

6359

LIBRARY BOARD, STATE—CREATED BY SECTION 3375.01 RC, AM HB 212, 101 GA, EFFECTIVE JANUARY 3, 1956, HAS CEASED TO BE PART OF DEPARTMENT OF EDUCATION.

SYLLABUS:

The state library board, created by Section 3375.01, Revised Code, by virtue of Amended House Bill No. 212, enacted by the 101st General Assembly effective January 3, 1956, has ceased to be a part of the department of education.

Columbus, Ohio, March 12, 1956

Hon. R. M. Eyman, Superintendent of Public Instruction,  
Department of Education, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion as to the following question:

“With the effective date of Amended House Bill No. 212 and specifically Section 3375.01 of the Revised Code of Ohio as amended by the 101st General Assembly, does the State Library cease to be a Division of the State Department of Education?”

Amended House Bill No. 212 was enacted by the One Hundred and First General Assembly for the express purpose of creating the state board of education and defining its powers and duties. Referring to the provisions of this enactment, it will be observed that all reference to the department of education or any of its divisions was deleted from Sections 121.02, 121.03 and 121.04, Revised Code, creating the various state departments, and the administrative offices therein. The department of education as previously constituted was abolished effective January 3, 1956, and thereupon reconstituted as provided by this act. See Opinion No. 6091, Opinions of the Attorney General for 1955.

The newly created department of education exists by virtue of the provisions of Section 3301.13, Revised Code:

“The department of education hereby created, shall be the administrative unit and organization through which the policies,

directives and powers of the state board of education and the duties of the superintendent of public instruction are administered by such superintendent as executive officer of the board.

*“The department of education shall consist of the state board of education, the superintendent of public instruction, a staff of such professional, clerical and other employees as may be necessary to perform the duties and to exercise the required functions of the department. \* \* \*.”* (Emphasis added.)

The state library board was originally created in the department of education in the enactment of the Administrative Code, in 109 Ohio Laws, 105, 123, codified as Section 154-51, General Code, and the then existing state board of library commissioners was abolished. This section was amended in 120 Ohio Laws, 475 (488), in accordance with the creation of the office of superintendent of public instruction, and appeared as Section 3375.01, Revised Code, reading as follows:

*“A state library board is hereby created in the department of education, to be composed of the superintendent of public instruction as chairman and four other members to be appointed by the governor. One member shall be appointed each two years for a term of eight years. The members shall receive no compensation, but shall be paid their actual and necessary expenses incurred in the performance of their duties.”*

(Emphasis added.)

Referring again to Amended House Bill No. 212, Section 3375.01, *supra*, was amended and now reads:

*“A state library board is hereby created to be composed of five members to be appointed by the State board of education. One member shall be appointed each year for a term of five years. No one is eligible to membership on the state library board who is or has been for a year previous to his appointment a member of the state board of education. All vacancies on the state library board shall be filled by the state board of education by appointment for the unexpired term. The members shall receive no compensation, but shall be paid their actual and necessary expenses incurred in the performance of their duties.*

*“At its regular meeting next prior to the beginning of each fiscal biennium the state library board shall elect a president and vice-president each of whom shall serve for two years or until his successor is elected and qualified.*

*“This section does not affect the term of any member of the state library board appointed prior to the effective date of this act.”*

The precise question presented by your inquiry must then be resolved by the language of amended Sections 3375.01 and 3301.13, Revised Code, supra. It is immediately apparent that the state library board is not now a part of the department of education, for all relationship with the department of education has been removed from the section creating such board. This conclusion is further required by the terms of amended Section 3301.13, supra, referring to the composition of the newly created department of education which does not include the state library board. Section 3375.01, supra, does provide that the members of the state library board are now appointed by the state board of education which is the supervising unit of the department; however, this power of appointment does not bring the state library board within the department, in the absence of any statutory provisions to that effect, and in view of the intent expressed by the General Assembly in specifically removing the board from the department of education.

For these reasons, therefore, and in specific answer to your inquiry, I am of the opinion that the state library board, created by Section 3375.01, Revised Code, by virtue of Amended House Bill No. 212, enacted by the 101st General Assembly effective January 3, 1956, has ceased to be a part of the department of education.

Respectfully,

C. WILLIAM O'NEILL

Attorney General