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LIBRARY—PUBLIC SCHOOL, BOARD OF TRUSTEES—AUTHORIZE TO CONSTRUCT ON LAND OWNED IN FEE OR BY PERPETUAL LEASE, BUILDING FOR LIBRARY PURPOSES—WITHOUT AUTHORITY TO ERECT BUILDING ON LAND HELD UNDER TEMPORARY LEASE—SECTION 7630 GC.

SYLLABUS:

The board of trustees of a public school library is authorized by Section 7630, General Code, to construct on land owned in fee or by perpetual lease a building for library purposes, but is without authority to construct such library building on land held under a temporary lease.

Columbus, Ohio, April 11, 1953

Hon. Bernard W. Freeman, Prosecuting Attorney
Huron County, Norwalk, Ohio

Dear Sir:

I have before me your communication requesting my opinion as to the power of a school district library board to build an addition to a library building which they now occupy under a temporary lease. Briefly stated, your letter indicates that the property in question is now held under a 99 year lease renewable forever, by two corporations not for profit, to wit, the Young Men's Library and Reading Room Association and the Firelands Historical Society. A 99 year lease renewable forever, in Ohio, while it does not convey a fee, yet for ordinary purposes is regarded and treated as ownership. As a matter of fact, under Section 10503-11, General Code, such a lease is subject to the same laws of descent as estates in fee. It is a

matter of common knowledge that a large part of the industrial and commercial buildings are built upon grounds so leased.

The school district public library occupies a portion of this building under a lease dated January 1, 1927, from the Young Men's Library and Reading Room Association, being for a term of three years, and automatically renewable for like terms, subject to the right of either party to terminate upon giving notice.

It will be noted that although said Association is a tenant in common with the historical society the lease to the library board is by one of such owners only.

The laws relative to public libraries generally underwent somewhat extensive revision in an Act found in 122 Ohio Laws, page 166, Section 7630, General Code, a part of that Act, deals with the powers of boards of library trustees, whether county, municipal or established by boards of education or by district boards. It will be noted that the powers given to these various boards are very liberal in their scope. Section 7630, in so far as pertinent, reads :

"The boards of library trustees appointed pursuant to the provisions of sections * * * 4840-1 * * * of the General Code shall have the following general powers to wit: * * *

"3. To purchase or lease buildings or parts of buildings and other real property and to purchase automobiles and other personal property necessary for the proper maintenance and operation of the free public libraries under their jurisdiction and to pay the purchase price therefor in installments or otherwise ;

"4. To purchase lease, lease with an option to purchase, or erect buildings or parts of buildings to be used as main libraries, branch libraries or library stations pursuant to the requirements of the next following section ; * * *

"9. To establish and maintain a museum in connection with and as an adjunct to the free public library under their jurisdiction ; * * *."

Here, it will be noted that the board has power to purchase, lease, or lease with an option to purchase property for library purposes and also to erect buildings or parts of buildings. While this is quite broad in its provisions, I cannot conclude that there is any grant of authority to use public funds for the erection of a building on land which the board neither

owns nor to which it has any permanent right. In the case you present, the board only enjoys a lease from one of two joint owners, and that only for a short period, which is subject to termination at any time, upon prescribed notice. Consequently, it has only an imperfect leasehold, even for a temporary period.

Library boards like other public bodies created by the statutes, are subject to the general rule that they have only such powers as the legislature has seen fit to grant, and such implied powers as are essential to the exercise of the powers granted. See 36 Ohio Jurisprudence, page 188, as to boards of education; 11 Ohio Jurisprudence, page 244, as to counties; 25 Ohio Jurisprudence, page 302, as to library boards. That the powers of a school district library board are so measured and limited was held in Opinion No. 2003, Opinions of the Attorney General for 1924, page 652.

In conclusion it is my opinion that the board of trustees of a public school library is authorized by Section 7630, General Code, to construct on land owned in fee or by perpetual lease a building for library purposes, but is without authority to construct such library building on land held under a temporary lease.

Respectfully,

C. WILLIAM O'NEILL
Attorney General