

3003.

LIBRARY TRUSTEES—APPOINTMENT OF SUCH BOARD OF TRUSTEES OF SCHOOL DISTRICT LIBRARY MADE BY BOARD OF EDUCATION—THEIR AUTHORITY AS AN INDEPENDENT UNIT OF GOVERNMENT DISCUSSED—SUCH BOARD IS INDEPENDENT FROM DICTATION OF APPOINTING POWER.

SYLLABUS:

1. *When a board of library trustees established by authority of Section 7635, General Code, certifies to the board of education, in compliance with Section 7639, General Code, the amount of money needed by it for library purposes during the ensuing year, the board of education has no authority to increase or decrease the amount as certified, except as it may be necessary to decrease the same to bring it within the limitations of the tax levy which the board of education is authorized to make for that purpose.*

2. *A board of library trustees established by authority of Section 7635, General Code, is not required to maintain branch libraries in the several school buildings of the district or to furnish library service within such buildings.*

3. *A board of education, after having established a library free to all the inhabitants of the school district and appointed a board of trustees for said library, as directed by Section 7635, General Code, has no authority to dictate to said board of trustees the manner in which or the purpose for which the said library board shall expend the funds at its command for library purposes.*

4. *A board of education is powerless to direct the policy of a board of library trustees established by authority of Section 7635, General Code.*

5. *A public library established by authority of Section 7635, General Code, must furnish free library service to all the inhabitants of the school district in which it functions, including school pupils, teachers, and school authorities and all of said inhabitants are equally entitled to said service.*

6. *A board of trustees of a school district library established by authority of Section 7635, General Code, is a distinct, independent unit of government created for the purpose of providing free library service to all the inhabitants of the school district in which it functions.*

7. *By authority of Section 7631, General Code, a board of education may establish school libraries in the several school buildings of the district, in addition to the library free to all the inhabitants of the district which it is authorized to establish by force of Section 7635, General Code, or may contract for school library service with any public library in the district.*

COLUMBUS, OHIO, February 27, 1931.

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

GENTLEMEN:—I am in receipt of your communication in which you refer to me for opinion, five questions which had been submitted to you relating to the powers and duties of library boards established under and by authority of Section 7635 of the General Code, of Ohio. These questions, as set forth in your inquiry, are as follows:

"1. May the Board of Education increase or decrease such budget as submitted to them by the Board of Trustees of a School District Library? (Both Boards functioning in the same School District.)

2. Is the Board of Trustees of a School District Library required by law to maintain in the school buildings, library services where such libraries are required by the laws governing Boards of Education? ('Library service' consisting of necessary reference books and such librarians that may be necessary to properly carry on the work of a School Library.)

3. To what extent has a Board of Education by law the right to instruct or direct the Board of Trustees of a School District Library, as to the manner in which or the purpose for which the Library Board shall use its funds?

4. To what extent does the fact that the Board of Trustees of a School District Library is appointed by the Board of Education give such Board of Education power or authority to instruct or direct such Board of Trustees in the management or policy of the Library?

5. (a) Does the fact that the Board of Trustees of a School District Library is appointed by the Board of Education make it mandatory upon the Board of Trustees to provide library service to school pupils or school authorities, including teachers, as requested by such school authorities, before providing general library service to adults and other residents of the School District Library? or

5. (b) Is the method of creation and organization of the Board of Trustees of a School District Library in the manner now provided by law purely an economic or governmental consideration, and is such Board of Trustees created for the purpose of providing for the residents of such School District general library service?"

For a number of years, boards of education have been authorized to establish and maintain public libraries, free to all the inhabitants of the school district. They were formerly permitted to manage these libraries directly or by the appointment of a board of trustees for that purpose as in their discretion they saw fit. For a time there was in force Section 3998-3 of the Revised Statutes, providing in substance that in any city, village or special school district where a library had been established by the board of education, which library contained twenty-five thousand or more volumes a board of trustees to manage the library should be appointed. This section was repealed, however, in 1908 (99 O. L., 65) and not until 1923 was it made mandatory that when a board of education established a public library free to all the inhabitants of the district, a board of trustees must be appointed to manage and control the same. Section 7635, General Code, as then enacted (110 O. L., 409) and now in force, reads as follows:

"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.

Within ninety days after the taking effect of this act, boards of education administering public libraries directly, shall appoint such boards of library trustees, and transfer to them all public library property, real and personal."

Section 7636, General Code, fixes the number of trustees to compose such a library board, and their terms of office. It also provides that the members of the board shall be residents of the school district and that no one shall be eligible to membership on such board who is or has been for a year previous to his election, a member or officer of the board of education of the district.

Sections 7637 and 7638, General Code, set forth the powers of the board, providing in substance, that it shall, in its own name, hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ librarians and assistants, may purchase or lease grounds and buildings, and may erect buildings for library purposes. It may accept gifts, devises and bequests for library purposes. It may acquire property by purchase or by condemnation when necessary, and may dispose of property not needed for library purposes.

By the terms of Section 7638-1, General Code, such a library board is authorized to elect officers consisting of a president, vice president, secretary, treasurer and such other officers as may be necessary. It is constituted a body corporate, with power to acquire and convey property, contract or be contracted with, sue or be sued, or perform other official acts in its corporate name.

Sections 7639 and 7640, General Code, provide as follows:

Sec. 7639. "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."

Sec. 7640. "The proceeds of the tax levy for school district public library purposes shall be paid over by the county treasurer, when collected by him as provided by law, to the treasurer of the board of library trustees, or other officer designated by such board to receive such funds, and shall constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, when signed by the president and secretary thereof and issued for lawful purposes."

It appears, upon consideration of the foregoing statutory provisions relating to library boards appointed by authority of Section 7635, General Code, that upon the establishment of a library in a school district free to all the inhabitants thereof by a board of education, and the appointment of a board of trustees therefor as directed by the statute, the board so created becomes an independent agency of government, with distinct independent powers, authorized to control and manage the library, and establish branches thereof at such location or locations as in its discretion seems proper. With respect to the discretion of such a library board, Judge Donahue said in the case of *Cleveland v. Library Board*, 94 O. S., 311, at page 321:

"This library board, however, is authorized by the provisions of Sec-

tions 7637 and 7638, General Code, not only to erect a library building, but library buildings, branches, stations and reading rooms, * *

The statutes of this state clothe that board with full authority to lease or purchase a site and erect a library building thereon. This court has no authority to control its discretion in the determination of these questions and will not attempt to do so."

The board of education, after having appointed a board of trustees by authority of Section 7635, General Code, is powerless to dictate to that board the manner of managing and controlling the library or the location of its buildings or branches.

When the library trustees, by authority of Section 7639, General Code, certify to the board of education of the school district in which the library is located, the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to other funds which may be available for that purpose, the board is required to levy a tax within certain specified limitations for the purposes of the library board and to the extent asked for by the board. The board of education has no authority to cut down the amount asked for only as it may be necessary in order to come within the limitations of the tax levy which the board of education is authorized by statute to make for the purpose.

It may be observed that the language contained in the first sentence of Section 7635, *supra*, wherein a board of education is authorized to provide for the establishment, control and maintenance in its district "of a public library free to all the inhabitants thereof," was prior to 1923, contained in Section 7631, General Code, then in force. Section 7635, General Code, then in force, only provided that the board of education might provide for the management and control of the library by a board of trustees. Upon the amendment of Section 7635, General Code, in 1923, by the incorporation of the first paragraph thereof and the provision making it mandatory to provide for the management and control of such library by a board of trustees, Section 7631, General Code, was also amended to read as it now does. Said section 7631, General Code, now reads:

"The board of education of any school district may provide for the establishment, control and maintenance of a school library or libraries for the purpose of providing school library service to the pupils under its jurisdiction, or may contract with any public library board, association, or other organization operating a public library in a community, to furnish such school library service, the board of education paying all or part of the expense thereof, including the salaries of school librarians, as and for compensation for the service rendered."

From these several changes in the statutes, made in 1923, as noted above, it appears that authority was extended to a board of education, if it desired to have library service in the school buildings for the use of the pupils and the teachers in the several school buildings, to contract with any public library in the district, which means that it might contract with a public library free to all the inhabitants of the district established by authority of Section 7635, General Code, as well as any other public library which might be located in the district. Apparently, the legislature foresaw the possibility that the library board established by Section 7635, General Code, might not in its discretion establish branch libraries for the use of the teachers and pupils in the several school buildings of the school district, and possibly that it might not be practical for it to do so, and for that reason

extended authority to the board of education to contract for that service if it so desired to have the service.

In view of the authority extended to a board of education by virtue of Section 7631, General Code, it would follow that the board, if it desired to contract for library service in the school buildings, would be authorized to pay from the regular school funds for that service.

Based on the foregoing discussion, I am of the opinion, in specific answer to the questions submitted:

(1) When a board of library trustees established by authority of Section 7635, General Code, certifies to the board of education, in compliance with Section 7639, General Code, the amount of money needed by it for library purposes during the ensuing year, the board of education has no authority to increase or decrease the amount as certified, except as it may be necessary to decrease the same to bring it within the limitations of the tax levy which the board of education is authorized to make for that purpose.

(2) A board of library trustees, established by authority of Section 7635, General Code, is not required to maintain branch libraries in the several school buildings of the district or to furnish library service within such buildings.

(3) A board of education, after having established a library free to all the inhabitants of the school district and appointed a board of trustees for said library, as directed by Section 7635, General Code, has no authority to dictate to said board of trustees the manner in which or the purpose for which the said library board shall expend the funds at its command for library purposes.

(4) A board of education is powerless to direct the policy of a board of library trustees established by authority of Section 7635, General Code.

(5) a. A public library established by authority of Section 7635, General Code, must furnish free library service to *all* the inhabitants of the school district in which it functions, including school pupils, teachers, and school authorities and all of said inhabitants are equally entitled to said service.

(b.) A board of trustees of a school district library established by authority of Section 7635, General Code, is a distinct, independent unit of government created for the purpose of providing free library service to all the inhabitants of the school district in which it functions.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3004.

APPROVAL, BONDS OF LOUISVILLE VILLAGE SCHOOL DISTRICT,
STARK COUNTY, OHIO—\$90,000.00.

COLUMBUS, OHIO, February 27, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3005.

APPROVAL, BONDS OF SIDNEY CITY SCHOOL DISTRICT, SHELBY
COUNTY, OHIO—\$250,000.00.

COLUMBUS, OHIO, February 27, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.