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1. LIBRARY — FREE PUBLIC — ESTABLISHED BY WILL OR OTHERWISE — MAY CONTRACT WITH LOCAL TAXING AUTHORITY FOR SERVICE—AREA OF SERVICE—WHEN NO REQUIREMENT AS TO APPROVAL STATE LIBRARY BOARD—SECTIONS 3375.05, 3375.42 RC.
2. LIBRARY ASSOCIATION — ESTABLISHED BY WILL OR OTHERWISE — FREE PUBLIC LIBRARY — CONTRACTED TO PROVIDE FREE PUBLIC LIBRARY SERVICE—PUBLIC AID — SERVICE EXTENDED TO ALL INHABITANTS OF COUNTY — EQUAL TERMS — MAY SHARE IN DISTRIBUTION OF PROCEEDS OF CLASSIFIED PROPERTY TAX—SECTIONS 5705.28, 5705.32, 5707.05 RC.
3. STATE LIBRARY BOARD — MAY DISTRIBUTE FUNDS APPROPRIATED BY GENERAL ASSEMBLY — AID TO LIBRARIES — RULES AND REGULATIONS — ANY LIBRARY WHICH QUALIFIES AS A FREE PUBLIC LIBRARY.

SYLLABUS:

1. A library association established by will or otherwise for the purpose of maintaining a free public library, may contract with a local taxing authority for library service under Section 3375.42, Revised Code, notwithstanding that such taxing district is receiving public library service and there is no requirement that the area of service so contracted for by such library association must be submitted to the state library board for its approval under Section 3375.05 of the Revised Code.

2. A library association established by will or otherwise that maintains a free public library, which has contracted under Section 3375.42, Revised Code, to provide free public library service, which is receiving public aid, and which has extended its service to all the inhabitants of a county on equal terms under Section 5705.28, Revised Code, may share in the distribution of the proceeds of the classified property tax as provided by Section 5707.05 and 5705.32, Revised Code.

3. The State library board may distribute funds appropriated by the General Assembly, for aid to libraries, under its rules and regulations, to any library which qualifies as a free public library.

Columbus, Ohio, August 26, 1955

Hon. R. M. Eyman, Superintendent of Public Instruction
Department of Education, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The State Library Board, in order to carry out the duties required of it by law, respectfully requests your opinion on the following questions:

“1. After the year 1947, can any association incorporate for the purpose of maintaining a free public library under provisions of Sec. 1713.28 of the Rev. Code of Ohio, immediately or subsequently enter into a contract with a local taxing authority for library service to such taxing district authorized under Sec. 3375.42 of the Rev. Code, and thereafter be eligible for participation in the proceeds of the classified property tax?

“2. After the year 1947, can any association incorporate for the purpose of maintaining a free public library, immediately or subsequently enter into a contract with a local taxing authority for library service to such taxing district, and thereafter become eligible for participation in the proceeds of the classified property tax notwithstanding the fact that such taxing district is already within the territorial boundaries of a school district, township, municipality, or county maintaining free public library service to the residents thereof, or that such taxing district is already being provided library service by the free public library of a school district, county, township or municipality under authority of Sec. 3375.05 of the Rev. Code of Ohio?

“3. Must the area of service so contracted for by such association library and taxing authority be submitted to the State Library Board for approval in accordance with Sec. 3375.05 of the Rev. Code of Ohio?

“4. What is the territorial boundary of an association maintaining a free public library over which such library has jurisdiction of free public library service?

“5. May funds appropriated by the General Assembly for aid to libraries be distributed to such private association by the State Library Board?

“A brief comment on library developments in recent years will point up the need for your opinion on the above questions.

“In 1935, Opinion No. 4216, your predecessor ruled that an association incorporated not for profit for the purpose of maintaining a library could not participate in the proceeds of the classified property tax. In a subsequent opinion, No. 4271, he ruled that such an association could participate in the classified property tax provided said association had in the past received public aid or becomes eligible to be granted such aid by reason of contracts made by virtue of former code sections 2455 and 7632 of the General Code of Ohio.

“In 1945 the General Assembly established an Ohio Library Survey Commission to study library laws and make recommendations for changes. In its report to the 97th General Assembly convening in 1947 the Commission recommended:

“* * * that the 97th General Assembly enact the provisions of law which provide that all library units to be established in the future shall be of the county district type.’

(Report of the Ohio Library Survey Commission to the Governor and General Assembly, January 15, 1947, p. 19.)

“Subsequently the 97th General Assembly removed from the statutes authority of the various local taxing units except the county to establish libraries after September 4, 1947. In the same act it enacted Sec. 3375.05 in an apparent attempt to prevent duplication or overlapping of library service areas by requiring the trustees of any public library to obtain approval of the State Library Board before extending its service areas.

“The chief issue confronting the State Library Board in the questions raised above is not whether an association may establish a library and operate it from private funds but whether a neophyte association, by the mere inking of a contract, may receive classified property tax funds, and assume jurisdiction over an area of service without approval of the State Library Board, thereby subverting what seems to the Board a clear intention of the legislature.

“For example: recently a former resident of Pleasant Hill, Miami County, willed a gift of a home and money for the establishment of a public library. Library service to this area is already being provided by the Troy Public Library under authority of Sec. 3375.40 (F). An association has been formed to accept the gift provided by will but instead of working out the provisions of the gift with the library which is serving the area, the association has indicated it will apply for funds from the classified property tax.

“Lastly, the General Assembly has provided \$160,000 in the General Appropriation Bill as Aid to libraries and authorized the

State Library Board to establish rules and regulations by which such aid is distributed. Can state funds be granted to such library associations?"

The General Assembly in 1947 enacted a recodification and revision of the public library laws, House Bill No. 125, 122 Ohio Laws, 166, which became effective September 4, 1947. This revision materially changed the laws pertaining to public libraries and it is true, as you have stated, that one of the changes was the termination of authority of the several political subdivisions to create public libraries other than county district libraries. However, your inquiry raises the question as to whether or not this recodification changed the laws in regard to a library association or organization formed for the purpose of maintaining a free public library, in regard to its right to contract with a local taxing authority and the right to become eligible for participation in the proceeds of the classified property tax. It also poses a question whether or not the change in the law has affected the right of a taxing authority to contract with such library association or organization for library services. I believe it can be recognized that a particular association could be formed for the purpose of maintaining a free public library to be financed by its own monies, and with the purpose of furnishing such service to the inhabitants of any area which it wishes, if the laws pertaining to incorporation of such associations permit that purpose to be included in its articles of incorporation. Section 1713.28, Revised Code, former Section 9972-9973, General Code, does so provide. In that situation, the association would not have any territorial boundaries other than that which it desired to service. However, your inquiry is more concerned with such an association's right, after being formed, to participate in the classified property tax, and whether this can be accomplished by merely contracting with a local taxing authority to furnish library service for such taxing district.

Section 3375.42, Revised Code, formerly Section 7632, General Code, reads as follows:

"The board of county commissioners of any county, the board of education of any school district, the legislative authority of any municipal corporation, or the board of township trustees of any township may contract with the board of library trustees of any public library, or with any private corporation or library association maintaining a free public library, situated within or without the taxing district, to furnish library service to all the inhabitants of said taxing district, and may levy a tax, or make

an appropriation from its general fund, therefor. The taxing authority shall require an annual report in writing from such board of library trustees, private corporation, or library association. When a tax for library purposes has been so levied, at each semiannual collection of such tax the county auditor shall certify the amount collected to the proper officer of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library.”
(Emphasis added.)

The section quoted above is substantially the same as the section of the former General Code prior to 1947. It therefore can be seen that the revision or recodification of the public library laws in no way changed the rights of the local taxing authorities to contract with any private corporation or library association maintaining a free public library to furnish library service to all inhabitants of such taxing district. Conversely, the same would be true in regard to the right of the library association to contract with the taxing authority. It will also be noted that nowhere in this section is there any indication that a taxing district already receiving library service, whatever kind, may not so contract. It would therefore seem clear that an association incorporated for the purpose of maintaining a free public library may enter into a contract with a local taxing authority for library service to such taxing district regardless of whether that taxing district is at the time receiving free public library service. This, however, alone would not be sufficient to entitle such association to participate in the proceeds of the classified property tax.

Before proceeding to this inquiry, you have asked whether or not the area of service so contracted for by such association library and taxing authority must be submitted to the state library board for its approval in accordance with Section 3375.05 of the Revised Code. This section reads in part as follows:

“The board of trustees of any public library *receiving local tax support* which desires to render public library service by means of branches, library stations, or traveling library service *to the inhabitants of any school district, other than a school district situated within the territorial boundaries of the subdivision or district over which said board has jurisdiction* of free public library service, may make application to the state library board,
* * * for the establishment of such service. * * *”

(Emphasis added.)

Under this section the board of trustees of any public library receiving local tax support which desires to extend its service to the inhabitants of

any school district other than a school district within its own territorial boundaries in which they are already furnishing service, must submit an application to extend such services to the state library board for its approval. It will be noted that this section applies to an existing public library and one that is already receiving tax support. If the public library is a municipal library, its territorial boundaries may be that of the municipality or it may be a larger territory depending on whether it has extended its services in the past. A reading of this section does not indicate that it was intended to apply to the creation of a new public library by a library association. Nor can it be read into the statute that it was intended to apply to a library association which has contracted with a local taxing authority to furnish library service. It will be noted further that the statute applies only where the library wishes to extend its service to the inhabitants of a school district. It therefore would appear that the area of service contracted for by the library association and the taxing authority need not be submitted to the state library board for its approval, in accordance with Section 3375.05 of the Revised Code.

Returning now to the question of classified property taxes, it is necessary to ascertain how a library becomes entitled to participate in the classified property tax. Section 5707.05, Revised Code, formerly Section 5639, General Code, provides, in substance, the manner of distribution of the undivided classified property tax fund. Therein is provided that a part of the undivided classified property tax shall go to each board of public library trustees *which has qualified for participation in such fund*. Section 5705.32, Revised Code, formerly Section 5625-24, General Code, reads in part as follows:

“* * * The commission may fix the amount of proceeds of classified property taxes, collected within the county, to be distributed to each board of public library trustees *which has qualified under section 5705.28 of the Revised Code* for participation in the proceeds of such taxes * * *.” (Emphasis added.)

Section 5705.28, Revised Code (formerly 5625-20, General Code) reads in part:

“* * * *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 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. * * *"
(Emphasis added.)

As can be seen by an examination of the foregoing statutes, where the board of trustees of any public library desires to participate in the proceeds of the classified property tax, they must adopt rules and regulations extending the benefits of library service to all the inhabitants of the county on equal terms. Where such a library extends its services to all the inhabitants of a county, its territorial boundaries become the county in which it is situated. The question now becomes whether or not the library association maintaining free public library service, which has contracted with a local taxing authority to furnish free public library service to all the inhabitants of that taxing district, may under the above section become eligible to participate in the proceeds of the classified property tax. A former Attorney General had under consideration this precise question in his Opinion No. 4271, Opinions of the Attorney General for 1935, Volume 1, page 586. The syllabus of that opinion reads as follows:

"Library associations or organizations established by will or otherwise, that maintain free public library service to all the inhabitants of a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio."

As will be noted, the then Attorney General came to the conclusion that a library association here under consideration could participate in the classified property tax upon the fulfillment of the above mentioned requirements.

In this opinion the then Attorney General's main consideration was whether library associations already established and receiving public aid came within the term "public library" as used by the legislature in Section 5625-20., General Code, now 5705.28, Revised Code. The conclusion reached was that the term "public library" was used in its popular sense rather than a technical sense, and at page 592 he stated:

“It seems clear that the legislature meant by the use of the words ‘public libraries’ * * * to include within that term library organizations providing free public library service, that had been receiving public aid or at that time were qualified to receive public aid under laws providing for such aid either directly or under contract with public authorities to provide free public library service. * * *”

Therefore in giving consideration to those library associations already established and receiving public aid it was concluded that they were “public libraries.”

However, a question is raised as to that part of the syllabus which reads,

“* * * or is eligible to or becomes eligible to be granted such aid * * *.”

Does this portion of the opinion mean that a library association by merely entering into a contract with a taxing authority but not receiving any public aid, comes within the term “public library.” I think not. I believe the opinion, although vague, concluded that a library association in order to come within the term “public library” must not only be eligible to, or become eligible to, receive public aid but must, in fact, thereafter receive public aid to fall within the term “public library.”

Comparing the sections of the law of the public libraries quoted in the 1935 opinion with the sections of the law as they read today, after the 1947 revision, I find that there has been no substantial change in those particular sections, and it would therefore follow that the conclusion reached in the 1935 opinion is still a proper statement of the law.

You have raised one other question in regard to the funds which the General Assembly included in its general appropriation bill as aids to libraries. That appropriation, which is to be found in Amended House Bill 929 of the One Hundred First General Assembly of Ohio, 1955, at page 31 states :

“Subsidy—	1955-56	1956-57	Biennium
“H 8. Library Aid	\$160,000	\$160,000	\$320,000

“The foregoing appropriation shall be distributed by the State Library Board in accordance with rules and regulations which the board shall establish governing its allocations.”

In that appropriation the legislature has laid down no specific standards as to how or to whom the money is to be allocated, other than under rules

and regulations of the board and to aid libraries. However, it must be remembered that this appropriation comes from tax money and it was quite clearly the intent of the General Assembly that such moneys should only be used for public purposes. It has left to the state library board the right under this general policy to distribute this money as aid to public libraries. If the library association here under consideration has contracted with the taxing authority and is providing free public library service as such, and has actually become a public library, in that its services are free and open to all people on equal terms without any restrictions, it would seem that they then would be entitled, if the state library board in its rules and regulations would so provide, to share in the allocation of this fund appropriated by the General Assembly.

Therefore, it is my opinion, and you are advised:

1. A library association established by will or otherwise for the purpose of maintaining a free public library, may contract with a local taxing authority for library service under Section 3375.42, Revised Code, notwithstanding that such taxing district is receiving public library service and there is no requirement that the area of service so contracted for by such library association must be submitted to the state library board for its approval under Section 3375.05 of the Revised Code.

2. A library association established by will or otherwise that maintains a free public library, which has contracted under Section 3375.42, Revised Code, to provide free public library service, which is receiving public aid, and which has extended its service to all the inhabitants of a county on equal terms under Section 5705.28, Revised Code, may share in the distribution of the proceeds of the classified property tax as provided by Section 5707.05 and 5705.32, Revised Code.

3. The state library board may distribute funds appropriated by the General Assembly, for aid to libraries, under its rules and regulations, to any library which qualifies as a free public library.

Respectfully,

C. WILLIAM O'NEILL
Attorney General