July 12, 1995

OPINION NO. 95-016

Richard M. Cheski
State Librarian
The State Library of Ohio
65 South Front Street
Columbus, Ohio 43266-0334

Dear Mr. Cheski:

You have requested an opinion concerning the dissolution of a metropolitan library system. Your specific questions read as follows:

> 1. Are the public library members of a Metropolitan Library System formed pursuant to Ohio Revised Code Section 3375.90 individually responsible for any debt remaining after dissolution of the system?
>
> 2. If they are not legally obligated for the debts, is it permissible for the individual libraries to expend their own funds to pay these debts?

As stated in your letter:

> In May, 1994, [a metropolitan library system] dissolved according to O.R.C. 3375.93. Due to some bookkeeping errors, there ended up being approximately $11,000 in unpaid debts remaining after the dissolution was complete. The debts, which include such things as payroll taxes, utilities, UPS charges and other obligations which had been previously authorized by the [library board] for [fiscal year 1994], are currently being handled by [a single member of the library system].[1] (Footnote added.)

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[1] Liability for particular debts of the metropolitan library system may depend on the resolution of various factual matters that cannot be decided by means of an opinion of the Attorney General. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-008; 1986 Op. Att'y Gen. No. 86-039. I will, therefore, assume for purposes of this opinion that the remaining obligations of the metropolitan library system were properly incurred for lawful expenses of that system.

In a telephone conversation with a member of my staff, you have also indicated that the metropolitan library system about which you ask is actually in the process of winding up its affairs in order to dissolve.

Metropolitan Library System

R.C. 3375.90-.93 govern the establishment, operation, and dissolution of a metropolitan library system. Pursuant to R.C. 3375.90, "[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 may form a metropolitan library system *by agreement* in the manner set forth in this section" (emphasis added). Pursuant to R.C. 3375.90(A), "[t]he libraries forming the system shall include two or more of the following types of libraries: academic, public, special, and school, including cooperative ventures established by two or more school districts." R.C. 3375.90(A) requires that any agreement for the formation of a metropolitan library system first be approved by the governing bodies of the participating libraries. Once the agreement and application for formation of the metropolitan library system are approved by the State Library Board, and a grant is made to the system, it may begin operation. R.C. 3375.90(B) and (C). *See generally* 5 Ohio Admin. Code 3375-2-07 (criteria for receipt of charter as metropolitan library system).

R.C. 3375.90 also provides for the government of the metropolitan library system by a board of trustees "consisting of at least seven and no more than fifteen persons, to be selected from among the representatives of the participating libraries, duly appointed as such representatives by the governing bodies of the participating libraries." The number of trustees, the manner of their selection, and their terms of office are determined by agreement of the governing bodies of the participating libraries. *Id.* Pursuant to R.C. 3375.91, the board of trustees of a metropolitan library system may:

> (A) Develop plans of service and operation for the metropolitan library system and submit these to the state library board; and to each other granting authority if and when required by such authority;
> (B) Receive grants, payments, bequests, and gifts and *have exclusive control of the expenditure of all moneys held in the name of the metropolitan library system*;
> (C) *Expend for library purposes*, and in the exercise of the powers enumerated in this section, *all moneys* whether received as grants, payments, gifts, bequests, or otherwise, and *generally do all things it determines necessary for the establishment, maintenance, and improvement of the metropolitan library system* under its jurisdiction;
> (D) *Make and publish such bylaws and rules as may be necessary for its operation and for the government of the metropolitan library system*;
> (E) Purchase or lease vehicles and other personal property *for the operation of the metropolitan library system*;
> (F) Purchase, erect, lease, or lease with an option to purchase, appropriate buildings or parts of buildings *for use of the metropolitan library system*;
> (G) *Hold title to and have the custody of all property, both real and personal, of the*

> *metropolitan library system*;
> (H) Appoint and fix the compensation of a director and necessary assistants who, subject to the approval of the state library board, shall have the same employment status as employees of public libraries;
> (I) Elect and fix compensation of a clerk and a deputy clerk who shall serve for a term of one year;
> (J) *Enter into contracts with the governing body of any participating library ...* , the state library board, any granting authority, the board of county commissioners of any county, the board of education of any school district, the legislative authority of any municipal corporation, boards of township trustees, colleges, universities, or public or private agencies and corporations;
> (K) Accept an application for any other library desiring to become a participating library in accordance with the agreement for the formation of the system, either as originally submitted to and approved by the state library board, or as amended by and with the agreement of all the participating libraries and the approval of the state library board. (Emphasis added.)

Thus, the activities of a metropolitan library system are determined by the board of trustees in accordance with the statutory powers conferred on it by R.C. 3375.91. *See generally* R.C. 3375.92 (duties of clerk of the board of trustees as treasurer of the metropolitan library system).

Examination of R.C. 3375.91 also reveals the nature of the relationship between a metropolitan library system and its member libraries. R.C. 3375.91(B) expressly authorizes the board of trustees, as the metropolitan library system's governing body, to "have exclusive control of the expenditure of all moneys held in the name of the metropolitan library system." In addition, the board of trustees may "[h]old title to and have the custody of all property, both real and personal, of the metropolitan library system." R.C. 3375.91(G). The fact that all moneys and property of the metropolitan library system are held in the name of the system demonstrate that the system is a distinct entity separate from its member libraries. The ability of a metropolitan library system to enter into contracts with participating members, R.C. 3375.91(J), further demonstrates that a metropolitan library system exists as an entity apart from its member libraries. *See generally In re State Exchange Bank*, 26 Ohio App. 142, 159 N.E. 839 (Williams County 1927) (contract requires at least two parties); *Black's Law Dictionary* 322 (6th ed. 1990) (defining "contract," in part, as meaning "[a]n agreement between two or more persons which creates an obligation to do or not to do a particular thing"). Finally, R.C. 3375.90 expressly provides that "[n]othing pertaining to the organization and operation of a metropolitan library system shall be construed to infringe upon the autonomy of any participating library or of the governing body of any library."

With respect to the metropolitan library system's incurring obligations, it is significant to note that R.C. 3375.91(B) places exclusive control of all expenditures in the system's board of trustees. Various other provisions within R.C. 3375.91 limit the authority of the board of trustees to expend system funds to expenditures "for library purposes," division (C), "for the operation of the metropolitan library system," division (E), or "for use of the metropolitan library system," division (F). The debts incurred by the metropolitan library system's board of trustees are incurred by the

board on behalf of the system, not on behalf of individual members.

Dissolution of Metropolitan Library System

Your first question asks whether the public library members of a metropolitan library system are individually responsible for the debts of the system that remain at the time the members wish to dissolve the system.[2] R.C. 3375.93, which provides for the dissolution of a metropolitan library system, states in pertinent part:

> If the need for a metropolitan library system ceases to exist, the board of trustees may, by a two-thirds vote of its members, declare its intention to dissolve the organization and file with the state library board a plan for effecting such dissolution. *The plan* shall state the means by which the participating libraries may record their approval or disapproval of such intended dissolution, and *shall include a plan for the distribution of the assets of the metropolitan library system*. If the metropolitan library system received more than fifty per cent of its total budget for the previous three years from grant funds provided by the state library board, the state library board shall make final determination of the distribution of the assets. (Emphasis added.)

As mentioned in your opinion request, R.C. 3375.93 requires a proposed plan of dissolution of a metropolitan library system to "include a plan for the distribution of the assets" of the system, but says nothing about the payment of the system's outstanding obligations. It is implicit within R.C. 3375.93, however, that the assets of a system remaining at the time of dissolution will be those remaining after the satisfaction of all of the system's obligations. Any liabilities incurred by the system prior to its dissolution, whether determined before or after the planned date of dissolution, remain liabilities of the system itself that must be satisfied prior to, or in the process of, the system's dissolution. *See* 1983 Op. Att'y Gen. No. 83-057.

Although the metropolitan library system about which you ask has incurred obligations that exceed its current assets, I am unaware of any theory under which the members of the system, absent agreement among themselves to the contrary, would be individually liable to third parties for obligations incurred by the system's board of trustees in the system's operation. As discussed above, a metropolitan library system exists as an entity separate from its members. In answer to your first question, therefore, I conclude that a metropolitan library system is solely responsible for the satisfaction of financial obligations or debts that it incurs to other persons or entities for expenses reasonably related to the lawful operation of the system, and the system's member libraries have no individual responsibility to those persons or entities for the satisfaction of those financial obligations or debts.

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[2] Although you have indicated that all members of the metropolitan library system about which you ask are public libraries, it is not necessary to distinguish between public and private member libraries for purposes of this discussion.

The question remains, however, as to how the system's outstanding debts are to be satisfied. Resolution of this matter will also address the concerns set forth in your second question, which asks: "If [the members] are not legally obligated for the debts, is it permissible for the individual libraries to expend their own funds to pay these debts?"

A similar question was addressed in Op. No. 83-057, concerning the satisfaction of the remaining obligations of a county-wide civil defense organization prior to its dissolution. The agreement pursuant to which the organization was formed did not expressly establish the responsibilities of the various member subdivisions. The agreement did provide, however, that each member would pay the organization the amount assessed against it by the organization's executive committee for services rendered to the members. Op. No. 83-057 at 2-235 discussed the members' responsibilities for satisfaction of the organization's outstanding obligations, as follows:

> The agreement establishing the Organization provides for its termination, but contains no provisions governing the winding up of its affairs. It is clear, however, that the Stark County Board of Commissioners, as a participant in the Organization, will have whatever responsibilities flow from such participation, whether they be assessments by the Executive Committee or other obligations lawfully imposed in the termination of the Organization. Such responsibilities may, of course, include obligations reasonably implied from the fact of membership in the Organization. *It must be presumed that the members will, as a group, meet all obligations of the body which they created. If their agreement does not expressly provide for allocation of all such obligations, authority to make a reasonable allocation must be implied.* (Emphasis added.)

The opinion then concluded in syllabus, paragraph one:

> A county-wide organization for civil defense created pursuant to R.C. 5915.07 constitutes an entity separate from the several political subdivisions which join in its creation, and any such political subdivision may be charged with the obligations created by the organization only to the extent that such subdivision has committed itself by entering into the organization.

Accordingly, in the situation you describe, even though no provision has been made in the metropolitan library system's dissolution plan for satisfaction of the system's outstanding obligations, it must be presumed that, prior to the system's dissolution, the members of the metropolitan library system will, as a group, ensure that all obligations that have been incurred by the system will be satisfied. The bylaws of the metropolitan library system about which you ask describe the financial obligations of its member libraries. *See generally* R.C. 3375.91(D) (authority of board of trustees to make bylaws for government of metropolitan library system). Article IV, Section 3 of these bylaws states in pertinent part: "A basic membership fee, to be established annually, shall be required for participation. *Additional charges shall be levied as needed.*" (Emphasis added.) Thus, in accordance with the system's bylaws, the outstanding obligations of the metropolitan library system

may be satisfied through the imposition of an additional charge upon its members in an amount sufficient to satisfy the system's outstanding obligations. *See* 1983 Op. Att'y Gen. No. 83-059 (syllabus, paragraph five) ("[a]bsent specific provisions governing the winding up of the affairs of a county-wide organization for civil defense which has been dissolved, the governing body of such an organization may require the political subdivisions which were members at the time of dissolution of the organization to make payments in accordance with the agreement establishing the organization in order to satisfy the obligations of the organization"). Because the bylaws do not specify the method to be used in determining the charges to be levied against the members, the board of trustees may do so in any reasonable manner. *See* Op. No. 83-057.

Conclusion

It is, therefore, my opinion, and you are hereby advised that:

1. A metropolitan library system created in accordance with R.C. 3375.90 is a legal entity that exists independently of its member libraries. A metropolitan library thus is solely responsible for the satisfaction of financial obligations or debts that it incurs to other persons or entities for expenses reasonably related to the lawful operation of the system, and the system's member libraries have no individual responsibility to those persons or entities for the satisfaction of those financial obligations or debts.

2. If the bylaws or other agreements of a metropolitan library system provide a process to assess additional charges or fees to the member libraries, such process must be employed, if the language of the system bylaws or agreements so permit, to raise through such assessments sufficient funds to extinguish the debts of the metropolitan library system prior to dissolution thereof, and all member libraries have a duty pursuant to bylaw or agreement to honor such assessment.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

July 12, 1995

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SYLLABUS: 95-016

1. A metropolitan library system created in accordance with R.C. 3375.90 is a legal entity that exists independently of its member libraries. A metropolitan library thus is solely responsible for the satisfaction of financial obligations or debts that it incurs to other persons or entities for expenses reasonably related to the lawful operation of the system, and the system's member libraries have no individual responsibility to those persons or entities for the satisfaction of those financial obligations or debts.

2. If the bylaws or other agreements of a metropolitan library system provide a process to assess additional charges or fees to the member libraries, such process must be employed, if the language of the system bylaws or agreements so permit, to raise through such assessments sufficient funds to extinguish the debts of the metropolitan library system prior to dissolution thereof, and all member libraries have a duty pursuant to bylaw or agreement to honor such assessment.