

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-058 was clarified by
1974 Op. Att'y Gen. No. 74-051.

OPINION NO. 73-058

Syllabus:

A political subdivision may appropriate funds for library services, under R.C. 3375.42, only pursuant to a contract with the board of library trustees, private corporation, or library association, which provides for the furnishing of library services to all inhabitants of the political subdivision.

To: Thomas S. DeLay, Jackson County Pros. Atty., Jackson, Ohio
By: William J. Brown, Attorney General, June 20, 1973

I have before me your request for my opinion, which reads as follows:

As Prosecuting Attorney of Jackson County and Legal Adviser for the various Library Boards of Trustees I have received several inquiries concerning the interpretation of Section 3375.42 Revised Code, which, of course, has statewide implications and for this reason we are seeking your opinion on the matter.

Section 3375.42, Revised Code, provides the authority for the expenditure of funds by certain specified units of local government to library boards for providing library service. It reads as follows:

The board of county commissioners of any county, the board of education of any school district, the legislative authority of any municipal corporation, or the board of township trustees of any township may contract with the board of library trustees of any public library, or with any private corporation or library association maintaining a free public library prior to September 4, 1947, situated within or without the taxing district, to furnish library service to

all the inhabitants of said taxing district, and may levy a tax, or make an appropriation from its general fund, to be expended by such library in providing library service in said taxing district for any of the purposes specified in section 3375.40 of the Revised Code. The taxing authority may require an annual report in writing from such board of library trustees, private corporation, or library association. "When a tax for library purposes has been so levied, at each semiannual collection of such tax the county auditor shall certify the amount collected to the proper officer of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library."

As you will note the Section provides the unit of local government with authority (1) to contract with a library board (2) to levy a tax and (3) to make an appropriation from its general fund.

The question which concerns us is whether the authority to "make an appropriation from its general fund" is exclusive of its authority to contract or whether appropriations from the general fund must be based on a contract.

We would appreciate a prompt response because the allocation of Federal Revenue Sharing funds which is currently under way has given rise to this question. The Federal Act (Section 123 (a) (4), P.L. 92-512) requires that expenditures of revenue sharing funds by units of local government be made "only in accordance with the laws and procedures applicable to the expenditure of its own revenues." Accordingly, units of local government desiring to allocate such funds to libraries (which are an object of priority under Section 103 of the Federal Act) need to know whether they may make a direct appropriation from their general fund for library service or whether they must first enter into a contract with the public library and then make an appropriation to carry out this contractual obligation.

Accordingly, your opinion is respectfully requested with respect to the following question: Does a unit of local government, proceeding under Section 3375.42, Revised Code, have authority to make an appropriation from its general fund for library service in the absence of a contract with the board of trustees of a public library?

While R.C. 3375.42 was not drafted with perfect lucidity, I feel that the only reasonable construction of it requires that a political subdivision may appropriate funds only if it has entered into a contract with the board of library trustees,

private corporation, or library association for the furnishing of library service to all the inhabitants of the subdivision.

Notice that the appropriated funds are "to be expended by such library in providing library service in said taxing district * * *." This language apparently refers to all the preceding language in the Section, including that authorizing the contract. I see no indication that the legislature meant, by "such" library to exclude reference to any of the terms pertaining to "public library" in the preceding language of the Section. The phrase "said taxing district" reinforces this impression, because the only foregoing reference to taxing districts is found in the description of the contract for library service. Hence, I conclude that the phrase "such library" refers only to a library bound by such a contract. If the Legislature had intended to authorize a political subdivision to appropriate funds for a library without entering into such a contract, it could have found a much clearer way to say so.

Besides, such a construction would make the contract and the appropriation (or tax) alternatives, because the subdivision could choose one without the other. If they were alternatives, logically the subdivision could choose the contract without the appropriation or tax, which would hardly be plausible. Without the appropriation or tax, there would be no consideration for the library owner's promise to provide library service to the inhabitants of the subdivision. To construe a statute to authorize such an absurdity would violate the rule of statutory construction which presumes that the Legislature intended a reasonable result. R.C. 1.47 (C).

A comparison with R.C. 5705.18 is particularly enlightening. That Section provides for the distribution of part of the proceeds of county property taxes to public libraries. Hence, its subject matter is related to that of R.C. 3375.42, and therefore the Sections are in pari materia and should be construed together. R.C. 5705.28 reads in part as follows:

The board of trustees of any public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations 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 and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules and regulations have been so certified or where the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board.

This Section provides for a distribution of property tax proceeds to the board of trustees of any public library which provides library service to all inhabitants of the county. Two methods are provided by which such free library service can be established: (1) by appropriate rules and regulations, certified to the taxing authority, and (2) by laws which make the library service available to all inhabitants. This Section reveals a clear legislative intent to require the recipient of property tax proceeds to provide library service to all inhabitants of the county. Hence, any ambiguity in the related Section 3375.42 should be resolved in favor of a similar requirement. The latter Section has a broader scope, and specifies a different procedure for the establishment of library service (i.e., by contract), but the underlying purpose is similar: to authorize political subdivisions to grant financial aid to public libraries, in return for access to those libraries by all residents of the political subdivisions. I could not favor a construction of such a statute which authorized a political subdivision to aid a library which served only part of the residents of that subdivision. Cf. Brown v. State, ex rel. Merland, 120 Ohio St. 297, 302 (1927). As the court stated in State ex rel Daley v. Parra, 68 Ohio L. Abs. 577, 578 (1952), "[i]t has always been the purpose of the legislature of this state to make available to the people of Ohio free public library service". And without the contract (as in R.C. 3375.42), or certified rules and regulations (as in R.C. 5705.28), there would be no assurance that the library was open to all residents.

On the basis of the foregoing reasoning, I conclude that a political subdivision can appropriate funds for a library only if it does so pursuant to the contract mentioned in R.C. 3375.42. The same restriction would apply to an appropriation of federal revenue sharing funds, because such funds can be expended by a unit of local government "only in accordance with the laws and procedures applicable to the expenditure of its own revenues", under Section 123(a)(4) of Pub. L. 92-512, the State and Local Fiscal Assistance Act of 1972.

In specific answer to your question, it is my opinion and you are so advised, that a political subdivision may appropriate funds for library services, under R.C. 3375.42, only pursuant to a contract with the board of library trustees, private corporation, or library association, which provides for the furnishing of library services to all inhabitants of the political subdivision.