

OPINION NO. 69-006

Syllabus:

Section 3313.39 of the Revised Code allows a local board of education to acquire land by eminent domain only for public school purposes and acquisition by eminent domain for any other purpose is not authorized.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, January 24, 1969

Before me is your predecessor's request for an opinion on the following question:

"Does the local board of education have the power of eminent domain in order to acquire property for library purposes?"

The purposes for which a board of education may acquire property by eminent domain are enumerated in Section 3313.39, Revised Code. The pertinent part of this statute provides that the power of eminent domain may be exercised:

"When it is necessary, in the opinion of any board of education, to procure or enlarge:
(A) any site for a building to be used for public school purposes whether as classroom, auditorium, or for technical training, administrative, storage, or other educational purposes; * * *"
(Emphasis added)

The intent of the General Assembly in promulgating this legislation was to empower a board of education with eminent domain when the land was needed "for public school purposes." This explicit language limits the remainder of the paragraph and makes it clear that any use of the land other than for public school purposes is not within the purview of the act. From the request submitted, it appears that the library in question would be a free public library and would be used for other than public school purposes.

The power of eminent domain is a powerful and encompassing privilege which is granted to the state and its particular subdivisions by the sovereign powers inherent in the state. Section 9, Article I of the Ohio Constitution provides the mode for eminent domain and only the legislature may exercise it or authorize eminent domain to take place. Blackman v. Cincinnati, 140 Ohio St. 25, 42 NE 2d 158 (1942).

It is well settled that statutes granting the power of eminent domain must be strictly construed. Ohio Power Co. v. Deist, 154 Ohio St. 473, 96 NE 2d 771 (1951).

Therefore, it is my opinion and you are hereby advised that Section 3313.39 of the Revised Code allows a local board of education to acquire land by eminent domain only for public school purposes and acquisition by eminent domain for any other purpose is not authorized.