

defeated by the Emergency Board authorizing an expenditure of money for a purpose for which the law-making body expressed a contrary intent.

It is therefore my opinion that:

(1) The Emergency Board has no authority to allot any part of the money appropriated to it for the purpose of continuing the work of the Ohio State Library from July 1, 1927, to January 1, 1929.

(2) The act of the Governor in vetoing appropriations to carry on the work of the Ohio State Library does not create a "deficiency in any of the appropriations for the expense of an institution, department or commission of the state for any biennial period", nor does it constitute an "emergency requiring the expenditure of money not specifically provided by law."

Respectfully,

EDWARD C. TURNER,

Attorney General.

732.

LIBRARY BOARD—NO AUTHORITY TO DISTRIBUTE BOOKS OF STATE
LIBRARY TO VARIOUS STATE NORMAL SCHOOLS.

SYLLABUS:

The State Library Board has no authority to distribute to the various state normal schools and universities and the Ohio Archaeological and Historical society for the purpose of management and control the books and property of the Ohio State Library.

COLUMBUS, OHIO, July 12, 1927.

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

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

"I am transmitting herewith an inquiry of Mr. L. J. Taber, a member of the Ohio State Library Board, and should be glad to have you answer the questions asked.

Will you please supplement your opinion by answering also the following questions:

Have the Normal Colleges, through action of their Boards of Trustees, the power to establish and maintain Traveling Library services in the same manner now carried on by the State Library?

Has the Ohio State University, through action of its Board of Trustees, power to carry on Traveling Library Service, Legislative Reference service or Advisory service, such as is now carried on by the Ohio State Library?"

The inquiry made by Mr. Taber reads as follows:

"As a member of the Ohio State Library Board, appointed under Section 154-51 I am asking your opinion on the following matter:

1. Has our Library Board the authority to distribute the books and property and to reassign the services of the Ohio State Library in accordance with the suggestions of Governor Donahey? (See attached statement.)

2. In case our board has the authority to distribute books and property in accordance with above suggestion, who will be responsible for the transfer, the allotment and the distribution of this property, and who will pay the expenses incident to the transfer?"

The attached statement to which you refer in your communication is a newspaper clipping, which reads as follows:

"At a public conference, called by the governor, held in the governor's office, Donahey submitted to members of the board of trustees the following recommendations:

First—That the traveling library section of the state library be divided among the four state normal colleges, situated at Bowling Green, Kent, Athens and Oxford, each to serve its section of the state.

Second—That the archaeological and historical books be transferred to the library of the Ohio Archaeological and Historical society, located on the Ohio State University campus.

Third—That the remainder of the state library, including the legislative reference work, be transferred to the Ohio State University."

As I understand the governor's plan as outlined in your enclosed clipping, above quoted, it is to distribute all the books in the State Library among the Bowling Green and Kent State Normal Schools, Ohio, Miami and Ohio State Universities, and the Ohio Archaeological and Historical Society, and that thereafter the books so distributed will be under the control of the institutions to which they were transferred.

As pointed out in opinion No. 590, rendered to you under date of June 9, 1927, the statutes creating and governing the State Library are found in Chapter 5, Division II, Title III of the General Code of Ohio under the title of "State Board of Library Commissioners" (Sections 792 to 798-7, inclusive), and in Sections 154-51 to 154-54 inclusive, of the General Code.

It is apparent from an examination of these sections that it was the intention of the legislature to create a state library and state library service separate and apart from any libraries which might be located at or controlled by any of the universities or normal schools or any other department of the state.

Section 154-52 of the General Code provides, among other things, that the State Library Board shall appoint a state librarian, "who shall, under the direction and supervision of the board, be the head of the library service of the state". This section also provides that the librarian shall have power to appoint and remove all assistants and heads of departments necessary for the "state library service". This section also provides that the librarian shall have power to appoint and remove all assistants and heads of departments necessary for the "state library service."

Section 154-53 of the General Code, among other things, provides that the State Library Board shall "make such rules for the government of the state library, the use and location of the books and other property therein or the transfer thereof as it deems necessary or advantageous to the library service of the state." It also provides that the board shall determine the number of assistants and employes in the library.

Section 792 of the General Code provides that:

"The librarian shall have charge of the state library and shall give personal attendance therein and attention thereto. He shall enforce the rules

and regulations established by the general assembly and the board of library commissioners for its government.”

To execute the plan as set forth in the clipping above quoted it would be necessary for the State Library Board to delegate to the various institutions and societies mentioned in said plan all of the powers and duties so plainly imposed by the legislature upon the board and the state librarian. That cannot be done lawfully.

It is a well recognized rule that when the law imposes a duty upon any officer or officers those duties cannot be delegated to other individuals or other officers.

See *In Re Emigrant Industrial Savings Bank*, 75 N. Y. 388. The facts in that case were that the law authorized the municipal council to do certain work by contract, unless the council determined it should be done otherwise. Instead of following that provision, the council directed the street commissioner to do the work in a manner to be determined by him. In passing upon this question the court said:

“This is eminently a discretionary power, which can not be delegated. It is their judgment which the law requires, and not that of any officer they may designate. There is no provision in the law itself, authorizing them to delegate this power; and the case falls within the settled principle, that powers of this description, involving the exercise of judgment and discretion, can not be delegated; a principle which applies to public bodies and officers, as well as to private individuals.”

I also find a very similar case in *Ampt vs. City of Cincinnati, et al.*, 4 O. D. 176. In that case council of Cincinnati directed the mayor to make purchases and do certain things in connection with the water fountains, which power was vested in the council. The court held the ordinance passed by the council delegating its authority to the mayor invalid. The court said:

“I know no statute which authorizes the council to delegate to the mayor power to enter into a contract for the purchase of the fountains or for placing them, or to appoint a man to manage and supervise them, * * *.”

The first branch of the headnote of the case reads as follows:

“An ordinance delegating the power to the mayor to purchase and maintain water fountains, is, in the absence of statutory authority, invalid.”

A board created by law and given certain executive powers and duties would have no broader powers than a municipal council. Such a board has such powers, and *only* such powers, as are expressly conferred upon it, and such implied powers as are necessary to carry the express powers into execution.

If it were to be held that the State Library Board was authorized to delegate its powers, it would be tantamount to saying that such board may abolish the state library, and, as pointed out in my former opinion heretofore referred to, the library can only be abolished by legislative action.

The universities and societies mentioned in the plan above referred to have no more right to use the books of the state library than any other organizations or any individuals.

Section 154-53, *supra*, requires the State Library Board to make rules for the use of the books, and these rules must have uniform application. The same is true relative to the provision found therein as to transfer and location of the books. Such rules must also be uniform. This section does not mean that the State Library Board

can transfer the entire library and its control to some other department or to several departments.

The only authority found in the library sections whereby books may be disposed of is in section 798-5 of the General Code, relative to the legislative reference department, which authorizes the director of said department to "give or lend to the proper officials of the Ohio State University, the Ohio Archaeological and Historical Society and the Ohio State Library any books and documents, as may not be required by him." This provision evidently refers to a surplus of books or documents in the legislative reference department which are not needed by the director of that department to carry on the functions thereof.

I am not unmindful of the provisions of House Bill No. 210, which will become effective July 13, 1927, and which reads as follows:

"Section 1. Any department, commission, board, officer or other administrative agency of the state government, having charge of documents, books, manuscripts, records or papers, may arrange with the Ohio State Archaeological and Historical society for the transfer of such documents, books, manuscripts, records or papers, in whole or in part, to the custody of said society on such terms and conditions as may be agreed upon by such department, commission, board, officer or other administrative agency of the state and the board of trustees of the Ohio State Archaeological and Historical society; and such transfer shall be made on approval of such agreement by the governor."

This act pertains to "such documents, books, manuscripts, records or papers" with which the Ohio State Archaeological and Historical society deals, to wit, historical documents, books, manuscripts, records or papers, which may be transferred to that organization for care and preservation and not to books for general distribution as a library function or state library service.

For the reasons stated herein and as well as those set forth in Opinion No. 590, is my opinion that the State Library Board has no authority to distribute to the various state normal schools and universities and the Ohio Archaeological and Historical society for the purpose of management and control the books and property of the Ohio State Library.

Respectfully,
EDWARD C. TURNER,
Attorney General.

733.

APPROVAL, BONDS OF RICHLAND TOWNSHIP, BELMONT COUNTY—
\$23,795.60.

COLUMBUS, OHIO, July 13, 1927.