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LIBRARY BOARDS, DISTRICT—MEMBERSHIP—EMPLOYEE OF BOARD OF EDUCATION, SEPTEMBER 17, 1957, BY OPERATION OF §3375.15 RC, CEASES TO BE MEMBER OF LIBRARY BOARD OF TRUSTEES—POSITIONS OF SUPERINTENDENT, TEACHER, EMPLOYEE OF BOARD OF EDUCATION, INCOMPATIBLE WITH OFFICE OF LIBRARY TRUSTEE—3162, OAG 1934, p. 1322, OVERRULED.

SYLLABUS:

1. Pursuant to Section 3375.15, Revised Code, as amended by the 102nd General Assembly, effective September 17, 1957, a member of a school district public library board of trustees who is also an employee of the board of education which makes appointments to such library board, ceases to be a member of the board of library trustees on the effective date of the amendment.

2. The positions of school superintendent, teacher, or other employee of a board of education and membership on a board of public library trustees under whatever subdivision organized are incompatible. Opinion No. 3162, Opinions of the Attorney General for 1934, page 1322, overruled.

Columbus, Ohio, November 4, 1957

Hon. Walter Brahm, State Librarian
The State Library, Columbus, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

“Amended House Bill 27, passed by the 102nd General Assembly, amended Section 3375.15 Revised Code of Ohio, making employees of boards of education ineligible for appointment to school district public library boards. Under present law members of such boards of education are not eligible for appointment and the amendment will extend such ineligibility to employees.

We are receiving requests from local library boards to advise them concerning the effect of this amendment. Therefore, we respectfully request your opinion on the following question:

‘Upon the effective date of the act, September 17, 1957, does a member of a school district public library board of trustees, who is also an employee of the board of education which makes

appointments to such library board, cease to be a member of the **board of library trustees**, or does the law apply only to new appointments when existing terms expire?"

The amended section retains the provision that the term of any member appointed prior to September 4, 1947, is not affected. However terms of members appointed prior to 1947 have long since expired.

Further, we respectfully request your opinion on the following question:

'Are the positions of school superintendent, teacher, or other employee of a board of education, and membership on a board of public library trustees under whatever subdivision organized, incompatible public offices?'"

Section 3375.15, Revised Code, as amended by the 102nd General Assembly reads as follows:

"In any school district in which a free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members. No one is eligible to membership on such board of library trustees who is or has been for a year previous to his appointment a member of a board of education making such appointment, *or an employee of a board of education making such appointment*. Such trustees shall be qualified electors of the school district and shall be appointed by the board of education of the school district. Such trustees shall serve for a term of seven years and without compensation. All vacancies on such board of library trustees shall be filled by the board of education by appointment for the unexpired term. Such board of library trustees shall organize in accordance with section 3375.32 of the Revised Code. Such board of library trustees shall have the control and management of the school district free public library and in the exercise of such control and management shall be governed by sections 3375.33 to 3375.41, inclusive, of the Revised Code. This section does not affect the terms of any member of a board of library trustees of a school district free public library appointed prior to September 4, 1947." (Emphasis added)

Prior to amendment this statute read exactly as quoted except for the underscored language. There is no provision made for the continuing in office of such employees who may presently be library trustees of a school district public library board and none can be implied, especially in view of the fact that the general assembly *did* see fit to provide such

a saving clause to preserve the *status quo* which existed at the time this section was originally enacted but *omitted* to do so with respect to the present amendment. The plain language of the statute must be considered and the fact that the application of the plain language may work an inconvenience or a result not anticipated or desired, such cannot be avoided by judicial construction, but is a matter for the legislature. See *State ex rel. Nimberger v. Bushnell*, 95 Ohio St., 203.

As to your second inquiry, since there are no statutory restrictions involved except Section 3375.15, Revised Code, as above designated, consideration must be given to the common law test of incompatibility in determining whether the positions of school superintendent, teacher, or other employee of a board of education and membership on a board of public library trustees under whatever subdivision organized are incompatible public offices. In *State ex rel. Klitzke v. Independent Consolidated School District No. 88 of McLeod County*, 240 Minn., 335, 61 N. W. 2d, 410, this test is stated as follows: "Public offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both." In 32 Ohio Jurisprudence, Section 48, page 908, the following is stated: "One of the most important tests as to whether offices are incompatible is found in the principle that incompatibility is recognized whenever one office is subordinate to the other in some of its important and principal duties or is subject to supervision or control by the other,—as an officer who presents his personal account for audit and at the same time is the officer who passes upon it,—or is in any way a check upon the other, or *where a contrariety and antagonism would result in an attempt to discharge the duties of both.* * * *"

In determining whether this common law rule of incompatibility applies we must first examine into the interplay of the functions and duties of a board of education and a board of public library trustees.

Accordingly, in Section 3375.14, Revised Code, it is provided:

"The board of education of any city exempted village, or local school district may provide for the establishment, control, and maintenance of school libraries for the purpose of providing school library service to the pupils under its jurisdiction. Such board of education may contract with any public board, association, or other organization operating a public library in a community to furnish such school library service, the board of education paying all or part of the expense thereof, including the

*salaries of school librarians, as compensation for the service rendered. * * ** (Emphasis added)

In Section 3375.16, Revised Code, it is stated:

“The board of education of any school district may, by resolution, transfer, convey or lease any property of the school district, real or personal, suitable for public library purposes to the board of trustees of any free public library rendering free public library service to the inhabitants of the school district, upon such terms as are agreed upon between the board of education and the board of trustees of the library rendering such service.” (Emphasis added)

Finally, in Section 3375.42, Revised Code, it is stated:

*“The board of county commissioners of any county, the board of education of any school district, the legislative authority of any municipal corporation, or the board of township trustees of any township may contract with the board of library trustees of any public library, or with any private corporation or library association maintaining a free public library, situated within or without the taxing district, to furnish library service to all the inhabitants of said taxing district, and may levy a tax, or make an appropriation from its general fund, therefor. * * *”* (Emphasis added)

Inasmuch as the above provisions permit the negotiation and the entering into contracts by and between a board of education and a board of public library trustees, it is my opinion that the common law rule of incompatibility does apply since the positions in question are such that an attempt to discharge the functions and duties of both would result in antagonism and a conflict of duties.

It is recognized that the employees of a board of education are not in the same position as members of a board of education relative to the discharge of duties as set forth in the above cited statutes, but nevertheless, since they are employees of the board their interests must be considered in common with that of their employer and for this reason there would be present this same natural conflict of interests whenever contact negotiations were being considered. As employees of the board of education they would be duty bound to act in the best interests of their employer and as members of a board of public library trustees it would be their duty to act in the best interests of the library or library district which they represent, and clearly in this situation it would be quite difficult for such individuals

to serve both boards with impartiality and without conflict. Further, inasmuch as employment with a board of education normally constitutes the means of livelihood of the employees concerned, there being no compensation given to members of a board of public library trustees, it is quite possible that the interests of the board of education would be considered paramount by such employee-board member.

In Opinion No. 3162, Opinions of the Attorney General for 1934, page 1322, one of my predecessors answered in the affirmative a somewhat similar question presented by one of your predecessors, the question being as follows :

“Are school superintendents of public schools, principals of public schools or members of the teaching staffs eligible to be appointed members of a board of library trustees of a school district library?”

In that opinion, however, the question of common law incompatibility was not considered, the answer being predicated on the fact that there were no statutory limitations which specifically precluded school superintendents, principals or members of the teaching staffs from becoming members of a board of library trustees. Since the answer given in that opinion is in conflict with the present answer, Opinion No. 3162, Opinions of the Attorney General for 1934 is accordingly overruled.

Therefore, in view of the foregoing and in specific answer to your questions, you are advised that :

1. Pursuant to Section 3375.15, Revised Code, as amended by the 102nd General Assembly, effective September 17, 1957, a member of a school district public library board of trustees who is also an employee of the board of education which makes appointments to such library board, ceases to be a member of the board of library trustees on the effective date of the amendment.

2. The positions of school superintendent, teacher, or other employee of a board of education and membership on a board of public library trustees under whatever subdivision organized are incompatible. Opinion No. 3162, Opinions of the Attorney General for 1934, page 1322, overruled.

Respectfully,
WILLIAM SAXBE
Attorney General