

4870.

APPROVAL, BONDS OF AURELIUS VILLAGE SCHOOL DISTRICT, WASHINGTON COUNTY, OHIO, \$2,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 7, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4871.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, November 7, 1935.

*State Employes Retirement Board, Columbus, Ohio.*

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4872.

LIBRARY—AUTHORITY OF ONE PUBLIC LIBRARY TO CONTRACT FOR SERVICES WITH ANOTHER PUBLIC LIBRARY.

**SYLLABUS:**

1. *The trustees of a public library may lawfully contract with the trustees of another public library in the same county which is authorized by law to render library service to the inhabitants of the same territory as is the contracting library, to perform certain services for it incident to the proper maintenance of the library, including the purchasing and cataloguing of its books, and the trustees of the library for whom the service is rendered may lawfully pay the trustees of the library so contracting for the services rendered.*

2. *The board of trustees of a school district library which has extended the service of the library by appropriate rules and regulations, to all the inhabitants of the county in which the library is located excepting to the inhabitants of subdivisions of the county maintaining a library participating in the proceeds of classified property taxes collected within the county in pursuance of Section 5625-20, General Code, may lawfully contract with the trustees of another*

*school district library located in the same county, the trustees for which have likewise made its library service county wide or are authorized by law to provide library service to the inhabitants of the same county to perform for it necessary and proper extension service.*

3. *A school district library in one county cannot lawfully contract with a school district library in another county to perform book truck service for the library in the other county to the schools of either county, except to such schools as the library contracting to perform the service may be authorized by law to provide library service.*

COLUMBUS, OHIO, November 7, 1935.

HON. PAUL A. T. NOON, *State Librarian, Columbus, Ohio.*

DEAR SIR:—My opinion has been requested by you in answer to the following questions:

“1. Can a large library make a contract with a smaller public library to purchase and catalogue the books ordered by the smaller library, the smaller library by contract agreeing to pay a certain yearly amount for such service?

2. Can a school district library contract with a larger school district library to do the necessary county extension service?

3. Can a school district library in one county contract with a school district library in another county to give book truck service to the schools, etc., within the contracting library's county?”

The authority to establish and maintain public libraries and furnish by means of such libraries, library service to the public, is statutory. Several kinds or classes of public libraries supported in whole or in part from public funds, are so authorized. By force of Sections 7643-1 et seq., General Code, county library districts may be created with power through trustees therein provided for, to establish and maintain within such districts free public libraries and to render to the inhabitants of such districts efficient library service. County libraries may be established by authority of Sections 2976-11 to 2976-17, General Code. Section 7635, General Code, provides that a board of education in any city, village or rural school district may provide for the establishment, control and maintenance in such district of a public library free to all the inhabitants thereof. Municipal public libraries may be established and maintained by authority of Sections 4004 et seq., General Code. Similarly, provision is made for the establishment and maintenance of township public libraries by Sections 3403 et seq., General Code. Libraries may be established by boards of education for the purpose of providing school library service to the pupils under its jurisdiction by authority of Section 7631, General Code, which reads in part, as follows:

“The board of education of any school district may provide for the establishment, control and maintenance of a school library or libraries for the purpose of providing school library service to the pupils under its jurisdiction, or may contract with any public library 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 part of the expense thereof, including the salaries of school librarians, as and for compensation for the service rendered.”

In each instance, except as to libraries maintained by authority of Section 7631, General Code, *supra*, where authority is extended for the establishment and maintenance of free public libraries, it is provided that the actual control and management of the library shall be vested in a board of trustees the duties of which with respect to furnishing library service are not detailed with particularity. In each such instance the duties of the trustees are set forth in the statutes in very broad terms. For instance, with respect to township libraries it is provided in Section 3405, General Code, that the trustees shall have “such authority as may be necessary to render a library so established of public utility. The library shall be conducted and cared for under such rules and regulations as the trustees prescribe.”

With respect to municipal libraries it is provided in Section 4005, General Code, that the trustees shall employ a librarian and necessary assistants, fix their compensation, adopt by-laws and regulations for the protection and government of the library and exercise all the powers and duties connected with and incidental to the government, operation and maintenance thereof.

The trustees of county libraries established by authority of Sections 2976-11 *et seq.*, General Code, are empowered by Section 2976-13, General Code, to have exclusive charge, custody and control of the public library in such county. They shall have power and it shall be their duty to establish in the city or village where such library is located and throughout the county within which is situated said library, reading rooms, branch libraries, and library stations in connection with said library. They are further expressly authorized and it is made their duty to purchase and pay for all books, periodicals, magazines and other literature and supplies necessary, in their judgment, for said public library, reading rooms, branch libraries and library stations, and to incur the necessary expenditures for the encouragement and advancement of the best use of such library, reading rooms, branch libraries and library stations by the public.

The powers of a board of trustees of a school district library established by authority of Section 7635, General Code, are, in so far as the furnishing of library service is concerned, set forth in Section 7637, General Code, which reads as follows:

“In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed.”

The powers and duties of trustees of county library districts established and maintained in pursuance of Sections 7643-1 et seq., are found in Section 7643-6, General Code. This section authorizes the trustees to accept gifts, to purchase, lease or dispose of grounds and buildings, and furnish and equip them for library purposes. They are directed to submit an annual report to the county commissioners and the state librarian and to draw up annually a budget showing in detail the purposes for which it is proposed the money will be expended during the succeeding year. All that is said with respect to their furnishing library service is contained in two lines of the statute. This provision is, “they shall render an efficient library service in their respective districts.”

It will be observed that the details of the manner of furnishing library service to the patrons of a public library throughout the territory within which the trustees of the several classes of libraries function are not fixed by statute. Much is left to the discretion of the trustees. Undoubtedly, the trustees of any public library established and maintained by authority of any of the statutes mentioned may provide for the furnishing of library service to the patrons through or by means of employes of the library or by contract with another library or any public or private agency providing, if the contractor is a public agency, it possess the power to enter into a contract for such service.

Of course, the purchasing and cataloguing of books for library purposes and county extension service if the library is a county or county district library or has provided for county wide library service, and the furnishing of library service to the schools within its jurisdiction, if such service is contracted for under and by virtue of Section 7631, General Code, supra, are each and all proper and necessary in the rendering of library service as contemplated by law, to the patrons of a public library.

At present, practically all public libraries except school libraries established by authority of Section 7631, General Code, supra, have taken advantage of the opportunity to participate in the proceeds of classified property taxes by extending the benefits of their library service to all the inhabitants of the county in which they are located except to the inhabitants of subdivisions maintaining a library that participates in the proceeds of

classified property taxes. Sections 5625-20, 5625-24 and 5639, General Code. The pertinent part of Section 5625-20, General Code, reads 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.”

It will be observed from the statutory provision quoted above that any library which has availed itself of the opportunity to participate in the classified property taxes collected within the county in which it is located, by making rules and regulations extending its service county-wide does not have authority to provide service within a subdivision of the county in which is maintained a library that has likewise extended its service throughout the county. For instance, a municipal or township library by making rules and regulations extending its service to the county in accordance with Section 5625-20, General Code, would not thereby be authorized to provide service within a school district or another municipality or township if that school district or municipality or township maintains a library that has extended its service in accordance with the provisions of Section 5625-20, General Code, and has thereby become entitled to participate in the proceeds of the classified property taxes collected in the county; and similarly, a school district library that extended its service throughout the county so as to entitle it to participate in the proceeds of classified property taxes collected within the county would not be authorized to provide library service to other school districts in which a library is maintained that had done the same thing, or to a municipality or township in which a library was maintained which had taken advantage of the statute. Of course, county libraries and county district libraries have authority to furnish library service throughout the county, regardless of whether or not local library service is provided within the different subdivisions of the county by libraries located therein or by libraries which have extended library service to these localities.

Whether or not a board of library trustees might lawfully contract with another library to perform certain service for it such as the purchasing and cataloguing of books or the doing of proper and necessary library extension service would depend upon whether the trustees of the library contracting to

do this work are authorized to provide library service within the territory covered by the contract.

It is a well known principle of law that administrative officers whose positions are created by statute (and this applies to trustees of public libraries), have such powers only as are expressly granted by statute, together with such so-called implied powers as are necessary to carry out the express powers granted. This principle is so well grounded in the law that it should not be necessary to cite authority therefor.

Certainly, a board of library trustees created by statute for the purpose of administering county, county district, municipal, township or school district libraries, is not empowered to commercialize its library facilities for the mere purpose of making money for the libraries which it is authorized to administer. It has no authority to hire employes for that purpose or to make contracts with that end in view. It exists for the sole purpose of furnishing library service within its jurisdiction and may do so only to the extent and in the manner authorized by statute. Any contracts that may be made by one library with another library to perform library service for that library or by means of the facilities of that library, are necessarily confined to the providing of library service for the patrons of that library that it might lawfully provide for the same persons on behalf of the library which it represents.

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. It follows that a board of trustees of a local library, with the possible exceptions noted above, would not be authorized in any case to contract with another library located in another county to do extension work or perform any other services for it because the board so attempting to contract would be exceeding its powers in that it has no power to perform library service for the inhabitants of the other county. Any such action would be a purely commercial venture or a mere accommodation if it were done without charge or at cost, either of which is clearly beyond the powers of a board of library trustees.

I am therefore of the opinion in specific answer to your questions:

1. The trustees of a public library may lawfully contract with the trustees of another public library in the same county which is authorized by law to render library service to the inhabitants of the same territory as is the contracting library, to perform certain services for it incident to the proper maintenance of the library, including the purchasing and cataloguing of its books, and the trustees of the library for whom the service is rendered may lawfully pay the trustees of the library so contracting for the services rendered.

2. The board of trustees of a school district library which has extended the service of the library by appropriate rules and regulations, to all the inhabitants of the county in which the library is located excepting to the inhabitants of subdivisions of the county maintaining a library participating in the proceeds of classified property taxes collected within the county in pursuance of Section 5625-20, General Code, may lawfully contract with the trustees of another school district library located in the same county the trustees for which have likewise made its library service county wide or are authorized by law to provide library service to the inhabitants of the same county to perform for it necessary and proper county extension service.

3. A school district library in one county cannot lawfully contract with a school district library in another county to perform book truck service for the library in the other county to the schools of either county, except to such schools as the library contracting to perform the service may be authorized by law to provide library service.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4873.

APPROVAL, BONDS OF BATH RURAL SCHOOL DISTRICT,  
ALLEN COUNTY, OHIO, \$60,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 8, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4874.

APPROVAL, BONDS OF JEFFERSON VILLAGE SCHOOL DIS-  
TRICT, MADISON COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, November 8, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*