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LIBRARY BOARD, STATE—MEMBERS HAVE NO AUTHORITY TO DEPUTIZE OTHER PERSONS TO ATTEND BOARD MEETINGS AND ACT FOR THEM—ACTS OF ANY NON-MEMBER ATTEMPTING TO ACT FOR OR ON BEHALF OF A MEMBER WOULD BE INEFFECTUAL AND ILLEGAL.

SYLLABUS:

The members of the State Library Board have no authority to deputize other persons to attend board meetings and act for them. The acts of any non-member attempting to act for or on behalf of a member of the State Library Board would be ineffectual and illegal.

Columbus, Ohio, February 20, 1943.

Hon. Walter Brahm, State Librarian, State Office Building,  
Columbus, Ohio.

Dear Sir :

This will acknowledge receipt of your request for my opinion which reads as follows:

"This is a request for an official opinion from you regarding the legality of proxy for State Library Board members.

Due to travel restrictions, it is becoming difficult to obtain a quorum for necessary meetings of the State Library Board and the question has arisen as to the legality of a board member deputizing another person to act for him at meetings of the State Library Board. In your opinion, would actions of the State Library Board taken by a quorum composed of one or more such deputies be legal and binding?

The Ohio State Library Board derives its authority from Section 154-51 to 53 of the General Code."

The State Library Board is established as a part of the Department of Education pursuant to the provisions of Section 154-51, General Code. This section reads:

"A State Library Board is hereby created in the Department of Education, to be composed of the director of education, as chairman, and four other members. The members other than the director of education shall be appointed by the governor. The first appointments under this section shall be as follows: One member for a term of two years, one member for a term of four years, one member for a term of six years and one member for a term of eight years. Thereafter one member shall be appointed each two years for a term of eight years. The members other than the director of education shall receive no compensation, but shall be paid their actual and necessary expenses incurred in the performance of their duties."

Section 154-52, General Code, authorizes the State Library Board to appoint and remove a state librarian who, under the direction and supervision of the Board, shall be the head of the library service of the state. Section 154-53, General Code, requires the Board to adopt rules for the government of the library and empowers it to accept gifts and to

administer funds thus received. Section 154-54, General Code, provides that the state librarian, under the supervision of the State Library Board, shall exercise all the powers and perform all the duties formerly vested in the state board of library commissioners, and the librarian and library organizer heretofore appointed by it. These powers and duties are found in Sections 792 to 797, inclusive, General Code.

The Board having public duties conferred upon it by law in which it is required to exercise its independent judgment, free from the direction or control of any superior officer, in the performance of governmental functions, its members must be regarded as public officers. As public officers they have only such powers as have been expressly delegated to them by statute and such powers as are necessarily implied from those so delegated. The Board members are limited in the exercise of their powers to the mode prescribed by statute. In 32 O. Jur., 934, section 74, it is said:

“\* \* \* It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted. \* \* \*”

Returning to the statutory provisions, it will be observed that the Board appoints the state librarian, administers funds which it receives, is required to make rules for the government of the state library, is required to organize the library service into departments and determine the number of assistants and other employes therein and is required to perform all the other duties enumerated in Sections 154-1 to 154-54, inclusive, General Code. It is expressly provided that all of these powers and duties are to be exercised by the Board. This is the mode specified and must therefore be the manner in which the Board's powers are to be exercised. No provision is made for the appointment of deputies or proxies. Such powers of appointment must be regarded as non-existent. The existence of an emergency will never justify the ignoring of unambiguous statutory provisions by administrative officials. As said in *Board of Education v. Beal*, 104 O. S., 482: “It is not the province of the court to legislate either directly or indirectly, or by extending the language employed by the legislature.” The remedy for legislative deficiencies is an appeal to the legislature itself. Under the existing statutory provisions it is my opinion that the members of the State Library Board have no authority to deputize other persons to attend board meetings and act for them. The acts of any non-member attempting to act for or on behalf of a member of the State Library Board would be ineffectual and illegal.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.