

OPINION NO. 74-042

Syllabus:

A board of trustees of a county library district may provide library services to inhabitants of other counties only pursuant to one of the contracts expressly authorized by R.C. Chapter 3375., which contract provides for free use of a library by inhabitants of the other library district.

To: Joseph F. Shubert, State Librarian, The State Library of Ohio, Columbus, Ohio

By: William J. Brown, Attorney General, May 30, 1974

Your request for an opinion poses the following questions:

"(1) Is there any statute or other legal authority which permits a board of library trustees of a public library to issue, without charge, library cards to persons residing outside the county in which the library is located?"

"(2) Is a board of library trustees of a public library authorized to impose a charge for the issuance of a library card to a person residing outside the county in which the library is located?"

My predecessors in office have stated that a board of library trustees has only such powers as are provided by statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board. Opinion No. 699, Opinions of the Attorney General for 1949, page 340; Opinion No. 2003, Opinions of the Attorney General for 1924, page 642.

R.C. 3375.40 provides in part as follows:

"Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code may:

* * * * *

"(H) Make and publish rules and regulations for the proper operation and management of the free public library under its jurisdiction;

* * * * *"

R.C. Chapter 3375. provides for separate library districts which are to serve the inhabitants of the respective districts. See also, Opinion No. 4872, Opinions of the Attorney General for 1935, page 1455, and R.C. 3375.08, 3375.11, 3375.13, 3375.16, 3375.27, and 3375.28.

R.C. 5705.28 permits a public library which offers its services to all the inhabitants of the county to share in the revenues derived from the classified property tax of the county. (For a

history of taxation for public libraries, see P.E. Spayde, Baldwin's Ohio School Laws, T 141.01 et seq. (8th ed. 1973).

R.C. 3375.06 authorizes a board of county commissioners which has received a gift or bequest therefor to establish a free county public library "for the use of all of the inhabitants of the county." It is evident that the General Assembly intended to authorize and provide financial support for public libraries which provide free service to all residents of the county.

There are specific provisions in R.C. Chapter 3375. for library services which transcend county lines. R.C. 3375.28 authorizes the formation of a regional library district by the boards of county commissioners of two or more contiguous counties. R.C. 3375.27 provides in part as follows:

"The board of library trustees of a county library district may contract with the governing bodies of one or more libraries within the county, or within any contiguous county, and such governing bodies may enter into a contract for the free use of such libraries by the people of the county library district. * * *

Provision is made in R.C. 3375.40(F) for the establishment of branch libraries outside the subdivision over which a board of library trustees has jurisdiction. R.C. 3375.42 authorizes the governing bodies of various political subdivisions to contract for library services for all inhabitants of the subdivision, with a public library or private corporation or library association.

Thus, the General Assembly has addressed itself to the subject of a board of library trustees providing library services outside its county district, and has not mentioned either of the plans described in your letter. Under R.C. 3375.27, persons outside the county library district could be provided free service under a contract between the boards of library trustees, but such free service would be available to all inhabitants of the county library district which contracted for the use of the library. There is no provision for a contract between individual residents of another district and a board of library trustees for service to such individuals. Accordingly, the maxim of expressio unius est exclusio alterius, the mention of one thing implies the exclusion of all others, is applicable.

While your question is not covered by precedent, an Opinion of one of my predecessors provides guidance. Opinion No. 4872, Opinions of the Attorney General for 1935, Vol. II, page 1455, discussed a contract between two school district libraries, stating at page 1460 as follows:

"No library except the State Library or a joint school district library established by authority of Section 7633, General Code, or a library maintained by a subdivision that lies in two or more counties such for instance, as the Alliance School District Library which provides library service in three different counties, is authorized to function outside the county where it is located. It follows that a board of trustees of a local library, with the possible exceptions noted above, would not be authorized in any case to

contract with another library located in another county to do extension work or perform any other services for it because the board so attempting to contract would be exceeding its powers in that it has no power to perform library service for the inhabitants of the other county. Any such action would be a purely commercial venture or a mere accommodation if it were done without charge or at cost, either of which is clearly beyond the powers of a board of library trustees."

(Emphasis added.)

The principles applied in this language are applicable to the instant fact situation. Absent express statutory authority, or authority by necessary implication of the express statutory language, a board of library trustees may not enter into contracts to provide library service.

It may be argued that a board of library trustees has implied power to charge a fine for overdue books, and therefore by analogy it can charge for the use of the library by non-residents of the county, although express authority is lacking for this charge also. However, the former authority is necessarily implied by the power to lend books to residents of the district and the power to make rules for the proper operation and management of the library (R.C. 3375.40(H)). No express power implies that of providing library services to residents of other counties, absent a contract with the proper authorities in a contiguous county for free service to its residents. Thus, no convincing analogy is possible.

In specific answer to your question, it is my opinion and you are so advised that a board of trustees of a county library district may provide library services to inhabitants of other counties only pursuant to one of the contracts expressly authorized by R.C. Chapter 3375., which contract provides for free use of a library by inhabitants of the other library district.