

properly examined and defects of vision corrected, unless the examination of said child's eyes by the school physician or his assistant reveals an underlying pathological condition requiring treatment by a specialist in diseases of the eye and a refraction in accordance with such treatment, or for other good cause which does not show discrimination against optometrists as a class."

Applying the rule laid down by this case, it is believed that a board of education has no authority to advise, counsel, direct or order any minor child attending the public schools to submit to an examination by any particular class or school of physicians or eye specialists or any other person or persons other than the school physician or his duly employed assistant physician unless the examination by said school physician shows an underlying pathological condition requiring treatment by a specialist in diseases of the eye and a refraction in accordance with such treatment.

You are, therefore, advised that a board of education may not advise, counsel, direct or order any minor child to submit to an examination by any person other than the school physician or his duly employed assistant physician unless an examination by said school physician discloses an underlying pathological condition requiring treatment by a specialist.

Respectfully,
C. C. CRABBE,
Attorney General.

2539.

TRANSFER OF LIBRARY PROPERTY BY MUNICIPALITY TO TRUSTEES
OF PUBLIC LIBRARY—TAX LEVY PROVIDED IN SECTION 7639 G. C.
IS OUTSIDE LIMITATIONS OF SMITH ONE PER CENT LAW.

SYLLABUS:

1. *A transfer of its library property by a municipal corporation (under the provisions of section 3711, General Code) to the trustees of the public library of the school district within which such municipal corporation is situated, upon such lawful terms and conditions as provided in said section, contemplates a consideration. It need not be a money consideration but may be any adequate consideration of substantial value agreed upon in the terms and conditions in the transfer.*

2. *The tax levy provided for in section 7639 of the General Code of Ohio is outside of the limitations imposed by the Smith one per cent tax law and is also not subject to the control of the budget commission.*

COLUMBUS, OHIO, June 4, 1925.

HON. EUGENE WRIGHT, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following questions:

"The board of education of Logan city school district maintains a library for the schools and the city of Logan also maintains a public library. It is the desire of the city of Logan to transfer its property composing said

public library to the Logan city school district library. Can this be done under section 3711, General Code of Ohio, as amended 110 Ohio laws, page 408?

"The law also provides that the transfer must be made by ordinance. Is the city of Logan authorized to transfer its library to the Logan city school district library without consideration?

"Also is the tax provided for it by section 7639, General Code of Ohio, outside of the limitations imposed by the Smith one per cent tax law? And is it not outside of the control of the budget commission?"

In considering your first question as to the matter of a consideration for the transfer by the city of Logan of its library property to the Logan city school district library, your attention is first directed to the case of *Cleveland vs. Library Board*, 94 O. S., 311, a part of the syllabus of which is as follows:

1. "A municipal corporation has no authority to donate real or personal property to the trustees of a public library of a school district within which such municipality is situated (Wasson et al. vs. commissioners 49 Ohio St., 622; Hubard, Treas. vs. Fitzsimmons, 27 Ohio St. 436, and the state, ex rel. The Clemmer & Johnson Co. vs. Turner, attorney general, 93 Ohio St., 379, approved and followed.

2. "Under the provisions of section 3711 General Code, a municipal corporation may transfer real or personal property, acquired or suitable for municipal purposes, to the trustees of any public library for the school district within which such municipality is situated, for an adequate consideration other than money, upon such lawful terms and conditions as are agreed to between the municipal corporation and the trustees.

3. "Section 3712, General Code, authorizes the board of trustees of a public library for a school district within which a municipal corporation is situated, to accept a transfer of real or personal property from such municipal corporation for library purposes, upon such lawful terms and conditions as are agreed to between the municipal corporation and the trustees, and to enter into any contract relating thereto."

In the opinion by Judge Donahue, at page 317 of the above report, appears the following:

"The presumption obtains, however, that this statute is constitutional and that it was enacted to serve some public purpose. That purpose undoubtedly is to authorize a municipal corporation to accept in payment for this property valuable considerations other than money, when terms and conditions agreed upon are lawful and of substantial value of the municipal corporation making the transfer, and reasonably adequate compensation for the property so transferred. The facts in this particular case would seem to demonstrate not only the purpose and intent of the law-making power but also the necessity for such legislation. * * *

"The erection of a public library building upon one of these lots and the improvement of the adjoining lot for park purposes will be not only of great value to the city in the furtherance of this group plan project, but will save the city a large sum of money in razing these buildings and improving the grounds and maintaining a public park thereon. It would therefore appear that this is not a gift by the city to the library board. On the contrary—in view of the necessity of limiting the use which is to be made of this property to one consistent with the group plan project and the further necessity of providing for the reversion of the title to the city when

that use shall be abandoned and also in view of the fact that the city cannot, without abandoning this group plan of public buildings in furtherance of which large sums of money have already been expended, sell this ground to a private purchaser for commercial purposes—it is evident that by this arrangement with the public library board the city is obtaining adequate value and that the transaction comes fairly within the provisions of section 3711, General Code.”

Attention is also directed to a former opinion of this department found in the opinions of the attorney general, 1918, vol. 2, page 1545, wherein it was held that:

“(1) Sections 3711 and 3712 of the General Code confer ample authority upon the council of the city of Cincinnati to transfer to the board of trustees of the library of the school district of Cincinnati a site and buildings thereon suitable for library purposes, without the assumption of any indebtedness of the city existing on account of the acquisition of such sites and buildings by the city, and without the receipt of enough money to reimburse the city for the indebtedness thus incurred; and upon such board of trustees to take this title thus transferred.”

In the case under consideration in the above referred-to opinion, the city of Cincinnati under an ordinance providing for the transfer of certain property to the trustees of the public library of the school district of Cincinnati certain terms were imposed upon such trustees to the effect that they should put the property in good repair and beautify the premises and at all times maintain the premises in good condition and repair and use the same for public library purposes, paying all expenses and charges in connection with the ownership, maintenance and upkeep thereof, and that such trustees shall assume and perform the obligations of the city of Cincinnati under any and all outstanding agreements or leases for the occupancy of any part of the premises.

Thus it appears both in the Cleveland and Cincinnati case that there was some consideration for the transfer and in view of these cases I am inclined to the view that there must be some consideration for the transfer in the instant case.

With reference to your second question as to the limitations on the tax provided for in section 7639 of the General Code, attention is directed to the language of the section which reads as follows:

“Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided.”

The language of the latter part of this section to the effect that such tax shall be in addition to all other levies authorized by law and subject to no limitation on tax rates, except as provided in the section, places such levies outside of the limitation of the Smith one per cent tax law, and such levy is therefore not subject to reduction by the budget commission.

Respectfully,
C. C. CRABBE,
Attorney General.