

1960.

LIBRARY—BOARD OF TRUSTEES OF FREE PUBLIC LIBRARY NO
AUTHORITY TO PAY SECRETARY OR TREASURER FOR SERVICES
RENDERED AS SUCH.

SYLLABUS:

A board of trustees of a school district free public library has no authority to pay its secretary or treasurer for services rendered as such secretary or treasurer.

COLUMBUS, OHIO, April 11, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication in which you request my opinion in answer to the following question:

“May the board of trustees of a school district public library employ and pay compensation to a person acting as secretary of such board?”

Authority for establishing and managing school district public libraries is found in Sections 7635 et seq. General Code. These sections read in part as follows:

Section 7635. “The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided. * * *”

Section 7636. “Such board of library trustees shall consist of seven members, who must be residents of the school district. * * * The members of the library board must serve without compensation and until their successors are elected and qualified.”

Section 7637. “* * * It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed.”

Section 7638. “* * * No member of the library board shall be interested, directly or indirectly in any contract made by the board. * * *”

Section 7638-1. “For the transaction of its business the board of library trustees shall elect a president, vice-president, secretary and treasurer, and such other officers as shall be deemed expedient or necessary, and with the exception of the offices of president and vice-president, may repose the duties of such officers, who need not be members or member of the board, in one person, provided, however, that the treasurer of said library board shall be required to give bond in such amount and form as the library trustees may prescribe, to secure such funds in his custody, as may not be otherwise prescribed by law. * * *”

It will be observed from the provisions of Section 7638-1, supra, that boards of trustees for school district public libraries may repose the duties of secretary and treasurer in one person who may be a member of the board or not. The statute is silent as to whether or not compensation may be provided for the secretary or treasurer. Obviously, if the secretary or treasurer, or the person who performs

the duties of secretary and treasurer, is also a member of the board of trustees, he could not receive any compensation for his services, inasmuch as Section 7636, supra, provides that the members of the library board must serve without compensation, and Section 7638, supra, provides that:

“No member of the library board shall be interested directly or indirectly in any contract made by the board.”

It is a well recognized rule of law, that statutory boards, such as a board of trustees for a school district public library, are limited in their powers to such as are expressly granted to them by the statutes, or necessarily included within such grants, to consummate the powers expressly granted. There is no authority either express or implied, for library boards such as these, to employ and pay anyone except librarians and assistants.

It is also a well recognized rule of law, that compensation for public service is entirely dependent on the law fixing such compensation, and if the law does not fix any compensation or authorize the fixing of it, it will be presumed that the services are to be rendered gratuitously.

In R. C. L. Vol. 22, page 532, in speaking of the compensation of incumbents of public positions, it is said:

“The absence of any provision for compensation carries with it the implication that the services of the incumbent are to be rendered gratuitously.”

Throop on Public Officers, Section 446, wherein the rule in the United States with reference to compensation of public officers is discussed, says:

“Here the general rule is, that the rendition of the services of a public officer is deemed to be gratuitous unless a compensation therefor is fixed by statute.”

This department in 1925, in an opinion reported in the published opinions for that year at page 409, passed on the precise question before us, and it was there said:

“The board of trustees of a library organized under the provisions of Sections 7635 et seq., General Code, is without authority to provide compensation for the services of its treasurer elected under the provisions of Section 7638, General Code.”

I agree with the opinion above referred to, and I am of the opinion that boards of trustees for school district public libraries have no authority to pay for services rendered by persons elected to act as secretary or treasurer of the board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1961.

NOTES—RETIREMENT OF COUNTY NOTES—USE OF GENERAL FUND
—MAY INCLUDE OBLIGATION IN BUDGET.

SYLLABUS:

1. *County notes issued in anticipation of the issuance of bonds, and not retired*