

OPINION NO. 92-012

Syllabus:

1. Pursuant to R.C. 1713.30, a trustee of a law library association referred to in R.C. 1713.28 may not receive any compensation except the right of free ingress to the grounds, rooms, and buildings of the association.

2. Absent a legislative change authorizing such payments, money that is paid to the board of trustees of a law library association under R.C. 3375.50-.53, including money that is retained by the association pursuant to R.C. 3375.56, may not be expended to compensate the trustees of the law library association.
3. If a law library association does not come within the provisions of R.C. 1713.28 and R.C. 1713.30, the association may use private money to compensate the members of its board of trustees, provided that such compensation is permitted by the provisions governing the association and is determined in accordance with applicable law.

**To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney,
Upper Sandusky, Ohio**
By: Lee Fisher, Attorney General, March 31, 1992

I have before me your request for an opinion concerning the compensation of members of the board of trustees of a county law library association. Provisions governing law library associations appear in R.C. 3375.48-.56.

I. Types of Law Library Associations

The current statutory scheme does not prescribe the manner in which law library associations are to be organized. Rather, it simply presumes their existence. *See, e.g.*, R.C. 3375.48 ("[t]he judges of the [court] of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge" shall fix the compensation of a librarian and not more than two assistant law librarians, to be paid from the county treasury); R.C. 3375.49 ("[f]or the use of the law library referred to in [R.C. 3375.48], the board of county commissioners shall provide, at the expense of the county, suitable rooms with sufficient and suitable bookcases..."). *See generally* 1988 Op. Att'y Gen. No. 88-095 at 2-466 ("[t]he county has no authority to determine what agency will operate the law library...").

It has, however, been established that a county law library association is a private organization that may be organized either as a private association or as a nonprofit corporation under R.C. 1713.28. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-070; Op. No. 88-095; 1986 Op. Att'y Gen. No. 86-102; 1984 Op. Att'y Gen. No. 84-087.

R.C. 1713.28 refers to "[a]n association incorporated for the purpose of receiving gifts, devises, or trust funds to erect, establish, or maintain...a law or other library." Statutory provisions explicitly preclude the trustee of such a corporation from receiving monetary compensation. R.C. 1713.30 states:

No trustee of a corporation referred to in section 1713.28 of the Revised Code, shall be eligible to any office or agency of the corporation to which a salary or emolument is attached, nor shall the trustees be allowed any salary, emoluments, or perquisites, except the right of free ingress to the grounds, rooms, and buildings of the corporation.

Thus, if a particular law library association is incorporated in accordance with R.C. 1713.28, the trustees of that association are prohibited from receiving any compensation, other than the right of free ingress to the association's facilities.

If the law library association to which your question relates is incorporated in accordance with R.C. 1713.28, the trustees of the association are prohibited by statute from receiving any monetary compensation. For purposes of further discussion, I am assuming that the law library association in question does not come within the provisions of R.C. 1713.28 and R.C. 1713.30. The remainder of this opinion addresses the question whether trustees of a law library association that is not subject to R.C. 1713.30 may be compensated for their services.

II. Financial Support of Law Library Associations

Law library associations receive financial support from several sources. Pursuant to R.C. 3375.48, the county pays the compensation of a law librarian and not more than two assistant law librarians. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-104; Op. No. 84-087. The county is also responsible for providing housing and bookcases for the county law library. R.C. 3375.49; *see also, e.g., Akron County Law Library Association v. Morgan*, 13 Ohio App. 3d 119, 468 N.E.2d 384 (Summit County 1983) (under R.C. 3375.49, the county has a clear legal duty to provide adequate facilities for a county law library).

Pursuant to R.C. 3375.50-53, the board of trustees of a law library association receives certain moneys collected by the courts as fines or penalties, or arising from forfeited bail. *See* R.C. 3375.50 (municipal court); R.C. 3375.51 (county court); R.C. 3375.52 (court of common pleas and probate court); R.C. 3375.53 (violations of liquor law or state traffic laws in any court within the county). R.C. 3375.54 authorizes the board of trustees of the law library association to spend that money for specified purposes:

The money that is paid to the board of trustees of a law library association under sections 3375.50 to 3375.53 of the Revised Code shall be expended in the support and operation of the law library association and in the purchase, lease, or rental of lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and other services, materials, and equipment that provide legal information or facilitate legal research.

It is firmly established that moneys received by a law library association pursuant to R.C. 3375.50-53 may be expended only for the purposes set forth in R.C. 3375.54. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-068; Op. No. 88-104.

Pursuant to R.C. 3375.56, the board of trustees of the law library association must annually make a detailed statement to the county auditor of the amount of fines and penalties received under R.C. 3375.50-53 and of the money expended by the association. If the amount received under R.C. 3375.50-53 during a calendar year exceeds the expenditures made during that year, the auditor certifies that fact to the board, which directs the treasurer of the association "to refund proportionately to the treasurers of the political subdivisions from which such balance was received, not less than ninety per cent of any unencumbered balance on hand from the preceding year." R.C. 3375.56. The law library association may, thus, retain each year an amount of up to ten percent of the unencumbered balance of moneys received under R.C. 3375.50-53 during the preceding year. *See, e.g.*, Op. No. 89-068.

A county law library association may also receive moneys from private sources, such as membership dues or contributions from private persons. *See, e.g., Van Wert County Law Library Association v. Stuckey*, 42 Ohio Op. 1, 8, 94 N.E.2d 32, 45 (C.P. Van Wert County 1949); Op. No. 88-104; Op. No. 86-102.

III. Trustees' Compensation from Public Funds

Your question pertains to the moneys received by the board of trustees of a law library association pursuant to R.C. 3375.50-53. You ask whether such moneys may be used to provide compensation to the trustees of the law library association. Your letter describes the trustees' responsibilities in these words:

The Wyandot County Law Library Trustees are the governing authority on all library support and operations, such as acquisition of publications, studying feasibility of computer operations, subscribing to LEXIS or alternative data bases, responsibility for possible moving of the library to more adequate facilities, and even filing looseleaf tax services available in the library.

A. Services Ordinarily Performed by Law Librarian

In addressing your question, it is instructive to consider *Greene County Law Library Association v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported). That case concerned a situation in which a law library association used funds received under R.C. 3375.50-.53 to pay one of its trustees a salary for performing various services. The duties performed by the trustee consisted of overseeing the operation of the law library, interviewing book salesmen, presenting bills of the library to the board of trustees, and generally managing the development and continuity of the law library association. The court found that these duties were ordinarily performed by a law librarian and, accordingly, that compensation for the services should be paid from the county treasury pursuant to R.C. 3375.48, rather than from funds received by the law library association pursuant to R.C. 3375.50-.53. The court stated:

While no evidence of wrongdoing stems from the payment for such services, and while it may appear hypertechnical to distinguish between which of the two funds should be responsible for payment, the General Assembly nonetheless had the right to make the final determination that the services of a law librarian and the first two assistant law librarians shall be paid for from the county treasury (Section 3375.48). Moreover, even if it were permissible to pay the librarian from monies received under [R.C. 3375.50-.53], it would nevertheless be improper for a trustee of the association to occupy any position which has its salary paid with such funds since the trustee would be sitting on the board which establishes and pays the salary.

Greene County Law Library Association v. Ferguson, slip op. at 8.

The *Greene County Law Library Association* case thus concludes that a law library trustee may not be paid from funds derived under R.C. 3375.50-.53 for performing duties that are ordinarily performed by a law librarian; instead, payment for services of a law librarian and two assistants must be made from the county treasury pursuant to R.C. 3375.48. See also *Van Wert County Law Library Association v. Stuckey*, 42 Ohio Op. at 8, 94 N.E.2d at 45; Op. No. 88-104; 1951 Op. Att'y Gen. No. 554, p. 298; 1946 Op. Att'y Gen. No. 1243, p. 698.

Thus, to the extent that the services to which your question relates are those that are ordinarily performed by a law librarian, funds derived under R.C. 3375.50-.53 may not be used as compensation for such services. See generally 1990 Op. Att'y Gen. No. 90-036 (an unpublished opinion is not considered controlling authority, but is persuasive authority); 1989 Op. Att'y Gen. No. 89-098 (discussing the precedential effect of a decision of a court of appeals). The question whether services performed in a particular case are those ordinarily performed by a law librarian is a question of fact that is more appropriately determined by your office or other local officials than by the Attorney General as part of a formal opinion. See, e.g., 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary").

B. Non-librarian Services

R.C. 3375.54 permits money paid to the board of trustees of a law library association under R.C. 3375.50-.53 to be expended "in the support and operation of the law library association" and for other specified purposes, including the purchase of "services, materials, and equipment that provide legal information or facilitate legal research." Considering an earlier version of R.C. 3375.54,¹ the Court of

¹ When *Greene County Law Library Association v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported), was decided, R.C. 3375.54 authorized the expenditure of funds derived under R.C. 3375.50-.53 for the "maintenance" of the law library association, rather than for the "support and operation" of the association. See 1979-1980 Ohio Laws,

Appeals of Greene County stated: "[T]he statute, since its enactment in May, 1939, has permitted the use of the funds for the 'maintenance of such law library association' itself, and by dictionary definition, this language necessarily contemplates that the funds will be expended 'to provide for', 'carry on', 'keep up', or 'bear the expense of' such law library associations." *Greene County Law Library Association v. Ferguson*, slip op. at 4; see also 1955 Op. Att'y Gen. No. 4856, p. 74 at 76-77 ("[t]he word 'maintenance,' in [R.C. 3375.54], has been held to denote upkeep, support, to keep in a state of efficiency, and includes any services which the statute has not made the responsibility of the county"). Moneys governed by R.C. 3375.54 may be used to pay for non-librarian services, such as custodial services, that are needed for the operation of the law library. See, e.g., *Van Wert County Law Library Association v. Stuckey*, 42 Ohio Op. at 8, 94 N.E.2d at 45 (construing G.C. 3056-4, predecessor to R.C. 3375.54, as authorizing the payment of "a reasonable amount to any person acting as custodian or performing other reasonable duties that are not within the usual duties of librarian"); 1955 Op. No. 4856 (syllabus, paragraph 2) ("[t]he word 'maintenance' in [R.C. 3375.54] Revised Code, denotes upkeep and contemplates the use of the fines fund to pay for all services necessary for the maintenance of the law library association, save those required by statute to be furnished by the county"); 1951 Op. No. 554 (finding that G.C. 3056-4, predecessor to R.C. 3375.54, did not authorize the expenditure of moneys to compensate an assistant to the librarian, but did permit expenditures to pay for typing, filing, and janitorial services). Further, Op. No. 89-068 states that "'support and operation' expenses may logically include...the internal administrative costs of the law library association." Op. No. 89-068 at 2-312.

Based upon this broad construction of the term "support and operation," it would be possible to construe R.C. 3375.54 as permitting funds derived under R.C. 3375.50-.53 to be expended for the payment of compensation to trustees of the law

Part II, 3030 (Am. Sub. H.B. 559, eff. Jan. 15, 1981). The change from "maintenance" to "support and operation" was intended to provide broader authority for the expenditure of the funds. Ohio Legislative Service Commission, *Summary of Enactments, August, 1979 - December, 1980*, at 450 (1981). The history of this language was discussed in 1988 Op. Att'y Gen. No. 88-104, at 2-513, as follows:

[The former] version of R.C. 3375.54 was interpreted as authorizing expenditures for goods or services necessary for the upkeep of the law library association and the furtherance of legal research, and as excluding expenditures for items that the county was obligated to provide. 1973 Op. Att'y Gen. No. 73-071 (expenditures for videotape equipment not authorized); 1955 Op. No. 4856, p. 74, 76-77 (maintenance "denote[s] upkeep, support...efficiency, and includes any services which the statute has not made the responsibility of the county").

The purpose for amending the statute was to clearly and unambiguously allow money received pursuant to R.C. 3375.50-.53 to be spent for the purposes expressed in the statute. See 1979-1980 Ohio Laws, Part II, 3030 (Am. Sub. H.B. 559, eff. Jan. 15, 1981). The amended statute fails to define "support and operation." It does appear, however, that R.C. 3375.54 continues to exclude authorization for expenditures for bookcases, rent, librarian's compensation, and heat and lights, since those expenditures are delegated to the county elsewhere in the statute. R.C. 3375.48; R.C. 3375.49. See Op. No. 85-030 (the board of trustees of a county law library association is not authorized to expend funds received under R.C. 3375.50-.53 to purchase bookcases). Because the statute directs that the physical facility be provided at county expense, it is logical to interpret the "support and operation" language of R.C. 3375.54 to apply to other library-related expenses, and in particular to the regular routine expenses necessary for the upkeep, support and efficiency of the law library association. See generally Op. No. 86-102; Op. No. 85-030.

library association for the performance of services that are not ordinarily performed by a law librarian. Such a reading of the statute would, however, permit the law library trustees to use public funds to compensate themselves. That type of arrangement is not permitted absent clear statutory authority. In the *Greene County Law Library Association* case, the court explicitly stated that "it would...be improper for a trustee of the association to occupy any position which has its salary paid with such funds since the trustee would be sitting on the board which establishes and pays the salary." *Greene County Law Library Association v. Ferguson*, slip op. at 8. The *Greene County Law Library Association* case thus stands for the proposition that trustees of a law library association may not use funds derived under R.C. 3375.50-.53 to compensate themselves. Compare *Greene County Law Library Association v. Ferguson* with, e.g., R.C. 102.03(D)-(E) (prohibiting a public official or employee from soliciting, accepting, or using the authority of his office or employment to secure, anything of value that manifests a substantial and improper influence on him with respect to his duties) and R.C. 2921.42-.43 (prohibiting a public official from having an unlawful interest in a public contract or soliciting or receiving improper compensation).

While it is clear, as discussed above, that R.C. 3375.54 grants law library trustees broad discretion in determining how moneys received under R.C. 3375.50-.53 are to be expended, that discretion is not unlimited. See, e.g., Op. No. 89-068 at 2-312 (finding "no authority for the law library association to simply donate its public funds to the endowment fund of a community college for the purpose of assisting in the maintenance of a civic center"); Op. No. 86-102 (finding that a county law library association may not expend funds received pursuant to R.C. 3375.50-.53 to remodel a courtroom, because such an expenditure is not authorized by R.C. 3375.54). One of the limitations on the expenditure of moneys received under R.C. 3375.50-.53 is that, since the statute does not explicitly authorize the trustees to compensate themselves, they may not do so. See, e.g., Op. No. 89-068 at 2-312 ("doubts regarding the authority to expend public funds must be resolved in favor of the public and against the exercise of such authority"); see also Op. No. 84-087 at 2-302 ("I am unaware of any statute which provides for a treasurer of a county law library association to be paid from public funds"). Compare R.C. 3375.54 and *Greene County Law Library Association v. Ferguson* with, e.g., *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948) (syllabus, paragraph 2) ("[s]tatutes relating to compensation and allowances of public officers are to be strictly construed, and such officers are entitled to no more than that clearly given thereby"); *Clark v. Board of County Commissioners*, 58 Ohio St. 107, 50 N.E. 358 (1898) (syllabus, paragraph 1) ("[t]o warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute"); and *Anderson v. Board of Commissioners*, 25 Ohio St. 13, 13 (1874) ("[w]here a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced"). I conclude, accordingly, that members of the board of trustees of a law library association are not permitted to use any moneys provided under R.C. 3375.50-.53 for their own compensation.

Your question raises the issue whether moneys retained by a law library association pursuant to R.C. 3375.56 — that is, up to ten percent of the unencumbered balance of moneys received under R.C. 3375.50-.53 — may be expended to pay compensation to the trustees, even though other moneys received under R.C. 3375.50-.53 may not be expended for that purpose. Moneys retained pursuant to R.C. 3375.56 retain their character as public moneys and may be expended, at the discretion of the trustees, only for purposes set forth in R.C. 3375.54. See, e.g., *Greene County Law Library Association v. Ferguson*; Op. No. 89-068 at 2-310 (moneys retained by a law library association pursuant to R.C. 3375.56 "remain subject to the restrictions imposed on funds received under R.C. 3375.50-.53"). It follows that such moneys may not be expended as compensation for the trustees of the law library association.

IV. Trustees' Compensation From Private Funds

If a law library association has private funds, derived from such sources as contributions from private persons or membership dues, the expenditure of such moneys is not restricted by R.C. 3375.54, and those moneys may be expended for any purpose that comes within the articles of incorporation or association and other provisions governing the law library association. See, e.g., *Van Wert County Law*

Library Association v. Stuckey, 42 Ohio Op. at 8, 94 N.E.2d at 45 ("[i]f the law library association receives private donations, in respect to such monies it is like any other private association and may use such private funds for any proper purpose of the association..."); Op. No. 89-070 at 2-323 ("use of any private funds of the association are governed solely by the purposes and procedures specified in the association's charter, by-laws, rules, or regulations"); Op. No. 88-104; Op. No. 86-102; 1955 Op. Att'y Gen. No. 5308, p. 280; 1955 Op. No. 4856. In appropriate circumstances, such moneys may, accordingly, be used to compensate the trustees. See generally 1946 Op. No. 1243 (permitting private funds of a law library association to be used to pay a librarian compensation in addition to the salary paid by the county). It is, of course, clear that compensation may be paid to the trustees of a particular law library association only if that payment is permitted by the provisions governing the association and is determined in accordance with applicable law. See, e.g., *Van Wert County Law Library Association v. Stuckey*; Op. No. 86-102.

V. Legislative Consideration

The prohibition of R.C. 1713.28 against providing compensation to a law library trustee is strict and may appear harsh. Similarly, the conclusion that R.C. 3375.54 may not be construed to permit public funds derived under R.C. 3375.50-.53 to be expended for the compensation of law library trustees may be objectionable to those who perceive the services of law library trustees as demanding and valuable. A resolution to these concerns cannot be reached by opinion of the Attorney General. The matter must, instead, be addressed by the General Assembly, which is in a position to make the statutory amendments necessary to effect a change, if it deems such a change desirable.

VI. Conclusion

On the basis of the analysis set forth above, it is my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 1713.30, a trustee of a law library association referred to in R.C. 1713.28 may not receive any compensation except the right of free ingress to the grounds, rooms, and buildings of the association.
2. Absent a legislative change authorizing such payments, money that is paid to the board of trustees of a law library association under R.C. 3375.50-.53, including money that is retained by the association pursuant to R.C. 3375.56, may not be expended to compensate the trustees of the law library association.
3. If a law library association does not come within the provisions of R.C. 1713.28 and R.C. 1713.30, the association may use private money to compensate the members of its board of trustees, provided that such compensation is permitted by the provisions governing the association and is determined in accordance with applicable law.