

OPINION NO. 91-073**Syllabus:**

1. Pursuant to 3 Ohio Admin. Code 3375-2-02 and 3375-2-07, a local library is permitted to be a full voting member of only one area library service organization ("ALSO") or metropolitan library system ("METRO"). There are no restrictions on the number of associate memberships a library may have in such entities; however, an associate member is not permitted to be a voting member or to serve on the board of trustees.

2. Pursuant to 3 Ohio Admin. Code 3375-2-02 and 3375-2-07, a library that is physically located in the legal service area of one chartered library system, but is not a member of that system, is not permitted to be a full voting member of a contiguous chartered library system.

To: Richard Cheski, State Librarian, Columbus, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion concerning chartered library systems. Your specific questions are as follows:

1. May a participating local library in either an area library service organization (ALSO) or a metropolitan library system (METRO) as defined in the Ohio Revised Code 3375.70 and 3375.90 and State Library Board Rules 3375-2-02(B)(8) and 3375-2-07(B)(8) respectively be a full voting member of more than one chartered library system with eligibility to serve and vote on the [system's] Board?
2. May a library physically located in the legal service area of one chartered library system, but not a member of that system, be eligible as a participating library with full voting [privileges] in a contiguous chartered system?

Statutes Governing Chartered Library Systems Do Not Set Forth Boundary or Membership Limitations

There are two types of chartered library systems in Ohio – the area library service organization ("ALSO"), governed by R.C. 3375.70-.73, and the metropolitan library system ("METRO"), governed by R.C. 3375.90-.93. An ALSO may be formed by public libraries in two or more counties. R.C. 3375.70. The libraries must obtain approval of their boards of trustees. R.C. 3375.70(A). Then they submit to the State Library Board an application and a plan of service "describing the specific purposes for which the organization is formed and the means by which such purposes are to be accomplished." R.C. 3375.70(B). The ALSO becomes operable upon approval of the application by the State Library Board and the making of a grant or grants for the organization. R.C. 3375.70(C).

A METRO may be formed by any four or more libraries within a metropolitan area with a population of two hundred fifty thousand or more. R.C. 3375.90. At least two of the following types of libraries must be included: academic, public, special, and school. R.C. 3375.90(A). The governing bodies of the participating libraries must approve an agreement for the formation of a METRO, and must submit to the State Library Board the agreement, an application, and a plan of service. R.C. 3375.90(A), (B). The METRO becomes operable upon approval of the application by the State Library Board and the making by that Board, or some other authority or authorities, of a grant or grants for the system. R.C. 3375.90(C).

The statutory provisions governing an ALSO and a METRO are similar. Both types of chartered regional library systems are authorized to receive grants and control and expend moneys, R.C. 3375.71(B), (C); R.C. 3375.91(B), (C), to acquire and hold real and personal property, R.C. 3375.71(E)-(G); R.C. 3375.91(E)-(G), and to enter into contracts with libraries and other entities, R.C. 3375.71(J); R.C. 3375.91(J). An ALSO or a METRO may be dissolved upon a two-thirds vote of its members. R.C. 3375.73; R.C. 3375.93. A participating library may withdraw from an ALSO or a METRO on July first of any year, following eighteen months' notice of the intent to withdraw. When a withdrawal occurs, or another library joins, an amended plan must be submitted to the State Library Board. *Id.*

Your questions pertain to the status of particular libraries as members of a regional library system and to the voting privileges of those libraries. The rights of a library to participate in management of a regional library system become operative in the formation and dissolution of the system, and also in the operation of the system by its board of trustees.

Before an ALSO or a METRO can exist, the libraries that wish to be part of the system must, through their respective boards of trustees, approve the formation of the system. R.C. 3375.70(A); R.C. 3375.90(A). The application for formation is submitted to the State Library Board and, upon approval and funding, the system becomes operable. R.C. 3375.70(B), (C); R.C. 3375.90(B), (C). It is apparent that, in forming an ALSO or METRO, the participating libraries will confer and debate the contents of the application and the plan. The plan must be amended whenever a participating library withdraws from the system or another library joins the system. R.C. 3375.73; R.C. 3375.93. The plan must state the means by which participating libraries may record their approval or disapproval of the dissolution of the system. A two-thirds vote of the members is necessary to dissolve the organization. *Id.* It appears that every library that participated in forming the system, or subsequently joined through amendment of the plan, is a voting member for purposes of dissolving the system.

Apart from formation and dissolution of the system, the governance of the system is undertaken by its board of trustees. In the case of an ALSO, the board of trustees consists of at least seven and no more than fifteen persons who are selected "from among the members of the boards of trustees of the participating public libraries." R.C. 3375.70. In the case of a METRO, the board of trustees consists of at least seven and no more than fifteen persons who are selected "from among the representatives of the participating libraries, duly appointed as such representatives by the governing bodies of the participating libraries." R.C. 3375.90. The number of trustees, the manner of selection, the terms of office, and the provisions for filling vacancies are determined by agreement of the governing bodies of the participating libraries and are set forth in the application submitted to the State Library Board. R.C. 3375.70; R.C. 3375.90.

The libraries themselves do not sit on the board of trustees of an ALSO or a METRO. Rather, a participating library is represented on the board of trustees of an ALSO or a METRO to the extent the library's trustees or representatives are selected to the board of trustees of the ALSO or METRO in accordance with the application submitted to the State Library Board.

The board of trustees of each chartered library system is authorized to develop plans of service and operation for the system and submit them to the State Library Board, R.C. 3375.71(A); R.C. 3375.91(A), and to make and publish bylaws and rules for its operation and for the government of the system, R.C. 3375.71(D); R.C. 3375.91(D). Thus, the board of trustees may modify the plan of service that was submitted by the initial participating members of a chartered library system.

It appears that, for purposes of your questions, a "full voting member" of a chartered library system is a library that has authority to participate in the formation or dissolution of the system and that is eligible to have its trustees or representatives serve as members of the board of trustees of the chartered library system. The statutes governing chartered regional library systems do not directly address the questions that you have raised. That is, the statutes do not specify: (1) whether a local library that participates in an ALSO or a METRO may be a full voting member of more than one chartered library system, with eligibility to serve and vote on the system's board; or (2) whether a library that is located in the service area of one chartered library system, but is not a member of that system, may be eligible as a participating library with full voting privileges in a contiguous chartered system.

Rules Adopted by the State Library Board Set Forth Boundary and Membership Limitations for Chartered Library Systems

The State Library Board consists of five members appointed by the State Board of Education. R.C. 3375.01. The State Library Board has various functions

relating to the State Library of Ohio and the coordination of library services throughout the state, including the duty of administering "such funds as the general assembly may make available to it for the improvement of public library services, interlibrary cooperation, or for other library purposes." R.C. 3375.01(C). The State Library Board is authorized to adopt rules to carry out its functions. *See* R.C. 3375.01(K); R.C. 3375.82.¹

The State Library Board is responsible for approving or disapproving applications for the formation of an ALSO or a METRO, *see* R.C. 3375.70(B), (C); R.C. 3375.90(B), (C), and has adopted rules for carrying out those functions, *see* 3 Ohio Admin. Code 3375-2-02 (ALSO); 3 Ohio Admin. Code 3375-2-07 (METRO); *see also* note 1, *supra*. The rules governing the two types of regional library systems are similar in many respects. They contain the following provisions relating to the approval of ALSO or METRO plans:

(A) In carrying out its responsibilities under Chapter 3375 of the Revised Code and in approving [ALSO/METRO] plans, the state library board shall keep in mind the overall and long-range needs for assuring library services to the residents of Ohio and will base its decisions and actions upon these needs.

(B) Planning for the [ALSO/METRO].

The state library board will grant a charter to [an ALSO/a METRO] and declare its eligibility for subsidy only after the approval of the submitted plan and demonstration that the [ALSO/METRO] board has been organized in accordance with the statutes and this rule....

....

(2) The plan shall demonstrate that the proposed boundaries do not overlap the boundaries of an existing state library chartered library system.

....

(8) Membership: Participating libraries may be full voting members of only one existing state library chartered library system. The plan may include a separate category of membership for associate members.

(9) The [ALSO/METRO] plan shall be based upon the following principles and [must/shall] clearly state the application of each principle proposed:

....

(c) The plan provides for the addition and withdrawal of member libraries, and definition and change of boundaries.

3 Ohio Admin. Code 3375-2-02; 3 Ohio Admin. Code 3375-2-07.

These rules address the matters with which you are concerned. The rules specify that the boundaries of two chartered library systems may not overlap. It follows that any particular geographical area may be located within the boundaries of only a single chartered library system. The rules also specify that a library may

¹ R.C. 3375.01(K) provides general authority for the State Library Board, in accordance with R.C. Chapter 119, to "adopt such rules as are necessary for the carrying out of any function imposed on it by law." R.C. 3375.70(B) states that the State Library Board shall approve or disapprove an application for the formation of an ALSO "in accordance with rules and regulations adopted under section 3375.82 of the Revised Code." R.C. 3375.82 requires the State Library Board to administer all grants and to provide for the expenditure of all funds appropriated for the essential library services support program. R.C. 3375.82 also provides that grants must be made under rules adopted by the State Library Board and sets forth guidelines that the rules should follow. Thus, the authority of the State Library Board to adopt rules relating to the formation and funding of an ALSO is derived from R.C. 3375.01(K), as well as from R.C. 3375.82.

be a full voting member of only one chartered library system. The rules allow for associate members; however, the contrast between the "associate member" language and the provision that a library may be a full voting member of only one chartered library system makes it clear that an associate member is not a full voting member.

On the basis of 3 Ohio Admin. Code 3375-2-02 and 3375-2-07, your first question must be answered in the negative. A library is not permitted to be a full voting member of more than one chartered library system. A library may be a full voting member of one system and an associate member of one or more other systems. The rule does not specify the role that an associate member may take in the operations of a chartered library system, but it is clear that an associate member is not permitted to be a voting member of the system or to serve on the system's board of trustees.

Because of these restrictions upon membership, it appears that your second question must also be answered in the negative. Neither the statutes nor the rules specify that a chartered library system must have boundaries that encompass the participating members of the system. That result is, however, clearly implied by the language in the rules requiring that the systems have boundaries that do not overlap. 3 Ohio Admin. Code 3375-2-02(B)(2); 3 Ohio Admin. Code 3375-2-07(B)(2). If a system is required to have boundaries, it follows that its members should be located within those boundaries.

You have described a situation in which a library is physically located in the legal service area of a chartered library system, but is not a member of that system. It does not appear that such a library is permitted to be a participating library with full voting privileges in a second system because of the clear implication that a library must be located within the boundaries of the system in which it participates as a full voting member. 3 Ohio Admin. Code 3375-2-02(B)(9)(c) and 3375-2-07(B)(9)(c) require that a plan provide for the addition and withdrawal of member libraries, and definition and change of boundaries. In a particular situation, it might be possible to change the boundaries of a chartered library system so that territory is transferred to a contiguous system, thereby permitting a library whose territory is so transferred to become part of the system to which the territory has been transferred. Existing rules do not, however, permit a library to be a full voting member of a chartered library system other than the one within which it is physically located.

The answers to both of your questions are based upon rules adopted by the State Library Board in accordance with R.C. Chapter 119. *See* R.C. 3375.01(K). Administrative rules enacted pursuant to a specific grant of legislative authority have the force and effect of law. *See, e.g., Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph 1); 1990 Op. Att'y Gen. No. 90-056; 1985 Op. Att'y Gen. No. 85-095. They will be upheld as long as they are reasonable and not in clear conflict with statutory provisions. *See, e.g., Youngstown Sheet & Tube Co. v. Lindley*, 38 Ohio St. 3d 232, 527 N.E.2d 828 (1988); Op. No. 85-095. The rules discussed in this opinion are, of course, subject to change by the State Library Board, pursuant to the provisions set forth in R.C. Chapter 119, if the Board, in its discretion, should choose to implement a different regulatory scheme. *See* R.C. 3375.01(K); *see also* 1989 Op. Att'y Gen. No. 89-008; 1986 Op. Att'y Gen. No. 86-076 (an administrative body may exercise its discretion in adopting any reasonable interpretation of a statute that it has the duty of implementing); 1984 Op. Att'y Gen. No. 84-080 at 2-269 n. 5.

Conclusion

On the basis of the reasoning set forth above, it is my opinion, and you are hereby advised, as follows:

1. Pursuant to 3 Ohio Admin. Code 3375-2-02 and 3375-2-07, a local library is permitted to be a full voting member of only one area library service organization ("ALSO") or metropolitan library system ("METRO"). There are no restrictions on the number of associate memberships a library may have in such entities; however, an associate member is not permitted to be a voting member or to serve on the board of trustees.

2. Pursuant to 3 Ohio Admin. Code 3375-2-02 and 3375-2-07, a library that is physically located in the legal service area of one chartered library system, but is not a member of that system, is not permitted to be a full voting member of a contiguous chartered library system.