

2077

1. LIBRARY EMPLOYEES—NOT EMPLOYEES ENTITLED TO SICK LEAVE—SECTIONS 7635, 115 O. L., PART 2, PAGE 278, 486-17c G. C.
2. BOARD OF LIBRARY TRUSTEES—HAS POWER TO MAKE RULES AND REGULATIONS GOVERNING SICK LEAVE BENEFITS FOR EMPLOYEES—SECTION 7630 PARAGRAPHS 7, 8 G. C.

SYLLABUS:

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.

Columbus, Ohio, July 26, 1950

Hon. Howard G. Eley, Prosecuting Attorney  
Darke County, Greenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Education of the City of Greenville, Darke County, Ohio, have requested that I write you for your opinion concerning General Code Section 486-17c.

“Their particular question is whether the employes of a Carnegie library, used jointly by the school system and the public, whose governing body consists of a board of trustees appointed by the school board and whose salary is paid from funds received by such board of trustees from county taxes, are entitled to  $1\frac{1}{4}$  days sick leave per month provided by the above section.”

Section 486-17c, General Code, reads in part, as follows:

“Each full-time employe, whose salary or wage is paid in whole or in part by the state of Ohio and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth ( $1\frac{1}{4}$ ) work days with pay. \* \* \*

The answer to your question will depend on whether the employes of the library are full-time employes in the various offices of the county service or full-time employes of a board of education.

I assume the library you refer to was one created under Section 7635, General Code, as enacted in 115 O. L. part 2, page 278. This section empowered a school district to create and maintain a public library within its district notwithstanding the fact that public library service had been established previously within such district by another political subdivision. See *State, ex rel. Library v. Main*, 83 Ohio App. 415.

Sections 4840-1 to 4840-5, General Code, were enacted by the General Assembly to continue the existence of school district libraries created before 1947. Hurd, J. in the *Main* case, *supra*, at page 422, stated the situation as follows:

“Section 3403, General Code, authorizing the creation of township libraries, Section 7635, authorizing the creation of school district libraries, and Sections 2976-11 to 2976-17, inclusive, authorizing the creation of county libraries, were all repealed. Section 3620, authorizing the creation and maintenance of municipal libraries, was so amended as to eliminate the authority to establish such libraries.

“As the statutes now stand, no kind of public library except a county district library can be created. Therefore, the Shaker Heights board of education cannot today create a school district public library as it did in 1937.

“An examination of the new provisions of the General Code, with respect to school district libraries, as set forth in Sections 4840-1 to 4840-5, inclusive, indicates a clear intendment of the

General Assembly to continue the existence of school district libraries created before the effective date of such provisions.  
\* \* \*”

Section 4840-1, General Code, reads as follows:

“In any school district in which there has been established, by resolution duly adopted by the board of education of such school district, prior to the effective date of this act, a free public library, such library shall be under the control and management of a board of library trustees consisting of seven members. No one shall be eligible to membership on such board of library trustees who is or has been for a year previous to his appointment a member of a board of education making such appointment. Such trustees shall be qualified electors of the school district and shall be appointed by the board of education of the school district. Such trustees shall serve for a term of seven years and until their successors are appointed and qualified. All vacancies on such board of trustees shall be filled by the board of education by appointment for the unexpired term. The members of such board of trustees shall serve without compensation. Such board of library trustees shall organize in accordance with the provisions of section 7627 of the General Code. Such board of library trustees shall have the control and management of the school district free public library. In the exercise of such control and management they shall be governed by the provisions of sections 7627-1 through 7630-1, both inclusive, of the General Code. Nothing in this section shall be construed to affect the term of any member of a board of library trustees of a school district free public library appointed prior to the effective date of this act.”

Section 7627, General Code reads as follows:

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall meet in January of each year and organize by selecting from their membership a president, vice-president and secretary who shall serve for a term of one year. At the same meeting they shall elect and fix the compensation of a clerk, who may be a member of the board, and who shall serve for a term of one year. The clerk, before entering upon his duties, shall execute a bond in an amount and with surety to be approved by the board of library trustees, payable to the board of library trustees, conditioned for the faithful performance of all the official duties required of him.”

Section 7627-1, General Code, reads as follows:

“The clerk of the board of library trustees of a free public

library shall be the treasurer of the library funds. All monies received by such clerk for library purposes, from any source whatsoever, shall be immediately placed by him in a depository designated by the board of library trustees. Such clerk shall keep an account of the funds credited to said board upon such forms as may be prescribed and approved by the bureau of inspection and supervision of public offices. Such clerk shall render a statement to the board of library trustees monthly showing the revenues and receipts from whatever sources derived, the disbursements and the purposes thereof and the assets and liabilities of the board. At the end of each fiscal year the clerk shall submit to the board of library trustees a complete financial statement showing the receipts and expenditures in detail for the entire fiscal year."

Section 7627-2, General Code, reads as follows :

"Before giving the clerk of a board of library trustees of a free public library a warrant for funds due such board of library trustees, the county auditor shall require the clerk of such board to file with him a statement showing the amount of funds on hand, available for expenditure by said board, according to his books and the books of the depository or depositories. Such statement shall be in such form as may be prescribed by the bureau of inspection and supervision of public offices, shall indicate that the clerk's books are in exact balance with the depository accounts and shall be certified to by the clerk and proper officer of the depository."

Section 7627-3, General Code, reads :

"All the duties and obligations required by law of the county auditor, county treasurer or other officer or person relating to the monies to the credit of or to be credited to a board of library trustees of a free public library shall be complied with by dealing with the clerk of such board of library trustees."

Section 7627-4, General Code, reads as follows :

"At the expiration of the term of a clerk of a board of library trustees of a free public library or before a board of library trustees approves the surety of any clerk, such board shall require the clerk to produce all money, bonds or other securities in his hands and they then must be counted by the board, or a committee thereof, or by a representative of the bureau of inspection and supervision of public offices. A certificate setting forth the exact amount of such money, bonds or other securities and signed by the representatives making such count shall be entered upon the records of the board and shall be prima facie evidence

that the amount therein stated is actually in the treasury at that date.”

Section 7628, General Code, reads as follows :

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code, shall be bodies 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.”

Section 7629, General Code, reads as follows :

“The name of a board of trustees of a free public library, appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code, under which it may acquire or convey property, contract or be contracted with, sue or be sued, or perform any other official act shall be —public library. The blank shall be filled in with the name of the subdivision which created the library or with any other name the board of trustees of the library may wish to designate.”

Section 7630, General Code, reads in part, as follows :

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall have the following general powers to wit :

1. To hold title to and have the custody of all property both real and personal of the free public library under their jurisdiction ;
2. To expend for library purposes, subject to the limitations of law, all monies credited to the free public library under their jurisdiction and generally do all things they may deem necessary and proper for the establishment, maintenance and improvement of the public library under their jurisdiction ;
3. To purchase real and personal property necessary for the proper maintenance and operation of the free public library under their jurisdiction ;
4. To purchase, lease or erect buildings or parts of buildings to be used as main libraries, branch libraries or library stations ; \* \* \*
7. To appoint and fix the compensation of all of the employes of the free public library under their jurisdiction ;
8. To make and publish rules and regulations for the

proper operation and management of the free public library under their jurisdiction; \* \* \*

10. By the adoption of a resolution accept any bequest, gift or endowment upon the conditions and stipulations connected with such bequests, gift or endowment; provided, however, no such bequest, gift or endowment shall be accepted by such boards if the conditions thereof shall remove any portion of the free public library under their jurisdiction from the control of such board or if such conditions, in any manner, limit the free use of such library or any part thereof by the residents of the county or counties in which such library is located.

11. At the end of any fiscal year by a two-thirds vote of its full membership to set aside any unencumbered surplus remaining in the general fund of the library under their jurisdiction for the purpose of creating a special building and repair fund.”

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 278, 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.

In the first place, while the library district may be co-extensive with a school district, yet no control over the board of trustees of the library is exercised by the board of education. The library is a body corporate and politic, pursuant to Section 7628, General Code, and managed by a separate board of trustees. It is true that the board of trustees is appointed by the board of education, but after said appointment the board of trustees operates alone, with no assistance from the board of education. Thus, pursuant to Section 7630, General Code, the board of trustees holds title to and has the custody of all property under their jurisdiction. They may expend all monies credited to them as they deem necessary; purchase all property and buildings, and appoint and fix the compensation of all employes. It is true that they receive the funds to operate such library from taxes levied by the board of education in the school district but the control of the money collected is in the board of trustees. No accounting

to the board of education is necessary. The trustees fix the budget for the proposed expenditures and no approval is necessary.

From the above it may be seen that the library is entirely separate from the board of education. The board of education has nothing to do with the personnel of the library. As stated in Section 7628, General Code, the board of library trustees is a body corporate and politic. Taking all these factors into consideration, I believe it may be clearly seen that the board of library trustees is not part of the board of education nor in any manner connected with it. Accordingly, the employes of the board of library trustees are not employes of a board of education as that term is used in Section 486-17c, General Code.

The fact that the employes of the board of library trustees do not come within the purview of Section 486-17c does not mean that they are precluded from obtaining any sick leave benefits. The board of library trustees pursuant to Section 7630, paragraphs 7 and 8, General Code, has the power to make rules and regulations governing sick leave benefits for their employes.

In summary and conclusion, it is my opinion that:

1. Employes of a library created under the provisions of Section 7635, General Code, 115 O. L., part 2, page 278, are not employes 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 employes.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.