

2038

EMPLOYEES OF A BOARD OF TRUSTEES OF A COUNTY LIBRARY DISTRICT ARE NOT ENTITLED TO SICK LEAVE—
§§3375.19, 3375.20, 143.29, R.C.

SYLLABUS:

Employees of a board of trustees of a county library district created pursuant to Section 3375.19 or Section 3375.20, Revised Code, are not employees entitled to sick leave under Section 143.29, Revised Code.

Columbus, Ohio, March 8, 1961

Hon. George E. Martin, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The chairman of the board of trustees of the Portage County District Library has requested an opinion concerning the eligibility of the employees of the Portage County District Library for sick leave in accordance with section 143.29 of the Revised Code. These employees contribute to the Public Employees Retirement System.

“Last year the state of Ohio contributed Three Thousand dollars to the operation of this library and approximately Sixty-three Thousand dollars from intangible tax made up the balance of their income.

“Section 3375.40 of the Revised Code, paragraphs (G) and (H) gives the board of trustees the authority to hire employees and make rules and regulations concerning the operation of the library.

“We are informed that the manual put out by the State Library, called the Library Trustees Manual, states that the board of trustees may follow the state statute with regard to sick leave but that it is not mandatory.

Therefore, we would like you to answer the following question:

“Is it mandatory that employees of a board of trustees of a county library be granted sick leave in accordance with section 143.29 of the Ohio Revised Code?”

Section 143.29, Revised Code, to which you refer, provides:

“Each full-time employee, whose salary or wage is paid in whole or in part by the state, and each full-time employee in the various offices of the county service and municipal service, and each full-time employee of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth work days with pay. * * *”

Employees of a county library district are obviously not in the service of a municipal corporation, or of a board of education. The question, therefore, is whether such employees are in the *county* service or whether their salaries are paid in whole or in part by the state within the purview of the section. To ascertain the answers to these questions, it appears advisable to review the statutes pertaining to such districts.

Section 3375.19, Revised Code, provides for the creation of a county library district composed of all the local, exempted village, and city school districts in the county which are not within the territorial boundaries of an existing township, school district, municipal, county district, or county free public library. The question of creation of such a district is submitted to the voters of the proposed district pursuant to resolution of the board of county commissioners.

Section 3375.20, Revised Code, also provides a method for creation of a county library district. In this case, the district is created by agreement of the trustees of existing public libraries and of the taxing authorities of the subdivisions concerned.

When a county library district is established the free public library of the district is under the control and management of a seven member board of library trustees who are appointed by the judges of the court of common pleas and by the board of county commissioners. (Section 3375.22, Revised Code.)

A board of trustees of a county library district is a body politic and corporate. In this regard, Section 3375.33, Revised Code, reads:

“The boards of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375. 15, 3375.22, and 3375.30 of the Revised Code are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.” Emphasis added)

Referring to Section 3375.33, *supra*, it is stated in the headnotes of the case of *Miller v. Akron Public Library*, 60 Ohio Law Abs., 364 CP):

“1. Under this section the legislature made all the various library boards politic and corporate, and as such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law, thus making them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic:.”

Speaking specifically of a county library district, it was concluded in Opinion No. 2994, Opinions of the Attorney General for 1953, page 387, that such a district is a “political subdivision” under the provision of the motor vehicle financial responsibility law, reading “any motor vehicle owned by the United States, this state, or any political subdivision of this state or any municipality therein.” (Section 6298-91, General Code, Section 4509.71, Revised Code.)

Since the county library district is operated exclusively by the board of trustees, and since the board is designated a body politic and corporate by statute, and in view of *Miller v. Akron* and Opinion No. 2994, *supra*, I am of the opinion that a board of trustees of a county library district must be considered an entity separate and apart from the county for the purposes of Section 143.29, *supra*; and in reaching this conclusion, I find that I am in accord with the reasoning of one of my predecessors as stated in Opinion No. 2077, Opinions of the Attorney General for 1950, page 535. That opinion dealt with the question whether employees of a school library district were entitled to sick leave pursuant to the then existing Section 486-17c, General Code now Section 143.29, Revised Code), and my predecessor concluded:

“1. Employees of a library created under the provisions of Section 7635, General Code, 115 O.L., part 2, page 278, are not employees entitled to sick leave pursuant to Section 486-17c, General Code.

“2. The board of library trustees has the power pursuant to Section 7630, paragraphs 7 and 8, of the General Code, to make rules and regulations governing sick leave benefits for its employees.”

At page 540 of said Opinion No. 2077, it is stated :

“It may be seen from the above quoted statutes that such a library is entirely separate and has no connection with the county. It is not a county function but separate from the county.

“It is therefore my opinion that an employe of a library created pursuant to Section 7635, General Code, 115 O.L., pt. 2, page 279, is not a full-time employe in the county service, as that term is used in Section 486-17, General Code.

“The next question is whether they are employes of a board of education. It is my opinion that they are not.”

Having concluded that the employees in question are not in the service of the county, the question remains whether their salaries are paid in whole or in part by the state.

Funds for the operation of a county library district are provided by a tax on the taxable property of the district. In addition, the district may receive some aid from the state. Amended Substitute House Bill No. 831 of the 103rd General Assembly, the general appropriations act, appropriated \$543,600 to the state library board to be used for library aid. The board administers this fund and allocates it among libraries in the various counties of the state. The amount allocated is for general use ; and, although possibly some part of it might be used for salaries, such would be at most an indirect payment to the employees concerned, and not, in my opinion, a payment of salary by the state within the purview of Section 143.29, Revised Code. (See Opinion No. 1302, Opinions of the Attorney General for 1960, issued on April 25, 1960.)

Answering your specific question, therefore, it is my opinion and you are advised that employees of a board of trustees of a county library district created pursuant to Section 3375.19 or Section 3375.20, Revised Code, are not employees entitled to sick leave under section 143.29, Revised Code.

Respectfully,
MARK McELROY
Attorney General