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1. LAW LIBRARIAN, COUNTY—ANNUAL SALARY MUST NOT EXCEED FIVE HUNDRED DOLLARS—COUNTIES WHERE ONE COMMON PLEAS JUDGE—WHERE MORE THAN ONE COMMON PLEAS JUDGE—COMPENSATION DETERMINED BY COMMON PLEAS JUDGES OF COUNTY—COMPENSATION TO LIBRARIAN DIRECTLY RATHER THAN TO LIBRARY ASSOCIATION—SECTION 3375.48 RC.
2. MEMBERSHIP IN PUBLIC EMPLOYES RETIREMENT SYSTEM—TO BE DETERMINED BY RETIREMENT BOARD—SECTION 145.01 ET SEQ., RC.

## SYLLABUS:

1. Under the provisions of Section 3375.48, Revised Code, the annual salary of a county law librarian must not exceed five hundred dollars in counties where there is only one common pleas judge; in counties having more than one judge the amount of compensation such librarian is to receive is to be determined by the common pleas judges of such county. Such compensation should be paid to such librarian directly rather than to the library association concerned.

2. The question of membership in the Public Employes Retirement System pursuant to the provisions of Section 145.01 et seq., Revised Code, is in the first instance one to be determined by the retirement board, and its decision on questions of membership will not be disturbed in the decision of collateral questions.

Columbus, Ohio, June 9, 1955

Hon. Bernard T. McCann, Prosecuting Attorney  
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Examiner for the State Auditor stated that he was making a finding against the officials of Jefferson County for a practice which has existed over the past twenty years. This practice concerns the law librarian, who has been carried as a county employee and paid by the Auditor at an annual salary of Two thousand Two hundred eighty (\$2,280.00) dollars. This salary has been fixed by the Common Pleas Court by a journal entry placed of record a few years ago.

"The Examiner explained that the salary of the law librarian could not be fixed in excess of One thousand (\$1,000.00) dollars, as it was his interpretation of Section 3375.48 of the Revised Code of Ohio that in a county where there was one Common Pleas judge, the maximum salary was fixed at Five hundred (\$500.00) dollars so that where there were two Common Pleas judges the salary could be One thousand (\$1,000.00) dollars and if there were seven Common Pleas judges the salary could be Three thousand Five hundred (\$3,500.00) dollars.

"The Trustees of the Law Library of Jefferson County did not agree with this interpretation but took the position that the statute fixed the maximum salary in those counties having one Common Pleas judge but had no control in those counties where there were two or more Common Pleas judges.

"Another point raised was that the appointment of the Law Librarian was made by the Trustees, so that she could not be considered a county employee. The Trustees differed with this ruling, as they were of the opinion that inasmuch as the court had the authority and did fix this employee's salary she would be an employee of the county.

"The Examiner further commented that it would be necessary for the Auditor to pay the money for the salary of the Law Librarian to the Board of Trustees and it was their duty and responsibility, in turn, to pay the Law Librarian. The Trustees referred to Opinion No. 554, 1951, in which the language appears that the salary of the Law Librarian shall be paid by the county commissioners, and did not agree with the position as taken by the Examiner, that the Trustees should handle her salary money.

"A discussion was also had with reference to the status of the Law Librarian in Jefferson County who had served in this capacity for approximately twenty years and has contributed as a member of the Public Employees Retirement System. It was argued that she has been considered a county employee and has received her salary from county money and has been appointed by county officials so that for all intents and purposes she should be classified as a county employee, and that her rights and privileges which have accrued by her participation in the Public Employees Retirement System should not be denied her.

"It was agreed that these questions would be referred to your office for an opinion."

Your request involves two distinct propositions: (1) the salary payable to the librarian in a county which has more than one judge; and (2) eligibility of such librarian to membership in the public employes retire-

ment system as a public employe. As to the first question your attention is directed to Section 3375.48, Revised Code, which provides:

“The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of 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, upon the appointment by the board of trustees of such association of a person to act as librarian thereof, shall fix his compensation, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation to be paid such librarian shall not exceed the sum of five hundred dollars per annum.”

It is clear from these provisions of the statute that the power to appoint a librarian is vested in the board of trustees of the library association; that the power to fix his compensation is conferred upon the judge or judges of the common pleas court of the county; that in counties having only one common pleas judge, his salary must not exceed five hundred dollars per annum; that such salary is to be paid out of funds in the county treasury.

It should also be noted that the library fund is derived from two separate and distinct sources; from court fines allocated under the provisions of Sections 3375.50 to 3375.53, Revised Code, and from moneys contributed by private persons. The former may only be used for purposes specified by statute, such as the purchase of law books and maintenance of the law library as provided by Section 3375.54, Revised Code; the latter, not being public funds and not accountable to the county auditor under Section 3375.56, Revised Code, may be used for any purpose, including the payment of additional salary to the librarian. *Van Wert County Library Association v. Stuckey*, 42 Ohio Opinions, p. 1. This case was followed in Opinion No. 4856, Opinions of the Attorney General for 1955, and the syllabus reads:

“1. Moneys from court fines and bond forfeitures allocated to the board of trustees of a county law library association under the provisions of Sections 3375.50 to 3375.53, Revised Code, may be used only for the purchase of law books and the maintenance of the law library association as provided by Section 3375.54, Revised Code; all other funds derived from private contributions, gifts and dues may be used for any library purpose at the discretion of the board of trustees of such association.

“2. The word ‘maintenance’ in Section 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.”

Similar rulings have been made in Opinion No. 1243, Opinions of the Attorney General for 1946, p. 698, and Opinion No. 6379 for 1943, p. 532, which denied the library trustees the right to use funds derived from fines to pay additional compensation to the librarian in addition to the amount fixed by the common pleas judges.

The duty of the county commissioners to pay the compensation to the librarian as fixed by the judges has been held to be a mandatory one, and the commissioners may be compelled to appropriate funds for the payment thereof. Opinion No. 3681, Opinions of the Attorney General for 1941, p. 299. No difficulty is presented as to salary in the five hundred dollar range which is fixed by statute. But what compensation are the judges to authorize in counties having more than one judge? Should it be five hundred dollars multiplied by the number of judges elected in the county as suggested by the state examiner? The statute, it will be noted, makes no such provision. It simply authorizes the judges to fix the compensation, except that in one-judge counties it may not exceed five hundred dollars. It would seem that had the legislature intended the salary of the librarian to be fixed by some multiple standard it would have so provided by appropriate language. In delegating such power to the judges, there is evinced an intent to leave the fixing of compensation to their discretion, save that in certain counties such action is limited to five hundred dollars per annum.

Coming to the second question presented, it is noted that the suggestion has been made that such compensation as has been fixed for the librarian under the provisions of Section 3375.48, Revised Code, should be paid by the county authorities to the library association and thereafter to the individual librarian concerned. I perceive no such requirement in the statute. It will be observed that Section 3375.48, *supra*, provides that “his compensation \* \* \* shall be paid from the county treasury.” This language, in the absence of any specific restrictive provision, would indicate a payment directly to the individual concerned; and I perceive no basis for argument that indirect payment through the library association was intended.

As to your question whether the librarian appointed by the law library association but paid with county funds is eligible to membership in the public employes retirement system, your attention is directed to Section 145.01, Revised Code, which provides:

“(A) ‘Public employee’ means any person holding an office, not elective, under the state or any county, municipal corporation, park district, conservancy district, sanitary district, health district, township, metropolitan housing authority, state retirement board, public library, union cemetery, joint hospital, institutional commissary, state university rotary fund, or employed and paid in whole or in part by the state or any of the authorities named in this division in any capacity.

*“In all cases of doubt the public employees retirement board shall determine whether any person is a public employee, and its decision is final.”*  
(Emphasis supplied.)

I am informed by the Public Employes Retirement Board that the librarian in question has been a contributing member of that system since 1938. Although this question is not free from doubt, I feel that this long continued practice by the Board under the statutory power set out above should not be disturbed in the set of circumstances which you have presented to me.

In specific answer to your questions it is therefore my opinion:

1. Under the provisions of Section 3375.48, Revised Code, the annual salary of a county law librarian must not exceed five hundred dollars in counties where there is only one common pleas judge; in counties having more than one judge the amount of compensation such librarian is to receive is to be determined by the common pleas judges of such county. Such compensation should be paid to such librarian directly rather than to the library association concerned.

2. The question of membership in the Public Employes Retirement System pursuant to the provisions of Section 145.01 et seq., Revised Code, is in the first instance one to be determined by the retirement board; and its decision on questions of membership will not be disturbed in the decision of collateral questions.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General