

OPINION NO. 1300**Syllabus:**

1. When the entire school district, in which is located a permanent branch of a school district library organized pursuant to Section 3375.15, Revised Code, is annexed by a city or village, title to the library vests in the board of education of the city or the school district of which the village is a part.

2. When a city or village annexes territory comprising only a part of a school district, title to a permanent branch of a school district library located within that annexed territory will vest in the city board of education or the board of education of which the village is a part only upon approval by the state board of education of the inclusion of the annexed territory within the school district of the city or village.

3. If the state board of education does not approve the inclusion of the annexed territory within the school district of the annexing city or village, the library may continue to operate as a permanent branch of the school district library system.

4. When territory is transferred from one school district to another under Section 3311.06, Revised Code, the terms for compensating the relinquishing school district for any property concomitantly transferred are set forth in that code section.

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To: Earl W. Allison, Franklin County Pros. Atty., Columbus, Ohio
By: William B. Saxbe, Attorney General, August 18, 1964

I have your request for my opinion the three branches of which are set forth below:

""1. What disposition is made of a permanent branch library of a school district public library organized pursuant to the provisions of Section 3375.15, of the Revised Code when the area in which such branch library is annexed to a city?

""2. Can it continue to operate as a permanent branch of the school district library system?

""3. Must it become a part of the city public library system, and if so, what arrangements are possible for compensation of the school district library for the building, books and furnishings of the branch library?""

Questions numbered 1 and 3 must be answered in the alternative. The alternative applicable in each case will depend upon whether or not the territory annexed comprises an entire school district or a part thereof.

Section 3375.15, Revised Code, is as follows:

"In any school district in which a free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members. No one is 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 without compensation. All vacancies on such board of library trustees shall be filled by the board of education by appointment for the unexpired term. Such board of library trustees shall organize in accordance with section 3375.32 of the Revised Code. Such board of library trustees shall have the control and management of the school district free public library and in the exercise of such control and management shall be governed by sections 3375.33 to 3375.41, inclusive, of the Revised Code. This section does not affect the term of any member of a board of library trustees of a school district free public library appointed prior to September 4, 1947."

The above-quoted statute recognizes a library created by resolution of a board of education. It also provides for the governing of that library by a board of trustees whose administration of library affairs is prescribed by Sections 3375.33 to 3375.41, inclusive, Revised Code.

Despite the broad and apparently all-inclusive powers granted the trustees (see Miller v. Akron Public Library, 60 Ohio Law Abs., 364), the fact remains that the library is a creation of the board of education. Hence, the law applicable to the disposition of school district property necessitated by annexation of that school district applies with equal vigor to the disposition of a district's library. This must be borne in mind when consideration is given to the effect of Section 3311.06, Revised Code, the applicable portions of which are as follows:

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"When all of the territory of a school district is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part. When the territory is annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes part of the said city school district or the school district of which the village is a part only upon approval by the state board of education.

In the event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and the board's decision shall be final. Such division shall not include funds payable to or received by a school district under Chapter 3317 of the Revised Code or payable to or received by a school district from the United States of America or any department or agency thereof. In the event such transferred territory includes real property owned by a school district, the state board of education, as part of such division of funds and indebtedness, shall determine the true value in money of such real property and all buildings or other improvements thereon. The board of education of the school district receiving such territory shall forthwith pay to the board of education of the school district losing such territory such true value in money of such real property, buildings and improvements less such percentage of the true value in money of each school building located on such real property as is represented by the ratio of the total enrollment in day classes of all pupils residing in the school district losing such territory enrolled at such school building in such school year. The school district receiving such payment shall place the proceeds thereof in its sinking fund or bond retirement fund.

"The state board of education, before approving such transfer of territory, shall determine that such payment has been made and shall apportion to the acquiring school district such percentage of the indebtedness of the school district losing the territory as is represented by the ratio that the assessed valuation of the territory transferred bears to the total assessed valuation of the entire school district losing the territory as of the effective date of the transfer, provided that in ascertaining the indebtedness of the school district losing the territory the state board of education shall disregard such percentage of the par value of the outstanding and unpaid bonds and notes of said school district issued for construction or improvement of the school building or buildings for which payment was made by the acquiring district as is equal to the percentage by which the true value in money of such building or buildings was reduced in fixing the amount of said payment.

"No transfer of school district territory or division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section applies to all proceedings for such transfers and divisions of funds and indebtedness pending or commenced on or after October 12, 1959."

The statute explicitly states that when an entire school district is annexed, the property of the former-lesser district vests in the board of education of the enlarged district. Similar language appearing in Section 3311.22, Revised Code, applicable to transfers within a county school system, was interpreted in Opinion No. 119,

Opinions of the Attorney General for 1959. The syllabus of that opinion is as follows:

"Where, pursuant to the provisions of Section 3375.14, Revised Code, a public school library has been established by the board of education of a local school district which has subsequently been transferred to and become a part of another district, such library falls under the dominion and control of the district to which the transfer has been made, and members of the board of library trustees theretofore appointed will continue to hold their offices until the expiration of their respective terms, at which time their successors will be appointed by the board of education of the enlarged district."

That syllabus directs the continued administration of library affairs by the trustees serving at the time of the transfer. The succession to the board of trustees by appointees of the board of education of the enlarged district is also appropriately treated.

Section 3311.06, Revised Code, provides that should a part only of a school district be included within territory annexed to a city or village, the partial district shall become part of the school district of the annexing territory only upon approval of the state board of education. Should the state board of education withhold approval for transferring the partial district into the school district of the annexing city or village, there is no reason why the permanent branch library located within that annexed partial district cannot continue its operations.

In the event that school district property is transferred from one district to another, Section 3311.06, Revised Code, provides for an equitable division of funds and indebtedness between the districts involved. The statute further provides for determination of the value of real estate, buildings, and improvements. All of these proceedings are to be under the supervision of the state board of education, whose decisions are accorded finality by the statute.

Section 3311.06, Revised Code, is remedial. Bohley v. Patry, 107 Ohio App., 345. The general rule is that remedial statutes should be construed liberally, 50 O. Jur. 2d, 24 Statutes, Section 14; hence, that code section can be deemed to include the evaluation and payment for any and all property to be transferred between the school districts contemplating such transfer.

In conclusion, it is my opinion and you are advised that:

1. When the entire school district, in which is located a permanent branch of a school district library organized pursuant to Section 3375.15, Revised Code, is annexed by a city or village, title to the library vests in the board of education of the city or the school district of which the village is a part.

2. When a city or village annexes territory comprising only a part of a school district, title to a permanent branch of a school district library located within that annexed territory will vest in the city board of education or the board of education of which the village is a part only upon approval by the state board of education of the inclusion of the annexed territory within the school district of the city or village.

3. If the state board of education does not approve the inclusion of the annexed territory within the school district of the annexing city or village, the library may continue to operate as a permanent branch of the school district library system.

4. When territory is transferred from one school district to another under Section 3311.06, Revised Code, the terms for compensating the relinquishing school district for any property concomitantly transferred are set forth in that code section.