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NEITHER THE TOWNSHIP RECORDS COMMISSION NOR THE COUNTY RECORDS COMMISSION HAS AUTHORITY TO ORDER THE DESTRUCTION OF RECORDS OF A LIBRARY—A BOARD OF LIBRARY TRUSTEES HAS IMPLIED AUTHORITY TO ORDER THE DESTRUCTION OF MEN—PERMANENT RECORDS—§§149.42, 149.38, 3375.10, R.C.

SYLLABUS:

1. Neither the township records commission created by Section 149.42, Revised Code, nor the county records commission created by Section 149.38, Revised Code, has authority to order the destruction of records of a library organized under Section 3375.10, Revised Code.

2. A board of library trustees organized under Section 3375.10, Revised Code, has implied authority to order the destruction of non-permanent records of the library when the records have served their entire useful purpose or are in a state of ruin beyond the possibility of use.

Columbus, Ohio, July 14, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“An inquiry has been directed to this office as to what procedure is to be followed by the Salem Township Library Board of Trustees with reference to certain records of that library.

“The facts are that high flood waters inundated certain cabinets containing vouchers, invoices and cancelled checks; as a result the condition of the records is such that they are in a very bad way. Inquiry has been made of the Bureau of Inspection and Supervision of Public Offices as to whether or not these records can be destroyed.

“Section 149.42 creates a township records commission and while this is a library, organized under Section 3375.09 of the Revised Code, there is a question whether or not application should be made to the township records commission for an order to destroy or otherwise dispose of the records or, whether the county records commission provided for by Section 149.38 of the Revised Code, is the proper agency to which application should

be made; or, whether either of such agencies have authority to order the destruction. Obviously, the records are in such a condition that it is not feasible to longer retain them because they are not only dirty but moldy.

"I can find nothing in Section 3375.40 of the Revised Code relating to the powers of boards of library trustees which expressly confers upon them the right to order such destruction, unless it would be Section (B) which says,

'* * * and generally do all things it deems necessary for the establishment, maintenance or improvement of the public library under its jurisdiction; * * *.'

"It might be inferred that the destruction can be considered an 'improvement' to the library in view of their present condition.

"An opinion is respectfully requested as to which of the two record commissions an application should be made or, how the same may be disposed of."

The Salem Township Library is one of the types of libraries mentioned in Section 3375.33, Revised Code, which reads as follows:

"The boards of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code are bodies politic and corporate, and as such are capable of suing and being sued, contracting, 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."

In the case of *Miller v. Akron Public Library, et al.*, 60 Ohio Law Abs., 364, the court determined the meaning of the phrase "bodies politic and corporate" as used in the then existing Section 7628, General Code, which is now Section 3375.33, Revised Code, beginning on page 369, as follows:

"Under Sec. 7628 GC the legislature, as stated before, made all the various library boards 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.

"In the court's opinion this made them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic."

Because the library is a separate and distinct entity, records of the library are not records of the township or county in which the library is

located. A county records commission under the provisions of Section 149.38, Revised Code, only has control over retention and disposal of public records "of the county." A township records commission presumably only has control over the disposal of public records of the township, although Section 149.42, Revised Code, does not say so specifically. In any event, a township records commission under the provisions of Section 149.42, *supra*, only has authority to order the destruction of any record "that has been copied" according to the procedure prescribed in Section 9.01, Revised Code, or vouchers "made to and by the board of township trustees" which are ten years old. There is no indication in the instant cast that the records have been copied or that the vouchers are ten years old. Furthermore, these vouchers were apparently made to and by the board of library trustees rather than the township trustees. While the General Assembly might have given one of the records commissions control over the disposal of library records or might have created a separate library records commission, it has not done so with the result that no records commission exists to which the library may make application for disposal of its records.

The next question is whether the board of library trustees, itself, has power to dispose of the library records. In this regard, paragraph one of the syllabus in Opinion No. 2003, Opinions of the Attorney General for 1924, page 652, reads as follows:

"1. A board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board."

As suggested in your letter, there is nothing in Section 3375.40, Revised Code, relating to the powers of boards of library trustees which expressly confers upon them the power to order destruction of the library records. On the other hand, I have been unable to find any express statutory provision requiring the board to retain such records for any definite period of time. It would seem, however, that in order for the board to compile the annual financial report showing the receipts and expenditures in detail as required under the provisions of Section 3375.35, Revised Code, such board must necessarily retain vouchers, invoices, and cancelled checks until the end of the fiscal year for reference. Furthermore, the bureau of inspection and supervision of public offices under the pro-

visions of Section 117.09, Revised Code, may wish to inspect the vouchers, invoices, and cancelled checks at the time of their examination. Vouchers, invoices, and cancelled checks are not, however, records of long term or permanent administrative, legal, fiscal, or historical value. See Section 149.40, Revised Code. Therefore, after such records have been inspected and the annual financial report has been compiled, the records would no longer serve any useful purpose. In *People v. Peck*, 138 N.Y. 386, 34 N.E. 347, which was a criminal action against a public officer for destroying certain public records in his possession, the court distinguished between records of permanent value and those of temporary usefulness stating on page 351 of 34 N.E. as follows:

“If these papers had actually served their whole purpose, so that they could no longer be of any use, they could have been destroyed with impunity, as it cannot be supposed that it was intended by the law to save such papers from destruction.”

Applying the court's reasoning in the *Peck* case, *supra*, to the facts in this case, it follows that when non-permanent records can no longer be of any use because they have either served their purpose or are ruined beyond the possibility of use, then the board of library trustees has implied power to destroy them.

Accordingly, it is my opinion and you are advised:

1. Neither the township records commission created by Section 149.42, Revised Code, nor the county records commission created by Section 149.38, Revised Code, has authority to order the destruction of records of a library organized under Section 3375.10, Revised Code.

2. A board of library trustees organized under Section 3375.10, Revised Code, has implied authority to order the destruction of non-permanent records of the library when the records have served their entire useful purpose or are in a state of ruin beyond the possibility of use.

Respectfully,

MARK McELROY

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