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LIBRARY BOARD, STATE—WITHOUT AUTHORITY TO CONTRACT WITH PRIVATE CIRCULATING LIBRARY TO HAVE PRIVATE LIBRARY PLACE COPIES OF POPULAR FICTION BOOKS IN STATE LIBRARY — PUBLIC TO PAY DAILY RENTAL FEE.

SYLLABUS:

The State Library Board is without authority to contract with a private circulating library for the purpose of having such library place copies of its popular fiction books in the State Library, for the use of which the public would pay a daily rental fee.

Columbus, Ohio, July 6, 1949

Mr. Clyde Hissong, Superintendent of Public Instruction
Department of Education
Columbus, Ohio

Dear Sir:

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

“I shall appreciate an opinion in answer to the following question:

Does the State Library Board have authority to contract with a private circulating library for the purpose of having such library place copies of its popular fiction books in the State Library, for the use of which the public would pay a daily rental fee?

“The reasons for considering such a contract, if in your opinion it would be legal, are as follows:

“The State Library does not buy current popular fiction for circulation locally here in Columbus. On occasions in the past

when fiction has been bought Columbus residents were in position to pre-empt use of these books which did not seem fair to other residents of the state. Since patrons of the Library who are Columbus residents still are greatly interested in having such material for their use, it has been the thinking of the State Library Board that if Columbus residents were willing to pay a rental fee to cover the cost of this material, in lieu of securing the books from their local public library, there would then be no reason why the service should not be made available by the State Library."

It was said in Opinion No. 2003, 1924 Opinions of the Attorney General, page 652, as disclosed by the first branch of the syllabus, that:

"A board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board."

The above opinion is applicable in considering a question relative to the State Library Board.

The term "state library board" connotes state public library board. Sections 154-51 to 154-53a, inclusive, of the General Code of Ohio provide for the creation and functions of a state library board.

Section 154-51, General Code, provides that:

"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. 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 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, provides that:

"The state library board shall appoint and fix the compensation of a state librarian, who shall be the secretary of said board, and under the direction and supervision of the board shall be the executive officer of the state library, with power to appoint and remove the employees thereof.

"The state librarian shall, upon request of a librarian or a member of the board of trustees of a public library or of a person

interested in establishing a public library, furnish such advice and information as he may have available concerning the organization, maintenance and administration of a public library.

“The state librarian shall compile statistics and information concerning the operation of the public libraries in the various subdivisions of the state and at the end of each fiscal year shall make a report in writing to the state library board which shall contain such statistics and information.

“The state librarian shall hold office during the pleasure of the state library board.”

Section 154-52a, General Code, is not pertinent to the instant question and, thus, is not quoted.

Control and management of the library is provided for in Section 154-53 of the General Code, which section reads :

“The state library shall be under the control and management of the state library board. The state library board shall make and publish such rules and regulations for the operation and management of the state library and *for the use and location of the books and other property thereof* as it may deem necessary. The state library board may establish such divisions and departments within the state library as it may deem necessary, shall determine the number and classifications of the employees therein and shall fix their compensation.” (Emphasis added.)

Section 154-53a, General Code, provides in detail for the procedure to be followed with reference to the establishment of branches, library stations and travelling library service by the board of trustees of any public library receiving local tax support, and having no application to the requested question, will not be quoted.

As a public body the State Library Board has only such powers as have been expressly delegated to it by statute and such powers as are necessarily implied from those so delegated. It will be noted from the foregoing statutes that Section 154-51, General Code, provides for the establishment of the State Library Board; that Section 154-52, General Code, directs the board to appoint a state librarian and defines his duties; that Section 154-53 places the state library under the control and management of the State Library Board, requires the board to adopt rules for the government of the library and authorizes it to establish such divisions and departments within the library as may be necessary, and requires that the board determine the number, classification and compensation of the

employees therein. An analysis of these sections indicates that unless the power to enter into a contract for the rental of books could be reasonably implied from the wording of Section 154-53, the board would be without authority to make such an agreement.

In vesting the control and management of the state library in the State Library Board the wording used in the first sentence of Section 154-53 authorizes a wide latitude of action on the part of said board. If this authorization were otherwise unqualified the board would have power to do any and all acts necessary to the conduct and furtherance of the operation and functioning of a public library within the limitations of the laws governing the conduct of public officials. Assuming the board possessed such unqualified authority, I would conclude that it might acquire books for the library by purchase, gift or rental as necessarily incident to the proper functioning thereof.

Our next inquiry must be whether or not the broad language of this sentence has been qualified to any extent. In studying Section 154-53, particularly the second sentence thereof, I am inclined to the view that the board is by inference denied the power to lease books for use in the State Library. The second sentence contemplates that the operation and management of the library shall be conducted in accordance with rules and regulations prescribed by the board and provides that the board shall make and publish rules and regulations as it may deem necessary "for the use and location of the books and other property thereof." I interpret this phrase to qualify the operational rules and regulations so as to apply only to books and property owned by the library. In the absence of a direct authorization to the State Library Board to rent books, coupled with regulatory authority over books or property of the library only, it is my opinion that the State Library Board would have no implied authority to enter into an agreement for the rental of books with a private agency.

Having concluded that the board would be without authority to rent books for use in the State Library, the question arises whether or not the facilities of the library might be used under an agreement with a private circulating library in which the library would act in the capacity of an agent of the private library in the rental of its books. As pointed out above, the State Library Board is a public body. By the terms of Section 154-51 it is a state agency within the department of education. As such agency of the State it is amenable to the limitations imposed by

Article VIII, Section 4 of the Constitution of Ohio. This constitutional provision reads as follows:

“The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever become a joint owner, or stockholder, in any company or association in this State, or elsewhere, formed for any purpose whatever.”

Article VIII, Section 6 of the Ohio Constitution contains a similar prohibition with respect to municipalities, and in applying it in the case of *Village of Brewster v. Hill*, 128 O. S. 343, 190 N. E. 766, the Supreme Court, in denying the right of the village to enter into an installment contract for the purchase of machinery where title to the machinery was to remain in the seller until paid for, said at page 352:

“The machinery after its installation was to be joined to the distribution system of the village, and thus form one complete system for the furnishing of electricity to the village and its inhabitants. While it is true that the net revenues derived from the joinder of the properties were not to be realized from general taxes, but from the income from the plant, it is also true that the village’s distribution system must originally have been raised by taxation. If such be a fact it follows that, by the contribution of the two properties, a part by the village and a part by the contractor, these properties were placed in a common pool from which the net earnings were to be paid to one member of the pool until its purchase price should be paid under the agreement. Let us assume that the village’s distribution system has a value of \$60,000, as indicated by counsel. Had the village advanced that amount in cash or credit, from which the net earnings of the joint enterprise would be first paid to the contractor in liquidation of his purchase, as stated by Johnson, J., on page 308 of his opinion in *State, ex rel., v. Cincinnati*, supra, it would be ‘in effect a lending of the city’s (village) credit in aid of the company’ (contractor). To the extent that the village devoted the whole of its own property to secure the contractor, to that extent did it loan its financial credit to and in aid of the contractor.”

Under the agreement between the State Library Board and the private circulating library in which the State Library would house and rent to the public books of the private library in which the State Library would in fact be acting as its agent we would have a stronger situation than that presented in the *Brewster* case of a joinder of public and private properties. Such joinder, and the resultant loaning of credit is expressly prohibited by Article VIII, Section 4 of the Ohio Constitution.

In conclusion, it is my opinion, therefore, that the State Library Board is without authority to contract with a private circulating library for the purpose of having such library place copies of its popular fiction books in the State Library, for the use of which the public would pay a daily rental fee.

Respectfully,

HERBERT S. DUFFY,
Attorney General.