

43.

PUBLIC LIBRARY—TOWNSHIP PARK OR BOARD OF EDUCATION
MAY NOT APPROPRIATE FUNDS FOR SUCH LIBRARY—EXCEPTION
AS TO LIBRARY SERVICE FOR SCHOOL DISTRICT.

SYLLABUS:

1. *A board of township park commissioners may not lawfully appropriate funds which it holds for park purposes to, and for the use of a board of trustees of a free public library*

2. *A board of education of a school district wherein there exists a school district public library free to all the inhabitants of said school district, may not lawfully appropriate funds in its possession which are held for school purposes, for the use of the trustees of the said public library in the maintenance of said library except as such appropriation may be made in pursuance of a contract made with said library trustees for library service in the school buildings of said school district for the use of the pupils and teachers in said buildings.*

COLUMBUS, OHIO, January 20, 1933.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Geneva Public Library is organized under the statutes as a school district library and administered under the laws governing school libraries.

It seems that funds in the hands of the library board are exhausted, and it will be necessary to discontinue library service unless some way can be found to secure funds.

The Geneva Township Park Board has a surplus of funds, as has also the Geneva Board of Education. I wish to inquire whether or not in your opinion, either one of these subdivisions could appropriate money for the use of the library board.”

I gather from your inquiry, that the “Geneva Public Library” is a library located in the Geneva Rural School District, and, regardless of when it was established, it is now maintained by authority of Section 7633, of the General Code of Ohio. This section reads 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.

Within ninety days after the taking effect of this act, boards of education administering public libraries directly, shall appoint such boards of library trustees, and transfer to them all public library property, real and personal.”

Prior to the enactment of Section 7635, General Code, in its present form in 1923, school district libraries free to all the inhabitants of the district might have been established and maintained by a board of education by authority of the then existing Section 7631, General Code. Such libraries were managed and controlled, at that time, directly by the boards of education which had established them. At the time Section 7635, General Code, was amended to provide as it now does, Section 7631, General Code, was also amended. This latter section has not since been amended, and now reads:

“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 an opinion rendered by my predecessor, which opinion is reported in the published Opinions of the Attorney General for 1931, at page 319, it was held:

“A board of trustees of a school district library established by authority of Section 7635, General Code, is a distinct, independent unit of government created for the purpose of providing free library service to all the inhabitants of the school district in which it functions.”

A board of township park commissioners may also be said to be a distinct independent unit of government. Such boards exist by virtue of Sections 3415, et seq. of the General Code. They are charged by law with the duty of locating, establishing, improving and maintaining free public parks within or without their respective townships. Provision is made by law for tax levies for the use of these boards for the purposes mentioned. Such provisions are entirely separate and distinct from corresponding provisions of law relating to tax levies for school district libraries or other school district purposes. These boards function in most respects, at least, as independent units of government and entirely distinct and separate from boards of education and boards of school district library trustees.

Clearly, the funds, whether the proceeds of taxation or not, in possession of boards of education or boards of township park commissioners, which funds came into their possession for use in carrying out their respective duties as such boards, cannot be diverted by them or appropriated by them for the use of another governmental unit for purposes entirely foreign to the original purpose for which they were intended, unless clear statutory authority exists for such action. No such statutory authority exists so far as a township park board is concerned.

A board of education may, by authority of Section 7631, General Code, contract with any public library board to furnish school library service. See Section 7631, *supra*.

In the 1931 opinion, referred to above, the Attorney General, in discussing the various changes made in the statutes relating to school district libraries, in 1923, said:

“From these several changes in the statutes, made in 1923, as noted above, it appears that authority was extended to a board of education,

if it desired to have library service in the school buildings for the use of the pupils and the teachers in the several school buildings, to contract with any public library in the district, which means that it might contract with a public library free to all the inhabitants of the district established by authority of Section 7635, General Code, as well as any other public library which might be located in the district. Apparently, the legislature foresaw the possibility that the library board established by Section 7635, General Code, might not in its discretion establish branch libraries for the use of the teachers and pupils in the several school buildings of the school district, and possibly that it might not be practical for it to do so, and for that reason extended authority to the board of education to contract for that service if it so desired to have the service."

If the Geneva Public Library does not now furnish library service for the use of the pupils and the teachers in the several school buildings of the Geneva Rural School District, the Geneva Rural Board of Education may contract with the trustees of the library for that service, and for that purpose may appropriate funds so that the service may be paid for. Except as the service mentioned may be contracted for no authority exists for the board of education to appropriate funds from its treasury for the use of the trustees of the Geneva Public Library in the maintenance of the library.

I might suggest in this connection that authority exists for a board of county commissioners to contract with any library association within the county or with any board of trustees having the management or control of a library free to the whole or a part of the county for the use of said library by the people of such county. The commissioners are limited, however, in making such a contract to making it with the one public library only. See Opinion 4860 rendered under date of January 6, 1933.

In specific answer to your question I am of the opinion that the Geneva Township Board of Park Commissioners may not lawfully appropriate any funds in its possession which are held for park purposes to, and for the use of the board of trustees of the Geneva Public Library; neither may the board of education of the Geneva Rural School District lawfully make such an appropriation, except as it may be done in pursuance of a contract entered into between the board of education and the said library board for the furnishing by said board of school library service in the school buildings of the Geneva Rural School District for the use of the pupils and teachers in said buildings.

Respectfully,

JOHN W. BRICKER,
Attorney General.

44.

APPROVAL, BONDS OF WELLSTON CITY SCHOOL DIST., JACKSON COUNTY, OHIO—\$6,500.00.

COLUMBUS, OHIO, January 20, 1933.

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