

3847.

COUNTY LIBRARY—TERRITORIAL LIMITS—WHERE TOWNSHIP LIBRARIES MAINTAINED AND NOT MAINTAINED—CANNOT CREATE COUNTY LIBRARY DISTRICT—HOW SUCH DISTRICTS CAN BE CREATED—EXAMPLE WHERE COUNTY LIBRARY DISTRICT CANNOT BE CREATED—“FREE LIBRARY SERVICE” CONSTRUED—MISCELLANEOUS LIBRARY LAWS.

1. *Under the provisions of the county library district law (7643-1 to 7643-9 G. C. inclusive), there can be but one county library district in a county and such district may be composed of territory less in extent than the county, or it could extend beyond the confines of the county, in cases where school districts with attached territory from another county were made a part of such county library district.*

2. *In a county composed of twelve townships, in four of which townships there are township libraries maintained by taxation, while in four other townships library associations are maintained, in which library service is furnished to the citizens of such townships who become members thereof, and in the remaining four townships there is no library service of any nature, the entire county cannot be created into a county library district because “free library service” is already provided to all of the citizens in four townships of the county.*

3. *In a county such as described in (2), the county library district may be created out of the eight townships other than the four in which the tax supported library exists, for the reason that these eight townships are “composed of territory \* \* \* in which free library service is not provided to all of its citizens.”*

4. *In a county such as described in (2), the county library district cannot be created out of only the four townships in which no library service is provided to citizens, because under section 7643-1 G. C. the county library district must be composed of all the territory in the county in which free library service is not provided to all its citizens. Where a township library association furnishes free library service to its members only, this is not free library service to “all its citizens.”*

5. *“Free library service,” as it appears in the county library district act (7643-1 to 7643-9 G. C.) means library service that is free “to all its citizens” and not a portion of them, and if a public library was supported by a voluntary association or maintained by means other than taxation, and it furnished “library service free to all its citizens” in the territory concerned, then that territory would be receiving “free library service.”*

6. *Under existing law there is no provision whereby authorities in charge of a county library established under 2976-11 to 2976-12 G. C. can change over and operate as a county library district under the provisions of sections 7643-1 et seq.*

7. *A county maintaining a county library is prevented from taking a vote on creating a county library district because the county library is already furnishing free library service to all of the citizens of the county and there could be no compliance with the language appearing in 7643-1 G. C. of the county library district act.*

8. *Under existing library laws of the state there is no provision whereby the trustees of a county library, which has accepted the gift of a library or a gift or bequest of money or property with which to construct a library, may legally convey this property to the board of trustees of a county library district.*

9. *Under existing law there is no provision for a township, school district or municipality joining in the creation of a county library district, thereafter leaving such established county library district.*

COLUMBUS, OHIO, December 30, 1922.

HON. HERBERT S. HIRSHBERG, *State Librarian, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon a series of nine questions contained in the following:

“In the administration of the Library laws, several questions have arisen relative to statutory construction, upon which the opinion of your department is requested.

Sections 7643-1 to 7643-9 of the General Code, enacted at the 1921 session of the General Assembly, provide for the creation of county library districts. Section one of this act reads in part as follows: ‘A county library district may be created in any county, composed of territory therein in which free library service is not furnished to all of its citizens.’ The chief difficulty which has arisen is the determination of the specific territory in which the election shall be held.

(1) In view of the fact that the county library law (2976-11 - 2976-17) was not repealed by the county library district law (7643-1 to 7643-9), can it be assumed that it was the intention of the General Assembly to provide that county library districts were to be composed of territory less in extent than the county?

In order to make the matter more concrete, we will assume that a certain county is composed of twelve townships. In four of these townships, township libraries are maintained by taxation. In four other townships, library associations are maintained in which library service may be furnished to the citizens of such townships who become members thereof, but which libraries are not supported by taxation. In the other four townships there is no library service of any nature. The specific questions, therefore, are the following:

(2) May the entire county be created into a county library district, since in a part of this county, to wit, four townships, library service is not furnished to the citizens thereof? or

(3) May the county district be created out of the eight townships other than the four in which the tax supported library service exists? or

(4) May the county library district be created out of only the four townships in which no library service is furnished the citizens?

(5) This raises the question as to the definition of free library service, whether it means service supported only by taxation, or whether it constitutes service rendered by voluntary associations or other means.

In several counties of the state, county libraries were created and are maintained under the provisions of sections 2976-11 to 2976-17 of the General Code. Section 2976-11 provides 'That in all counties of the state of Ohio where the county commissioners have *received a bequest or gift* of a building, money, or property wherewith to construct a building for, or to furnish or equip and help a county library, or have *accepted a gift of a library* or its use for a term of years and have made an agreement to maintain and provide for such library, \*\*\* there shall be established a *county library* for the use of all the citizens of the county, and the maintenance, management, care and control of such library shall be entrusted to a board of trustees consisting of *six members*.'

In a part of these counties, the county library authorities desire to change over and operate as a county library district under the provisions of section 7643-1, et seq. There is apparently *no provision of law which authorizes this transfer*.

(6) Is such transfer possible in view of the provisions of section 2976-11 that the title to the county library property is vested in the county, and the provisions of section 2976-12 that, 'Each and every resident of the county within which is situated such a county library shall be entitled to the free use of such library,' in view of the fact that the county library district may not be coterminous with the county?

(7) Is not any county maintaining a county library prevented from taking a vote on the proposition of creating a county library district because such district can be created only in a county in which library service is not furnished to all citizens thereof, while the language of sections 7629-11 et seq. specifically states that each and every citizen is entitled to this library service?

(8) Where a county has accepted the gift of a library, or a gift or bequest of money or property with which to construct a library, would it constitute a violation of this trust to convey this property to the board of trustees of a county library district?

Section 7643-4 of the General Code provides that any subdivision of a county may, by proper resolution, become a part of any county library district at any time after its creation, but there is no specific provision by which any part of any county library district may be separated therefrom after it has once voted to join.

(9) In one of the counties of the state, a county library district is being created, and the village of G. expects to become a part of this library district. At the same time, the annexation of the village of G. to the adjoining city of C. is being seriously considered. If the village becomes a part of the county library district and is subsequently annexed to the adjoining city of C. is there any means by which the village of G. can be

separated from the county library district or must the village be compelled to levy taxes for both the support of the county district library service and the municipal library service in view of the provision of section 3574 that "The annexation shall not affect any rights of libraries existing at the time of annexation either in favor of or against the corporation except such as are affected by such terms and conditions of annexation?"

The questions which you submit largely grow out of the act "Providing for the creating of county library districts and the certification of librarians therefor" (Amended Senate Bill 209) as appearing at page 351 of 109 O. L., and placed in the General Code under section numbers 7643-1 to 7643-9 inclusive.

It is only by a careful reading of the entire act (Amended Senate Bill 209) that one becomes convinced that there could not be in a county more than one county library district because the opening sentence of the act simply says that "a county library district may be created in any county" and this in itself is not conclusive that but one county library district was contemplated because this same section, speaking of the confines of a county library district, clearly says that such county library district can be composed of townships, school districts or municipalities, and that "the map or plat showing the boundaries thereof" as submitted to the Probate Judge must describe such territory in such proposed district "by metes and bounds." Thus, section 7643-1 G. C. reads:

*"A county library district may be created in any county, composed of territory therein in which free library service is not furnished to all of its citizens, in the manner hereinafter provided. Upon the filing of a petition in the probate court of the county, signed by not less than twenty-five per cent of the electors residing in the territory comprising the proposed district, specifically describing the territory in such proposed district by metes and bounds and accompanied by a map or plat showing the boundaries thereof, or in case such proposed district is composed of entire townships, school districts, or municipalities the proper name of each such sub-division, the probate judge shall fix a day for the hearing thereof not more than thirty days after the filing of such petition. If the probate judge finds the territory of such proposed district sufficiently described and the boundaries thereof accurately designated he shall certify such fact to the deputy state supervisors of elections of the county who shall submit the question of the creation of such county library district to the electors residing in the territory comprising such proposed district and shall place the same on the ballot at the next regular or general election. If a majority of the electors voting upon such proposition vote in the affirmative, such district shall be deemed and held to have been created."*

Throughout the other sections of the act the words used are "the county library district service," "a county library district," "the county library district," etc. However, further along in the act reference is made to "the county library district trustees," "the county district library fund," "the levy made for the county library district," "such library district fund," and then the provisions that "the county treasurer shall be custodian" of the county library district fund of such county. It is to be inferred then that the intent of the act was that there should be but one county library district in each county which took advantage of the act and that the district created for the

purposes named in the act would be the county library district of that county, regardless of the size or boundaries of the territory in the county which composed such county library district. The use of the words "county library district" in the title of the act is not conclusive that there could not be more than one "county library district" in the county for there are a number of activities in a county such as "county ditches," "county highways," "county buildings" and "county institutions," of which there are more than one in the county. Having in mind, then, that the intent of this law was that there should be but one county library district in a county, your first question is whether "it can be assumed that it was the intention of the General Assembly to provide that county districts were to be composed of territory less in extent than the county. The answer to this question is that the county library district can be less in extent than the county because section 7643-1 G. C. provides that a county library district may be created only from territory "in which free library service is not provided to all its citizens," that is a part of the county in a great many cases; again, the section does not speak of the county as a geographical unit but says "that the territory comprising the proposed district" and provides further that such, *proposed district* shall be described by metes and bounds and if such proposed district is "composed of entire townships, school districts or municipalities, the proper name of each such subdivision" shall appear. You indicate that the county library law (sections 2976-11 to 2976-17 G. C.) was not repealed by the county library district law (sections 7643-1 to 7643-9 G. C.) and it is also true that the county library district law did not repeal section 7631 G. C. et seq., providing for county libraries, village libraries and school district libraries.

In your question No. 2, following your description of the concrete instance of a county composed of twelve townships in four of which townships there are township libraries maintained by taxation while in four other townships library associations are maintained in which library service is furnished to the citizens of such townships *who become members thereof*, and in the remaining four townships there is no library service of any nature, you ask whether the entire county may be created into a county library district, since in a part of this county, to wit, four townships, library service is not furnished to the citizens thereof. The answer to this is in the negative because section 7643-1 clearly says that a county library district must be "composed of territory therein in which free library service is not provided to all its citizens," and in the county which you describe, free library service is provided to all of the citizens in four townships of the county.

Your third question is whether the county library district may be created out of the eight townships other than the four in which the tax supported library service exists, and the answer to this is in the affirmative, for the reason that these eight townships are "composed of territory \* \* \* in which free library service is not provided to all of its citizens" since in four of these eight townships the library service is not free to all its citizens but limited to those who become members of the respective library associations, while in the other four townships there is no library service of any nature.

Your fourth question is whether the county library district in the case described may be created out of only the four townships in which no library service is provided the citizens and the answer to this is in the negative because under section 7643-1 G. C. the county library district "must be composed of territory therein in which free library service is not provided to all its citizens." Thus in the four townships there is no library service at all, and hence none provided to "all of its citizens," and this complies with section 7643-1 G. C., but on the other hand, there

are also four townships with library associations in which library service is limited to the members of the associations and in these townships it also can be said that free library service is not furnished to "*all of its citizens.*"

In your fifth question you desire to be advised as to whether "free library service" as it appears in this act means service supported only by taxation or whether it constitutes service rendered by voluntary associations or other means. The answer to this question is that the library service must be free to "all of its citizens" and not a portion of them, so that if a public library was supported by a voluntary association or maintained by means other than taxation, and it furnished "library service free to all its citizens" in the territory involved, then that territory would be receiving "free library service."

In your sixth question you desire to be advised as to whether the county library authorities established under sections 2976-11 to 2976-12 G. C. can change over and operate as a county library district under the provisions of sections 7643-1 et seq., and the answer to this is that under the law there is no provision which authorizes this transfer or creates any machinery for the same. As you indicate, the county library district may not be coterminous with the county because the county library district may lie wholly within the county and be less than the county, while on the other hand, in the county library district composed in part of a school district or districts which had school territory attached from another county, the geographical boundaries of the county itself would not obtain.

In your seventh question you desire to know whether a county maintaining a county library is not prevented from taking a vote on the proposition of creating a county library district because such district can be created only in a county in which "library service is not furnished to all the citizens" thereof, while the language of sections 2976-11 et seq. specifically states that each and every citizen is entitled to this library service. The answer to this question is in the affirmative, that is, that the county is prevented from taking a vote to create a county library district under Amended Senate Bill No. 209 because the county library is already furnishing free library service to all of the citizens of the county and therefore that territory would not be territory "in which free library service is not furnished to all its citizens," and there could be no compliance with section 7643-1 G. C.

In your eighth question you desire to be advised as to whether it would constitute a violation of a trust for a board of trustees of a county library which has accepted the gift of a library, or a gift or bequest of money or property with which to construct a library to convey this property to the board of trustees of a county library district. In reply to this query you are advised that there is nothing in the county library district law providing for such procedure and this is a proper subject for further legislation if authority of this kind is desired. Provision for the county library district trustees contracting with the governing body of one or more libraries within the county for the free use of such library or libraries by the people of the county library district appears in section 7643-5 G. C., but this right of contract as to the free use of a library or the furnishing of library service could hardly be said to go so far as to permit a conveyance of an established library itself (which has been a gift), or the conveyance of a gift or bequest of money or property with which to construct such library, from the trustees of the county library to the trustees of the county library district.

In your ninth and final question you say that in one of the counties of the state a county library district is being created and that the village of G. expects to become a part of this library district; at the same time the annexation of the village of G. to the adjoining city of C. is being seriously considered, and you desire

to be advised if the village becomes a part of the county library district and is subsequently annexed to the adjoining city of C. is there any means by which the village of G. can be separated from the county library district, or must the village be compelled to levy taxes for both the support of the county district library service and the municipal library service at the same time. Relative to this question you quote section 3574 G. C. as saying that "The annexation shall not affect any rights of libraries existing at the time of annexation either in favor of or against the corporation, except such as are affected by such terms and conditions of annexation." A careful examination of section 3574 G. C. as amended in House Bill No. 2 appearing on page 266 of 109 O. L. fails to show any reference therein to "libraries," but on the other hand the closing sentence of section 3574 G. C. uses the word "liabilities" and not "libraries." Thus it reads:

"The annexation shall not affect any rights or liabilities existing at the time of annexation, either in favor of or against the corporation, except such as are affected by such terms and conditions of annexation and suits founded on such rights and privileges may be commenced, and pending suits prosecuted to final judgment and execution, as though the annexation had not taken place."

In reply to your ninth query, you are advised that nowhere in the act creating county library districts (Amended Senate Bill No. 209) is there any provision for a township, school district or municipality joining in the creation of such proposed district thereafter leaving such established county library district. For this department to say that the village in question could leave the county library district in the absence of law upon the subject would be legislation and a matter that should come within the power and authority of the General Assembly.

The attention of the State Librarian is invited to the fact that if this county library district law does not at this time dovetail into the many other sections of the General Code bearing upon libraries of various kinds, the opportunity is now close at hand in the coming session of the Eighty-Fifth General Assembly to have the sections of the county library district law amended so that they will harmonize with other existing library statutes and thus care for just such cases as those mentioned in the inquiries herein discussed.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3848.

BOARD OF EDUCATION—HAS NO AUTHORITY TO REFUSE TO ADMIT TO HIGH SCHOOL PUPIL WHO HAS DIPLOMA SHOWING COMPLETION OF ELEMENTARY SCHOOLWORK—WHERE TUITION PAID OR WILL BE PAID—REMEDY FOR REFUSAL TO PAY TUITION—HOW PAID.

1. *Under existing law there is no authority for a board of education conducting a high school to refuse to admit to the high school conducted by it any pupil holding a diploma showing completion of the elementary school work, where such pupil's tuition is paid or will be paid.*