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1. MUNICIPAL LIBRARY—CLERK, BOARD OF TRUSTEES—EX OFFICIO TREASURER OF ALL FUNDS OF LIBRARY—SUCH FUNDS WILL NO LONGER BE DEPOSITED WITH TREASURER OF SUCH MUNICIPALITY—CLERK MUST BE ELECTED AND QUALIFIED, SECTION 7627 ET SEQ., G. C.
2. UNTIL ELECTION AND QUALIFICATION OF SUCH CLERK, TREASURER OF MUNICIPALITY WILL CONTINUE TO BE CUSTODIAN OF LIBRARY FUNDS.
3. NEITHER AUDITOR OF CITY WHICH HAS A MUNICIPAL LIBRARY, NOR A DEPUTY AUDITOR MAY BE ELECTED CLERK OF BOARD OF TRUSTEES OF SUCH LIBRARY UNDER SECTION 7627 G. C.

SYLLABUS:

1. The clerk of the board of trustees of a municipal library, when elected and qualified pursuant to Section 7627 et seq., General Code as enacted by the 97th General Assembly, becomes ex officio treasurer of all funds belonging to such library, and such funds will no longer be deposited with the treasurer of such municipality.

2. Until the election and qualification of a clerk of the board of trustees of the library board of a municipality, as provided by Section 7627 et seq., General Code, the treasurer of such municipality will continue to be the custodian of the funds belonging to such library.

3. Neither the auditor of a city having a municipal library nor a deputy of such auditor may be elected as clerk of the board of trustees of such library under the provisions of Section 7627, General Code.

Columbus, Ohio, December 31, 1947

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, which reads as follows:

“Questions have been recurring in connection with H. B. 125 enacted by the 97th General Assembly and effective September 4, 1947, Recodification of laws pertaining to Public Libraries.

In view of the provisions of Sections 7627 and 7627-1, General Code, may the library trustees of a municipal free public library continue to deposit the library funds in the municipal treasury, to be disbursed by the treasurer of the municipal corporation?

Is it lawful for the city auditor or his bonded deputy to also serve as the clerk of the Board of Library Trustees?"

House Bill No. 125 of the 97th General Assembly is a recodification and revision of the laws of Ohio relative to public libraries.

Section 4004, General Code, relates to municipal libraries, and reads as follows:

"Except as provided in General Code Section 4005-1, the erection and equipment, and the custody, control and administration of free public libraries established by municipal corporations, shall be vested in six trustees, not more than three of whom shall belong to the same political party, and not more than three of whom shall be women. Such trustees shall be appointed by the mayor, to serve without compensation, for a term of four years and until their successors are appointed and qualified. In the first instance three of such trustees shall be appointed for a term of two years, and three for a term of four years. Vacancies shall be filled by like appointment for the unexpired term. Such board of library trustees shall organize in accordance with the provisions of Section 7627 of the General Code. In the exercise of their control and management of the municipal free public library, except as provided in Section 4005-1 of the General Code, such board of library trustees shall be governed by the provisions of Sections 7627-1 through 7630-1, both inclusive, of the General Code."

It will be noted that reference is made to Section 7627, General Code, in accordance with which section the board of library trustees is to be organized. It is also provided that in the exercise of their control and management of the municipal free public library, such board is to be governed by the provisions of Section 7627-1 through Section 7630-1, both inclusive, General Code, excepting as provided in Section 4005-1, General Code. Section 4005-1 merely authorizes the board to employ librarians and assistants, fix their compensation and adopt by-laws and regulations, so that it does not really constitute an exception, and is not pertinent to your inquiry.

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.” (Emphasis added.)

Section 7627-1, General Code, provides:

“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.”

It will be observed that no definite date is fixed for the organization meeting and for the election of the clerk except it is to be “in the month of January in each year.” It would appear, therefore, that the time when the new legislation takes effect, to the extent of actual transfer of authority to the clerk-treasurer of the board, depends upon the time when the board meets and organizes and elects a clerk who qualifies by furnishing his bond.

It will be noted that certain authority is conferred upon the clerk which under previous statutes belonged to the municipal treasurer, to wit, the custody of and responsibility for all moneys received for library purposes, from any source whatsoever.

Section 7627-2 requires that the county auditor before giving the clerk of such board a warrant for funds due it, shall require of the clerk a statement showing the amount of funds on hand and in the depositories.

Section 7627-3, General Code, provides as follows:

“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 4298, General Code, relating to the powers and duties of the treasurer of a municipality, provides as follows:

“The treasurer shall demand and receive from the county treasurer taxes levied and assessments made and certified to the county auditor by authority of the council, and by the auditor placed on the tax-list for collection, and from persons authorized to collect or required to pay them, moneys, accruing to the corporation from judgments, fines, penalties, forfeitures, licenses, and costs taxed in the mayor’s or police courts, and debts due the corporation, and he shall disburse them on the order of such person or persons as may be authorized by law or ordinance to issue orders therefor.”

The above section has been in force in its present form for a great many years. Plainly, the provisions of the recent amendment of these library laws create an exception which would appear to amount to a partial repeal of the provisions of said Section 4298, in that the various officers of the county through whom moneys would come to the municipality, are authorized and required to pay over to the clerk-treasurer of the library all moneys that accrue from taxes or otherwise, to the credit of the library board.

The obvious intention of the General Assembly to give library boards and their officers complete control of library funds and their expenditure is further shown by the provisions of Section 7630, General Code, which specifically gives to the board of trustees of a municipal library and other public libraries, among other general powers, the following:

“* * * 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;”
(Emphasis added.)

Section 7630-I, General Code, contains the provisions:

“No monies credited to a free public library shall be paid out except on a check signed by the clerk of the board of library trustees having jurisdiction over said monies and the president or vice president or secretary of said board.”

Accordingly, it is my opinion that from and after the organization of the board of trustees of a municipal library, and the election and qualification of a clerk of such board, as provided in Section 7627 et seq., General Code, the funds of a municipal library are no longer to be deposited with or disbursed by the treasurer of the municipality but are to be paid over directly to the clerk of the library board.

Coming to your second question, as to the right of the city auditor or his bonded deputy to serve also as the clerk of the board of library trustees, I would call attention to Section 4284 of the General Code, relating to the duties of the auditor. It reads:

“At the end of each fiscal year, or oftener if required by council, the auditor shall examine and audit the accounts of all officers and departments. We shall prescribe the form of accounts and reports to be rendered to his department, and the form and method of keeping accounts by all other departments, and, subject to the powers and duties of the state bureau of inspection and supervision of public offices, shall have the inspection and revision thereof. Upon the death, resignation, removal or expiration of the term of any officer, the auditor shall audit the accounts of such officer, and if such officer be found indebted to the city, he shall immediately give notice thereof to council and to the solicitor, and the latter shall proceed forthwith to collect the indebtedness.”

The fact that the custody of the funds of the municipal library is transferred from the treasurer of the city to the clerk-treasurer of the library does not in any degree change their character as municipal funds, and it would appear that the auditor has very important powers and duties in keeping check on the clerk in respect to his handling of those funds. Accordingly, one of the familiar rules governing the compatibility or incompatibility of public offices is brought into action. The rule is stated in 32 Oh. Juris., page 908 as follows:

“One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties, or is subject to supervision or control by the other * * * or is in any way a check upon the other.”

See also *State, ex rel. v. Gebert*, 12 O.C.C., N. S., 274; *State, ex rel. v. Taylor*, 12 O. S., 130; *Mason v. State*, 58 O. S., 30.

Accordingly, I have no hesitancy in holding that neither the city auditor nor his bonded deputy can legally hold the office of clerk of a city library board elected under the provisions of Section 7627 et seq., General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.