

OPINION NO. 96-023

Syllabus:

1. The board of trustees of the Mt. Gilead Free Public Library Association may change the territory in which the library operates to be coterminous with the Mt. Gilead Exempted Village School District by amending the association's articles of incorporation through the appropriate procedures.
2. As an association library, the Mt. Gilead Free Public Library is a private entity, rather than a governmental entity. Even though it may be

considered a public library and may receive public funds, it does not constitute a library district and it does not have a taxing authority for purposes of submitting a tax levy to the voters.

3. Since the Mt. Gilead Free Public Library is an association library, the board of county commissioners is the taxing authority of the library only for the purposes of R.C. 3375.20, concerning the formation of a county library district.

To: Michael S. Lucas, Acting State Librarian, The State Library of Ohio, Columbus, Ohio

By: Betty D. Montgomery, Attorney General, April 16, 1996

Thank you for your two recent letters, in which you ask essentially the following questions:

1. Can the Mt. Gilead Free Public Library change its legal boundaries to be coterminous with the Mt. Gilead Exempted Village School District by simply amending its original charter through a vote of the library's board of trustees?
2. Since the Mt. Gilead Free Public Library is an association library, is the board of county commissioners its taxing authority?
3. If the board of county commissioners is the library's taxing authority, is the taxing authority then required to put an issue on the ballot upon the request of the library?
4. If the board of county commissioners is the library's taxing authority, must an issue put on the ballot for the library be put before the entire county, or can it be confined to the boundaries of the library district?

You have requested an opinion addressing these issues.

It is my understanding, based upon your letters and other communications with your office, that the Mt. Gilead Free Public Library was formed as an association library under articles of incorporation filed with the Secretary of State on June 27, 1908. The articles of incorporation state that the Mt. Gilead Free Public Library Association was formed for the purpose of "maintaining a public library for the use of the citizens of Mt. Gilead, Ohio." Based upon its charter, the Mt. Gilead Free Public Library serves the city of Mt. Gilead. It also provides services to the Mt. Gilead Exempted Village School District, in which it is located.

You have indicated that the Mt. Gilead Free Public Library is involved in a planning process to improve services to its patrons. A major part of the plan is to build a new library building in Mt. Gilead. To accomplish this goal, the library board would like to put a tax levy on the ballot to raise the necessary funds. The library proposes to change its service area to be

coterminous with the Mt. Gilead Exempted Village School District and then to submit the tax levy for the new library to the electors of the school district.

The information you have provided states that there are three other library systems in the county, each a school district library whose legal boundaries are coterminous with the school district in which it is located. Like those other library systems, the Mt. Gilead Free Public Library receives public money from the county library and local government support fund. *See* R.C. 5705.28, .32; R.C. 5747.48.

In order to address your concerns, it is helpful to examine the legal status of the Mt. Gilead Free Public Library. As an association library, the Mt. Gilead Free Public Library operates under its own articles of incorporation and elects its own board of trustees. *See* R.C. Chapter 1702; R.C. 1713.28; 1995 Op. Att'y Gen. No. 95-018; 1962 Op. Att'y Gen. No. 2956, p. 292. In this respect, the Mt. Gilead Free Public Library must be distinguished from the various public libraries and public library districts that are created and operate pursuant to R.C. Chapter 3375. In each case, those entities are created pursuant to statute and their trustees are appointed by a public official or entity. *See* 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); R.C. 3375.30 (regional library district); 1993 Op. Att'y Gen. No. 93-031.

Unlike a library district or a library established by a political subdivision, *see* R.C. 3375.06-.07, .09-.10, .12-.121, .14-.17, .19-.212, .23, .28-.31, an association library does not have boundaries established by law. Instead, it has such boundaries or limitations on its activities as are established by its charter or articles of incorporation. *See* 1955 Op. Att'y Gen. No. 5670, p. 392.

Even though the Mt. Gilead Free Public Library is a private entity, it is considered a public library and is permitted to receive public funds from the county library and local government support fund, which is funded from state income tax revenues.¹ *See* R.C. 5705.28, .32; R.C. 5747.03(A)(2), .46-.48; 1992 Op. Att'y Gen. No. 92-028. Eligibility for proceeds from this fund extends to a library association only if the association was organized and operating prior to January 1, 1968. R.C. 5705.28(D). Further, an association library may participate in the distribution of the county library and local government support fund only if it adopts "appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms" and certifies a copy of those rules to the taxing authority when it submits its estimate of contemplated revenue and expenditures. R.C. 5705.28(D); *see also* R.C. 5705.32(F) (if any public library expends funds allocated to it under R.C. 5705.32 for the construction of new library buildings or parts of buildings, the library must be free and open to all the inhabitants of the county in which it is located).

The fact that the Mt. Gilead Free Public Library has been receiving distributions from the county library and local government support fund indicates that the library has complied with the requirement that it extend the benefits of its library service to all the inhabitants of the

¹ Funding from the library and local government support fund takes the place of classified property taxes that formerly were available to public libraries. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-028 at 2-104 n.1; 1962 Op. Att'y Gen. No. 2956, p. 292; 1955 Op. Att'y Gen. No. 5670, p. 392.

county. Thus, even though the library was established to serve the citizens of Mt. Gilead, its current funding indicates that its services are available to all the inhabitants of the county. *See, e.g., 1955 Op. Att'y Gen. No. 5670, p. 392.*

I turn now to your first question -- that is, whether the board of trustees of the Mt. Gilead Free Public Library Association can change the boundaries of the library by amending the association's original charter. The board of trustees of the Mt. Gilead Free Public Library Association operates under the articles of incorporation that established the association and may take actions in accordance with those articles to change the area that the association serves. As discussed above, the fact that the library currently receives proceeds of the county library and local government support fund indicates that its articles have been construed as permitting it to serve all the inhabitants of the county. Its articles, however, may address such matters as the area in which it will construct facilities or operate programs. That area might be restricted to a portion of the county, such as a municipal corporation or a school district, even though the facilities or programs are available to all county inhabitants.

In response to your first question, I conclude, therefore, that the board of trustees of the Mt. Gilead Free Public Library Association may change the territory in which the library operates to be coterminous with the Mt. Gilead Exempted Village School District by amending the association's articles of incorporation through the appropriate procedures. Such a change of boundaries, however, would not make the library a governmental entity and would not relieve the library of the obligation that, to receive money from the county library and local government support fund, it must make the benefits of its library service available to all the inhabitants of the county.

Your second question is whether the board of county commissioners is the taxing authority of the Mt. Gilead Free Public Library. As discussed above, the Mt. Gilead Free Public Library is an association library. As an association library, the Mt. Gilead Free Public Library is a private entity, rather than a governmental entity. *See 1995 Op. Att'y Gen. No. 95-018.* Even though it may be considered a public library and may receive public funds, it does not constitute a library district and it does not have a taxing authority for purposes of submitting a tax levy to the voters. *See R.C. 5705.01(C), (H).* *See generally 1956 Op. Att'y Gen. No. 6814, p. 523.*

There is, however, one limited purpose for which an association library may be considered to have a taxing authority. Your representative indicated to a member of my staff that the idea that the board of county commissioners might be the taxing authority for an association library arose from R.C. 3375.20, which states in its final sentence: "*For the purposes of this section the board of county commissioners is the taxing authority of an association library.*" (Emphasis added.) The important part of this sentence, as it applies to your question, is that the board of county commissioners is the taxing authority of an association library *only* for the purposes of R.C. 3375.20. Those purposes relate to the creation of a county library district.² They do not include putting a tax levy on the ballot for an association library.

² In 1948 Op. Att'y Gen. No. 2719, p. 80, one of my predecessors concluded that the trustees of an association library were not authorized to request the formation of a county library district pursuant to R.C. 3375.20, then G.C. 7643-1a, because an association library was not under the jurisdiction of a taxing authority. In 1949, the General Assembly enacted the final sentence of

R.C. 3375.20 prescribes a limited method³ for creating a county library district in a county that does not have such a district.⁴ It permits the boards of trustees of the library or libraries that provide approved library service to certain school districts⁵ to adopt a resolution requesting the formation of a county library district composed of all the school districts served by such library or libraries.⁶ The resolution "shall be submitted to the taxing authority of the subdivision or subdivisions having jurisdiction over the library or libraries requesting the formation of such proposed library district." R.C. 3375.20. The taxing authority must approve or disapprove the formation of the proposed county library district. If all the taxing authorities approve, the district is created and the boards of library trustees and taxing authorities must "take appropriate action transferring all title to the interest in all property, both real and personal, in the name of the public libraries under their jurisdiction to the board of trustees of the county library district." R.C. 3375.20.

It is not clear on the facts you have presented whether the situation at issue meets the requirements for the creation of a county library district pursuant to R.C. 3375.20. Assuming that it does, however, if the board of trustees of the Mt. Gilead Free Public Library Association were to adopt a resolution requesting the formation of a county library district, the board of county commissioners would act as the taxing authority of the association library in receiving the resolution and approving or disapproving the formation of the proposed county library district. If all the requirements of R.C. 3375.20 were satisfied, a county library district would be created. The county library district would be under the control and management of a board of library trustees appointed pursuant to R.C. 3375.22, and the board of county commissioners would be the taxing authority of the district. *See* R.C. 3375.23-.24. The board of county commissioners would act as the taxing authority for the Mt. Gilead Free Public Library only for purposes of considering whether to create a county library district.

Provisions governing the funding of association libraries, which are private entities, differ in significant respects from those governing governmental library entities created pursuant to

the statute, making the board of county commissioners the taxing authority of an association library for purposes of the creation of a county library district. *See* 1949-1950 Ohio Laws 356, 357 (Am. H.B. 25, passed June 13, 1949). Therefore, the conclusion reached in 1948 Op. Att'y Gen. No. 2719 is no longer valid because the statute has been amended.

³ R.C. 3375.20 is effective only in a county "in which all of the local, exempted village, and city school districts in the county, in which there is not located a main library of a township, municipal, school district, association, or county free public library, are receiving approved service from one or more of such libraries."

⁴ County library districts may also be created in other manners. *See* R.C. 3375.01(E), .19, .201; 1978 Op. Att'y Gen. No. 78-020.

⁵ R.C. 3375.20 permits a resolution requesting the formation of a county library district to be adopted by the boards of trustees of the library or libraries providing approved library service "to the school districts in the county in which there is not located a main library of a township, municipal, school district, or county free public library."

⁶ The State Library Board determines whether a library has been providing approved library service and is eligible to request formation of a county library district under R.C. 3375.20. *See* R.C. 3375.01; 5 Ohio Admin. Code 3375-4-01(C).

R.C. Chapter 3375. These differences reflect the fact that an association does not have a taxing authority for purposes of placing an issue on the ballot.

For example, trustees of the various governmental libraries -- county, municipal corporation, school district, and township -- have express statutory authority to require that the appropriate taxing authority⁷ submit to the voters the question of adopting a levy for library purposes.⁸ R.C. 5705.23; *see also* 1988 Op. Att'y Gen. No. 88-013. Association libraries are not named in the statute authorizing special levies for public libraries and, therefore, are not authorized to seek levies pursuant to its provisions. *See* 5705.23. The omission of association libraries is consistent with the fact that an association library is not a governmental entity and is not subject to the jurisdiction of a political subdivision. *See* 1956 Op. Att'y Gen. No. 6814, p. 523.

A different statute authorizes "[a]ny public library board of trustees" charged with the ownership and maintenance of a public library to "request the taxing authority of the political subdivision to whose jurisdiction the board is subject" to submit to the voters the question of issuing bonds for library purposes. R.C. 3375.43; *see also* 1988 Op. Att'y Gen. No. 88-013. This provision has been found not to apply to an association library both because an association library is not a governmental body and because "it is in no sense subject to the jurisdiction of any political subdivision." 1956 Op. Att'y Gen. No. 6814, p. 523 at 527; *see also* 1985 Op. Att'y Gen. No. 85-017. Again, the conclusion is that an association library, as a private entity, does not have a taxing authority for purposes of submitting an issue to the voters.

I conclude, therefore, in response to your second question, that since the Mt. Gilead Free Public Library is an association library, the board of county commissioners is the taxing authority of the library only for the purposes of R.C. 3375.20, concerning the formation of a county library district. The Mt. Gilead Free Public Library is not a governmental entity and does not have a taxing authority to place an issue on the ballot for the library.

⁷ The appropriate taxing authority is "the taxing authority of the political subdivision to whose jurisdiction the board [of library trustees] is subject." R.C. 5705.23. The taxing authority is required to submit the question of a levy "to the electors of the subdivision or ... to the electors residing within the boundaries of the library district." R.C. 5705.23; *see* 1982 Op. Att'y Gen. No. 82-056. Upon the approval of the voters, the taxing authority imposes the levy, and the proceeds are available for purposes of the board. If a library district has been created and the board of trustees of the library district requests the levy, the question is submitted to voters within the library district and, if approved, the tax is levied within the library district. If there is no library district, the question is submitted to all the electors of the political subdivision and, if approved, the tax is levied throughout the political subdivision. *See* R.C. 5705.23; 1985 Op. Att'y Gen. No. 85-017.

⁸ If the trustees of the Mt. Gilead Free Public Library Association were to request the formation of a county library district pursuant to R.C. 3375.20, and if such a district were created, the board of trustees of the county library district could request the submission of a special levy pursuant to R.C. 5705.23. In that case, the board of county commissioners, as taxing authority of the county library district, would "submit the levy to the voters of the county library district only," and, if approved, the tax would be levied "within the county library district only." R.C. 5705.23; *see also* R.C. 3375.24.

Because I have concluded that the board of county commissioners is the taxing authority of an association library only for the limited purpose of forming a county library district pursuant to R.C. 3375.20, I find it unnecessary to address your last two questions, which relate to the adoption of a levy by the library's taxing authority. I note, however, that there are means by which an association library can receive proceeds of a tax levy adopted by a particular political subdivision for library purposes, even though the association library does not itself have a taxing authority to adopt a levy on its behalf.

One means of providing public funding to an association library is by contract. R.C. 3375.42 authorizes a board of county commissioners, a board of education, a board of township trustees, or the legislative authority of a municipal corporation to contract with a library association that maintained a free public library prior to September 4, 1947, to furnish library service to all the inhabitants of the taxing district. Such a contract is permitted regardless of whether the library association is located within the taxing district. A taxing district that enters into such a contract may levy a tax⁹ or make an appropriation from its general fund or from federal funds for the library to spend in providing library service in the taxing district. When a tax for library services is so levied, the county auditor periodically certifies the amount collected to the taxing district for payment to the proper officer of the library. R.C. 3375.42; *see also* 1982 Op. Att'y Gen. No. 82-056.

Pursuant to R.C. 3375.42 and an applicable contract, an association library may receive the proceeds of a library tax that is levied by a taxing authority,¹⁰ in addition to amounts from the county library and local government support fund.¹¹ R.C. 3375.42. The authority of a public entity to provide funds to an association library under this provision does not make the public entity the taxing authority for the association library and does not make the association library subject to the jurisdiction of the public entity. *See* 1956 Op. Att'y Gen. No. 6814, p.

⁹ The authority to levy unvoted property taxes is restricted generally to an aggregate amount of ten mills. *See* Ohio Const. art. XII, §2; R.C. 5705.02; *see also* R.C. 5705.18. R.C. 5705.06(B) authorizes a subdivision to impose a levy, without the vote of the electors and within the ten-mill limitation, for the library purposes of the subdivision, to the extent permitted by Revised Code provisions authorizing levies for those purposes. Subdivisions other than school districts are permitted to seek voter approval of a levy in excess of the ten-mill limitation "[f]or a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported." R.C. 5705.19(D). A board of education may also submit such a levy to the voters. *See* R.C. 5705.21.

¹⁰ Any of the entities named in R.C. 3375.42 -- a board of county commissioners, a board of education, the legislative authority of a municipal corporation, or a board of township trustees -- could enter into a contract with the Mt. Gilead Free Public Library and provide it with funds as set forth in the statute. Any such entity could use its taxing power to benefit the Mt. Gilead Free Public Library in that manner. The benefit would be provided pursuant to contract, however. The contracting entity would not become the taxing authority for the association library.

¹¹ The authority for a board of county commissioners, a board of education, a board of township trustees, or the legislative authority of a municipal corporation to contract under R.C. 3375.42 with a library that receives proceeds from the county library and local government support fund is expressly granted by statute, thereby effectively overruling 1974 Op. Att'y Gen. No. 74-051, which reached a contrary conclusion under prior law. *See* R.C. 3375.42.

523. An association library is not empowered by statute to require that a taxing authority submit the question of a levy to the voters.¹² *Cf.* R.C. 5705.23 (upon resolution of the board of library trustees of a county, municipal corporation, school district, or township public library, the taxing authority of the political subdivision to whose jurisdiction the board is subject is required to submit the question of a tax levy to the voters); 1988 Op. Att'y Gen. No. 88-013 (upon receipt of a proper resolution, the taxing authority of the political subdivision with jurisdiction over a public library board is required to submit to the electorate the question of issuing bonds under R.C. 3375.43).

Another means of funding an association library appears in R.C. 3375.18. If a city, exempted village, or local school district does not have a school district public library (established prior to September 4, 1947) and board of library trustees, *see* R.C. 3375.15, the board of education may acquire library real estate and facilities to be operated by the board of trustees of an association library, under terms agreed upon by the board of education and the association library. R.C. 3375.18. The board of education may issue bonds for that purpose under R.C. Chapter 133. R.C. 3375.431. A real property tax imposed by a board of education is levied on property within the school district, and voter approval is obtained from the voters of the school district. *See* R.C. 5705.21. An association library has no authority to require a board of education to take action under R.C. 3375.18.

Thus, there are various methods by which public funds may be made available to an association library. Even though an association library is not a governmental entity, it may benefit from a tax levied for library purposes.

For the reasons set forth above, it is my opinion and you are advised:

1. The board of trustees of the Mt. Gilead Free Public Library Association may change the territory in which the library operates to be coterminous with the Mt. Gilead Exempted Village School District by amending the association's articles of incorporation through the appropriate procedures.
2. As an association library, the Mt. Gilead Free Public Library is a private entity, rather than a governmental entity. Even though it may be considered a public library and may receive public funds, it does not constitute a library district and it does not have a taxing authority for purposes of submitting a tax levy to the voters.

¹² If the board of county commissioners and the Mt. Gilead Free Public Library were to enter into a contract pursuant to R.C. 3375.42 for the library to furnish library service, the board of county commissioners would be permitted to submit to the voters a tax levy to benefit the association library. No statute would grant the association library authority to require that an issue be placed on the ballot at its request, but the board of county commissioners would be subject to whatever terms were contained in the contract. In the absence of a county library district, if the county were to propose a real property tax outside the ten-mill limitation for library purposes, the question of the levy would be submitted to the voters of the whole county and the tax would be imposed on the whole county. The boundaries of an association library define the area in which the library functions, but they do not establish a library district for taxing purposes.

3. Since the Mt. Gilead Free Public Library is an association library, the board of county commissioners is the taxing authority of the library only for the purposes of R.C. 3375.20, concerning the formation of a county library district.