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LIBRARY, ESTABLISHED UNDER G.C. §7635 MAY BE REACTIVATED UNDER §3375.15, R.C.

SYLLABUS:

A library established by a local district June 25, 1947, pursuant to the authority of Section 7635, General Code, then in force, which library did not function by reason of the existence of an association library then providing library service to the community, may now be revived and proceed under Section 3375.15, Revised Code.

Columbus, Ohio, June 29, 1959

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion as to the present status of the School District Library which was established by resolution of the board of education of Madison Local School District on June 25, 1947. Your letter states that although a board of library trustees was then duly appointed, the board did not function, library service being supplied to the community by an association library theretofore incorporated pursuant to Section 9972, General Code, (1713.28, Revised Code.) That section

is a part of the law relating to the organization of private "corporations not for profit."

Your letter further states that the state librarian was, from time to time urging that the association library be merged into the Madison Local District Library; which proposal was approved by the association library board of trustees by a resolution passed on December 17, 1956. It further appears that on January 14, 1957 the board of education of the Madison local district voted "to establish a Madison school district library," and at the same time appointed seven trustees to serve on the library board. Since that time the library has been operated as a school district library. Out of this situation you have raised two questions:

- "1. Did the resolution which the Madison Local School District Board of Education passed on *June 25, 1947* in the matter of establishing a School District Library, for which the appointed Board of Trustees did not organize and did not function or provide for any library service, authorize or empower the Board of Education on *January 14, 1957* "to establish a Madison School District Library" and appoint seven members to serve as a Board of Trustees.
- "2. If you hold that the School District Board of Education had no such power, does the Library now being operated revert to its former status as an Association Library and proceed to operate under the provisions of Section 1713.28 of the Revised Code."

When the Madison Local Board undertook, on June 25, 1947, to establish the library, and appointed trustees, Section 7635, General Code, was in force, reading as follows:

"The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided, which board shall hold title to all such library property.

"Such boards of education shall also have the power for such purpose or purposes to purchase, erect, construct, enlarge, extend or improve a building or buildings for library purposes, including a site or sites therefore, and equipping and furnishing the same."

That section was repealed by an enactment which became effective September 4, 1947. (122 Ohio Laws, 166). That same act also enacted Section 4840-1 General Code, now Section 3375.15, Revised Code, reading in part as follows :

“In any school district in which a free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members. No one is eligible to membership on such board of library trustees who is or has been for a year previous to his appointment a member of a board of education making such appointment, or an employee of a board of education making such appointment. Such trustees shall be qualified electors of the school district and shall be appointed by the board of education of the school district. Such trustees shall serve for a term of seven years and without compensation. * * *”

It will be noted that under the terms of the section last quoted, all that is necessary for the establishment of a free library in a school district is, for the purpose of that statute, the *adoption of a resolution* by the board of education, and if such resolution was adopted before September 4, 1947 such library shall be under the control and management of a board of library trustees consisting of seven members who are to be appointed by the board of education. In the case presented here, it appears that the original action of the Board of Education taken on June 25, 1947 did establish the library, and while the trustees then appointed may not have functioned, and while their terms of office may have expired, I cannot conclude that the establishment of the library was a nullity or that its existence was legally terminated. It appears from the statements in your letter that its functioning was delayed by the action of the state librarian in expressing doubts as to whether that library and the association library could each receive money from the intangible taxes. In 1948 he recommended the absorption of the association library into the school library.

Apparently these two libraries had worked in harmony. The Board of Education permitted the library established by it to remain in a state of inaction until 1956, when, following the recommendation of the state librarian, the school library was revived, and the property of the association library shortly thereafter was turned over to the school district library.

Where an institution has been set up in the manner prescribed by the law, I know of no principle which would cause such institution to dissolve

automatically merely because the duly appointed controlling board failed to function.

Under the circumstances here presented, it is my opinion that the school district library established June 25, 1947 did not cease to exist but was merely in a state of suspension, and that the Board of Trustees appointed for such library on January 14, 1957, may lawfully proceed to act in conformity with the powers conferred upon it by Section 3375.15, Revised Code.

The case of *State ex rel. Shaker Heights v. Main*, 83 Ohio App., 415, seems to me to furnish a close parallel and strong support for the conclusion which I have indicated in the present case. It was there held:

“3. Section 7635, General Code, as enacted (115 Ohio Laws, pt. 2, 278), empowered a school district to create and maintain a public library within its district notwithstanding the fact that public library service had been established previously within such district by another political subdivision.

“4. In the enactment of Sections 4840-1 through 4840-5, General Assembly clearly manifested its intention to recognize free public libraries established by virtue of Section 7635, General Code (115 Ohio Laws, pt. 2, 278), in any school district prior to the effective date of such new General Code sections.”

In view of the facts as above outlined and as stated in your letter, I can see no theory upon which the library now being operated could revert to the former status of the association library. Therefore, I do not deem it necessary to discuss your second question.

Accordingly, in specific answer to your question, it is my opinion and you are advised that a library established by a local school district June 25, 1947, pursuant to the authority of Section 7635, General Code, then in force, which library did not function by reason of the existence of an association library then providing library service to the community, may now be revived and proceed under a new board of trustees appointed pursuant to the provisions of Section 3375.15, Revised Code.

Respectfully,

MARK MCELROY

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