

1507.

APPROVAL, NOTES OF LEESBURG RURAL SCHOOL DISTRICT, UNION COUNTY, OHIO—\$1,535.00.

COLUMBUS, OHIO, September 5, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1508.

APPROVAL, NOTES OF NEGLEY RURAL SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO—\$1,214.00.

COLUMBUS, OHIO, September 5, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1509.

COUNTY LIBRARY DISTRICT—CAN BE DISSOLVED ONLY BY ACT OF LEGISLATURE—NO REFERENDUM VOTE THEREON UNLESS PROCEDURE AUTHORIZED BY LAW.

SYLLABUS:

1. *There is no provision of law whereby a county library district established by virtue of sections 7642-1 to 7642-12, inclusive, of the General Code, can be dissolved and until the legislature provides a procedure for dissolving such district theretofore established, such district cannot be dissolved.*

2. *County library districts established by popular vote of the electors as provided in section 7643-1, General Code, cannot be dissolved by a referendum vote of the electors of the district. A referendum vote on the question of dissolving county library districts can be had only when such a procedure is authorized by law.*

COLUMBUS, OHIO, September 5, 1933.

HON. MARCUS MCCALLISTER, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—Your request for my opinion reads as follows:

“Your opinion is respectfully requested on the following statement of facts:

We have in Greene County a library known as the county district library, which was created by popular vote, under the provisions of sections 7643-1 to 7643-9 of the General Code, 110 Ohio Laws, page 328, and recently amended in 114 Ohio Laws, page 54.

Although the law provides for the creation of a county library district, it does not provide for the dissolution of such a district. The

question has arisen in this county as to how the county library district can be dissolved. The parties agitating the dissolution of such district are seeking a referendum with respect thereto, and voting on the question of dissolution in the coming election.

My questions therefore are:

FIRST: Can a county library district, created by popular vote within the county, be dissolved?

SECOND: Can the question of dissolution be brought before the voters by a referendum within the particular county, in view of the fact that the law has state-wide application?"

Section 7643-1 to section 7643-13 of the General Code authorize and provide for the establishment of county library districts. Section 7643-1, General Code, reads as follows:

"A county library district may be created in the manner hereinafter provided in any county, composed of taxing districts therein, in which public library service supported in whole or in part by tax moneys, is not furnished to the citizens thereof. And said county library district may also include any taxing district having a public library supported in whole or in part by tax moneys, upon resolution of the board of trustees or other governing bodies of any such library. At any regular or special session the county commissioners of any county may adopt a resolution providing for the creation of, and specifically describing the limits of, a proposed county library district in such county, and may file the said resolution in the probate court of such county. Upon the filing of such resolution in the probate court, the probate judge shall fix a day for the hearing thereof, not less than thirty (30) days and not more than sixty (60) days after the date of such filing. If the probate judge finds the territory of such proposed district sufficiently described, he shall certify such fact to the board 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."

An examination of all the sections of the General Code relating to county library districts discloses that there has been made no statutory provision authorizing a dissolution of a county library district theretofore established by a vote of the electors. It is a fundamental rule of statutory construction that public officers have no powers except such as are expressly granted by statute or are necessarily implied from the powers that are given. *Schwing vs. McClure, et al. Trustees*, 120 O. S. 335; *Peter vs. Parkinson, Treas.*, 83 O. S. 36; *State ex rel. Clarke vs. Cook, Aud.*, 103 O. S. 465.

The management and control of a county library district is placed in a board of trustees consisting of seven members. Section 7643-6, General Code, enumerates the powers and duties of said trustees. Nowhere in this section are the trustees empowered to dissolve a county library district established by the vote of the electors of the district. The trustees having only those powers which are expressly granted by statute, it is my opinion that the trustees of the county library district have no authority to dissolve the county library district.

The legislature has provided that the library district should be established by a vote of the electors. This means of establishing library districts exists by virtue of legislative enactment. It does not follow that a library district can be dissolved by a vote of the electors in the absence of legislation authorizing such a procedure. There is no inherent right in the electors to establish or dissolve a library district. In the absence of legislative enactment, the electors could not by a vote have established a library district and provided a tax levy for library purposes. The electors are granted this opportunity or means of establishing a library district by virtue of an act of the legislature. The remedy now is with the legislature to provide a procedure by which a county library district can be dissolved or a part of the territory now contained in the district be withdrawn from the district. Should the legislature provide for the dissolution of the library district, it would be necessary to provide for the disposition of the library property.

It is therefore my opinion that no procedure for dissolving or disbanding a county library district having been provided, the electors of the district are without authority to dissolve the district. It is the proper exercise of the legislative function to provide for the establishment of public libraries and to provide the procedure by which library districts can be established and it is the legislative branch of the government that can provide for the dissolution of such county library districts.

In specific answer to your first inquiry, it is my opinion that no method or means by which a county library district can be dissolved has been provided by law. The district once having been established exists until such time as there is made provision by law for dissolving the district.

Article II, Section 1 of the Ohio Constitution vests the legislative power of the state in the legislature, reserving to the people the power to propose laws and constitutional amendments to the legislature and to adopt or reject by referendum vote acts of the legislature or constitutional amendments. The granting to the legislature of the power to enact laws is a limitation on the power to the people to enact laws.

The legislature by enactment of Section 7643-1, General Code, chose to permit the establishment of a county library district by popular vote of the electors within the proposed district. The legislature could have selected another procedure by which such district could be established. There is no inherent right in the people to a referendum vote of such a question. The right of the electors to vote on the establishment of the district exists by virtue of legislative enactment. The county library districts are made possible by virtue of general laws which have uniform operation throughout the state.

In specific answer to your second inquiry it is my opinion that there is no provision of law whereby the question of dissolving a county library district theretofore created by a vote of the electors can be presented to the electors. There is no provision of law by which the county library district can be dissolved by popular vote.

Respectfully,

JOHN W. BRICKER,

Attorney General.