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## LIBRARY—MUNICIPAL:

1. TRUSTEES—EXERCISE OF CONTROL AND MANAGEMENT GOVERNED BY SECTIONS 7627-1 THROUGH 7630-1 G. C.—EXCEPTION, SECTION 4005-1 G. C.—TRUSTEES AUTHORIZED IN DISCRETION TO TRANSFER MONEYS FROM LIBRARY GENERAL FUND TO SPECIAL BUILDING AND REPAIR FUND—TIMES AND CIRCUMSTANCES OTHER THAN AS PROVIDED BY SUBPARAGRAPH 11 OF SECTION 7630 G. C.
2. TRUSTEES HAVE AUTHORITY TO EXPEND MONEYS CREDITED TO GENERAL FUND OF SUCH LIBRARY TO CONSTRUCT GARAGE TO HOUSE BOOKMOBILE USED TO MAINTAIN AUTHORIZED TRAVELING LIBRARY SERVICE.

## SYLLABUS:

1. The trustees of a municipal library who, in the exercise of their control and management of such library (except as provided in Section 4005-1, General Code) are governed by the provisions of Sections 7627-1 through 7630-1, both inclusive, General Code, are authorized in their discretion to transfer moneys from the library general fund to a special building and repair fund at times and under circumstances other than as provided in subparagraph 11 of Section 7630, General Code.

2. The trustees of such municipal library have authority, under the provisions of Section 7630, General Code, to expend moneys credited to the general fund of such library to construct a garage to house a bookmobile used to maintain an authorized traveling library service.

Columbus, Ohio, March 2, 1951

Hon. John H. Anderson, Prosecuting Attorney  
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads:

"The Clerk of the Board of Trustees of the Warren Public Library has asked me to make the following inquiry of your office:

"1. Does a public library have authority to transfer money from the general operating fund to a building and repair fund?

"2. Does the Board of Trustees possess the power to use general operating funds to construct a garage to house a book-mobile used in the county extension service of the library?"

Although your inquiry does not so state, I assume for the purpose of this discussion that the Warren Public Library is not one created by will or endowment and so subject to the provisions of Section 4005-1, General Code, but rather is a municipal library the trustees of which are required, by the provisions of Section 4004, General Code, to be governed in the exercise of their control and management of such library by the provision of Section 7627-1 et seq., General Code.

With respect to your first question, I find no express provision of law requiring trustees of a municipal library to segregate library funds into different accounts, or funds. In this connection, it is to be observed that a municipal library is not a "subdivision" as defined in Section 5625-1, General Code; and it would not, therefore, be required to establish and maintain the several funds listed in Section 5625-9, General Code.

There is statutory authority, however, which permits the establishment by municipal library trustees of a special building and repair fund. Section 7630 of the General Code provides in part as follows:

"The boards of library trustees \* \* \* shall have the following general powers to wit:

"\* \* \* 11. At the end of any fiscal year by a two-thirds vote of its full membership to set aside any unencumbered surplus remaining in the general fund of the library under their jurisdiction for the purpose of creating a special building and repair fund."

Since this is the only provision in the statute relative to a transfer of moneys to a library building fund (and, indeed, the only mention of a fund other than the general operating fund,) it might be supposed under the maxim "expressio unius est exclusio alterius," that such a transfer under any other circumstances is not authorized by law. I cannot reach that conclusion, however, in view of what I conceive to be the special reasons for the enactment of this statutory provision.

The trustees of a municipal library are required, under the provisions of Section 5625-20, General Code, to submit an annual budget request to the chief executive officer of the municipality. Section 5625-21, General Code, requires that the budget adopted by the taxing authority of the municipality, and based on the several departmental budget requests so made, contain an "estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited." It seems clear, therefore, that the purpose of the special statutory authority in Section 7630, General Code, for the setting aside at the end of a fiscal year of the unencumbered surplus in the library general fund to create a special building and repair fund is to permit the encumbrance of such moneys so that the amount thereof will not appear as an estimated credit (receipt) in the budget for the ensuing fiscal year. In view of this special purpose, I readily conclude that this statutory provision does not by implication or otherwise forbid transfers from the library general fund to the special building and repair fund at times or under circumstances other than therein specified. I conclude further that under the general authority conferred in subparagraph 2 of Section 7630, General Code, "to expend for library purposes, subject to the limitations of law, all monies credited to the free public library under their jurisdiction," there is an implied authority to make such transfers from the general fund to the special building and repair fund as the trustees may deem proper.

Your second question requires an examination of the powers of library trustees as stated in Section 7630, General Code. This section reads in part 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 have the following general powers to wit :

"1. To hold title to and have the custody of all property

both real and personal of the free public library under their jurisdiction ;

“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 ;

“3. To purchase real and personal property necessary for the proper maintenance and operation of the free public library under their jurisdiction ;

“4. To purchase, lease or erect buildings or parts of buildings to be used as main libraries, branch libraries or library stations ;

“5. To establish and maintain a main library, branches, library stations and traveling library service within the territorial boundaries of the subdivision or district over which they have jurisdiction of public library service ;

“6. To establish and maintain branches, library stations and traveling library service in any school district, outside of the territorial boundaries of the subdivision or district over which they have jurisdiction of free public library service upon application to and approval of the state library board, pursuant to the provisions of section 154-53a of the General Code ; provided, however, that the trustees of any free public library maintaining branches, stations or traveling book service, outside of the territorial boundaries of the subdivision or district over which they have jurisdiction of public library service, on the effective date of this act, may continue to maintain and operate such branches, stations and traveling library service without the approval of the state library board ; \* \* \*”

In a situation where the trustees of a library are authorized by law to establish and maintain a “traveling library service,” and where that service is maintained by the operation of a motor vehicle known as a bookmobile, I have no difficulty in reaching the conclusion that the term “public library,” as used in Section 7630, General Code, is not so limited as to include merely the building or buildings which house the main library and its branches, but rather that it includes all and sundry of the property, real and personal, pertaining to such public library ; and specifically that such term includes a bookmobile used in the maintenance of a traveling library service.

From this it necessarily follows that the power of the trustees to

acquire "real and personal property necessary for the proper maintenance and operation of the free public library under their jurisdiction" and "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," includes the power to use the general funds of the library to construct a garage to house a bookmobile used in the maintenance of a traveling library service.

Accordingly, in specific answer to your inquiry, it is my opinion:

1. The trustees of a municipal library who, in the exercise of their control and management of such library, except as provided in Section 4005-1, General Code, are governed by the provisions of Sections 7627-1 through 7630-1, both inclusive, General Code, are authorized in their discretion to transfer moneys from the library general fund to a special building and repair fund at times and under circumstances other than as provided in subparagraph 11 of Section 7630, General Code.

2. The trustees of such municipal library have authority, under the provisions of Section 7630, General Code, to expend moneys credited to the general fund of such library to construct a garage to house a bookmobile used to maintain an authorized traveling library service.

Respectfully,

C. WILLIAM O'NEILL

Attorney General