

OPINION NO. 93-031

Syllabus:

1. The public libraries and public library districts established variously in accordance with R.C. 3375.06, .10, .12, .15, .22, and .30 are political subdivisions for purposes of R.C. Chapter 167, and, therefore, may become members of a regional council of governments, created pursuant to R.C. 167.01.
2. The public libraries and public library districts established variously in accordance with R.C. 3375.06, .10, .12, .15, .22, and .30 are political subdivisions for purposes of R.C. 9.833, and, as such, may participate in any of the self-funded health care benefit programs authorized by R.C. 9.833(B).

To: Richard M. Cheski, State Librarian, Columbus, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have asked for an opinion on the following questions:

1. Is a public library district established under [R.C. 3375.06-.411] a political subdivision of the State for the purposes of [R.C. 167.01]?
2. Is a public library district established under [R.C. 3375.06-.411] a political subdivision of the State for the purposes of [R.C. 9.833]?
3. If your answer is yes to the first two questions, may such a public library join a regional council of governments established under [R.C. Chapter 167] and participate in a joint self-insurance health care program for its employees operated pursuant to [R.C. 9.833]?

Free Public Libraries

Within R.C. Chapter 3375, the General Assembly has provided for the creation and operation of various types of public libraries throughout the state. As the court in *Brown v. State ex rel. Merland*, 120 Ohio St. 297, 302, 166 N.E. 214, 216 (1929), stated: "Public libraries are a part of the educational facilities of the state, and, while not so generally employed or so readily accessible as schools, if they constitute a proper element of *governmental activity* they must be as applicable to every community as to any one community. Knowledge is neither more nor less necessary or expedient in the populous centers than in the sparsely settled rural counties." (Emphasis added.) See also *State ex rel. Brickell v. Frank*, 129 Ohio St. 604, 196 N.E. 416 (1935).

Public libraries are created in a number of ways. R.C. 3375.06 provides that in certain counties, "a county free public library shall be established for the use of all of the inhabitants of the county" (emphasis added). Similar provision is made in R.C. 3375.10 for the establishment in certain townships of "a free public library." R.C. 3375.15 refers to a "free public library" that has been established by a certain type of school district, as does R.C. 3375.12, referring to "free public libraries established by municipal corporations." R.C. 3375.22 and R.C. 3375.30, however, use different terminology, speaking instead of "the free public library" of a "county library *district*" under the former, and referring to the "regional

district free public library" in the latter.¹ Thus, although your opinion request uses the term "library district" to refer to all of the above, this opinion will refer to the various public libraries and public library districts established under R.C. 3375.06-.411 as "library entities," in recognition of the different schemes described above.

An element common to these library entities is that each is governed by a board of trustees appointed under R.C. 3375.06 (county free public library), R.C. 3375.10 (township free public library), R.C. 3375.12 (municipal free public library), R.C. 3375.15 (school district free public library), R.C. 3375.22 (county library district), or R.C. 3375.30 (regional library district). Pursuant to R.C. 3375.33, these boards of library trustees are "bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law." Among the powers conferred upon such library boards of trustees is the power to:

(L) Procure and pay all or part of the cost of group life, hospitalization, surgical, major medical, disability benefit, dental care, eye care, hearing aids, or prescription drug insurance, or a combination of any of the foregoing types of insurance or coverage, whether issued by an insurance company, or nonprofit medical or dental care corporation duly licensed by the state, covering its employees and in the case of hospitalization, surgical, major medical, dental care, eye care, hearing aids, or prescription drug insurance, also covering the dependents and spouses of such employees, and in the case of disability benefits, also covering spouses of such employees. With respect to life insurance, coverage for any employee shall not exceed the greater of the sum of ten thousand dollars or the annual salary of the employee, exclusive of any double indemnity clause that is a part of the policy.

R.C. 3375.40.

Your questions concern the statutory authority of the various library entities, acting through their boards of trustees, to combine with other governmental entities for purposes of providing self-funded health care benefits for public library employees.

Regional Councils of Government

Your first question concerns the status of public library entities as political subdivisions for purposes of R.C. Chapter 167. Part of your third question is, in the event that such library entities are political subdivisions within the meaning of R.C. Chapter 167, whether they may join a regional council of governments.

R.C. 167.01 provides for the creation of regional councils of government, as follows:

That [sic] *governing bodies* of any two or more counties, municipal corporations, townships, special districts, or *other political subdivisions* may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions. (Emphasis added.)

¹ You have stated that your questions do not concern municipal libraries operating under R.C. 3375.121.

Concerning membership in a regional council of governments, R.C. 167.02, states in part:

(A) Membership in the regional council shall be the counties, municipal corporations, townships, special districts, school districts, *and other political subdivisions* entering into the agreement establishing the council or admitted to membership subsequently pursuant to the agreement establishing the council or the bylaws of the council. Representation on the council may be in the manner provided in the agreement establishing the council. (Emphasis added.)

Thus, whether library entities, by action of their boards of trustees, may become members of a regional council of governments depends upon whether such library entities constitute "political subdivisions," for purposes of R.C. Chapter 167.

A. Political Subdivisions for Purposes of R.C. Chapter 167

The meaning of the term "political subdivision," as used in R.C. Chapter 167, was discussed in 1989 Op. Att'y Gen. No. 89-063, at 2-274, as follows:

Political subdivision is not defined in R.C. Chapter 167. As I have noted in an earlier opinion, the term political subdivision may have a wide variety of meanings. See 1983 Op. Att'y Gen. No. 83-059 at 2-247 (listing numerous different statutory usages). In 1972 Op. Att'y Gen. No. 72-039 at 2-149, my predecessor held that for purposes of R.C. Chapter 167, a political subdivision is "a limited geographical area wherein a public agency is authorized to exercise some governmental function," noting also that inclusion of the term "special district" in R.C. 167.01 indicates that "political subdivision" is to be used in its most general sense. See also 1979 Op. Att'y Gen. No. 79-018 at 2-59 ("'political subdivision' is used [in R.C. 167.01] in its general sense, to encompass all types of public agencies authorized to exercise governmental functions"). (Footnote deleted.)

Thus, in order to qualify as a political subdivision for purposes of R.C. Chapter 167, an entity must be a public agency that is authorized to exercise some governmental function, and it must exercise that function within a limited geographical area.

B. Public Libraries as Political Subdivisions under R.C. Chapter 167

In *Miller v. Akron Public Library*, 60 Ohio L. Abs. 364, 96 N.E.2d 795 (C.P. Summit County 1951), the court discussed the nature of free public libraries. The court noted that because the General Assembly, pursuant to G.C. 7628 (now R.C. 3375.33), designated boards of library trustees as bodies politic and corporate and gave them such extensive powers, the General Assembly intended that they be "separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic." *Id.* at 369, 96 N.E.2d at 798. See also 1960 Op. Att'y Gen. No. 1552, p. 520 (finding the board of trustees of a township free public library to be an entity separate from the township and county in which it is located). Thus, rather than existing merely as an agency of the subdivision in which it is located, each board of library trustees, as the governing body of the library entity, is a distinct public agency. Further, as discussed above in *Brown v. State ex rel. Merland*, the services performed by free public libraries are governmental activities.

The remaining factor to consider in determining whether a library entity constitutes a political subdivision for purposes of R.C. Chapter 167 is whether the library entity is authorized to perform its activities in a "limited geographical area." The meaning of the phrase "limited

geographical area" is not readily apparent, but becomes clearer upon examination of the syllabus of 1972 Op. Att'y Gen. No. 72-035, from which Op. No. 72-039 adopted its definition of "political subdivision." The syllabus of Op. No. 72-035 states: "A political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is *a public agency with state-wide authority.*" (Emphasis added.) It appears, therefore, that the phrase "limited geographical area" refers to any geographical area within the state that is smaller than the area of the entire state.

The geographic area over which each type of library entity has jurisdiction is not expressly defined in the statutes creating those entities. R.C. 3375.40, however, describes the powers of boards of library trustees established under R.C. 3375.06, .10, .12, .15, .22, and .30, as including the powers to:

(E) Establish and maintain a main library, branches, library stations, and traveling library service within the *territorial boundaries of the subdivision or district over which it has jurisdiction* of public library service;

(F) Establish and maintain branches, library stations, and traveling library service in any school district, outside the *territorial boundaries of the subdivision or district over which it has jurisdiction* of free public library service, upon application to and approval of the state library board, pursuant to [R.C. 3375.05]; provided the board of trustees of any free public library maintaining branches, stations, or traveling-book service, *outside the territorial boundaries of the subdivision or district over which it has jurisdiction* of public library service, on September 4, 1947, may continue to maintain and operate such branches, stations, and traveling library service without the approval of the state library board;

....

(H) Make and publish rules for the proper operation and management of the free public library under its jurisdiction, including rules pertaining to the provision of library services to individuals, corporations, or institutions that are not inhabitants of the county....² (Emphasis and footnote added.)

These portions of R.C. 3375.40(E) and (F) suggest that the board of trustees of each library entity has jurisdiction within a limited area, presumably the area of the subdivision or the district in which it was created. Further, R.C. 3375.40(H) suggests that special rules would be necessary to make the library's services available outside its normal service area, *i.e.*, the subdivision or district in which it was established or the county to which its services may be available. Thus, the statutory scheme governing the library entities about which you ask

² Also to be considered in this regard is R.C. 5705.28(D), which states in part:

The board of trustees of any public library desiring to participate in the distribution of the county library and local government support fund shall adopt appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures.

It is commonly understood that, in accordance with R.C. 5705.28(D), most library boards make their services available to all county inhabitants in order to be eligible to participate in the distribution of the county library and local government support fund.

indicates that such entities generally operate within a geographical area smaller than that of the entire state.

Accordingly, it follows that library entities established under R.C. 3375.06, .10, .12, .15, .22, and .30 are political subdivisions for purposes of R.C. Chapter 167, and, as such, may become members of a regional council of governments.

Self-Funded Health Care Benefit Plans Under R.C. 9.833

You also ask whether library entities are political subdivisions for purposes of R.C. 9.833, which states in pertinent part:

(B) *Political subdivisions* that provide health care benefits for their officers or employees may do any of the following:

(1) Establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits in accordance with division (C) of this section;

(2) After establishing an individual self-insurance program, agree with other political subdivisions that have established individual self-insurance programs for health care benefits, that their programs will be jointly administered in a manner specified in the agreement;

(3) Pursuant to a written agreement and in accordance with division (C) of this section, join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits;

(4) Pursuant to a written agreement, join in any combination with other political subdivisions to procure or contract for policies, contracts, or plans of insurance to provide health care benefits for their officers and employees subject to the agreement;

(5) Use in any combination any of the policies, contracts, plans, or programs authorized under this division. (Emphasis added.)

As used in R.C. 9.833, the term "political subdivision" is defined as meaning "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.*" R.C. 9.833(A) (emphasis added).

As stated above, pursuant to R.C. 3375.33, each board of library trustees is established as a body corporate and politic. Further, as characterized by the court in *Brown v. State ex rel. Merland*, the services performed by library entities are governmental activities. Finally, as discussed in answer to your first question, the services rendered by the various library entities are generally available within areas smaller than that of the entire state. Thus, library entities, as governed by their respective boards of trustees, fall squarely within the definition of "political subdivision" for purposes of R.C. 9.833. As such, the library entities about which you ask are authorized to exercise any of the options available to them as political subdivisions under R.C. 9.833(B).

Having answered your third question as part of the first two questions, it is unnecessary to separately restate those conclusions.

Conclusions

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

1. The public libraries and public library districts established variously in accordance with R.C. 3375.06, .10, .12, .15, .22, and .30 are political subdivisions for purposes of R.C.

Chapter 167, and, therefore, may become members of a regional council of governments, created pursuant to R.C. 167.01.

2. The public libraries and public library districts established variously in accordance with R.C. 3375.06, .10, .12, .15, .22, and .30 are political subdivisions for purposes of R.C. 9.833, and, as such, may participate in any of the self-funded health care benefit programs authorized by R.C. 9.833(B).