

**OPINION NO. 95-006****Syllabus:**

A library located in a state other than Ohio may not be a full voting member of a metropolitan library system chartered by the State Library Board pursuant to R.C. 3375.90-.93.

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**To: Richard M. Cheski, State Librarian, The State Library of Ohio, Columbus, Ohio**  
**By: Betty D. Montgomery, Attorney General, March 28, 1995**

You have requested an opinion on the following question regarding library membership in a metropolitan library system ("METRO"): "Are Kentucky member libraries permitted to be full voting members of a state chartered METRO regional library system as chartered by the State Library Board under Revised Code Sections 3375.90 through 3375.93?" In phone discussions with a member of my staff, you have indicated that the METRO would serve the Cincinnati metropolitan area and involve public libraries in Kentucky and Ohio, as well as private libraries in both states. A "full voting member," as described in 1991 Op. Att'y Gen. No. 91-073, at 2-342, is "a library that has authority to participate in the formation or dissolution of the system, and that is eligible to have its trustees or representatives serve on the board of trustees" of the METRO.

**Metropolitan Library System ("METRO")**

A METRO may be formed by "[a]ny four or more libraries within a metropolitan area, as defined by the state library board, with a population of two hundred fifty thousand or more." R.C. 3375.90. The governing bodies of the participating libraries, which may include both public and private libraries, must first approve an agreement for the formation of the METRO, and then submit the agreement, an application, and a plan of service to the State Library Board. R.C. 3375.90 (A), (B). The METRO becomes operable upon approval of the application by the State Library Board and the making of a grant for the METRO by the State Library Board or some other authority. R.C. 3375.90(C). A METRO that has been approved by the State Library Board is eligible for grants from the essential library services support program, which is comprised, in part, of state and federal funds and is administered by the State Library Board. R.C. 3375.81-.82.

A METRO is not governed directly by the participating libraries, but instead is governed by a board of trustees, consisting of seven to fifteen persons who are selected from the representatives of the participating libraries in the manner prescribed by the agreement between the participating libraries. R.C. 3375.90(C). The board of trustees is authorized to receive grants and to "have exclusive control of the expenditure of all moneys held in the name of the metropolitan library system," R.C. 3375.91(B), to expend such funds "for library purposes ... and generally do all things it determines necessary for the establishment, maintenance, and improvement of the metropolitan library system under its jurisdiction," R.C. 3375.91(C), to

acquire and hold real and personal property, R.C. 3375.91(E)-(G), and to enter into contracts with libraries and other entities, R.C. 3375.91(J). Additionally, the board of trustees may modify the plan of service from that submitted by the initial participating libraries and may make and publish bylaws and rules as necessary for the governance of the board and the METRO. R.C. 3375.91(A), (D). The board of trustees may initiate dissolution of the system by a two-thirds vote and the filing of a plan for dissolution of the system with the State Library Board. R.C. 3375.93. The plan must provide a means by which participating libraries may record their approval or disapproval of the dissolution. *Id.* See generally Op. No. 91-073.

Thus, the provisions of R.C. 3375.90-93 authorize the formation of a cooperative library system that provides agreed upon services in a designated metropolitan area in a manner that none of the participating libraries could accomplish individually. A METRO is more than a contractual agreement for the provision of services between the participating libraries, in that a METRO exists as a separate administrative entity that is recognized by the state and is eligible for public funds.<sup>1</sup>

#### **Lack of Express Authority to Extend a METRO Beyond State Boundaries**

The provisions of R.C. 3375.90-93 do not directly address whether the participating libraries in a METRO must be located within Ohio. R.C. 3375.90 requires only that the libraries be "within a metropolitan area, as defined by the state library board, with a population of two hundred fifty thousand or more." The State Library Board permits libraries "in a single metropolitan area, with a population of two hundred fifty thousand or more, *as identified by the U.S. department of commerce*" to submit a plan for a METRO. 5 Ohio Admin. Code 3375-2-07(B)(1) (emphasis added). The census report issued by the United States Department of Commerce defines metropolitan area as "a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that nucleus." Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Population Characteristics, Metropolitan Areas, Vol. III, App. A, A-8 (1992). A metropolitan area whose territory is defined by the economic and social integration of a population nucleus could theoretically cross any combination of national, state, county, or municipal boundaries. Thus, the definition of metropolitan area, standing alone, does not require that the geographic territory of a metropolitan area be restricted to the geographic territory of any particular political entity.

The authority of a state agency is, by definition, however, restricted to the geographic territory of the state itself. A state agency is not authorized to exercise its authority outside the state simply because the population in part of an adjacent state is economically and socially integrated with the population in the state over which the state agency has jurisdiction. See generally *Minnesota v. Karp*, 84 Ohio App. 51, 56-57, 84 N.E.2d 76, 79 (Hamilton County 1948) ("jurisdictions of all governments are geographical or territorial. Any attempt at extra-territorial jurisdiction constitutes an invasion of another sovereignty.... The jurisdiction of a state ... must confine itself to persons and property and activities within its boundaries"). It is not appropriate, therefore, to construe the statutory authority vested in the State Library Board to define the term "metropolitan area" as also conferring authority to create and recognize a library system that extends beyond the boundaries of the state of Ohio. Such a construction

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<sup>1</sup> The participating libraries retain their autonomy. R.C. 3375.90.

raises serious issues of state sovereignty and the allocation of state funds, which are in no way addressed in the provisions of R.C. 3375.90-.93.

### **Interstate Library Districts**

In contrast, the provisions of R.C. 3375.83-.85 do address the creation of a library system that crosses state boundaries. Through the enactment of R.C. 3375.83, Ohio became a party to the Interstate Library Compact. The policy and purpose of the Compact is as follows:

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

R.C. 3375.83, art. I.

Pursuant to the provisions of the Interstate Library Compact, one or more public libraries in one party state may cooperate with one or more public libraries in another party state by entering into a library agreement for an interstate library district. R.C. 3375.83, art. III (A). Private libraries within the interstate library district may become members as provided in the agreement. *Id.* The agreement may provide for joint or cooperative performance of library functions within the district. R.C. 3375.83, art. III (B). The agreement must contain provisions that, *inter alia*, detail the specific library functions to which the agreement is applicable, and that provide for the allocation of costs and financial responsibilities of the parties. R.C. 3375.83, art. IV. An interstate library district that establishes, maintains, or operates facilities in its own right must have a governing board comprised of representatives from each participating public library and, if so provided in the agreement, the board may include representatives from participating private libraries. R.C. 3375.83, art. IV.

A library agreement to form an interstate library district becomes effective when filed with the compact administrator of each state involved, R.C. 3375.83, art. VI (C),<sup>2</sup> and when reviewed and approved by the Attorneys General of each state involved in order to insure conformity to the provisions of the Interstate Library Compact and compatibility with state law, R.C. 3375.83, art. VII (A). Once an interstate library district is formed, public libraries within the district may appropriate public funds to the district and pledge their credit in support of the district. R.C. 3375.83, art IX. Additionally, "[a]n interstate library district lying partly within this state may claim and be entitled to receive state aid ... in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried

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<sup>2</sup> The compact administrator in Ohio is the state librarian. R.C. 3375.84.

on by entities wholly within this state." R.C. 3375.85. The amount of aid is calculated in proportion to the part of the district that lies within the state. *Id.*

### Conclusion

Comparison of the statutes governing METROs and interstate library districts shows that both authorize the formation of cooperative library systems by participating libraries from different political subdivisions. These cooperative library systems may then be recognized as administrative entities eligible for public funds from the state and its political subdivisions. Although the statutes provide different structural requirements for the governing boards and the library agreements, there is no substantive distinction between the types of library functions that may be provided through a METRO or an interstate library district. Thus, an interstate library district may be formed to provide the same type of functions as are provided for by a METRO agreement, and pursuant to R.C. 3375.85, the interstate library district is eligible for state aid to the same extent and manner as is a METRO.

Only the statutes governing interstate library districts, R.C. 3375.83-.85, however, expressly authorize a district that includes libraries located in states other than Ohio and acknowledge the necessity of obtaining approval of the other state government involved to any agreement that includes public libraries under its jurisdiction. Further, only the provisions of R.C. 3375.83-.85 provide mechanisms for addressing the appropriation and use of state moneys for such a district. These factors indicate that the provisions of the Interstate Library Compact are the exclusive means for forming a library district or system that includes public libraries located in a state other than Ohio. The absence of similar provisions in R.C. 3375.90-.93 indicates that the General Assembly did not intend for a METRO to include participating libraries outside the state of Ohio.

It is, therefore, my opinion, and you are hereby advised that a library located in a state other than Ohio may not be a full voting member of a metropolitan library system chartered by the State Library Board pursuant to R.C. 3375.90-.93.