

Note from the Attorney General's Office:

1935 Op. Att'y Gen. No. 35-4216 was clarified by 1935
Op. Att'y Gen. No. 35-4271.

None of the sections above referred to contains any language which would limit the authority granted in section 2419 to a county of more than 400,000 where an office is usually provided for the coroner by the county. Furthermore, when section 2419 was amended in 1919, as stated above, the only method of compensating a coroner was through fees. Section 2856-4, which provides for a regular salary for a coroner in a county of more than 400,000, was not enacted until 1927 (112 O. L. 204). Consequently there can be no question as to the applicability of section 2419 in counties where coroners are paid through the fee system.

The fact that the office of the coroner is maintained in his own home in which he also conducts his private practice does not change the situation, as the power to equip an office is not affected by its location. The instruments, however, would at all times be the property of the coroner's office and would have to be surrendered by the incumbent to his successor.

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. County commissioners by virtue of section 2419 General Code may, if they deem it necessary, purchase with county funds a set of surgical instruments for the use of the coroner in performing autopsies and post mortems.

2. The authority of the county commissioners to purchase surgical instruments is not limited by the fact that the coroner, because of the population of his county, receives fees rather than a salary and maintains his office as such coroner and practicing physician in his own home.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4216.

**LIBRARY—LIBRARY OF ASSOCIATION INCORPORATED NOT FOR PROFIT
IS NOT PUBLIC LIBRARY AND MAY NOT PARTICIPATE IN PROCEEDS
OF CLASSIFIED PROPERTY TAXES.**

SYLLABUS:

1. *A library owned, maintained and operated by a library association organized under the General Corporation Act of Ohio, as a corporation not for profit, is not a public library.*

2. *A board of trustees of a library so organized and operated cannot avail itself of the provisions of sections 5639 and 5625-20 of the General Code, with reference to participation in the proceeds of classified property taxes, collected in the county where such library is located.*

COLUMBUS, OHIO, May 2, 1935.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"In Paragraph 2, Section 5625-20 of the General Code of Ohio, the following language appears:

'The Board of Trustees of any public library, desiring to participate in the proceeds of classified property tax collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property tax) on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures.'

Section 5639 provides in substance the manner of distribution of undivided classified property tax fund. It is stipulated therein that a part of the undivided classified property tax fund shall go to a Board of Public Library Trustees which have certain qualifications.

There is in Putnam County, a library known as the 'Putnam County Library Association' and the same was organized under Sections 8623-97, et seq. of the General Code.

My specific question is this: Can a library organized as herein indicated and which said library complies with Section 5625-20 as herein set out, take benefit of Section 5639? In other words, can a library organized not for profit, by passing a resolution following the requirements of Section 5625-20, get some of the money as it is distributed under Section 5639?"

Section 5639, General Code, reads in part as follows:

"At each settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasurer as follows:

* * *

To each board of public library trustees in the county, which shall have qualified or be qualified according to law for participation in such fund, fifty per centum of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount or amounts so distributed, together with the fees of the auditor and treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the several municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively.

* * *".

Section 5625-20, which provides for the manner by which boards of trustees of public libraries may qualify for participation in the proceeds of classified property taxes, reads in part as follows:

"The board of trustees of any public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes) on equal terms, unless such library service is by law

available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. In all cases in which such rules and regulations have been so certified and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board of library trustees."

After reading the above provisions, it at once becomes apparent that any public library, the service of which is not already available to all the inhabitants of a county, may qualify for participation in the proceeds of classified property taxes in the county wherein the library is located, by extending the benefits of such public library service to all of the inhabitants of the county, on equal terms. It must be noted, however, that only public libraries come within the provisions of said statutes. Section 5639, supra, provides that there shall be distributed to each board of public library trustees who have qualified according to law, fifty per centum of the amount set forth in the annual budget and allowed by the budget commission, while section 5625-20, supra, provides that the board of trustees of any public library desiring to participate in the proceeds of classified property taxes shall adopt appropriate rules and regulations extending the benefits of the library service to any inhabitant of the county.

Public libraries are a part of the educational facilities of this state. The General Code of Ohio provides for the establishment and maintenance of public libraries, by municipalities, by counties and by townships. The law also provides for the creation of school library districts and county library districts. There are specific provisions in the General Code for the appointment and duties of trustees of various public libraries. the administration of such libraries, for the management and control thereof, and for the eligibility and number of such trustees and their powers.

In the instant case, however, you state in your letter that the Putnam County Library Association was organized under the provisions of sections 8623-97, et seq., of the General Code of Ohio. Said sections are part of the General Corporation Act and provide for the formation of private corporations not for profit. We are therefore dealing with a library owned and maintained by a private corporation and under the management and control of a board of trustees elected by the membership of such corporation. The question then is, is such a library, so owned, operated and controlled, a public library. A public library is defined in *Corpus Juris*, Volume 50, page 856, as a library to which the public has free access. In the case of *Providence Athenaeum vs. Tripp*, 9 R. I., page 559, it was stated that the term "public library" does not include a library owned by a corporation, the use of which is limited to the stockholders of the corporation or their immediate families and their licensees, since the public as such has no interest in the library. It would therefore appear that the term "public library", is understood to mean a library which is free and open to all and is established and maintained by law, administered by trustees whose offices are created by law and whose powers and duties are defined by law. I am therefore constrained to the view that in order to come within the provisions of sections 5639 and 5625-20, supra, of the General Code, a library must be open to all and the general public must be assured of free access thereto, that such library must have been established pursuant to the statutes providing for the establishment of public libraries, and that the management and control thereof, the appointment, the powers and duties of the trustees must be provided for by law.

In specific answer to your question, it is therefore my opinion that the Putnam

County Library Association, which you name in your communication is not a public library and that the board of trustees thereof cannot avail itself of the provisions of sections 5639 and 5625-20 of the General Code, with reference to participation in the proceeds of classified property taxes, collected in the county where such library is located.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4217.

APPROVAL, CONTRACT FOR THE CONSTRUCTION AND COMPLETION OF CONTRACT FOR PLUMBING FOR PROJECT KNOWN AS COMPLETION OF T. B. COTTAGE, LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, \$2,588.00, NEW AMSTERDAM CASUALTY COMPANY OF NEW YORK, SURETY—D. H. JACOBS CO., INC., CINCINNATI, OHIO.

COLUMBUS, OHIO, May 3, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and the D. H. Jacobs Co. Inc., of Cincinnati, Ohio. This contract covers the construction and completion of Contract for Plumbing for a project known as Completion of T. B. Cottage, Longview State Hospital, Cincinnati, Ohio, in accordance with Item No. 2 and Item No. 5, Alternate P-1 of the form of proposal dated March 14, 1935. Said contract calls for an expenditure of two thousand five hundred and eighty-eight dollars (\$2,588.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that such board has released funds for this project in accordance with section 1 of House Bill No. 69 of the second special session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the New Amsterdam Casualty Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
JOHN W. BRICKER,
Attorney General.