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LIBRARY TRUSTEES MAY PURCHASE KITCHEN EQUIPMENT FOR SERVING OF MEALS TO EMPLOYEES WHERE THERE ARE NO OTHER EATING FACILITIES AVAILABLE TO SUCH EMPLOYEES. § 3375.40, R.C. (B).

SYLLABUS:

Under division (B) of Section 3375.40, Revised Code, a board of library trustees may purchase kitchen units for the preparation and serving of meals to employees during working hours where such action is necessary for the efficient operation of the library, there being no other convenient eating facilities available to such employees.

Columbus, Ohio, December 22, 1961

Hon. Paul R. Young, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have been requested by the Board of Trustees of the Dayton and Montgomery County Public Library to obtain your opinion on whether the boards of library trustees have, by virtue of 3375.40, paragraph (B) of the Ohio Revised Code, the authority to make an expenditure for the purchase of kitchen units when the Trustees deem it necessary and proper.

“The case at issue is a Report of Examination of the Dayton and Montgomery County Public Library by the Bureau of Inspection and Supervision of Public Offices of the Auditor of State. In this report received August 24, 1961, page 25 there was a finding against the Library for an expenditure of \$750.00 for the purchase of a kitchen unit at a branch library.

“The Board members have expressed their conviction that kitchen units and refrigerators are very essential for the comfort and convenience of the staff since many of them operate in areas where there are no eating facilities, often have only a half-hour for their meals, and frequently are called to take care of a patron at the desk during their meal times.

“O.R.C. 3375.40 (B) together with 1948 Attorney General Opinion 4122 which states:

“I cannot give full effect to the broad powers that the legislature has seen fit to confer upon these library boards, without conceding to them the right to do such things as they consider beneficial and helpful to the library. This, of course, like all other discretionary powers is subject to abuse, but the courts are very reluctant to control the discretion of public officers when power has been granted to them by law, as long as they are acting within the general scope of their duties.’

should resolve this issue in favor of the Board.

“As a result of the adverse decision of the Auditor’s report, which in our opinion, unduly restricts the discretion given by the legislature to Library Boards, they have asked us to in turn ask for an opinion from your office as there are plans for expanding and adding branch libraries in this area.

Your consideration on this matter will be appreciated.

Division (B) of Section 3375.40, Revised Code, to which reference is made in your letter, provides that the boards of trustees of libraries mentioned in that section, may :

“(B) Expend for library purposes, *and in the exercise of the power enumerated in this section, all moneys*, whether derived from unclassified property taxes or otherwise, credited to the free public library under its jurisdiction and *generally do all things it deems necessary for the establishment, maintenance, and improvement of the public library under its jurisdiction;*” (Emphasis added)

It is to be noted that the cited provision of Section 3375.40, *supra*, grants to the boards involved very broad discretionary authority in regard to expenditures it may make in connection with the establishment, maintenance, and improvement of the public library under their jurisdiction. Whether or not a board of library trustees has the power to purchase a kitchen unit for the use of its employees, must necessarily come under the heading of the maintenance and improvement of such library, if I am to conclude that the statute confers such power; and I must note here that the power to spend moneys credited to a free public library, derived from all sources, for library purpose and generally to do “all things a board of library trustees deems necessary,” relates expressly to the exercise of power “enumerated in this section.”

Under division (E) of Section 3375.40, *supra*, a board of library trustees is authorized to establish and maintain a main library, *branches*,

library stations, and traveling library service within the territory over which it exercises jurisdiction. Under division (F) of the same section, library service may be extended outside the boundaries of a library district, if the state library board approves such extension. Division (H) gives such board the authority to make and publish rules and regulations for the proper operation and management of the library under its jurisdiction.

In Opinion No. 4122, Opinions of the Attorney General for 1948, page 586, it was determined that under the provisions of Section 7630, General Code, now Section 3375.40, *supra*, a library board of trustees was authorized to subscribe to the membership of the National Geographic Society for the purpose of securing for the library the magazine of that society, and to send a member or employee of such board to a library conference, and pay his expenses out of library funds. In arriving at such determination, the then Attorney General relied on the board's discretionary power here considered, as shown in the citation in your letter from the mentioned opinion.

In the use of the word "necessary" in division (B) of Section 3375.40, *supra*, the legislature gave broad discretion to the boards involved. As stated in the opinion of Marshall, C.J., in the case of *McCulloch v. Maryland*, 4 Wheaton (U.S.) 316, 4 L. ed., 579, beginning at page 413 (U.S.), L.ed., page 603:

"* * * Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive should be understood in a more mitigated sense—in that sense which common usage justifies. *The word 'necessary' is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases. This comment on the word is well illustrated by the passage cited at the bar, from the 10th section of the 1st article of the constitution. It is, we think, impossible to compare the sentence which prohibits a state from laying 'imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws,' with that which authorizes Congress 'to make all laws which shall be necessary and proper for carrying into execution' the powers of the general government, without feeling a conviction that the convention understood itself to change mate-*

rially the meaning of the word 'necessary,' by prefixing the word 'absolutely.' *This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.*" (Emphasis added)

It might no doubt be argued that the expenditure of money for the purpose here considered is not authorized, even under the broad discretion given to library boards in Section 3375.40, *supra*, for the reason that it does not pertain to the library as such, but rather to the convenience and comfort of its employees. As against such argument, it may be pointed out, however, that the kitchen unit in question was purchased for a branch public library in an area where eating facilities are not available, and that public libraries do not close their doors to allow their staff to go out for their meals during the hours such libraries are open to the public; furthermore, that the welfare of library employees in the factual situation here considered has a direct bearing on the efficiency with which the people making use of public libraries are served. It also might be noted in passing that it is a matter of common knowledge that many private industrial and commercial enterprises provide eating facilities on their premises for the convenience of their employees, which they apparently would not do if they did not believe that such practice was ultimately in the best interest of such enterprises. It is, therefore, not unreasonable to suppose that where such facilities are made available for the use of the staff on the premises of a public library, a board of trustees could, under the authority of division (H) of Section 3375.40, *supra*, adopt a rule whereby the time allowed for meals of the staff would be reduced, thereby increasing the efficiency of library service to the public.

Answering your specific question, therefore, it is my opinion and you are advised that, under division (B) of Section 3375.40, Revised Code, a board of library trustees may purchase kitchen units for the preparation and serving of meals to employees during working hours where such action is necessary for the efficient operation of the library, there being no other convenient eating facilities available to such employees.

Respectfully,
MARK McELROY
Attorney General