

1840.

BOARD OF LIBRARY TRUSTEES—REQUIRED TO PAY FOR WATER FURNISHED LIBRARY BY MUNICIPAL WATER SYSTEM AT RATE CHARGED FOR SCHOOL BUILDINGS WHEN SUCH SCHOOL DISTRICT INCLUDES TERRITORY OUTSIDE LIMITS OF MUNICIPAL CORPORATION—LIBRARY BUILDING IS A BUILDING USED IN EDUCATIONAL ACTIVITIES OF DISTRICT.

A school district having a library building under control and management of a board of library trustees as provided in sections 7635 G. C. et seq., when such school district includes territory outside of the limits of the city or village where such library building is situated, said board of library trustees is required to pay for water furnished the library by the municipal water system at the rate charged for school buildings under section 3963 G. C.; and said library building is a building used in the educational activities of the district as an adjunct to the public school system.

COLUMBUS, OHIO, February 5, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your request, as follows:

"We are today in receipt of a communication from the city solicitor of Wooster, Ohio, as follows:

"The city water department is having some difficulty in the matter of water rent on the Wooster public library, and I would like to have the opinion of your department on the matter.

The Wooster free library is a sort of offspring of the Wooster board of education, being formed under sections 7631, 7632, 7635, 7636, 7637, 7638, 7639 and 7640 of the General Code. The title as required by law is held in the board of trustees (seven members) and the support and maintenance of said library is by tax levy made by the board of education of Wooster school district. This library was formed about the year 1903 as above indicated and since that date has never paid any water rents, and the board of education and trustees are now objecting to paying any rent except that portion representing taxable property of the school district outside the city limits, same as any school building, on the theory that the library is part of the school system of the district.

Section 3963, as amended, 108 O. L. Part II, page 1160, relates to charge by municipalities for water service, and I would greatly appreciate it to have your opinion on the matter taking into consideration the character of this particular library, as I understand there are few libraries in Ohio formed under these particular statutes.'

Question 1: Is the library herein described entitled to free water?

Question 2: Is such library entitled to any portion of its water free?"

From your statement of facts it is apparent that the limits of the Wooster school district and those of the incorporated village or city of Wooster are not coextensive. The school district includes territory outside the limits of the municipality and thus brings the schools within the exception found in section 3963 G. C., as amended in 108 O. L., Part II, 1160, requiring payment for water supplied to the school buildings in the ratio there fixed for such payment for water consumed. It is also evident that the Wooster free library building is not a building belonging to the municipality.

You observe that the library is a sort of offspring of the activities of the board of education, which is assumed to mean that the board of education fostered the library at its inception in or prior to 1903, and then in conformity to the law as found in section 7635 G. C. turned over the management of the same to a board of library trustees, consisting of seven members elected by the board of education in compliance with and under authority of sections 7635 et seq.

The board of library trustees, originally created by the board of education, is a continuing board, each member serving without compensation for a term of seven years, and a new member being elected, at the expiration of the term or when for any other cause a vacancy exists, by the board of education.

The board of library trustees makes an annual report in writing to the board of education. Section 7635 G. C. It makes an annual estimate of the money it will need for the ensuing year to increase, maintain and operate the library, to obtain which the board of education levies a tax on property subject to taxation in the whole school district. Section 7639 G. C. The proceeds of this tax constitute a library fund. Section 7640 G. C. The board of library trustees holds the title to and has the custody and control of all libraries, all library property, real and personal, of such school district, and expends and receives all moneys coming to the library from any source for library purposes. Section 7637 G. C.

It is thus evident that the library is, under the law, considered an adjunct or agency of the educational activities of the school district and that the board of library trustees is the creature or agent, so to speak, of the board of education. While the board of library trustees may receive gifts, demises and bequests, yet it gets its regular revenue from a tax levied by the board of education upon the school district, and its members are elected by such board, to whom reports of its activities are annually made.

The Wooster free library is open to the public; it especially serves the people of the school district from whom it receives support; it is a public institution serving the education interests of the community. Its building and branches, if any, are some sort of public buildings, though not municipal public structures. Payment for water supplied to the library evidently does not come under the rates paid by private institutions.

Section 3963 G. C., as amended in 108 O. L., Part II, 1160, reads:

“No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children, or for the use of the public school buildings in such city or village.

But in any case where the school district, or districts, include territory not within the boundaries of the city or village, a proportionate charge for water service shall be made in the ratio which such tax valuation of the property outside the city or village bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the waterworks department of the municipality governing, controlling, and regulating the use of water consumed.”

An analysis of section 3963 G. C. indicates the legislative intent to be that certain public uses of water supplied by the municipal water system shall be

gratuitous. No charge shall be made for water to extinguish fires, for cleaning market houses, for the use of municipal owned public buildings, for any hospital, any asylum, or any charitable institution devoted to certain purposes spoken of in the statute, and for any public school building in such municipality.

It is evident that such a library building as we have here, unless it may be classed with buildings belonging to the school district, does not come within the terms of section 3963 G. C., although it is a *public* building supported by a tax. If it were a municipal public library it would be furnished water without cost. The major portion of the tax this library receives for support, doubtless, is levied upon property within the limits of the municipality in the school district. If the library building is classed as a school building it follows such building in payment for water supplied.

When the boundaries of the municipality and the school district are coextensive "no charge shall be made for supplying water for the use of the public school buildings in such city or village." If there be territory belonging to the school district, but not within the boundaries of the municipality in such district, a charge for water supplied may be made at a rate corresponding to the ratio existing between the taxable valuations outside of the municipality to the aggregate tax valuation of the whole district. In no other case can a charge be made against the school district or the board of education.

Notice that the phrase is not school *houses* but school *buildings*.

"A school house is a house appropriated for the use of the schools or for instruction, but usually applies to a building for a subordinate school and not for a college." 35 Cyc., page 813.

So a building erected to house the heating system outside of and separated from a school house proper, a toilet, a building to store supplies, apparatus and all other impedimenta necessary to the use of the schools, a bicycle shed, an office building for the administrative part of the school system, or a building rented for the use of the schools, all come within the term "school building" and within the law if owned or used by the public school authorities of the state. Water furnished to all these buildings would be free or otherwise supplied, depending upon the fact of territorial area of the district being coextensive with, or more extensive than, the area of the municipality.

This library property, upon the creation of a board of library trustees, was, by operation of law, transferred by the board of education without consideration to said library board, but continues to derive support through a tax on the property of the school district.

Since this building is a public building, but not a municipal owned one, the conclusion follows that it is a building appropriated to and a part of the school system, a necessary adjunct to the essential activities of the same, and impliedly, if not expressly, falls within the law governing the payment for water consumed as a school building of the district.

The conclusion reached, then, is that the municipal water system is entitled to receive payment for the water supplied to the library building at the rate charged for that supplied to all other buildings belonging to the school district, if the limits of the district include territory beyond the limits of the municipality situated in said district. If the limits of the school district and of the municipality are coextensive no charge for water is to be made.

Respectfully,
 JOHN G. PRICE,
Attorney-General.