

OPINION NO. 95-017**Syllabus:**

A law library association that provides the public officials specified in R.C. 3375.48, including the county prosecuting attorney, access free of charge to the county law library and its books, has no duty to provide the prosecuting attorney a computerized legal research service free of charge. (1973 Op. Att'y Gen. No. 73-071, overruled in part).

To: Robert P. DeSanto, Ashland County Prosecuting Attorney, Ashland, Ohio
By: Betty D. Montgomery, Attorney General, August 17, 1995

You have requested an opinion on the following question: "Does a County Law Library Association have an obligation to provide computerized legal research services such as Westlaw or Lexis free of charge to the Office of Prosecuting Attorney pursuant to ORC Section 3375.48, et. seq.?" In order to answer your question, it is first necessary to review the nature of county law library associations. As discussed in 1992 Op. Att'y Gen. No. 92-012 at 2-38:

The current statutory scheme does not prescribe the manner in which law library associations are to be organized. Rather, it simply presumes their existence.

It has, however, been established that a county law library association is a *private organization* that may be organized either as a private association or as a nonprofit corporation under R.C. 1713.28. (Emphasis added; various citations omitted.)

Because county law library associations are private organizations, the purposes, management, and administration of each association may vary. See 1986 Op. Att'y Gen. No. 86-102.

Funding of Law Library Associations

Law library associations receive funding from various sources. The source of the funds determines their permitted uses. See 1988 Op. Att'y Gen. No. 88-104. Pursuant to the scheme established by R.C. 3375.50-.53, law library associations may receive a portion of the fines, penalties, and forfeited bail collected from the various courts throughout the state. The monies so received may be used for those purposes enumerated in R.C. 3375.54. Op. No. 92-012; Op. No. 88-104 (syllabus, paragraph two); Op. No. 86-102. A law library association also may receive money from private sources, which may be used for any proper purposes of the library association. See *Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 94 N.E.2d 32 (C.P. Van Wert County 1949). See generally Op. No. 86-102 (syllabus, paragraph two) (discussing possible restrictions on law library association's use of money from private sources).

Particularly pertinent to your question is R.C. 3375.48, which states in part:

The judges of the county [*sic*] of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, 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 board of trustees of such association of a person to act as librarian thereof, ... shall fix the compensation of such [person], which shall be paid from the county treasury. (Emphasis added.)

In addition, R.C. 3375.49 requires a county to provide suitable rooms, sufficient and suitable bookcases, heat, and light at county expense for the use of "the law library referred to in [R.C. 3375.48]," *i.e.*, a library that provides admission to the library and use of its books free of charge to the public officers named therein. *See also* R.C. 3375.55 (free access granted to county court judges and to township and municipal officers). As stated in *State ex rel. Akron Law Library Ass'n v. Weil*, 16 Ohio App. 2d 151, 154, 242 N.E.2d 664, 666 (Summit County 1968), "[t]he state of Ohio, by legislation, provided a means of supporting county law libraries for the free use of such facilities by the judges and other public officials."

Accordingly, if a law library association permits county officers, among others, admission to the library and "the use of its books" without charge, the compensation of the law librarian is paid from the county treasury in accordance with R.C. 3375.48. R.C. 3375.49 also entitles such a law library association to be provided, at county expense, "suitable rooms, sufficient and appropriate bookcases, and heating and lighting for such county law library rooms." Op. No. 88-104 at 2-512. *See Akron Law Library Ass'n v. Morgan*, 13 Ohio App. 3d 119, 468 N.E.2d 384 (Summit County 1983) (R.C. 3375.49 imposes a mandatory duty on the county to provide suitable rooms for the county law library).

Access by County Prosecuting Attorney to County Law Library

The statutory scheme governing access to a county law library was discussed generally in 1989 Op. Att'y Gen. No. 89-070 at 2-322, as follows:

The statutory scheme created by R.C. 3375.48 through R.C. 3375.56 provides public funds for specific purposes to those law libraries which grant free access to designated public officials. *See* R.C. 3375.48 (county treasury to pay librarian's and assistants' salaries in counties where free access is given to members of general assembly, county officers, judges of the several courts in the county); R.C. 3375.49 (county to provide rooms, bookcases, heat and light in county courthouse for use of the law library); R.C. 3375.55 (judges of the county court, officers of townships and municipalities in the county to have free access to library receiving moneys under R.C. 3375.50-.53). Thus, when a county law library association receives public funds, the use of the public funds and the access of public officials to the library is governed by statute. (Citation omitted.)

Access to the county law library by the county prosecuting attorney, as a county officer, is, therefore, governed by statute, *i.e.*, R.C. 3375.48. It is thus necessary to determine whether the portion of R.C. 3375.48 specifying that the public officials named therein be given "admission to [the] library and the use of its books free of charge" includes the provision of computerized legal research services to such officers free of charge.

The word "books," as used in R.C. 3375.48, has not been interpreted by the courts or by prior opinions of the Attorney General. As noted in your opinion request, however, 1969 Op. Att'y Gen. No. 69-082 considered whether R.C. 3375.54, governing the permissible uses of funds distributed to a law library association under R.C. 3375.50-.53, permitted the association to purchase a computer console as a means of access to a system of computerized legal research. At the time Op. No. 69-082 was issued, R.C. 3375.54 read as follows: "The money paid to the board of trustees of a law library association under [R.C. 3375.50-.53] shall be expended in the purchase of lawbooks and in maintenance of such law library association." 1953 Recodification of Revised Code, vol. 3, Title 33, p. 244. In considering whether R.C. 3375.54 permitted the proposed expenditure, Op. No. 69-082 reasoned as follows:

Although a computerized legal research system is not technically a law book, it serves precisely the same purpose. Both are means of legal research; both provide access to the law. The system of computerized legal research is merely a technological improvement over law books....

....

A system of computerized legal research, while a means of legal research similar to law books, also provides a service similar to library cards, catalogs, and indexes. It operates as a[n] index in that it furnishes citations to cases and statutes. Such a system is reasonable to maintaining a modern up-to-date law library. It would thus be authorized as a reasonable expense necessary for the maintenance of the law library.

Id. at 2-177 to 2-178.¹ The opinion thus concluded, in part, that because R.C. 3375.54 permitted the funds described to be used to purchase lawbooks, the purchase of a computer console for access to a legal research system, serving the same purpose as "lawbooks," was also a permissible use of such funds.²

Since the issuance of Op. No. 69-082, however, the statutory scheme governing law library associations, including R.C. 3375.54, has been significantly amended. It is clear that

¹ R.C. 3375.54 was subsequently amended to its current form in 1979-1980 Ohio Laws, Part II, 3030 (Am. Sub. H.B. 559, eff. Jan. 15, 1981).

² 1973 Op. Att'y Gen. No. 73-071 concluded that R.C. 3375.54 did not permit the expenditure of funds distributed to a law library association under R.C. 3375.50-.53 for the purchase or lease of videotape equipment because such equipment could not be classified as a "lawbook." Op. No. 73-071 at 2-263 distinguished its conclusion from that reached in 1969 Op. Att'y Gen. No. 69-082 as follows: "While a computer console is not a book either, it provides direct access to the contents of lawbooks.... I can see no justification for further expanding the definition of the term to include materials which may provide instruction in legal research, or supplements to such research, but do not actually record statutes or decisions." Op. No. 73-071 concluded in the syllabus: "The board of trustees of a county law library association has no authority, under R.C. 3375.54, to purchase or lease videotape equipment for the viewing of educational materials and use in the trial of cases." Based upon the current language of R.C. 3375.54 permitting the purchase, lease, or rental of videotape materials and equipment, 1973 Op. Att'y Gen. No. 73-071 is hereby overruled to the extent it pertained to the purchase or lease of such equipment to be used for library purposes.

a computer console that provides access to a system of legal research is not included in the term "lawbooks," as used in R.C. 3375.54, which currently reads as follows:

The money that is paid to the board of trustees of a law library association under [R.C. 3375.50-.53] shall be expended in the support and operation of the law library association and in the purchase, lease, or rental of *lawbooks*, a *computer communications console that is a means of access to a system of computerized legal research*, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and other services, materials, and equipment that provide legal information or facilitate legal research. (Emphasis added.)

R.C. 3375.54 separately lists lawbooks and computer communications consoles for computerized legal research as separate items for which moneys distributed under R.C. 3375.50-.53 may be used. R.C. 3375.54 also lists separately "services, materials, and equipment that provide legal information or facilitate legal research," which arguably would include access to a computerized legal research system like Westlaw or Lexis. R.C. 3375.48, however, continues to specify only the library itself and its "books" as items to which a law library association must provide access free of charge to certain public officials. Just as the term "lawbooks," as used in R.C. 3375.54, does not include a computer console for access to a system of legal research,³ neither does the term "books," as used in R.C. 3375.48, include either a computer for access to a legal research service or access to a computerized legal research service. Rather, had the General Assembly intended that a law library association provide access free of charge not only to the books of the county law library, but to all equipment and services that the association may acquire under R.C. 3375.54, including a computerized legal research service, it could easily have included such language in R.C. 3375.48.⁴ See generally *Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 158 N.E. 81 (1927) (the General Assembly's use of different language in two statutes indicates that different results were intended); *Swetland v. Miles*, 101 Ohio St. 501, 130 N.E. 22 (1920) (where the General Assembly has used certain language in one statute and not in another, it did not intend such language to be read into the statute in which it was not used); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Thus, although R.C. 3375.54 now permits a law library association to use funds distributed to it under R.C. 3375.50-.53 for the purchase, lease, or

³ Based upon the amendment of R.C. 3375.54 since the issuance of 1969 Op. Att'y Gen. No. 69-082, the reasoning of that opinion is no longer valid. The conclusion reached in Op. No. 69-082, that R.C. 3375.54 permits the expenditure of moneys distributed under R.C. 3375.50-.53 for the purchase of a computer communications console for access to a system of computerized legal research, remains valid, however, in light of the current wording of R.C. 3375.54, which expressly permits such a purchase.

⁴ It is interesting to note that when the General Assembly amended R.C. 3375.54 in Am. Sub. H.B. 559 to include the phrase "a computer communications console that is a means of access to a system of computerized legal research ... and other services, materials, and equipment that provide legal information or facilitate legal research," it similarly amended R.C. 3375.49 to exempt such equipment from taxation under specified circumstances. R.C. 3375.48 was not, however, amended to include the free use of the additional equipment, materials, and services that were added to R.C. 3375.54 by Am. Sub. H.B. 559.

rental of "a computer communications console that is a means of access to a system of computerized legal research" and the additional equipment, materials, and services named therein, R.C. 3375.48 does not make the use of such additional equipment, materials, and services by county officers free of charge a condition for the law library association's receipt of public funds.

Conclusion

It is, therefore, my opinion, and you are hereby advised that, a law library association that provides the public officials specified in R.C. 3375.48, including the county prosecuting attorney, access free of charge to the county law library and its books, has no duty to provide the prosecuting attorney a computerized legal research service free of charge. (1973 Op. Att'y Gen. No. 73-071, overruled in part).