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LIBRARIAN SERVICES:

1. PAYMENT OF COMPENSATION FOR ASSISTANTS TO COUNTY LAW LIBRARIAN—NOT AUTHORIZED BY SECTION 3056-4 G. C.
2. PAYMENT IN REASONABLE AMOUNTS, COMPENSATION FOR REASONABLE SERVICES, NOT LIBRARIAN SERVICES TO ASSISTANTS IS AUTHORIZED BY SECTION 3056-4 G. C.
3. TYPING, FILING AND JANITORIAL SERVICES DO NOT ORDINARILY CONSTITUTE LIBRARIAN SERVICES.

SYLLABUS:

1. The payment of compensation for assistants to a county law librarian for librarian services rendered by them is not authorized by the provisions of Section 3056-4, General Code.
2. The payment, in reasonable amounts, of compensation for assistants to a county law librarian for reasonable services, other than librarian services, rendered by them is authorized by the provisions of Section 3056-4, General Code.
3. Typing, filing and janitorial services performed by assistants to a county law librarian do not ordinarily constitute librarian services.

Columbus, Ohio, July 20, 1951

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

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

"The Law Library Association of Akron has employed, pursuant to Section 3054 of the General Code of Ohio, a Law Librarian. The duties of maintaining and operating the Library are greater than one person can perform. Can such a Law Library Association under Section 3056-4 G. C., employ assistants to the librarian, when such person's duties are to assist the Law Librarian in the maintaining of the Library Association in its services, by performing the following duties: typing, filing cards, correspondence, loose-leaf services, checking in materials, accessioning books received, maintaining business records, charging and discharging books loaned, getting books from shelves and shelving books, and such janitorial services as dusting and cleaning books, materials, desks, etc.

"If you will favor us with an opinion on this question, we will greatly appreciate it."

The employment of a librarian of a county law library is provided for in Section 3054, General Code, which reads as follows:

"The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the trustees of such library association of a person to act as librarian thereof, shall fix his compensation, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation so to be paid such librarian shall not exceed the sum of five hundred dollars per annum."

Section 3055, General Code, requires that the county commissioners of a county shall provide certain facilities, including rooms and equipment, for the use of such law library.

Section 3056, General Code, provides generally for the allowance of

funds to such law library from fines imposed by municipal and common pleas courts.

Sections 3056-1, 3056-2 and 3056-3, General Code, provide for alternative sources of revenue for the use of such law library, such sources being fines, penalties, etc., collected by justices of the peace and certain courts of record and from fines, penalties, etc., collected in cases involving violations of the liquor control act.

The use of all funds so received by the law library from these sources is governed by the provisions of Section 3056-4, General Code. This section reads as follows:

“The money so paid under the foregoing sections of the statute shall be expended in the purchase of law books and in maintenance of such law library associations.”

I deem the question here involved to be whether the language “in maintenance of such law library associations,” is such as to authorize the expenditure of such revenues of a law library association for the compensation of assistants to the librarian appointed under the provisions of Section 3054, General Code. More specifically we are concerned with the meaning of the word “maintenance” as used in this section.

The word “maintain” is variously defined in Webster’s New International Dictionary. It is defined in one sense as follows:

“To hold or keep in any particular state or condition, esp., in a state of efficiency or validity; to support, sustain or uphold * * * .”

In another sense the word is defined by this same work as:

“To bear the expense of * * * .”

It is quite obvious if the word “maintain,” as used in Section 3056-4, General Code, is deemed to be used in the latter sense, it might readily be concluded that the expense of employing an assistant to the librarian, being one which a law library might properly incur, could be met by the expenditure of funds under the provisions of this section.

If, however, the word “maintain” is deemed to be used in the former sense, then it is apparent that the use of the funds here involved for the payment of compensation to an assistant to the librarian, not being for

the purpose of preserving or keeping the library in its current state or condition, would not be authorized.

In the interpretation of the language used in Section 3056-4, General Code, it is clear, I think, that this section must be considered in relation to Section 3054, General Code. In this connection it will be noted that Section 3054, General Code, provides for the "appointment by the trustees of such library association of a person to act as librarian thereof." (Emphasis added.) It provides also that the judge of the common pleas court of the county "shall fix *his* compensation, which shall be paid from the county treasury." (Emphasis added.)

This language clearly contemplates the appointment and compensation of only one person to perform librarian service in such library and for the compensation of that person from county funds. Accordingly, considering these two sections, each in relation to the other, it must be concluded that where one section expressly provides in clear and unmistakable terms for the employment and compensation from county funds of an individual to perform librarian service, and where the other provides for the expenditure of funds from other sources merely in the maintenance of the library association, it cannot be supposed to be the intent of the General Assembly, by the somewhat ambiguous language of Section 3056-4, General Code, to authorize the expenditure of funds from such other sources to provide compensation for a service for which express provision is elsewhere made.

In your inquiry you have indicated that the assistants whom the law library association of Akron contemplates employing will be engaged in "typing, filing cards, correspondence, looseleaf services, checking in material, accessioning books received, maintaining business records, charging and discharging books loaned, getting books from shelves and shelving books, and such janitorial services as dusting and cleaning books, materials, desks, etc."

The word "librarian" is defined in Webster's New International Dictionary as :

"One who has the care or charge of a library."

I think it is obvious that if all the duties which you have listed in your inquiry are performed by an assistant to the librarian of a county law library, such assistant would be primarily engaged in the performance

of the duties usually devolving upon a person having "the care or charge of a library." An exception could probably be made in the case of typing, filing and janitorial services, but it seems clear to me that these duties, if combined in one position with the other duties you have listed, would be merely incidental to them.

A question somewhat similar to that here presented was considered by one of my predecessors in Opinion No. 1242, Opinions of the Attorney General for 1946, dated October 15, 1946. The syllabus of the opinion reads in part as follows :

"* * * the trustees of a law library association do not have authority to provide for additional compensation to such librarian from funds accruing to such association under the provisions of Sections 3056, 3056-1, 3056-2, and 3056-3, General Code.

If the funds so accruing to the library association cannot be used to increase the compensation received by the librarian appointed under the provisions of Section 3054, General Code, it would appear by analogy that such funds could not be used to employ assistants to perform the same general duties as devolve on such librarian.

In *Van Wert County Law Library Assn. v. Stuckey*, 42 Ohio Opinions, 1, a declaratory judgment was sought in which an interpretation of the several statutes relative to county law libraries was involved. In the opinion in that case, in considering the uses for which law library funds might properly be expended, the court said:

"The law library association may expend funds received under Sections 3056 to 3056-3 for purchase of books; repair of books; *a reasonable amount to any person acting as custodian or performing other reasonable duties that are not within the usual duties of librarian*; the reasonable purchase of furniture, such as tables and chairs for the use of persons using the books; and any other reasonable expenses necessary for the maintenance of the law library such as purchase of library cards, catalogs, indexes, etc.

"However, a law library association may not use funds collected under Sections 3056 to 3056-3 for the purchase of book-cases, light fixtures, rent or heat, as Section 3055 provides that the county commissioners shall furnish the above.

"The salary of the law librarian may not be paid from funds received by the law library association under Sections 3056 to 3056-3, as Section 3054 provides that the salary of the law librarian shall be paid by the county commissioners and provides the maximum amount payable.

“The law library association may purchase bookcases or light fixtures, expend funds for rent, light and heat, or for additional salary to the law librarian from funds that it may receive from a private source. If the law library association receives private donations, in respect to such monies it is like any other private association and may use such private funds for any proper purpose of the association, even though it is prohibited by law from expending funds received from a public source for such purposes. * * *” (Emphasis added.)

It is my belief that this quotation correctly states the law applicable to the situation at hand. You will particularly note that funds accruing to the library association under the provisions of Sections 3056 to 3056-3, General Code, may properly be expended in reasonable amounts for the compensation of persons employed to perform reasonable duties not included within the usual duties of a librarian. As I have already indicated, I do not consider that such duties as typing, filing and janitorial service would be so included.

In this statement of the law in the Stuckey case there is the clear implication that expenditure of funds accruing under the provisions of Sections 3056 to 3056-3, General Code, is not authorized to provide for services which are within the usual duties of a librarian.

I agree with the reasoning and the conclusions above quoted, both in the 1946 opinion of my predecessor and in the Stuckey case, and for these reasons, and for the reasons hereinbefore stated, I conclude that :

1. The payment of compensation for assistants to a county law librarian for librarian services rendered by them is not authorized by the provisions of Section 3056-4, General Code.

2. The payment, in reasonable amounts, of compensation for assistants to a county law librarian for reasonable services, other than librarian services, rendered by them is authorized by the provisions of Section 3056-4, General Code.

3. Typing, filing and janitorial services performed by assistants to a county law librarian do not ordinarily constitute librarian services.

Respectfully,

C. WILLIAM O'NEILL

Attorney General