed in that case to be those ordinarily performed by a law librarian, the Greene County Court of Appeals concluded that payment for such services was not a proper use of funds retained by the law library association under R.C. 3375.56. *See also* 1992 Op. Att'y Gen. No. 92-012 at 2-40 ("to the extent that...services...are those that are ordinarily performed by a law librarian, funds derived under R.C. 3375.50-.53 may *not* be used as compensation for such services" (emphasis added)). The court also suggested, however, that a law library may need certain services that are not ordinarily performed by the law librarian, and that payment for such services would be a purpose authorized by R.C. 3375.54.

The specific services described in your opinion request are those of "a systems operations analyst/research specialist to operate computerized legal research." If such services are those ordinarily performed by a law librarian, funds derived under R.C. 3375.50-.53 may not be used to pay for such services.¹ As stated by my predecessor in 1992 Op. Att'y Gen. No. 92-012, however, the question of "whether services performed in a particular case are those ordinarily performed by a law librarian is a question of fact that is more appropriately determined by your office or other local officials than by the Attorney General as part of a formal opinion." *Id.* Thus, only if you find that the services of a systems operations analyst/research specialist to operate computerized legal research are services needed by the library, and that such services are not those ordinarily performed by a law librarian, is payment for such services an expenditure authorized by R.C. 3375.54 for which the board of library trustees may use funds it receives under R.C. 3375.50-.53.

¹ Whether the law library association may use its private funds to pay for such services depends upon whether such payment is permitted by the association's charter, by-laws, or other regulations. *See Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 8, 94 N.E.2d 32, 45 (C.P. Van Wert County 1949).

Trustees' Compensation for Services to County Law Library

Your second question asks whether a board of trustees of a county law library may expend public funds to pay the chairman of the board of law library trustees "to oversee and supervise the operation of the Law Library Association and in the purchase, lease or rental of law books, computerized legal research equipment and other equipment used to facilitate legal research." The matter of payment to a law library trustee for services rendered to the county law library was also addressed in *Greene County Law Library Ass'n v. Ferguson, supra*. After concluding that funds retained by the law library association under R.C. 3375.56 could not be used to pay for services ordinarily performed by a law librarian, the court went on to address the propriety of paying one of the library trustees for the performance of those services, and stated:

[E]ven if it were permissible to pay the librarian from monies received under Sections 3375.50 through 3375.53, inclusive, it would nevertheless be improper for a trustee of the association to occupy any position which has its salary paid with such funds since the trustee would be sitting on the board which establishes and pays the salary.

Id., slip op. at 8. The court thus found that funds received by a law library association under R.C. 3375.50-.53 may not be used to compensate a trustee of the law library association. *See also* 1992 Op. Att'y Gen. No. 92-012 (syllabus, paragraph two) ("[a]bsent a legislative change authorizing such payments, money that is paid to the board of trustees of a law library association under R.C. 3375.50-.53, including money that is retained by the association pursuant to R.C. 3375.56, may not be expended to compensate the trustees of the law library association").

In answer to your second question, I conclude, therefore, that R.C. 3375.54 does not authorize a law library association to use funds it receives pursuant to R.C. 3375.50-53, including money retained by the association pursuant to R.C. 3375.56, to compensate a trustee of the law library association.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

- 1.If the services of a systems operations analyst/research specialist to operate computerized legal research are services needed by a county law library, but such services are not those ordinarily performed by a law librarian, payment for such services is an expenditure authorized by R.C. 3375.54, and the board of library trustees may use funds it receives under R.C. 3375.50-.53 to pay for such services.

- 2.R.C. 3375.54 does not authorize a law library association to use funds it receives pursuant to R.C. 3375.50-53, including money retained by the association pursuant to R.C. 3375.56, to compensate a trustee of the law library association. (1992 Op. Att'y Gen. No. 92-012 (syllabus, paragraph two), approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

September 26, 1995

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 North Detroit Street
Xenia, Ohio 45385

SYLLABUS:

95-029

- 1.If the services of a systems operations analyst/research specialist to operate computerized legal research are services needed by a county law library, but such services are not those ordinarily performed by a law librarian, payment for such services is an expenditure authorized by R.C. 3375.54, and the board of library trustees may use funds it receives under R.C. 3375.50-.53 to pay for such services.
- 2.R.C. 3375.54 does not authorize a law library association to use funds it receives pursuant to R.C. 3375.50-53, including money retained by the association pursuant to R.C. 3375.56, to compensate a trustee of the law library association. (1992 Op. Att'y Gen. No. 92-012 (syllabus, paragraph two), approved and followed.)