An examination of authorities discloses that the term "political subdivision" is not used in the same sense in each type of laws. When used in the Election Law the term is held to mean the district from which any public officer is authorized by law to be elected. Matter of Richards, 167 N. Y. Supp. 152.

In Missouri, where the term has been used in the Constitution as limiting the indebtedness of any political subdivision (Constitution, Article X, Section 12) the term has been construed to include a school district and a levee district. *Morrison* vs. *Morey,* 146 Mo., 543. I do not find any definition of such term within the Federal Reserve Act, nor do I find any decision of the Federal Courts defining such term.

The term "political subdivision" is not used in the Ohio statutes. The term "subdivision" has been defined by statute in the Uniform Bond Act and in the Budget Act (Sections 2293-1 and 5625-1, General Code) as:

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

This same definition is contained in both acts. These definitions are for the purposes of the act of which they are a part and would not bind a court on any other subject.

From the foregoing, it might be deduced that a public library is either a district or a political subdivision.

It must be borne in mind that it is peculiarly within the province of the Federal courts to interpret the meaning of the Federal statutes, and such rulings, when made, become binding upon State courts. Therefore, my opinion herein expressed cannot have any binding effect upon the administrative officers of the Federal Reserve Bank, nor upon their duly constituted legal advisers.

Specifically answering your inquiry, it is my opinion that the notes issued by a board of trustees of a public library under the authority of Section 7 of Am. S. B. 323, enacted by the 89th General Assembly, are legal investments for Federal Reserve Banks under the provisions of Title 12, Section 355, U. S. Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4227.

WATER RIGHTS—CHANNEL FLOWING THROUGH LANDS OWNED BY STATE—STATE MAY NOT DIVERT WATER SO AS TO INJURE ADJOINING RIPARIAN OWNER—MAY USE WATER FOR FISH HATCHERY.

SYLLABUS:

When the source of water flowing in a natural channel or water course on and through lands owned by the state and thence on and through lands of an adjoining proprietor is a spring on the lands owned by the state, the state has no legal right to divert the water from the spring on to adjoining non-riparian land,

where the effect of such diversion will be to injure and damage such adjoining riparian proprietor in the reasonable use of his lands.

COLUMBUS, OHIO, April 2, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication over the signature of Hon. William H. Reinhart, Conservation Commissioner. This communication reads as follows:

> "Subject: So called Miller Blue Hole, located in Sandusky County, Townsend Township, Section 9.
>
> This spring is located on a tract of land of about 12½ acres. The water hole, or spring consists of about 1.4 acre in area. At the present time, the water flows out of one end of this so called Blue Hole and thru a natural ditch to the north, flowing thru adjoining lands.
>
> Suppose the State would buy this 12½ acre tract containing the Blue Hole? Could we then divert the water where we pleased? Or, would the adjoining land thru which it now flows have a claim on it?"

From the facts stated in this communication and from other information at hand, it appears that the waters of the spring or "Blue Hole" on the 12½ acre tract of land mentioned in the communication, emerge from an under-ground water course or from an artesian basin underlying this tract of land. After emerging through the earth at this point, the waters form a pool something more than 1 acre in extent, from which they flow, at the rate of about 800 gallons per minute, in a natural channel, which is about 3 feet wide at the base and 3 feet deep, through the tract of land mentioned in your communication and thence through two 40 acre tracts of land owned respectively by one Mapus and one Warner where the waters from the pool, flowing through such channel, join those of a small creek and flow thence a distance of about 11 miles to Sandusky Bay.

The question presented for my consideration is whether the state, if it should acquire title to the 12½ acre tract referred to in your communication, can divert the waters of this pool to lands adjoining this 12½ acre tract and adjoining the Mapus tract of land above referred to for the purpose of a fish hatchery to be constructed either upon such adjoining lands or upon the Warner tract of land to which such waters will be carried by a new channel.

In the consideration of this question, a recognized rule to be observed is that the owner of land through which a natural water course flows can only exercise the rights of a riparian owner with respect to the waters in such a natural water course, and that he can not in any material way divert water from such water course to the substantial injury or damage of another person owning land through which such natural water course flows. *Castalia Trout Club* vs. *Castalia Sporting Club,* 8 O. C. C. 194, affirmed without opinion, 56 O. S. 749. A water course is defined as "a stream usually flowing in a particular direction in a definite channel having a bed, banks or sides and discharging into some other stream or body of water." *East Bay Sporting Club* vs. *Miller,* 118 O. S. 360. To constitute a water course, the size of the stream is not material. "It must, however, be a stream in fact, as distinguished from mere surface drainage occasioned by freshets or other extraordinary causes". *Pyle* vs. *Richards,* 17 Nebr. 180; *East Bay Sporting Club* vs. *Miller, supra.*

The rule above noted with respect to the material diversion of waters from a natural water course by one riparian owner to the substantial injury or damage of another is the same when the waters flowing in such natural water course have their source in a spring on the lands of the upper riparian owner. Touching this point, the Supreme Court of Nebraska, in the case of *Pyle* vs. *Richards, supra,* held:

> "Where water has a definite course, as a spring, and takes a definite channel, it is a water-course, and no person through whose land it flows has a right to divert it from its natural channel so as to cause injury to another landowner."

And with respect to this question, it seems to be well settled that the owner of land upon which a spring rises, and by a pool or otherwise forms the source of a flowing stream or water course, has only the rights of a riparian owner in the waters of the spring. *Gutierrez* vs. *Wege,* 145 Calif. 730; *Barneich* vs. *Mercy,* 136 Calif. 205; *Wadsworth* vs. *Tillotson,* 15 Conn. 366; *Kelly* vs. *Nagle,* 150 Md. 125; *Arnold* vs. *Foot,* 12 Wendell 330; *Colrick* vs. *Swinburne,* 105 N. Y. 503. In the case of *Gutierrez* vs. *Wege, supra,* it was held that the owner of land upon which are a spring and a stream flowing therefrom has only the rights of a riparian owner in the spring and stream, where the stream, if allowed to follow its natural course without obstruction or diversion, would flow across the land of an adjoining owner. The court, in its opinion in this case, said:

> "The spring supplying the stream was itself a part of the stream, and the defendant had the same right in the spring, and no greater right therein, than he had in the stream below. He had no different or better right to cut off the water in the spring or above the spring than he had to cut it off or divert it from the stream."

In the case of *Wadsworth* vs. *Tillotson, supra,* it was held that the owner of land upon which a spring arises, from which the water flows in a natural course across the land of another, has the right as a riparian owner only to make a reasonable use of the water flowing from the spring, such as he would have in a stream flowing through his premises to lands below.

In the case of *Arnold* vs. *Foot, supra,* the court held that the owner of a tract of land upon which a spring arises has no right to wholly divert a stream having its source in such spring to the injury of an adjoining land owner through whose land the stream flows in a natural channel; and that although he may make such use of the waters of the spring as are necessary for his family and stock, he can not use such water for the purpose of irrigating his land, where the effect of such use deprives the owner of the adjoining land of a reasonable use of the water of the stream.

In the case of *Heninger* vs. *McGinnis,* 131 Va. 70, it was held that if the waters of a spring flow by a definite marked channel to the land of an adjoining owner, the owner of the spring would be entitled to such portion only of the water of the spring as would be necessary for the reasonable use and purpose of the tract on which the spring was located; and that he could not dispose of or interfere with the natural flow of the surplus.

The case of *Virginia Hot Springs Company* vs. *Hoover,* 143 Va. 460, was one involving an alleged diversion of waters having their source in a spring emerging

on the land of an upper proprietor, and which he had contracted to pipe on to non-riparian lands owned by the Virginia Hot Springs Company for the use of the guests of a hotel operated by this company. The court in this case held:

> "A proprietor may make any reasonable use of the water of the stream in connection with his riparian estate and for lawful purposes within the watershed, provided he leaves the current diminished by no more than is reasonable, having regard for the like right to enjoy the common property of other riparian owners. If he diverts the water to a point outside the watershed or upon a disconnected estate, the only question is whether there is actual injury to the lower estate for any present or future reasonable use."

In the case of *Lord* vs. *Meadville Water Company,* 135 Pa. St. 122, it was held:

> "The owner of land upon which a spring issues, creating a stream which flows in a natural channel into and through the land of others, has no right, by virtue of his ownership of its site, to divert the waters of the spring to another channel; his rights are those of a riparian owner, neither more, nor less."

It was further held in this case that the fact that such owner is a corporation organized for the purpose of supplying water to the public, under statutory authority, does not affect the extent of the rights acquired by purchasing the land upon which the spring is located; and that those rights do not justify the diversion of such water into pipe lines for the supply of its customers.

The question here presented is with respect to the right of the state of Ohio, acting through its constituted authorities, to divert the waters flowing from the spring or "Blue Hole" on the tract of land referred to in the communication of the conservation commissioner, if the state acquires title to such land. In this connection, it is to be noted that in conducting transactions with respect to its lands, the state acts in a proprietary, and not in a sovereign capacity, and is amenable to all the rules of justice which it prescribes for the conduct of its citizens. *Cleveland Terminal and Valley Railroad Company* vs. *State, ex rel.,* 85 O. S. 251; *State, ex rel.,* vs. *Hydraulic Company,* 114 O. S. 437, 448.

I am of the opinion therefore, by way of specific answer to the question made in your communication, that the state, if it becomes the owner of the property here in question, will not be authorized to divert the water flowing from the spring on this land in the manner contemplated by the conservation commissioner above stated, if such diversion will result in actual injury and damage to the owners of other lands upon the water course in and through which the waters of this spring flow.

It is not to be understood from what has been said above that the state, if it acquires title to this tract of land, can not make a reasonable use of the water flowing from the spring in the operation of a fish hatchery on this tract of land. This it may do if no more water is used than is reasonably necessary for the purpose and the same is returned to the water course without any more diminution than is incident to the use of water for this purpose.

In this connection, it is noted that the authorities, which, in the application of the rule above noted, deny to an upper proprietor the right to divert water from a spring on his land to the injury and damage of a lower proprietor of lands

on the water course in and through which the waters of the spring naturally flow, recognize the right of the upper proprietor in such case to make a reasonable use of the waters of the spring for his own needs. Thus in the case of *Kelly* vs. *Nagle,* 150 Md. 125, the court, although it recognized the rule that the owner of land containing a spring has no right, as against a riparian owner on a stream fed by the spring, to divert the water from the spring to other land which is not riparian, applied the following rule stated in 27 R. C. L. 1093, with respect to the rights of riparian owners of land on such stream to the use of the waters therein flowing from the spring:

> "The general rule that a lower owner is entitled to the natural flow of a stream, if strictly construed and applied, would be too broad, for it would give the lower proprietor superior advantages over the upper, and in many cases give him in effect a monopoly of the stream, and it is accordingly uniformly held that the right of a riparian owner to the natural flow of the stream is not an absolute right to the flow of all the water in its natural state, but is subject to the right of the upper owners to make a reasonable use of such waters. The law does not require that there shall be no diminution, obstruction or detention whatever by the riparian proprietor, but on the contrary there may be a diminution in quantity or a retardation or acceleration of the natural flow, indispensable for the general and valuable use of the water, perfectly consistent with the existence of the common right. A diminution, retardation, or acceleration not positively and sensibly injurious by diminishing the value of the common right is implied in the right of using the stream."

A practical application of this rule was given by the Supreme Court of this state in the case of *City of Canton* vs. *Shock,* 66 O. S. 19, with respect to the right of a municipal corporation as a riparian proprietor to take water from a natural stream or water course. In this case it was held:

> "An incorporated municipality situated on a natural flowing stream, is, in its corporate capacity, a riparian proprietor, having the rights, and subject to the liabilities, of such proprietor.
>
> Such municipality so situated has the right to use out of such stream all the water it needs for its own proper purposes, returning to the stream the water not consumed in such use.
>
> Such municipality so situated, may supply water to its inhabitants for domestic use, returning to the stream the water not consumed; and a lower proprietor who uses the water of the same stream for power, has no legal cause for complaint against such upper proprietor for so using the water of the stream."

I conclude therefore, although the question is not made in your communication, that the state, in the event it acquires title to this land, can legally use the water flowing from the spring on this land for the operation of a fish hatchery thereon, if no more water is used than is necessary for this purpose.

Respectfully,

GILBERT BETTMAN,
Attorney General.