

1193.

CONTRACTS—FOR BUILDINGS TO BE USED AS LIBRARIES FOR LIBRARY DISTRICTS UNDER SECTION 7635, GENERAL CODE—MUST HAVE CERTIFICATE OF FISCAL OFFICER.

SYLLABUS:

*Before a contract or contracts may be entered into for buildings to be used as libraries or branch libraries for library districts, established under Sections 7635, et seq., General Code, it is necessary to obtain and attach to said contract or contracts the certificate or certificates of the fiscal officer that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances, as required by Section 5625-33, General Code.*

COLUMBUS, OHIO, October 24, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion upon the following:

“The Cleveland Public Library is about to enter into contracts for the construction of new branch libraries and the question is presented as to the necessity, under the present law, of the certificate of the Secretary of the Cleveland Public Library to the effect that the money for the payment of such contract is in the treasury to the credit of the fund from which it is to be drawn and not appropriated to any other purpose. For the purposes of this letter I will presume that the payment is to be made out of funds derived from taxation and not from the sale of bonds.

Your opinion as to this question is respectfully solicited.

Under the broad provisions of General Code, Section 5660, there would seem to be no room for doubt but that such a certificate was necessary. However, Section 5660 has been repealed by House Bill No. 80. In House Bill No. 80 we find Section 33, subdivision D, relating to certifications on contracts, but said Section 33 begins with the phrase “No division or taxing unit shall”. Turning to Section 1 of said House Bill No. 80, we find the following definitions:

‘(a) Subdivision shall mean any county school district, except the county school district, municipal corporation or township in the state.

‘(i) Taxing unit shall mean any subdivision or governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including conservancy districts, metropolitan park districts, sanitary districts, road districts and other districts.’

The Cleveland Public Library is organized under the provisions of Section 7635, et seq. It has no authority to levy taxes except by certifying the same to the board of education under Section 7639 of the General Code, which is still in force. The board of education then makes the levy, which is certified to the county auditor.

This Public Library has power to issue bonds under authority of General Code, Section 4007, still in force.

Is the Cleveland Public Library a taxing unit within the meaning of subdivision "i" of Section 1 of House Bill No. 80?"

As pointed out in your communication, Section 5660, General Code, was repealed in House Bill No. 80, passed by the 87th General Assembly on April 13, 1927. Said section provided that no expenditure, excepting from the proceeds of bonds, should be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed, and which also provided that no contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatever source derived, should be made or assumed by any authority, officer or employe of any county or political subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate was required to be filed with such authority, officer, employe, commissioners, council, body or board, or the chief clerk thereof.

In lieu of said Section 5660, General Code, and as a part of said House Bill No. 80 the legislature enacted Section 5625-33, General Code, which reads, in part, as follows

"No subdivision or taxing unit shall:

\* \* \* \* \*

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. \* \* \* "

The question submitted by you is, whether or not the words "subdivision or taxing unit," as used in Section 5625-33, General Code, are broad enough to require the fiscal officer's certificate specified in said Section 5625-33, General Code, before contracts for the construction of new branch libraries of the Cleveland Public Library may be entered into.

Section 1 of House Bill Number 80 (Section 5625-1, General Code), defines "subdivision" as follows:

"(a) 'Subdivision' shall mean any county school district, except the county school district, municipal corporation or township in the state."

"Taxing unit" is defined in said section as:

"(i) 'Taxing unit' shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including Conservancy Districts, Metropolitan Park Districts, Sanitary Districts, Road Districts and other districts."

In your communication you state that the Cleveland Public Library was organized under Sections 7635, et seq, General Code. Section 7635, General Code, provides:

"The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided. \* \* \*"

Section 7636, General Code, provides that the board of library trustees shall consist of seven members, prescribes the qualifications of a member, the term of office, the method of filling vacancies, and provides that the members of such board must serve without compensation. The powers of the library board are set forth in Sections 7637 and 7638, General Code. Section 7638, General Code, provides:

"By a two-thirds vote of its members such library board may purchase or lease grounds and buildings, and erect buildings for library purposes. It also may appropriate land for library purposes if the owner and the board cannot agree upon terms, and dispose of land, when, in its opinion, it is no longer needed for library purposes. \* \* \*"

Section 7639, General Code, provides:

"Such board of library trustees, annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided."

None of the above sections were repealed or amended by the 87th General Assembly and are still in effect. While a board of library trustees appointed under Sections 7635, et seq, General Code, has full control over the libraries, branches, etc., in the school district for which such board has been appointed, it does not have the power of levying taxes to pay the expenses of maintaining and operating such libraries and branches. Such board has only authority to certify the amount of money needed for such purposes and the board of education is directed annually to levy a tax of not exceeding one and one-half mills for such purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as provided in said sections. However, Section 4007, General Code, which also was not repealed or amended by the 87th General Assembly, and is still in full force and effect, provides:

"Any public library board charged by law with the title, custody, control and maintenance of a public library in the state, may issue bonds, with interest coupons attached, to provide buildings for the public library in their charge, and to furnish them, and to pay the cost and expense thereof. In anticipation of the income from such taxes levied from time to time as occasion requires, the board may issue and sell bonds, bearing interest payable semi-annually at a rate specified therein not to exceed five per cent per annum, and in such sums and at such times as the board determines, which bonds shall be numbered consecutively, made payable to the bearer, and be signed by the president and secretary of the board and denominated 'public library

bond of the ----- library" (naming the one to provide and furnish buildings for which they are issued)."

Although boards of library trustees do not have the power to levy taxes by virtue of the provisions of the above section, they do have the power to issue bonds to provide buildings for the public library in their charge, and to furnish them. It seems clear, therefore, that such boards of library trustees come within the definition of "taxing unit," as set out in Section 5625-1 (i), General Code, and that before a contract can be entered into for the construction of new buildings for branch libraries for the Cleveland Public Library, the fiscal officer's certificate specified in Section 5625-33, General Code, must be obtained.

It is therefore my opinion that before a contract or contracts may be entered into for the construction of new branch libraries of the Cleveland Public Library, it will be necessary to request and obtain the certificate of the fiscal officer to the effect that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1194.

COUNTY CORONER—REPORTS—SALARY OF SECRETARY AND CUSTODIANS OF MORGUE—SALARY OF CORONERS IN COUNTIES OF 400,000 OR MORE—INCAPACITATION OF CORONER IN SUCH COUNTIES—APPOINTMENT OF PERSONS TO PERFORM CORONER'S DUTIES.

*SYLLABUS:*

1. *The period to be covered by the reports of a coroner as provided to be made by Section 2856-5, General Code, is the year next preceding the first Monday in September of each year.*

2. *A county coroner is authorized to fix the salary of his stenographer-secretary and the custodians of the county morgue from and after August 1, 1927.*

3. *Coroners who have been duly elected and have qualified, and entered upon their duties in counties of 400,000 or more, are entitled to their salary during the time for which they have title to the office, whether or not they are able to, and do perform the duties of the office.*

4. *Coroners in counties of 400,000 or more are entitled to their salary during the time they are temporarily unable to perform the duties of the office, by reason of absence from the county on account of illness or other causes.*

5. *Appointments of persons to perform the duties of county coroners during the time of such coroner's absence from the county, or inability from sickness or other causes to discharge the duties of his office, continue only for the period of such disability and if after such disability the duly elected and qualified coroner resumes the duties of his office and again becomes temporarily disabled to perform the duties of his office, or is absent from the county, another appointment should be made and such appointee is required to qualify for the performance of the duties incident to such appointment by giving bond and taking*