

OPINION NO. 69-102

Syllabus:

Section 731.02, Revised Code, forbids a member of city council from holding the position of a member of the board of trustees of a school district public library.

To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio
By: Paul W. Brown, Attorney General, August 21, 1969

I have before me your request for my opinion on the question of the compatibility of the position of a member of city council and the position of a member of the board of trustees of a school district public library.

Section 731.02, Revised Code, reads in pertinent part as follows:

* * * * *

"Each member of the legislative authority shall be an elector of the city, shall not hold other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city.

* * * * *

(Emphasis added)

If the position of a member of the board of trustees of a school district public library can be considered a "public office" then a member of the legislative authority of a city (city council) may not hold such other public office. Section 731.02, supra, would make these positions incompatible.

Section 3375.15, Revised Code, relates to the creation of a board of library trustees:

"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. A majority of such trustees shall be qualified electors of the county who reside outside the school district, and all shall be appointed by the board of education or 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 term of any member of a board of library trustees of a school district free public library appointed prior to September 4, 1947."

(Emphasis added)

Sections 3375.32 and 3375.40, Revised Code, relate to the meetings and the powers of the board of library trustees:

(Section 3375.32, Revised Code)

"Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22 and 3375.30, of the Revised Code shall meet in January of each year and organize by selecting from its membership a president, a vice-president, and a secretary who shall serve for a term of one year. At the same meeting each board shall elect and fix the compensation of a clerk, who may be a member of the board, and who shall serve for a term of one year. The clerk, before entering upon his duties, shall execute a bond in an amount and with surety to be approved by the board, payable to the board, and conditioned for the faithful performance of the official duties required by him."

(Emphasis added)

(Section 3375.40, Revised Code)

"Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22 and 3375.30 of the Revised Code may:

"(A) Hold title to and have the custody of all property both real and personal of the free public library under its jurisdiction;

"(B) Expend for library purposes, and in the exercise of the power enumerated in this section, all moneys, whether derived from unclassified property taxes or otherwise, credited to the free public library under its jurisdiction and generally do all things it deems necessary for the establishment, maintenance, and improvement of the public library under its jurisdiction;

"(C) Purchase or lease buildings or parts of buildings and other real property and purchase automobiles and other personal property necessary for the proper maintenance and operation of the free public libraries under its jurisdiction and pay the purchase price therefor in installments or otherwise;

"(D) 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 section 3375.41 of the Revised Code;

"(E) Establish and maintain a main library, branches, library stations, and traveling library service within the territorial boundaries of the subdivision or district over which it has jurisdiction of public library service;

"(F) Establish and maintain branches, library stations, and traveling library service in any school district, outside the territorial boundaries of the subdivision or district over which it has jurisdiction of free public library service upon application to and approval of the state library board, pursuant to section 3375.05 of the Revised Code; provided the board of trustees of any free public library maintaining branches, stations, or traveling-book service, outside the territorial boundaries of the subdivision or district over which it has jurisdiction of public library service, on September 4, 1947, may continue to maintain and operate such branches, stations, and traveling library service without the approval of the state library board;

"(G) Appoint and fix the compensation of all of the employees of the free public library under its jurisdiction;

"(H) Make and publish rules and regulations for the proper operation and management of the free public library under its jurisdiction;

"(I) Establish and maintain a museum in connection with and as an adjunct to the free public library under its jurisdiction;

"(J) By the adoption of a resolution accept any bequest, gift, or endowment upon the conditions connected with such bequest, gift, or endowment; provided no such bequest, gift, or endowment shall be accepted by such board if the conditions thereof remove any portion of the free public library under its jurisdiction from the control of such board or if such conditions, in any manner, limit the free use of such library or any part thereof by the residents of the counties in which such library is located;

"(K) At the end of any fiscal year by a two-

thirds vote of its full membership set aside any unencumbered surplus remaining in the general fund of the library under its jurisdiction for the purpose of creating a special building and repair fund."

It should be noted that a member of the library board of trustees must be an elector, is appointed rather than elected, serves for seven years without compensation, and may be elected by the board as a clerk who receives compensation and must execute a bond. The board of library trustees under Section 3375.40, supra, exercises independent powers and prerogatives.

The Ohio Supreme Court in State, ex rel., Bricker v. Gessner, 129 Ohio St. 290, 195 N.E. 63 (1935), decided that membership on a county charter commission constitutes the holding of a public office. The Court noted at page 295:

* * * * * * * * *

"* * * The position is authorized by the organic law of the state, which prescribes the general duties to be performed. A member must be an elector, which assumes importance when considered in connection with Section 4, Article XV of the Constitution of Ohio, which says in part: 'No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector'. * * *. He exercises independent prerogatives and is not amenable to superior authority. His tenure is reasonably definite * * *. The nature of his work possesses legislative qualities. His acts are in the public service. While he is not required to take an oath of office, gives no bond, and receives no compensation, these are indicia of public office and lose significance when compared with the other more important criteria which have been noted.

* * * * * * * * *"

The dicta and conclusion of Judge Zimmerman in the Gessner case, supra, indicate to me that as a matter of law the position of a member of the board of trustees of a school district public library is a "public office" as that term is used in Section 731.02, supra.

In conclusion, it is my opinion and you are therefore advised that Section 731.02, Revised Code, forbids a member of city council from holding the position of a member of the board of trustees of a school district public library.