March 12, 1996

OPINION NO. 96-013

The Honorable David E. Bowers
Allen County Prosecuting Attorney
410 Colonial Building
212 North Elizabeth Street
Lima, Ohio 45801

Dear Prosecutor Bowers:

I have before me your request for my opinion as to whether a county law library association is required to allow members of the general public unlimited access to, and use of, the county law library facility. According to its articles of incorporation, the Allen County Law Library was formed as a nonprofit corporation in 1897. The purpose of the corporation is set forth in the articles of incorporation, which state in pertinent part:

> The purpose for which said corporation is formed is not for profit, but to acquire and maintain a library of law books, law periodicals, and other papers and documents of like kind and character, for the encouragement, culture, advantage and education of the members of the Bar of Allen County, Ohio, and other members of said association; and for the use of such books, periodicals, papers and documents, by all county officers and judges of the several courts of said county, free of charge.

It is my understanding that certain members of the general public now seek unlimited use of the Allen County Law Library.

In order to determine whether the general public has a right of access to the Allen County Law Library, it is first necessary to discuss the statutory scheme governing county law libraries generally. A county law library association is a private organization that is organized either as a private association or as a nonprofit corporation. 1995 Op. Att'y Gen. No. 95-029. A county law library is generally funded by both private and public sources. *See Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 94 N.E.2d 32 (C.P. Van Wert County 1949). As a private association, a county law library association is governed by its charter, by-laws, and other governing regulations. *See* 1986 Op. Att'y Gen. No. 86-102.

Although a county law library exists as a private organization, access to county law libraries is governed, in part, by statute. 1989 Op. Att'y Gen. No. 89-070. Specifically, the General Assembly has conditioned a county law library's receipt of certain county support upon the library's providing "to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge." R.C. 3375.48. Similarly, a board of county commissioners is to provide, at county expense, "suitable rooms with sufficient and suitable bookcases," heat, and light to a county law library that provides free access and use of its books to the officers named in R.C. 3375.48. R.C. 3375.49; *see* 1988 Op. Att'y Gen. No. 88-104. Those county law libraries that receive moneys under R.C. 3375.50-.53 (from court fines, penalties, and forfeited bail) must also allow free access and use of their books to "[j]udges of the county court in the county and officers of the townships and municipal corporations therein." R.C. 3375.55. The General Assembly has, therefore, specifically designated the persons to whom a county law library that receives financial support from the county must provide free access and use of its books.[1]

The fact that the General Assembly has granted county assistance under R.C. 3375.48-.53 only to those county law library associations that grant free access and use of their books to various public officers clearly indicates that access to a county law library and the use of its books is not a right held by the general public.[2] *See State ex rel. Akron Law Library Ass'n v. Weil*, 16 Ohio App. 2d 151, 154, 242 N.E.2d 664, 666 (Summit County 1968) ("[t]he state of Ohio, by legislation,

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[1] The application of the statutory scheme governing access to the Allen County Law Library was addressed in *State ex rel. Allen County Law Library Ass'n v. Welker*, 47 Ohio App. 42, 49, 190 N.E. 150, 152 (Allen County 1934), as follows:

> [T]he law library association which receives such funds shall be one which furnishes to all the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, and which maintains a library in which the justices of the peace in the county, and officers of the townships, villages, and cities therein, have the same free use of the books of the library receiving such moneys as the judges and county officers; the trustees to make an annual report as provided in said chapter. And so long as the Allen County Library Association, which is recognized by the legislature...as complying with the provisions of [G.C. 3054 through G.C. 3058 (currently at R.C. 3375.48-.56)], continues to comply with the provisions of said chapter,...it will be entitled to receive payments in the amount and in the installments derived from the costs, fines and penalties collected by the clerk of the municipal court as in said section provided.

[2] Even the public officials who are entitled to access free of charge to a county law library are not entitled to free use of all the library equipment. 1995 Op. Att'y Gen. No. 95-017 (syllabus) ("[a] law library association that provides the public officials specified in R.C. 3375.48, including the county prosecuting attorney, access free of charge to the county law library and its books, has no duty to provide the prosecuting attorney a computerized legal research service free of charge").

provided a means of supporting county law libraries for the free use of such facilities *by the judges and other public officials*"(emphasis added)). If everyone were entitled to free access to a county law library, there would have been no need to condition county assistance to such library upon the library's granting free access to the public officers mentioned in R.C. 3375.48 and R.C. 3375.55. Instead, the right of access to a county law library by persons other than those named in R.C. 3375.48 and R.C. 3375.55 is governed by the "purposes and procedures specified in the [law library] association's charter, by-laws, rules, or regulations." 1989 Op. Att'y Gen. No. 89-070 at 2-323.

I note that the foregoing analysis is consistent with the legislative scheme governing the state's system of public libraries, where the General Assembly has employed language expressly granting wider access to such libraries and their services. *See, e.g.*, R.C. 3375.06 (establishment of county free public library "for the use of all of the inhabitants of the county"); R.C. 3375.08 (authority for county commissioners to transfer property "to the board of trustees of any free public library rendering free public library service to all the inhabitants of the county"); R.C. 3375.14 (authority of boards of education to establish school libraries "for the purpose of providing school library service to the pupils under its jurisdiction"). Had the General Assembly intended that county law libraries be required to provide access to persons other than those named in R.C. 3375.48 and R.C. 3375.55, it could easily have so provided. *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). It appears, therefore, that by requiring, as a prerequisite to receiving county financial assistance, that certain public officers be allowed free access to a county law library, the General Assembly recognized that such access was not necessarily available to such officials as members of the general public or otherwise. *See generally* 1995 Op. Att'y Gen. No. 95-017. Thus I must conclude that members of the general public have no statutory right of access to, or use of, the county law library.

Based on the foregoing, it is my opinion, and you are hereby advised that a county law library, whether or not it receives public funds, has no statutory duty to afford members of the general public free access to its facility.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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