

## OPINION NO. 75-026

## Syllabus:

1. In the absence of an order to the contrary from the state library board pursuant to R.C. 3375.01(F), the consolidation of adjacent school districts effects a corresponding expansion of the area served by an existing school district public library established pursuant to R.C. 3375.14. (Opinion No. 931, Opinions of the Attorney General for 1951, page 775, modified to the extent indicated.)

2. In the absence of approval from the state library board, a county library district created pursuant to R.C. 3375.20, cannot be formed so as to include any part of, or all of, a school district which is partly located outside of the county. Such approval may, however, be granted, pursuant to R.C. 3375.01(E).

3. A school district which has its own main library cannot be included within a county library district created pursuant to R.C. 3375.20. If a main library is located within a school district but outside of the county in which the county library district is located, no part of the school district may be included within the county library district.

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To: Joseph F. Shubert, State Librarian, Columbus, Ohio

By: William J. Brown, Attorney General, April 2, 1975

I have before me your request for an opinion which reads in part as follows:

- "1. When two adjacent school districts are consolidated, does this consolidation effect a corresponding expansion in the boundaries of the district of an existing school district public library?
- "2. R.C. Section 3375.20 provides for the formation of county library districts composed of '...all of the [certain described] school districts ...' Where a school district includes parts of two different counties, may a county library district be formed so as to include only the part of such school district which is located within the county in question?
- "3. As a school district may be divided along county lines when a county library district is formed, does the presence of a 'main library' in the school district, but outside the county in which the county library district is being formed, bar the inclusion of any portion of the school district in the county library district?
- "4. If a school district may not be divided along county lines as suggested above, may

a county library district include all of a school district some of which is located in an adjacent county and where that school district has no main public library?"

The proper disposition of your questions necessitates a brief discussion of the organization and regulation of the various public library systems in Ohio. R.C. 3375.01, which creates the State Library Board, provides in part as follows:

"The state library board is responsible for the state library of Ohio and a statewide program of development and coordination of library services, and its powers include the following:

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"(E) Approve, disapprove, or modify resolutions for establishment of county district libraries and to determine the boundaries of such districts;

"(F) Upon consolidation of two or more school districts, to define and adjust the boundaries of the new public library district resulting from such consolidation and to resolve any disputes or questions pertaining to the organization and operation of the new library district;

"(G) Upon application of two or more boards of library trustees, to amend, define, and adjust the boundaries of the library districts making such application;

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"(K) Adopt such rules and regulations as are necessary for the carrying out of any function imposed on it by law, and provide such regulations as are necessary for its government and the government of its employees. The board may delegate to the state librarian the management and administration of any function imposed on it by law."

Thus, the state library board is charged with the general coordination of library services throughout the state. The existence of various types of library districts, the possible consolidation thereof and the potentiality for inefficient and overlapping service attendant thereto, indicate a real need for some sort of coordinating body.

It is obvious that the state library board, in assuring the efficient discharge of library services, possesses rather broad supervisory powers. It is free to operate without many of the restrictions that would act as a limitation upon bodies of more limited powers. Thus, in defining and adjusting the boundaries of school district libraries upon the consolidation of school districts, the state library board, pursuant to R.C. 3375.01(F), is presumably able to make any territorial adjustments it deems fit. Similarly, pursuant to R.C. 3375.01(E), the state library board is authorized to approve or disapprove the creation of county library districts and to determine the boundaries thereof. Therefore, it appears that a county library district may extend

library service beyond the boundaries of the county if such service is approved by the state library board.

Consequently, the ultimate determination of the questions presented in your request letter would ordinarily rest with the discretion of the state library board.

The situation in question, however, came into being prior to 1969 at which time Am. S.B. 262, which conferred broad supervisory powers upon the state library board, was enacted. It is clear that a statute is presumed to be prospective in its operation unless expressly made retrospective. R.C. 1.48. Since there is no clear indication that R.C. 3375.01 is to operate retrospectively, the district in question was created without benefit of boundary adjustment by the state library board. Future adjustments are possible however, upon application of two or more boards of library trustees. R.C. 3375.01(G).

Mindful of the foregoing, it is now appropriate to direct our attention to the questions presented in your request letter. R.C. Chapter 3375 makes specific provision for the creation and operation of various library districts. R.C. 3375.14, which authorizes a board of education to establish school libraries, provides as follows:

"The board of education of any city, exempted village, or local school district may provide for the establishment, control, and maintenance of school libraries for the purpose of providing school library service to the pupils under its jurisdiction. Such board of education may contract with any public board, association, or other organization operating a public library in a community to furnish such school library service, the board of education paying all or such part of the expense thereof, including the salaries of school librarians, as compensation for the service rendered, as the two boards shall agree upon as terms of the contract, provided that nothing in this section shall prevent such public board, association, or other organization operating a public library from providing classroom collections, operating bookmobiles, branches, or the main library of a public library, notwithstanding the fact that such branches or main library may be located within a school building.

"Such board of education may purchase, erect, construct, enlarge, extend, or improve buildings for library purposes, including sites therefor, and equip and furnish such buildings."

Although it was noted in Opinion No. 65-119, Opinions of the Attorney General for 1965, that one school district may have only one school district public library system, we are not presently concerned with the consolidation of two school districts each of which operates a library system. Rather, we are concerned with the consolidation of two school districts only one of which had a public library of its own prior to such consolidation.

Although R.C. 3375.14 fails to specifically so state, it appears well settled that a library created pursuant to this statute continues in existence after the school district of

which it is comprised has been consolidated with another school district.

Thus the syllabus of Opinion No. 119, Opinions of the Attorney General for 1959, p. 59, reads as follows:

"Where, pursuant to the provisions of Section 3375.14, Revised Code, a public school library has been established by the board of education of a local school district which has subsequently been transferred to and become a part of another district, such library falls under the dominion and control of the district to which the transfer has been made, and members of the board of library trustees theretofore appointed will continue to hold their offices until the expiration of their respective terms, at which time their successors will be appointed by the board of education of the enlarged district."

See also Opinion No. 1291, Opinions of the Attorney General for 1964.

These opinions, with which I concur, clearly indicate that a public school library established in compliance with R.C. Chapter 3375, continues in existence upon a consolidation of school districts with one noted change. The change is that upon the expiration of the terms of the members of the existing board of library trustees, any further appointments to the board must be filled by the new controlling board of education, which will govern the districts so consolidated.

The foregoing opinions do not, however, clearly state whether the public school library continues to serve the area that comprised the original school district or whether it is to include also the newly annexed territory. In Opinion No. 931, Opinions of the Attorney General for 1951, p. 775, my predecessor concluded that the consolidation of two school districts does not alter the territory served by the original school district libraries.

I am, however, unable to agree with that conclusion. Subsequent to a consolidation, an expanded school district is, for all purposes, considered a single entity. Moreover, it is an entity that differs substantially from either of its component parts. The legal title to all school district property changes hands, net indebtedness of one district is assumed by the acquiring district, and the composition of the board of education itself is changed to reflect changes made in the size of the district. See R.C. 3311.22, R.C. 3311.231, R.C. 3311.24, R.C. 3311.26.

A school district board of library trustees is, after all, an agency of the district which appoints it and the services which it extends are for the benefit of those persons residing within the district. Although a large part of the library's operating funds come from the proceeds of the levy on intangible property within the county (R.C. 5705.28, 5705.32, 5707.04, 5707.05, 1972 Op. Att'y Gen. No. 72-110), the board of education may also levy a tax within the district to provide library operating funds. R.C. 3375.17. As indicated earlier, even the composition of the board of library trustees may change when the school district is

enlarged. I feel, therefore, that to conclude that a consolidation of school districts does not effect a corresponding initial change in the area served by a school district library is anomalous. It will be noted, however, that the final authority to define and adjust the boundaries of the new public library district resulting from a consolidation of two or more school districts rests with the state library board pursuant to the authority vested in by R.C. 3375.01(F).

In conclusion, I think it clear that in the absence of an order to the contrary from the state library board pursuant to R.C. 3375.01(F), a consolidation of adjacent school districts effects a corresponding expansion of territory served by an existing school district public library established pursuant to R.C. 3375.14.

Your second and fourth questions necessitates a brief discussion of the precise nature of county library districts. R.C. Chapter 3375 sets forth two methods by which a county library district may be formed. R.C. 3375.19 provides that in each county there may be created such a district composed of all the local, exempted village and city school districts in the county which are not within the territorial boundaries of an existing township, school district, municipal, county district or county free public library. R.C. 3375.19 further provides for the creation of such a district by resolution of the board of county commissioners and submission of such question to the electors. The second method of creating a county library district is set forth in R.C. 3375.20. This section, which contemplates united action by all of the boards of library trustees in the county which are furnishing library service to districts not having libraries of their own, provides as follows:

"In any county in which there is not in existence a county library district and in which all of the local, exempted village, and city school districts in the county, in which there is not located a main library of a township, municipal, school district, association, or county free public library, are receiving approved service from one or more of such libraries, there may be created a county library district.

"The boards of trustees of the library or libraries providing approved library service to the school districts in the county in which there is not located a main library of a township, municipal, school district, or county free public library may adopt a resolution requesting the formation of a county library district composed of all of the school districts being served by such library or libraries. Such resolution or resolutions shall set forth the school districts to be included in the proposed county library district and it shall be submitted to the taxing authority of the subdivision or subdivisions having jurisdiction over the library or libraries requesting the formation of such proposed library district.

"Within thirty days after the receipt of such resolution by the taxing authority of a subdivision

it shall either approve or disapprove the formation of the proposed county library district as set forth in said resolution. Within ten days after a taxing authority has either approved or disapproved the formation of a proposed county library district it shall notify the board of county commissioners of the county in which such proposed library is to be situated of its action.

"If all of the taxing authorities to which such proposal has been submitted approve of the creation of such county library district, such district is created and the board of county commissioners shall immediately notify the boards of library trustees initiating such proposed county library district and the taxing authorities which approve the formation of such county library district that such county library district has been created.

"Upon receipt of such notice from the board of county commissioners the boards of library trustees initiating such proposed county library district and the taxing authorities which approve the creation of such county library district shall take appropriate action transferring all title to the interest in all property, both real and personal, in the name of the public libraries under their jurisdiction to the board of trustees of the county library district.

"For the purposes of this section the board of county commissioners is the taxing authority of an association library."

It will be noted, at the outset, that a board of library trustees has only such powers as are provided by statute and such other powers as are reasonably necessary to the accomplishment of the purposes of the board. Opinion No. 74-042, Opinions of the Attorney General for 1974; Opinion No. 699, Opinions of the Attorney General for 1949, p. 340; Opinion No. 2003, Opinions of the Attorney General for 1924, p. 652.

I am unable to find any provision expressly authorizing a board of library trustees to include within a county library district only that portion of a school district which is situated within the county in question. Moreover, I do not feel that such a power can be fairly implied. As indicated earlier, a school district is considered, in every respect, a single entity. Accordingly, the power to partition such a district for any reason would be extraordinary. I feel, therefore, that if the General Assembly had intended the division of school districts along county lines for county library purposes, it would have expressly so stated.

The same rationale applies with equal force to the question of whether or not a board of library trustees of a county library district may include within its area of service an entire school district part of which is located outside of the county. In this particular instance there is every indication that the General Assembly never intended such a situation.

In Opinion No. 4872, Vol. II, page 1455, Opinions of the Attorney General for 1935, my predecessor, in discussing the

legality of a contract between two school district libraries stated at page 1460 as follows:

"No library except the State Library or a joint school district library established by authority of Section 7633, General Code, or a library maintained by a subdivision that lies in two or more counties such for instance, as the Alliance School District Library which provides library service in three different counties, is authorized to function outside the county where it is located."

See, also Opinion No. 74-042, supra.

There are specific provisions in R.C. Chapter 3375 for the extension of library services beyond county lines. R.C. 3375.27 authorizes a board of library trustees of a county library district to contract with other libraries either within the county or within any contiguous county. R.C. 3375.28 authorizes the creation of a regional library district by the boards of county commissioners of two or more contiguous counties. R.C. 3375.42 authorizes the governing bodies of various political subdivisions to contract for library services for all inhabitants of the subdivision, with a public library or private corporation or library association. Finally, R.C. 3375.40, which sets forth the powers and duties of the various boards of library trustees, authorizes, upon the approval of the state library board, such a board to 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.

Thus, the General Assembly has addressed itself to the subject of a board of library trustees providing library services outside of the library district or county in which it is located. It has not, however, authorized the type of situation herein described. Accordingly, the maxim of expressio unius est exclusio alterius, the mention of one thing implies the exclusion of all others, is applicable.

In conclusion, absent approval of the state library board, a county library district created pursuant to R.C. 3375.20, can neither be formed so as to include only that part of a school district which is located within the county in question, nor include within its territory an entire school district part of which is located outside of the county. The board of library trustees of a county district library may, however, extend library service beyond the county pursuant to one of the plans for such extended service set forth in R.C. Chapter 3375.

Your third question asks whether or not the presence of a main library within a school district but outside of the county in which the county library district is formed prevents the inclusion of any portion of the school district in said county district.

Since it has been determined that a county library district may not, in the absence of approval from the state library board, include only that portion of a school district situated within the county in question, I must conclude that the location of the

main library within said district, in the absence of such approval, is of no consequence.

As indicated earlier, however, a school district might be divided along county lines pursuant to an order of the state library board. It is necessary, therefore, to determine whether or not the presence of a main library anywhere within a school district will always prevent any portion of that district from inclusion within a county library district.

R.C. 3375.20 is quite clear in providing that each of the local, exempted village and city school districts that will comprise the county library district be without a main library. There is no basis in the statutory language to support the contention that the relevant unit should be the county rather than the school district. I think it clear, therefore, that a school district which has its own main library cannot be included within a county library district created pursuant to R.C. 3375.20. If said main library is located within the school district but outside of the county in which the county library district is located, no part of the school district may be included within the county library district.

In specific answer to your questions, it is my opinion and you are so advised that:

1. In the absence of an order to the contrary from the state library board pursuant to R.C. 3375.01(F), the consolidation of adjacent school districts effects a corresponding expansion of the area served by an existing school district public library established pursuant to R.C. 3375.14. (Opinion No. 931, Opinions of the Attorney General for 1951, page 775, modified to the extent indicated.)

2. In the absence of approval from the state library board, a county library district created pursuant to R.C. 3375.20, cannot be formed so as to include any part of, or all of, a school district which is partly located outside of the county. Such approval may, however, be granted, pursuant to R.C. 3375.01(E).

3. A school district which has its own main library cannot be included within a county library district created pursuant to R.C. 3375.20. If a main library is located within a school district but outside of the county in which the county library district is located, no part of the school district may be included within the county library district.