

3232.

PUBLIC LIBRARY—TOWNSHIP TRUSTEES UNAUTHORIZED TO PURCHASE REAL ESTATE FOR SUCH PURPOSE—TAX LEVIED UNDER SECTION 3407 G. C. MAY BE PAID OVER TO PRIVATE ASSOCIATION WHICH MAINTAINS FREE PUBLIC LIBRARY.

1. *Under the provisions of sections 3403 and 3404 G. C. township trustees are unauthorized to purchase real estate as a site for a public library.*

2. *The funds raised by the tax levy provided by section 3407 G. C. may be paid over to a private or unincorporated association which maintains a free public library for the benefit of the township.*

COLUMBUS, OHIO, June 17, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

"We call your attention to the opinion of the Attorney-General rendered to the state librarian under date of September 6, 1913, to be found in the 1913 Annual Report, Volume I, page 957, in which it was held that the trustees of a township upon favorable result of an election will have authority to borrow money or issue bonds in order to acquire a site for the erection of a building; also to an opinion rendered to the prosecuting attorney of Defiance county, under date of April 11, 1916, to be found in the Annual Report for 1916, Volume I, at page 640, in which it is held that township trustees are not authorized under sections 3403 and 3404 to purchase real estate upon which to erect a public library. These two opinions seem to be in direct conflict and for this reason we respectfully request your opinion upon the questions passed upon by the opinions above referred to.

We also request your opinion as to the interpretation of section 3407 G. C., which provides that the trustees of a township may annually levy and collect a tax on the taxable property of the township and pay it to a private corporation or association which furnishes and maintains a free public library for the benefit of the inhabitants of the township. In view of the provisions of section 12972 G. C., may this tax be levied and paid over to an unincorporated or private association?"

Relative to the conflicting opinions mentioned by your inquiry, attention is directed to the one referred to as recorded in Opinions of the Attorney-General 1913, Vol. I, p. 957.

It may be noted that this opinion pertains chiefly to a consideration of the gift of funds for the establishment of a Carnegie library building, and one of the questions discussed, is whether or not the funds produced by a tax levy under sections 3403 et seq. of the General Code, may be used in part for the purchase of real estate upon which said building may be erected.

Considering this question, the above cited opinion briefly disposes of the same in the following language:

"Section 3404 General Code, of itself seems to authorize the application of the proceeds of the levy referred to therein, to the procuring of suitable

room or rooms therefor,' which by inference would carry with it the authority to purchase a site and to erect a building."

Considering the same question, however, and construing the same section unaltered by legislative amendment, Opinion No. 1465, Opinions of the Attorney-General, 1916, Vol. I, p. 640, holds in its syllabus as follows:

"Township trustees are not authorized under the provisions of sections 3403 and 3404 G. C. to purchase real estate upon which to erect a building for a public library."

The latter opinion it is believed, considers more specifically the question under discussion, and bases its conclusion apparently upon the construction given the phrase "and the procuring of suitable room or rooms therefor," as well as applying the well established rule that township trustees may exercise only such powers as are expressly conferred upon them by statute, or those necessarily implied from such granted authority.

It would seem therefore apparent that section 3404 G. C. does not expressly authorize the purchase of real estate by the township trustees, neither may it be said that such authority may be clearly implied, although it is conceded that a construction given the words "procuring" and "establishment" might indicate perhaps a legislative intention in this direction. However in such cases of ambiguity and doubtful authority, the rule of statutory construction resolves the doubt against the existence of the power.

Upon such considerations therefore it is believed that Opinion No. 1465, Opinions of the Attorney-General 1916, Vol. I, p. 640, correctly construes the purpose and intention of sections 3403 and 3404 G. C., in concluding that said sections do not authorize the purchase of real estate in such cases by the township trustees, and such conclusion this department is inclined to follow.

Section 3407 G. C. is pertinent to your second question and provides as follows:

"Sec. 3407. The trustees of each township may annually levy and collect a tax not to exceed one-half mill on each dollar of the taxable property of the township, and pay it to a private corporation or association which maintains and furnishes a free public library for the benefit of the inhabitants of the township, as and for compensation for the use and maintenance thereof."

It is observed that the section quoted authorizes the township trustees to levy and collect a tax, not in excess of one-half mill upon each dollar of the taxable property of the township, and to pay the same to a "private corporation or association," which maintains and furnishes a free public library for the benefit of the inhabitants of the township. Such language is thought to be clear and explicit in its direction, and it would seem that the private association therein indicated, is not limited to an incorporated association, hence it is concluded that a private and unincorporated association qualified in other statutory respects, may under the provisions of section 3407 G. C. lawfully be paid the tax fund in question.

It may be noted that your second question states "In view of the provisions of section 12972 G. C. may this tax be levied and paid over to an unincorporated or private association?"

It is apparent that an error has been made in the section number cited, since upon examination section 12972 G. C. could not possibly be relevant to the question under consideration. If, however, section 9972 G. C. is the one you have in mind,

it is believed that the provisions of this section may not be considered as a limitation directed to the provisions of section 3407 G. C., since the former is thought merely to provide for the adoption by such incorporated associations as the section mentions of certain regulations and organized laws for the purpose of the government of said associations, and does not attempt to consider unincorporated associations in this or any other respect. Hence, it is not thought that section 9972 G. C. attempts to preclude the payment of the funds raised by the tax levy under section 3407 G. C., to unincorporated or private associations, as specified by the provisions of that section.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3233.

MUNICIPAL CORPORATION—MEMBER OF COUNCIL MAY UPON EXPIRATION OF TERM OF OFFICE AND WITHIN ONE YEAR LIMITATION PRESCRIBED BY SECTION 12912 G. C. QUALIFY AND ACT AS DIRECTOR OF PUBLIC SERVICE.

Under the provisions of section 12912 G. C. a member of council of a municipality, may upon the expiration of his term of office as councilman and within the one year limitation prescribed by the section, qualify and act as director of public service of the same city, said section prohibiting such an officer only from acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the corporation during the term for which he was elected or for one year thereafter.

COLUMBUS, OHIO, June 17, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“Section 12912 G. C., provides in part that:

‘Whoever being an officer of a municipal corporation or member of council thereof, or a trustee of a township, is interested in the profits of a contract, job, work or service for such corporation or township, or acts as a commissioner, architect, superintendent or engineer in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed or for one year thereafter, etc.’

Opinions of the Attorneys-General No. 398 of 1912, volume II, page 1743, and No. 6 of 1917, volume I, page 10, held that a councilman in a city might resign and immediately be appointed as street commissioner in a city; an office subordinate to that of director of public service.

Question: May a member of council immediately upon expiration of his term of office be legally appointed director of public service of the same city in view of the ‘one year’ provision of section 12912 G. C.?”

Pertinent to your inquiry, section 12912 G. C. reads as follows: