

OPINION NO. 87-065

Syllabus:

1. Pursuant to R.C. 3375.402, a library board may annually provide an amount not in excess of fifteen thousand dollars to a nonprofit corporation organized to establish a museum for the use of the general public and located within the territory served by the library, for the maintenance of such a museum.
2. A historical society founded as a nonprofit corporation is eligible under R.C. 3375.402 to receive funds from a library board for maintaining and administering a historical residence as a museum, provided that the historical society is authorized to maintain and administer the museum and that the museum is for the use of the general public and is located within the territory served by the library.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 20, 1987

I have before me your request for an opinion on the question of whether a local library district may, pursuant to R.C. 3375.402, provide a historical society with funds to be used for the purpose of maintaining and administering a historical residence as a museum. R.C. 3375.402 states:

A library board may contract with a corporation not for profit organized to establish a museum for the use of the general public and located within the territory served by the library, to turn over to such corporation the museum physical assets of the library under such terms and conditions as the library board may deem proper. Such board may also loan books, periodicals, and similar matter belonging to the library to such corporation for use in its museum, and such library board may include in its annual budget a sum not to exceed fifteen thousand dollars, which sum it may pay to such corporation for the maintenance of such museum. (Emphasis added.)

A member of your staff has informed me that the library district in question is a library district under the control and management of a board of library trustees in accordance with R.C. Chapter 3375. See, e.g., R.C. 3375.121; R.C. 3375.19; R.C. 3375.20; R.C. 3375.32. The board of trustees is,

thus, a library board for purposes of R.C. 3375.402, and has the powers set forth in that section. See R.C. 3375.33; R.C. 3375.35.

R.C. 3375.402 states that a library board may contract with a nonprofit corporation "organized to establish a museum for the use of the general public and located within the territory served by the library" to turn over to the nonprofit corporation the "museum physical assets" of the library under terms and conditions deemed proper by the board. R.C. 3375.402 also authorizes the board to loan materials to the nonprofit corporation for use in its museum and to "include in its annual budget a sum not to exceed fifteen thousand dollars, which sum it may pay to such corporation for the maintenance of such museum." You have not inquired about a situation involving the transfer of physical assets or the loan of library materials to a nonprofit corporation, but have asked only about the payment of funds to be used for the purpose of maintaining and administering a museum. The language of R.C. 3375.402 does not indicate that there must be a contract for the transfer of physical assets or an arrangement for lending library materials in order for the provision for funding to take effect. Rather, use of the words "such corporation" indicates that a library board may provide funding to any nonprofit corporation that satisfies the criteria set forth in the first sentence of R.C. 3375.402.

You have indicated that the nonprofit corporation with which you are concerned is a local historical society founded to "preserve, research, display, publish and promote interest among the citizens of the City of Oakwood in the history of the community, its government, schools, public enterprises, citizens, architecture and buildings, and do all things necessary and proper in which a corporation may be authorized by the laws of Ohio to engage to do." You have asked whether such a nonprofit corporation is eligible to receive funds from a library board under R.C. 3375.402.

To come within the terms of R.C. 3375.402, so as to be eligible for the receipt of funds from a library district, a nonprofit corporation must be "organized to establish a museum for the use of the general public and located within the territory served by the library." A determination as to whether these criteria are satisfied in a particular instance depends upon all the pertinent facts and should be made by local authorities who have access to such facts, rather than by means of an opinion of the Attorney General. See, e.g., 1983 Op. Att'y Gen. No. 83-057, at 2-232 ([t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). The information that you have provided does, however, suggest that a finding of eligibility under R.C. 3375.402 may be appropriate in the situation with which you are concerned.

On the basis of the information that you have provided, it appears that the purposes of the corporation with which you are concerned are broad enough to authorize it to establish a museum. See generally R.C. 1702.12(F). The word "museum" is defined as "an institution, building, or room for preserving and exhibiting artistic, historical, or scientific objects." Webster's New World Dictionary 938 (2d college ed. 1978). The authority of the corporation in question to "preserve," "display," and "promote interest" in the history, architecture and buildings of the community appears to encompass the

authority to establish a historical residence as a museum. A similar conclusion was reached in 1953 Op. Att'y Gen. No. 2516, p. 156, which states, in the syllabus: "A County Historical Society may use the money paid to it [by the board of county commissioners] under [G.C. 2457-1, now R.C. 307.23] to purchase an old house for the purpose of preserving said house as an example of early architecture, and, as an incident thereto, may use said house as a place of storage and display for its collection of historical relics." See 1962 Op. Att'y Gen. No. 2956, p. 292 at 297 ("I believe that the language, 'a museum of nature or other curiosities or specimens of art or nature promotive of knowledge'...would include the operation of a historical society"). See also R.C. 1713.28; R.C. 1743.07. The conclusion that the functions of a historical society may include the establishment and maintenance of a museum is illustrated by R.C. 149.30, which provides that the Ohio Historical Society, chartered as a nonprofit corporation to promote a knowledge of history and archaeology, may perform the public function of "[a]dministering a state historical museum, to be the headquarters of the society and its principal museum and library, which shall be maintained and kept for public use at reasonable hours." R.C. 149.30(D). See also R.C. 149.30(I) (authorizing the Ohio Historical Society to encourage and promote the organization and development of county and local historical societies); R.C. 149.302 (providing that the Ohio Historical Society shall establish a museum of Afro-American history and culture and shall convey title to the museum and its contents to a private, nonprofit organization that shall operate and maintain the museum); 1981 Op. Att'y Gen. No. 81-093.

It thus appears, on the basis of the facts set forth in your letter, that the nonprofit corporation to which your question relates may be found to have authority to establish a museum and, accordingly, may qualify as a corporation "organized to establish a museum" within the meaning of R.C. 3375.402. The facts that you have provided indicate, further, that the programs contemplated by the nonprofit corporation may have the effect of making the museum available to the general public. The additional requirement imposed by R.C. 3375.402 is that the museum must be located within the territory served by the library. If an examination of all the facts supports the conclusion that these criteria are satisfied, then the corporation comes within the terms of R.C. 3375.402 and is eligible to receive funds for maintenance of the museum from the library board pursuant to that provision.

While I conclude that a library board has authority to provide funding for the maintenance of a museum as set forth in R.C. 3375.402, I note that a library board is granted discretion in determining whether to provide such funding. See generally Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"). The General Assembly has indicated that the payment of costs of maintaining a museum constitutes a proper expenditure of library funds. R.C. 3375.402; accord, R.C. 3375.40(I) (authorizing a board of library trustees to "[e]stablish and maintain a museum in connection with and as an adjunct to the free public library under its jurisdiction"). See generally Op. No. 81-093; 1962 Op. No. 2956. The General

Assembly has, however, left to the library board the decision as to whether it chooses to include in its budget an amount for the maintenance of a museum under R.C. 3375.402.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 3375.402, a library board may annually provide an amount not in excess of fifteen thousand dollars to a nonprofit corporation organized to establish a museum for the use of the general public and located within the territory served by the library, for the maintenance of such a museum.
2. A historical society founded as a nonprofit corporation is eligible under R.C. 3375.402 to receive funds from a library board for maintaining and administering a historical residence as a museum, provided that the historical society is authorized to maintain and administer the museum and that the museum is for the use of the general public and is located within the territory served by the library.