

OPINION NO. 67-100**Syllabus:**

1. A county library board of trustees may purchase a site for a free public library by giving notes to a lender and pledging the tax revenues of the board for a 10 to 15 year period, only in accordance with a vote of the electors of such county district, pursuant to Section 3375.24, Revised Code.

2. A county library board of trustees may purchase a site for a free public library by entering into a contract providing for immediate possession of the site and for paying the balance in installments over a 10 to 15 year period. No authorization is needed from either the taxing authority or electorate of such district, pursuant to Sections 3375.33 and 3375.40, Revised Code.

To: Forrest P. Moore, Hocking County Pros. Atty., Logan, Ohio
By: William B. Saxbe, Attorney General, November 7, 1967

Your request for my opinion reads as follows:

"The Library Board for Hocking County has accumulated a building fund and propose to purchase real estate and construct a library building on the site. It is contemplated that the funds for building the building will be supplied by a trust fund available here in this county. The Board has taken an option on a proposed site and have on hand a fund sufficient to pay about 40% of the purchase price under the option. The Board proposes to pay approximately 40% of the purchase price of the site at the time title is transferred to the Board and wishes to pay the remaining 60% of the purchase price over a 10 to 15 year period. The annual tax revenues to the Library Board are sufficient to provide for the current operating expenses of the library and the amortization of the remaining balance of the cost of the site.

"I find that Section 3375.33 of the Revised Code establishes a Board of Library Trustees as a body politic. I further find Section 3375.40 (c) of the Revised Code provides for the purchase of real property and the payment therefore 'in installments or otherwise.'

"Would you please advise me whether or not the County Library Board of Trustees can purchase a site for a free public library and pay for the same by paying approximately 40% of the purchase price in cash and the balance by one or both of the following means:

"(a) By giving the notes of the Board to a lender in which the tax revenues of the Board are pledged for a given period of time such as 10 to 15 years.

"(b) By entering into a land contract with the seller of the real estate providing for immediate possession of the land by the Board with the remaining balance over a 10 to a 15 year term.

"In the event your answer to either of the above proposals is in the affirmative, would it be necessary for the Library Board to obtain the authorization of its taxing authority or a vote of the electorate of the library district necessary?"

Section 3375.24, Revised Code, provides:

"The board of county commissioners of any county which has a county library district constitutes the taxing authority of such district and may issue notes and bonds of such district under sections 133.01 to

133.65, inclusive, of the Revised Code, for the acquisition of land and the construction of buildings and equipment of one or more buildings, but no notes or bonds shall be issued for such purpose except in accordance with the vote of the electors of such district. The proceeds of the sale of any former site, including land or buildings, or both, belonging to said district, may be applied to reduce the amount of the bonds ultimately issued to refund the notes issued under such section. All funds provided by the issue of county bonds or notes, or in any other manner, for the acquisition of property and the construction and equipment of library buildings shall be deposited in a special library fund, which shall be expended only on the order of the board of library trustees of the county library district, to be handled and disbursed in the same manner as other funds of the district. The title of all property so acquired shall be held by the board of library trustees of the county library district and section 307.03 of the Revised Code shall not apply.

"The title of all property acquired for use of the county library district which was held in the name of the county under former section 3375.26 of the Revised Code shall be held in the name of the board of library trustees of the county district library."

(Emphasis added)

Your first inquiry seems to be answered by the language of the above cited statutory provision. Following the entire above prescribed procedure, financing the purchase of the site by means of notes issued by the county commissioners would seem permissible only in accordance with a vote of the electorate of your county district.

As you have noted in your request, Section 3375.33, Revised Code, makes the board of library trustees a "body politic" and Section 3375.40, Revised Code, provides that:

"Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code may:

* * * * *

"(C) Purchase or lease buildings or parts of buildings and other real property necessary for the proper maintenance and operation of the free public libraries under its jurisdiction and pay the purchase price therefor in installments or otherwise;"

The Revised Code sections referred to immediately above would seem dispositive of your second inquiry permitting the board of library trustees to pay the balance in periodic in-

stallments over a 10 to 15 year period. The power needed to consummate your second proposal seems to be present within the strict purview of Sections 3375.33 and 3375.40 of the Revised Code. This proposition was elaborated upon in Miller v. Akron Public Library, 60 Ohio Law Abs. 364, where the court said beginning at page 369:

"Under Section 7628 GC [Section 3375.33, Revised Code] 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."

Authorization for this proposal by either the taxing authority or by a vote of the electorate, as was needed for disposition of your first proposal, would not seem to be imposed by either statute or implication.

Therefore, it is my opinion and you are hereby advised:

1. A county library board of trustees may purchase a site for a free public library by giving notes to a lender and pledging the tax revenues of the board for a 10 to 15 year period, only in accordance with a vote of the electors of such county district, pursuant to Section 3375.24, Revised Code.
2. A county library board of trustees may purchase a site for a free public library by entering into a contract providing for immediate possession of the site and for paying the balance in installments over a 10 to 15 year period. No authorization is needed from either the taxing authority or electorate of such district, pursuant to Sections 3375.33 and 3375.40, Revised Code.