

OPINION NO. 99-040**Syllabus:**

The operation of an attorney referral service to assist the local bar association does not constitute a service that provides legal information for purposes of R.C. 3375.54 for which moneys distributed to a law library association under R.C. 3375.50-.53 may be used.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio

By: Betty D. Montgomery, Attorney General, July 29, 1999

You have requested an opinion regarding the use of moneys distributed to a law library association in accordance with R.C. 3375.50-.53. You specifically ask whether participation in the operation of an attorney referral service for the local bar association is one of the "services ... that provide legal information," as that phrase is used in R.C. 3375.54, for which a county law library may expend funds received under R.C. 3375.50-.53 or retained under R.C. 3375.56.

Your request describes the proposal as follows:

The Law Library Association has been approached by the Erie County Bar Association and has been requested to provide assistance in operating an attorney referral service. The service would be operated in the following manner: a telephone number would be listed for a lawyer referral service. This telephone would ring in the law library and would be answered by law library personnel, who would provide the names of the lawyers practicing in common areas of law from a list supplied by the bar association. The personnel answering the telephone would be personnel paid from money distributed pursuant to [R.C. 3375.50-.53]. It is unknown at this time how much time would be spent on referral duties, but it is expected that several calls would be taken each day.

Before answering your specific question, let us briefly examine the manner in which law library associations are organized and funded.

A county law library association may be established either as a private association or as a nonprofit corporation under R.C. 1713.28. *See* 1986 Op. Att'y Gen. No. 86-102. Law library associations may be funded through private and public moneys.¹ As explained in *State ex rel. Akron Law Library Ass'n v. Weil*, 16 Ohio App. 2d 151, 154, 242 N.E.2d 664, 666

¹ The private component of law library association funding was described in 1988 Op. Att'y Gen. No. 88-104 at 2-512, as follows:

The second source of funding for county law library associations consists of private contributions, gifts, or dues.... [F]unds collected from private contributions are discretionary and may be expended as the association's board of trustees sees fit, providing, of course, that authorization for such expenditures appears in the association's charter, bylaws, rules or regulations. *Van Wert County Law Library Association v. Stuckey*, 42 Ohio Op. 1, 94 N.E.2d 32 (C.P. Van Wert County 1949). (Footnote and various citations omitted.)

(Summit County 1968), “[t]he state of Ohio, by legislation, provided a means of supporting county law libraries for the free use of such facilities by the judges and other public officials.”

Part of the public support for law library associations that provide free access to the specified public officials is provided for in R.C. 3375.49,² which requires the board of county commissioners to provide such associations, at the expense of the county, suitable rooms, sufficient and suitable bookcases, and heating and lighting for the rooms, and in R.C. 3375.48,³ pursuant to which the compensation of the law librarian and up to two assistants is paid from the county treasury. 1988 Op. Att’y Gen. No. 88-104 (syllabus, paragraph one).

Additional public support is provided for in R.C. 3375.50-.53, pursuant to which moneys derived from various court fines, penalties, and forfeited bail are distributed to those law library associations that provide the specified public officers free access to their libraries and books. *See State ex rel. Allen County Law Library Ass’n v. Welker*, 47 Ohio App. 42, 49, 190 N.E. 150, 152 (Allen County 1934) (“the law library association which receives such funds [generated under provisions now appearing at R.C. 3375.50-.53] shall be one which furnishes to all the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, and which maintains a library in which the justices of the peace in the county, and officers of the townships, villages, and

Because you have not asked, this opinion will not address the possibility of the law library association’s use of its private moneys to pay for the service you describe.

² R.C. 3375.49 states:

For the use of the law library referred to in [R.C. 3375.48], the board of county commissioners *shall provide, at the expense of the county*, suitable rooms with sufficient and suitable bookcases in the county courthouse or, if there are no suitable rooms in the courthouse, any other suitable rooms at the county seat with sufficient and suitable bookcases. The librarian or person in charge of the law library shall receive and safely keep in these rooms the law reports and other books furnished by the state for use of the court and bar. The board of county commissioners shall heat and light any such rooms. The books, computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, other materials and equipment utilized in conducting legal research, and furniture of the law library association that are owned by, and used exclusively in, the law library are exempt from taxation. (Emphasis added.)

³ Pursuant to R.C. 3375.48:

The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, upon the appointment by the board of trustees of such association of a person to act as librarian thereof, or of a person to act as librarian and *not more than two additional persons to act as assistant law librarians thereof*, shall fix the compensation of such persons, which *shall be paid from the county treasury*. (Emphasis added.)

cities therein, have the same free use of the books of the library receiving such moneys as the judges and county officers”).

The purposes for which moneys distributed under R.C. 3375.50-.53 may be used are described in R.C. 3375.54, as follows:

The money that is paid to the board of trustees of a law library association under [R.C. 3375.50-.53] shall be expended in the support and operation of the law library association and in the purchase, lease, or rental of lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and *other services, materials, and equipment that provide legal information or facilitate legal research.* (Emphasis added.)

R.C. 3375.54 thus establishes two broad categories of permissible expenditures of moneys distributed to a law library association under R.C. 3375.50-.53—expenditures for the support and operation of the law library association itself and expenditures for the purchase, lease, or rental of law books, and various services, materials, and equipment that provide legal information or facilitate legal research. *See* 1988 Op. Att’y Gen. No. 88-104 (syllabus, paragraph two).

Prior Attorney General opinions have found a number of proposed expenditures to be impermissible under R.C. 3375.54 because the proposals clearly did not come within either category of permissible expenditures established by R.C. 3375.54. *See, e.g.*, 1989 Op. Att’y Gen. No. 89-068 (donation to community college civic center not permitted use of funds); 1986 Op. Att’y Gen. No. 86-102 (remodeling of court room not permitted use of funds).

In certain instances, however, the courts and prior Attorney General opinions have found proposed expenditures that might arguably come within the purposes described in R.C. 3375.54 to be impermissible expenditures because the General Assembly has provided for their payment from another source, *e.g.*, R.C. 3375.48 (salary of a law librarian and two assistant librarians is payable from the county treasury); R.C. 3375.49 (duty of county commissioners to provide, “at the expense of the county,” suitable facilities, including heat, light, and bookcases). *See, e.g., Greene County Law Library Ass’n v. Ferguson*, No. CA 1139 (Ct. App. Greene County, December 24, 1980) (salary of law librarian and first two assistants is to be paid from the county treasury, not from funds distributed to law library association under R.C. 3375.50-.53); *Van Wert County Law Library Ass’n v. Stuckey*, 42 Ohio Op. 1, 94 N.E.2d 32 (C.P. Van Wert County 1949) (salary of law librarian, which is paid by the county under G.C. 3054 (now R.C. 3375.48), and items that the county must furnish under G.C. 3055 (now R.C. 3375.49) may not be paid as expenses under G.C. 3056-4 (now R.C. 3375.54)); 1988 Op. Att’y Gen. No. 88-104 (cost of relocating library must be paid by the county under R.C. 3375.49).

Specifically concerning the types of services for which payment is authorized by R.C. 3375.54, a number of cases and prior Attorney General opinions have recognized a distinction between services that are normally performed by a law librarian and those that are not. If a particular service is one normally performed by a law librarian, compensation for such service is payable to a law librarian from the county treasury in accordance with R.C. 3375.48 and, therefore, not from funds governed by R.C. 3375.54. If a person performs services for the law library other than those normally provided by a law librarian, however, R.C. 3375.54 permits the payment of that person’s compensation from moneys distributed to

the law library association under R.C. 3375.50-.53. *See, e.g., Greene County Law Library Ass'n v. Ferguson*, slip op. at 8 ("the maintenance of the library might require the assistance of additional personnel to perform services which could be paid for under authority of [R.C. 3375.54]"); 1995 Op. Att'y Gen. No. 95-029 (syllabus, paragraph one) ("[i]f the services of a systems operations analyst/research specialist to operate computerized legal research are services needed by a county law library, but such services are not those ordinarily performed by a law librarian, payment for such services is an expenditure authorized by R.C. 3375.54, and the board of library trustees may use funds it receives under R.C. 3375.50-.53 to pay for such services"); 1951 Op. Att'y Gen. No. 554, p. 298 (syllabus, paragraph three) ("[t]yping, filing and janitorial services performed by assistants to a county law librarian do not ordinarily constitute librarian services").

Currently, R.C. 3375.54 defines the services for which payment may be made under that section as services, other than those expressly set forth therein, "that provide legal information or facilitate legal research." You ask, therefore, whether the operation of an attorney referral service is a service that provides legal information for purposes of R.C. 3375.54. Although the General Assembly has not specifically defined the phrase "other services ... that provide legal information or facilitate legal research," the meaning of this language becomes evident when it is contrasted with the earlier version of R.C. 3375.54.

Prior to its amendment in 1979-1980 Ohio Laws, Part II, 3030 (Am. Sub. H.B. 559, eff. Jan. 15, 1981), R.C. 3375.54 (formerly G.C. 3056-4) authorized moneys distributed to law library associations under R.C. 3375.50-.53 (formerly G.C. 3056 to 3056-3) to be expended only "in the purchase of *lawbooks* and in *maintenance* of such law library association" (emphasis added).⁴ The insufficiency of this language became apparent when the Attorney General was asked in 1969 whether R.C. 3375.54 permitted the use of funds for the purchase of a computer communications console to access computerized legal research. As explained in 1969 Op. Att'y Gen. No. 69-082 at 2-177 to 2-178:

Although a computerized legal research system is not technically a law book, it serves precisely the same purpose. Both are means of legal research; both provide access to the law. The system of computerized legal research is merely a technological improvement over law books....

....

A system of computerized legal research, while a means of legal research similar to law books, also provides a service similar to library cards, catalogs, and indexes. It operates as an index in that it furnishes citations to cases and statutes. Such a system is reasonable to maintaining a modern up-to-date law library. It would thus be authorized as a reasonable expense necessary for the maintenance of the law library.

Thus, 1969 Op. Att'y Gen. No. 69-082 found that a computerized system of legal research, although serving the same purpose as a law book, was not in fact a "law book," the purchase of which was authorized by former R.C. 3375.54. The opinion did find, however, that the functions provided by a system of computerized legal research were necessary to the proper

⁴ *See* 1953 Recodification of Revised Code, vol. 3, Title 33, p. 244 (Am. H.B. 1, eff. Oct. 1, 1953) and 1939 Ohio Laws 453 (Am. S.B. 46, filed June 1, 1939).

"maintenance" of the library, and that the purchase of such a system was permitted as an expenditure for the maintenance of the law library association.

Among the changes subsequently made by Am. Sub. H.B. 559 to R.C. 3375.54 was the replacement of the phrase "the purchase of lawbooks" with the language, "the purchase, lease, or rental of lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and *other services, materials, and equipment that provide legal information or facilitate legal research.*" (Emphasis added.) The specific items added to R.C. 3375.54 are simply specific types of "services, materials, and equipment that provide legal information or facilitate legal research." This amendment of R.C. 3375.54 did not alter the nature of the information that law library associations may procure under R.C. 3375.54. Rather, the amendment simply authorizes law library associations to acquire in other media the information previously available only in law books.

The nature of the information contained in "lawbooks," *i.e.*, "legal information," was characterized in 1943 Op. Att'y Gen. No. 5914, p. 150, at 151, as follows: "Manifestly, texts and other publications devoted essentially to those subjects which enable lawyers to advise their clients concerning their rights and responsibilities, and that aid courts in passing upon legal questions, come within the meaning of the term 'lawbooks.'"⁵ Subsequent Attorney General opinions have similarly described the types of expenditures authorized by R.C. 3375.54 as expenditures related to the performance of legal research. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-104 at 2-513 ("[w]ith the exception of the phrase 'support and operation of the law library association,' R.C. 3375.54 contemplates expenditures for the purpose of acquiring legal research materials and related services and equipment"); 1985 Op. Att'y Gen. No. 85-030 at 2-110 ("R.C. 3375.54 is still aimed toward the provision of a system of legal research"); 1969 Op. Att'y Gen. No. 69-082 at 2-177 ("[t]he obvious purpose of [R.C. 3375.54] is to authorize the library trustees to expend funds to provide means for legal research for the judges and other specified officials"). We agree with these characterizations of the type of information encompassed within the term "legal information," as used in R.C. 3375.54, and adopt the description of that term set forth in 1943 Op. Att'y Gen. No. 5914 at 151.

Let us now apply this analysis to the "service" you describe. The attorney referral service about which you ask would involve giving callers seeking the services of an attorney the names of attorneys appearing on a list compiled by the local bar association. Although such a service may be useful to members of the general public who take advantage of the service, as well as to members of the bar association in the establishment of attorney-client relationships, such a service does not serve as a means of providing lawyers information that assists them in advising clients concerning their rights and responsibilities or that assists courts in passing upon legal questions. We must conclude, therefore, that such a service does not constitute a service that provides "legal information" for purposes of R.C. 3375.54.⁶

⁵ As further noted by the 1943 opinion, "[i]t would be impossible to adopt any arbitrary definition by which a book could or could not be considered a 'law book.'" 1943 Op. Att'y Gen. No. 5914 at 151.

⁶ As explained in 1989 Op. Att'y Gen. No. 89-068, law library associations, as private organizations, may be established for purposes beyond that of merely serving those public officials in return for which they receive public funding and support. For example, many law library associations provide services to the local bar in addition to that provided to public

Based upon the foregoing, it is my opinion, and you are hereby advised, that the operation of an attorney referral service to assist the local bar association does not constitute a service that provides legal information for purposes of R.C. 3375.54 for which moneys distributed to a law library association under R.C. 3375.50-.53 may be used.

officials. R.C. 3375.54, however, limits the permissible uses of the moneys distributed thereunder to those purposes expressly set forth therein, and “[t]he legislature has not delegated any authority to the law library association to expend public funds for other purposes, either public or private.” 1989 Op. Att’y Gen. No. 89-068 at 2-311 to 2-312 (footnote omitted). Thus, although a law library association may, in its capacity as a private organization, offer services to the general public and to the local bar, “[w]hat is prohibited is the use of public funds [by the association] for any purpose which is totally unrelated and separable from the statutory purpose which is the basis for the public funding.” *Id.* at 2-312 n.4.

A similar question was recently addressed in 1998 Op. Att’y Gen. No. 98-022. In considering whether R.C. 3375.54 authorizes the use of funds distributed under R.C. 3375.50-.53 for the purchase of videotape equipment to be used by members of the local bar association for trial purposes, 1998 Op. Att’y Gen. No. 98-022 states at 2-118:

A law library association does not provide legal information or facilitate legal research by making video equipment available to members of the local bar association for trial purposes. Providing access to modern technological means of recording and presenting evidence is a service that is more analogous to providing access to a court reporter. While this may be a valuable and desirable purpose of a law library association in its private capacity, it is not a purpose that justifies the expenditure of public funds under R.C. 3375.54. *See generally State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (statutes authorizing the expenditure of public moneys should be strictly construed); *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948); *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918).