

**Note from the Attorney General's Office:**

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1. LIBRARY, PUBLIC—SCHOOL DISTRICT—AUTHORITY OF BOARD OF LIBRARY TRUSTEES NOT AFFECTED BY REPEAL OF SECTIONS 7635, 7639, G. C.—ENACTMENT, SECTION 4840-1 ET SEQ., G. C.
2. OUTSIDE LIBRARY SERVICE—SCHOOL DISTRICT AUTHORIZED TO WITHDRAW APPROVAL—SECTION 154-53a G. C.
3. STATE LIBRARY BOARD—UNDER AUTHORITY OF SECTION 154-53a G. C. MAY WITHDRAW FROM A SCHOOL DISTRICT THE RIGHT TO RECEIVE LIBRARY SERVICE UNDER CERTAIN CONDITIONS.
4. COUNTY DISTRICT LIBRARY—TERRITORY INCLUDES SCHOOL DISTRICT AFTERWARDS ANNEXED TO ANOTHER SCHOOL DISTRICT—JURISDICTION OF COUNTY DISTRICT NOT TERMINATED—AUTHORITY OF STATE LIBRARY BOARD TO CONTROL LIBRARY SERVICE.

## SYLLABUS:

1. Where a school district has established a public library under the authority granted by former Sections 7635 to 7639, General Code, the existence of such public library and the authority of the board of library trustees appointed for its management and operation are in no wise affected by the repeal of the sections aforesaid, and the contemporaneous enactment of Section 4840-1 et seq., General Code.

2. Under Section 154-53a, General Code, the state library board, having given authority to a school district having a library to give library service to territory outside of its original jurisdiction is authorized to withdraw its approval of such outside library service.

3. Where a school district has under the provisions of former Sections 7635 to 7639, General Code, established a library and has obtained authority under the provisions of Section 154-53a, General Code, to give library service outside of said district and such outside territory is thereafter transferred to another school district, the right of the district originally providing such library service is not thereby affected unless the state library board acting pursuant to the authority given it by Section 154-53a, withdraws from the district so furnishing such service, the right so to do.

4. Where a county district library organized under Section 7643-1a, General Code, includes within its territory a school district which is afterwards annexed to another school district which has a school library, the jurisdiction of said county district over the territory so transferred is not thereby terminated and the state library board is without authority to order a withdrawal of the authority of such county district over such territory, but the state library board may, in its discretion, authorize the school district having such library to furnish library service to the district so annexed.

Columbus, Ohio, November 15, 1951

The State Library Board  
Columbus, Ohio

Gentlemen :

I have before me your communication, requesting my opinion, and reading as follows :

“The State Library Board finds it difficult to exercise the authority granted it in Sec. 154-53a of the General Code of Ohio, and generally to advise with library boards concerning the organization of a public library, as authorized in Sec. 154-52. This difficulty arises from the numerous consolidation of school districts, sometimes creating a conflict in jurisdiction of the public libraries serving such area. We respectfully request your opinion on the following questions :

1. What library has jurisdiction in the case of a school district under authority of Secs. 154-53a and 7630, item 6, when a second school district, a part of that service area, is consolidated with a third school district having its own public library?

“The following situation exists in Wood County, and may be duplicated soon in Ashtabula and Darke Counties.

“The Bowling Green Public Library, organized under the Bowling Green School District, has been serving the Village of

Bradner, and maintains a branch there, under authority of Sec. 154-53a. Recently the school district in which Bradner is located consolidated with the Montgomery school district. The former Montgomery district was maintaining a public library located in the Village of Wayne. Does the Bowling Green Library or the Wayne Library have jurisdiction of library service over the Bradner area? When the library laws were recodified in 1947, the authority of Boards of Education to establish public libraries was repealed. Does the new Montgomery school district affect the existence of the Wayne Public Library?

"2. What library has jurisdiction in the case of a county district library when a school district located within the library district is consolidated with a second school district, not located in the county library district, and which has its own public library?

"The Delaware Public Library is a county district library, organized under authority of Sec. 7643-1a, and the library district includes all of the county except the school district in which are located the Ashley and Sunbury public libraries.

"A consolidation of school districts is being discussed which would bring the Harlem School District which, for library purposes, is a legal part of the county library district, into the Big Walnut (Sunbury) school district.

"Since library service in the county library district is a function and responsibility of the county and not of the school district, we assume of course that such consolidation would in no way remove service to the communities or residents in the Harlem area from the jurisdiction of the county district library, or alter the boundary of the library district, but would like legal verification of the matter."

As a background for the consideration of the questions submitted, I call attention to the changes that have been made by the General Assembly in the statutes relating to the organization and government of public school libraries. Prior to the enactment of the present law, which undertook to recodify and revise the laws relative to libraries generally, 122 Ohio Laws, 166, effective September 4, 1947, the establishment of public school libraries was authorized by Sections 7631 to 7639, General Code.

Section 7631 authorized in general terms, the board of education of any school district to provide for the establishment, control and maintenance of a public library or libraries, "for the purpose of providing school library service to the pupils under its jurisdiction." This section further provided that such boards of education should have power to purchase,

erect, construct and enlarge a building or buildings for library purposes, including a site or sites therefor, and the equipment for the same.

Section 7635, referring somewhat more specifically to the grant of power, read as follows:

“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, which board shall hold title to all such library property.

“Such boards of education shall also have the power for such purpose or purposes to purchase, erect, construct, enlarge, extend or improve a building or buildings for library purposes, including a site or sites therefor, and equipping and furnishing the same.”

Section 7636, read as follows:

“Such board of library trustees shall consist of seven members, who must be residents of the school district. No one shall be eligible to membership on such library board who is or has been for a year previous to his election, a member or officer of the board of education. The term of office shall be seven years, except that at the first election the terms must be such that one member retires each year. Should a vacancy occur in the board, it shall be filled by the board of education for the unexpired term. The members of the library board must serve without compensation and until their successors are elected and qualified.”

Section 7637 authorized such library board to hold title in its own name to all library property, real and personal, belonging to the school district.

Section 7638 related further to the purchase by such board of land for such library, and authorized it to appropriate property for such purpose, and further authorized it to dispose of land no longer needed for library purposes.

Section 7639 authorized such board to levy taxes for the support of such library.

Section 7640 authorized the payment to such board of taxes collected and provided that expenditures from the library fund should be made only on the warrant of such board.

The revision of 1947, above referred to, 122 Ohio Laws, p. 166, dealt with the laws relating to public libraries generally, not only those maintained by school districts, but also county and municipal libraries. Of the original sections above referred to, Section 7631 was amended to read as follows:

"All persons who are duly elected officers of a board of library trustees on the effective date of this act shall hold their respective offices and perform all the duties imposed upon them by law until the board of library trustees of which said persons are officers has organized pursuant to the provisions of this act."

It will be noted that the scope of that section, which formerly related to school libraries only, was made to include all boards of public library trustees. It was limited to the purpose of continuing the tenure and duties of officers of the various boards until the boards were reorganized under the new law. All of the other sections of the old law to which I have referred, were repealed. There were introduced into the new legislation certain new sections, to wit, Sections 4840-1, 4840-2, 4840-3, 4840-4 and 4840-5.

Section 4840-1 reads:

"In any school district in which there has been established, by resolution duly adopted by the board of education of such school district, prior to the effective date of this act, a free public library, such library shall be under the control and management of a board of library trustees consisting of seven members. No one shall be eligible to membership on such board of library trustees who is or has been for a year previous to his appointment a member of the board of education making such appointment. Such trustees shall be qualified electors of the school district and shall be appointed by the board of education of the school district. Such trustees shall serve for a term of seven years and until their successors are appointed and qualified. All vacancies on such board of trustees shall be filled by the board of education by appointment for the unexpired term. The members of such board of trustees shall serve without compensation. Such board of library trustees shall organize in accordance with the provisions of section 7627 of the General Code. Such board of library trustees shall have the control and management of the school district free public library. In the exercise of such control and management they shall be governed by the provisions of sections 7627-1 through 7630-1, both inclusive of the General Code. Nothing in this section shall be construed to affect the term of any member of a board of library trustees of a school district free public library appointed prior to the effective date of this act."

Section 4840-2, reads as follows :

“The board of education of any school district may, by resolution duly adopted, transfer, convey or lease any property of the school district, real or personal, suitable for public library purposes to the board of trustees of any free public library, rendering free public library service to the inhabitants of the school district, upon such lawful terms and conditions as are agreed upon between the board of education and the board of library trustees of the library rendering such service.”

Section 4840-3, authorizes the board of library trustees of a school district free public library to certify to the board of education of such district annually, the amount of money required to maintain and operate said library during the year, and further authorizes the board of education of such district to levy a tax not exceeding one and one-half mills to provide the necessary funds.

Section 4840-4 provides that the proceeds of such tax shall be paid over to the treasurer of the board of trustees of the school district library.

Section 4840-5 reads as follows :

“The board of education of any city, exempted village or local school district in which there has been established by resolution duly adopted by such board of education, prior to the effective date of this act, a free public library may purchase, erect, construct, enlarge, improve, equip or furnish a building or buildings for the purpose of rendering free public library service to the inhabitants of said school district.”

In the same act under consideration a new Section 7630, General Code, was introduced. That section, as slightly amended by the 99th General Assembly, effective September 10, 1951, reads in part, as follows :

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall have the following general powers to wit :

“1. To hold title to and have the custody of all property both real and personal of the free public library under their jurisdiction; \* \* \*

“4. To purchase, lease, lease with an option to purchase, or erect buildings or parts of buildings to be used as main libraries, branch libraries or library stations pursuant to the requirements of the next following section ;

"5. To establish and maintain a main library, branches, library stations and traveling library service within the territorial boundaries of the subdivision or district over which they have jurisdiction of public library service;

"6. To establish and maintain branches, library stations and traveling library service in any school district, *outside of the territorial boundaries of the subdivision or district over which they have jurisdiction* of free public library service upon application to and approval of the state library board, pursuant to the provisions of section 154-53a of the General Code; provided, however, that the trustees of any free public library maintaining branches, stations or traveling book service, *outside of the territorial boundaries of the subdivision or district over which they have jurisdiction of public library service*, on the effective date of this act, may continue to maintain and operate such branches, stations and traveling library service without the approval of the state library board; \* \* \* (Emphasis added.)

It will be noted that the powers here granted relate specifically to library trustees appointed pursuant to Section 4840-1 supra.

The net result of the new legislation above set out as bearing on the former law relative to school libraries, is merely a withdrawal of the right to *establish thereafter* new school libraries. There is a very manifest and plainly expressed intention to continue the powers as to the operation and management of such libraries theretofore established, even to the extent of authorizing the construction of new buildings and the enlarging or improving of old buildings for such library purposes.

That such is the effect of these statutory changes, was very clearly pointed out in the case of *State ex rel. Library Board v. Main*, 83 Ohio App., 415. A portion of the syllabus of that case is as follows:

"3. Section 7635, General Code, as enacted (115 Ohio Laws, pt. 2, 278), empowered a school district to create and maintain a public library within its district notwithstanding the fact that public library service had been established previously within such district by another political subdivision.

"4. In the enactment of Sections 4840-1 through 4840-5, General Code, the General Assembly clearly manifested its intention to recognize free public libraries established by virtue of Section 7635, General Code (115 Ohio Laws, pt. 2, 278), in any school district prior to the effective date of such new General Code sections.

"5. By the repeal of Section 7635, General Code, and the



enactment of Sections 4840-1 through 4840-5, General Code, there was no repeal of the grant of power or termination of the authority conferred therein upon a local school district, either expressly or by implication."

An examination of the facts stated in the above opinion shows that as early as 1921, there had been created under authority of law, the Cuyahoga County library district, which consisted of certain taxing districts in Cuyahoga County not then maintaining tax supported public libraries. This district included the territory of Shaker Heights school district. The county library district board had proceeded to provide public library service for its district, including the portion within the Shaker Heights School district. Thereafter, in 1937, the board of education of the Shaker Heights school district acting under authority of Section 7635 et seq., General Code, then in force, established a public library for the inhabitants of that school district, and created a board of library trustees.

The result of this situation was that there were two libraries which were maintaining library facilities in the territory of Shaker Heights school district. The case referred to arose by reason of the refusal of the clerk of the board of the Shaker Heights district to sell notes in anticipation of the issue of bonds which had been voted for building a library building. To the petition for a writ of mandamus the clerk filed a demurrer. The court stated the issues raised by the demurrer to be as follows:

"1. Whether the Board of Education of the Shaker Heights School District had jurisdiction in 1937 to establish the Shaker Heights Public Library, under the provisions of Section 7635, General Code, as it then existed.

"2. Whether the repeal of Section 7635, General Code, and the contemporaneous enactment of new Sections 4840-1 to 4840-5, inclusive, General Code (122 Ohio Laws, 166), either expressly or by implication terminated the existence of the Shaker Heights Public Library."

The court found authority for the issuance of the bonds in question in Section 4005-2, et seq., General Code, which provides that a public library board may request the taxing authority to which it is subject to submit to the electors the question of the issuing of the bonds. Finding that that procedure had been duly carried out, the court granted the writ of mandamus and announced the conclusions stated in the syllabus, which I have already quoted.

Applied to the situation stated in your first proposition, this decision makes it clear that neither the library maintained by the Bowling Green district or the library known as the Wayne Public Library, which had been maintained by the Montgomery district, were destroyed, and that their powers were in no way affected by the repeal of Section 7635 et seq. of the General Code, even though the repeal of those sections deprived school districts of the power thereafter to *establish* libraries. It appears, however, that the school district in which the village of Bradner is located, had formerly been receiving its library service from the Bowling Green school district library, under authority of Section 154-53a, General Code, and that by a change in boundaries, the Bradner district was consolidated with the Montgomery district. This raises the main question involved in your first inquiry, to wit, which of these district libraries has the right to serve Bradner?

The answer to this question necessitates an examination of Section 154-53a, General Code, and a comparison of its provisions with those contained in paragraph 6 of Section 7630 which I have already quoted. Let it be noted that both of these sections were new enactments contained in the same act whereby the library laws generally, were revised, 122 Ohio Laws, p. 166. Section 154-53a, General Code, reads in part as follows:

“The board of trustees of *any public library* receiving local tax support desiring 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, upon forms provided by said board for the establishment of such service.”  
(Emphasis added.)

It will be noted that under Section 7630 the trustees of the public school library are authorized to maintain branches and traveling library service “outside of the territorial boundaries of the subdivision or district over which they have jurisdiction by free public library service upon application to and approval of the state library board pursuant to the provisions of Section 154-53a, of the General Code.” We may inquire at the outset what is meant by the “territorial boundaries of the subdivision or district over which they have jurisdiction of free public library service.” The answer to that question appears to me to be found in the provisions of the law under which these libraries were originally organized. Section

7635, General Code, in authorizing the board of education to provide for the establishment of a public library, used these words :

“The board of education of any \* \* \* district \* \* \* may provide for the establishment, control and maintenance *in such district* of a public library *free to all the inhabitants thereof.*”  
(Emphasis added.)

It appears very clear that this is the definition and limitation of the territory over which such library has “jurisdiction of free public library service.” Accordingly, the Bowling Green library had original jurisdiction of the Bowling Green school district, and by virtue of the grant of the state library board under Section 154-53a, supra, has acquired the right to serve the territory of the village of Bradner. The former Montgomery district, at the time its library was established, had its jurisdiction for library service confined to its own territory. In the absence of any authoritative order changing the area of these respective services, I cannot see that the alteration of the district boundaries and the annexation of the Village of Bradner district to Montgomery district would effect any change in the area of its library service.

It is true that changes in territorial boundaries of school districts and the consolidation of two or more districts into one, will have the effect of making changes in the property rights of the districts affected. In my opinion No. 225, rendered April 9, 1951, it was pointed out that where changes are made in district boundaries by annexation of part or all of one district to another, or by consolidation of several districts into one, the property rights and obligations of the constituent districts are merged in the district which is thereby established. This conclusion is based on the language of Section 4831, General Code, which relates to the transfer of school district territory. The pertinent portion of that section reads :

“The legal title of all property of the board of education in the district transferred shall become vested in the board of education of the school district to which such territory is transferred.”

As already pointed out, the title to school library property was to be taken in the name of the library trustees, but since the establishment of the library, the financing thereof and the appointment of the trustees were all by action of the trustees of the district, there can be no doubt that the property of the library was the property of the district, and upon annexa-

tion or consolidation of district territory, passed like other property to the new district.

This may manifestly lead to a somewhat anomalous situation, where territory which was served by a library might be transferred to a district that has no library, or where a district which has a library of its own is transferred to or consolidated with a district which has none. In this situation it appears to me that it is proper to resort to Section 154-53a, supra, which gives the state library board discretion to make such changes as the best interests of the various districts and their inhabitants might seem to require. It will be noted that in addition to the authority to grant permission to one district to serve territory outside of its own territorial limits, the state library board has also authority to withdraw its approval of outside library service by certain procedure therein set forth, and it can thereby make such adjustments as the interests of those affected may require. In other words, in the specific case which we are considering, the present service of what was formerly the Bradnor territory may be left in the hands of the Bowling Green district or may be transferred to the Montgomery district of which Bradner has now become a part, this matter being left to the sound discretion of the state library board.

Your second question relates to the Delaware County district library and a proposed consolidation of districts whereby Harlem school district, which for library purposes is a legal part of such county library district, is to be consolidated with the Big Walnut school district. Your letter indicates that the Big Walnut (Sunbury) school district has a public library.

If my conclusion relative to your first question is correct, then the status of the Harlem district as to library service would not be changed merely by the annexation of its territory to or consolidation with the Big Walnut school district. We are then confronted with the question of whether the state library board would have the power to separate it from the county library district for the purpose of library service, and turn it over to the Big Walnut district for such purpose.

We find in Section 154-53a, General Code, authority given to your board under some circumstances to "withdraw its approval of library service." The following is quoted from that section:

"The state library board shall have authority to withdraw its

approval of library service *rendered by any library to the inhabitants of a school district other than the school district in which the main library of such library is located. \* \* \*.*"

But it will be noted that the withdrawal of approval implies that approval has been given by the board for "outside service." From the very nature of a county library district as set forth in the statutes, it does not appear that your board has any part in its foundation or that its territory of library service is in any case subject to your approval. If that be true, then the provision of Section 154-53a as to withdrawal of approved library service, would be inapplicable, as far as the jurisdiction of a county library district is concerned.

Turning to the statutes under which a county library district is formed we note two different procedures. Section 7643-1 provides in part:

*"In each county of the state there may be created, in the manner hereinafter provided, a county library district composed of all of 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.*

*"The county commissioners of any county may initiate the creation of such a county library district adopting a resolution providing for the submission of the question of creating a county library district to the electors of such proposed district. Such resolution shall define the territory to be included in such district by listing the school districts which will compose the proposed county library district. \* \* \*."*

Here, by the terms of the statute itself, such district will include all the school districts in the county "which are not within the territorial boundaries of an existing \* \* \* free public library." By this phrase, I am bound to conclude that the legislature meant the territory over which a school library has jurisdiction, as heretofore defined. If that be the proper construction it is evident that a county library district may include territory, which, while not having a library of its own, is receiving library service from another school district library. The proposition to organize such county district must be submitted to the electors of the territory proposed to be included, and approved by a majority of those voting on the proposition.

The second method of setting up such county district as set forth in

Section 7643-1a, General Code. The procedure is quite complicated and need not be set out in full. In brief, it 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, and approval of such resolution by all of the taxing authorities to whom they are subject; and when so approved all of the property of all such libraries is transferred and conveyed to the board of trustees of the county district. Your letter states that the Delaware county library was created pursuant to said Section 7643-1a.

It appears that such county library district, however formed, acquires its territory for service by virtue of the statute, and not by action of the state library board, and therefore the provisions of Section 154-53a *supra*, authorizing the state library board to *withdraw its approval*, would not be applicable, since no approval has been given. However, I can see no reason why, under the provisions of that section your board should not have power to grant to the Big Walnut district the right to extend its library service to the Harlem district, even though it is within the area of the county district. There is nothing in the law that forbids such action. It is conceivable that in the case you present, it would be more advantageous to the inhabitants of the Harlem district to be served by the Big Walnut (Sunbury) school district than by the county district. In my opinion that would be within the discretion of your board.

It will be noted that in the decision of the court in the case of *State ex rel. v. Main*, *supra*, the court recognized the fact that there were two library boards which were maintaining library facilities in Shaker Heights, and the court did not find in that circumstance any illegality or any reason for withholding its mandate. I do not find in Sections 7630 or 154-53a, General Code, from which I have quoted, any prohibition, express or implied, against such dual service, and it is my opinion that the allowance or disallowance of the same rests in the discretion of the state library board.

In specific answer to the questions submitted, it is my opinion :

1. Where a school district has established a public library under the authority granted by former Sections 7635 to 7639, General Code, the existence of such public library and the authority of the board of library trustees appointed for its management and operation are in no wise

affected by the repeal of the sections aforesaid, and the contemporaneous enactment of Section 4840-1 et seq., General Code.

2. Under Section 154-53a, General Code, the state library board, having given authority to a school district having a library to give library service to territory outside of its original jurisdiction, is authorized to withdraw its approval of such outside library service.

3. Where a school district has under the provisions of former Sections 7635 to 7639, General Code, established a library and has obtained authority under the provisions of Section 154-53a, General Code, to give library service outside of said district and such outside territory is thereafter transferred to another school district, the right of the district originally providing such library service is not thereby affected unless the state library board acting pursuant to the authority given it by Section 154-53a, withdraws from the district so furnishing such service, the right so to do.

4. Where a county district library organized under Section 7643-1a, General Code, includes within its territory a school district which is afterwards annexed to another school district which has a school library, the jurisdiction of said county district over the territory so transferred is not thereby terminated and the state library board is without authority to order a withdrawal of the authority of such county district over such territory, but the state library board may, in its discretion, authorize the school district having such library to furnish library service to the district so annexed.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General