

OPINION NO. 74-051

Syllabus:

A board of trustees of a public library may not contract under R.C. 3375.42 to provide free library service to the inhabitants of a political subdivision within a county, when it has already qualified for participation in the proceeds of the classified property tax by providing free library service to all residents of that county. (Opinion No. 73-058, Opinions of the Attorney General for 1973, clarified)

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, June 14, 1974

I have before me your request for a clarification of my Opinion No. 73-058, Opinions of the Attorney General for 1973. The syllabus of that Opinion reads as follows:

"A political subdivision may appropriate funds for library services, under R.C. 3375.42, only pursuant to a contract with the board of library trustees, private corporation, or library association, which provides for the furnishing of library services to all inhabitants of the political subdivision."

I reasoned that an appropriation to a board of library trustees could only be made pursuant to contract authorized by R.C. 3375.42, providing for free library service to the inhabitants of the subdivision. The reason, besides the wording of that Section, was that without such an agreement the subdivision would not receive consideration for its appropriation and payment, and that a reading of the statute which produced such an absurd conclusion could not be favored.

The Opinion compared R.C. 3375.42 with R.C. 5507.28, which authorizes the board of trustees of any public library to participate in the proceeds of classified property taxes collected in the county if its services are available free to all the county's inhabitants, either by law or by regulation of the board of library trustees.

The Opinion concluded that federal revenue sharing funds could be paid by a subdivision to a board of library trustees

only pursuant to a contract authorized by R.C. 3375.42. However, it did not touch on your present question which involves the relationship between R.C. 3375.42 and 5705.28. Basically, you ask whether a board of library trustees which is already committed to providing free library service to the inhabitants of a subdivision, by law or by regulation, may nevertheless enter into an agreement with the governing body of that subdivision to provide free library service, thereby qualifying for an appropriation from that subdivision under R.C. 3375.42. You feel that there would be a lack of consideration for such a contract, because the board was required to provide free service in order to participate in the proceeds of the classified property tax. Therefore, in terms of ordinary contract law, the contract would be illusory.

As mentioned in Opinion No. 73-058, supra, statutes should be construed in such a way as to produce a just and reasonable result (R.C. 1.47(C)), and to construe a statute to authorize a contract without consideration would not be reasonable. At the same time, related statutes should be interpreted in a manner which gives effect to both; statutory language should not be considered nugatory, if any reasonable construction can give it effect. See R.C. 1.47(B), and United States v. Borden Co., 308 U.S. 188, 84 L.Ed. 181, 60 S.Ct. 182 (1939).

I understand that most, if not all, boards of trustees of public libraries have qualified for participation in the classified property tax proceeds of their respective counties. Therefore, they are required to furnish free service to all the county's inhabitants. It follows that a contract between such a board and the board of county commissioners, or governing body of another subdivision within the county, for the provision of free service, would be without consideration. However, there would be consideration for a contract with a subdivision outside the county, which is also authorized by R.C. 3375.42. (For a discussion of contracts for library service under R.C. Chapter 3375., see my Opinion No. 74-042, Opinions of the Attorney General for 1974.) And a board of library trustees which has not qualified for participation in the classified property tax proceeds may, of course, contract under R.C. 3375.42 with subdivisions inside its county, as well. Therefore, that Section and R.C. 5705.28 can be construed together to give effect to all provisions in both, yet to authorize only contracts for which there is consideration. In the absence of an express directive from the General Assembly, I adopt this construction on the basis of maxims which aid in determining the legislative intent.

In specific answer to your question, it is my opinion and you are so advised that a board of trustees of a public library may not contract under R.C. 3375.42 to provide free library service to the inhabitants of a political subdivision within a county, when it has already qualified for participation in the proceeds of the classified property tax by providing free library service to all residents of that county. (Opinion No. 73-058, Opinions of the Attorney General for 1973, clarified)