

Note from the Attorney General's Office:

1991 Op. Att'y Gen. No. 91-061 was overruled by
2007 Op. Att'y Gen. No. 2007-012.

OPINION NO. 91-061**Syllabus:**

Assistant law librarians of a county law library, hired under the auspices of R.C. 3375.48, are included in the civil service pursuant to R.C. 124.11(A)(7)(b) and are employees within the meaning of R.C. 124.01(F).

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for my opinion on the following question: "Are assistant law librarians of a county law library, hired under the auspices of R.C. Section 3375.48, employees within the meaning of R.C. Section 124.01(F)?"

Pursuant to R.C. 3375.48, a county law library "furnishes to all of the members of the Ohio general assembly, the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge...." *See also* R.C. 3375.55 (providing for free use of library by county court judges and by township and municipal officers). Such a library is operated by the county law library association, which is organized as either a private association or as a non-profit corporation pursuant to R.C. 1713.28. *See* 1986 Op. Att'y Gen. No. 86-102 at 2-565. For support of the law library, the General Assembly has mandated that certain court fines, penalties, and forfeitures be paid to the board of trustees of the law library association. *See* R.C. 3375.50-3375.53; R.C. 733.40; R.C. 4513.35; R.C. 5503.04.

R.C. 3375.48 provides for the appointment and compensation of assistant law librarians as follows:

The judges of the court of common pleas of any county in which there is a law library association...upon the appointment by the board of trustees of such association...of a person to act as librarian and not more than two additional persons to act as assistant law librarians thereof, shall fix the compensation of such persons, which shall be paid from the county treasury.

Thus, under this statutory scheme, assistant law librarians are appointed by and work under the direction of the board of trustees of the law library association. They are compensated from the county treasury and work in a library supported at least in part by public funds.

In 1988 Op. Att'y Gen. No. 88-095, my predecessor determined that county law librarians are members of the civil service, as defined in R.C. 124.01(A), by virtue of their inclusion in the unclassified civil service, pursuant to R.C. 124.11(A)(7)(b). That statute provides that "library staff of any library in the state supported wholly or in part at public expense" are part of the unclassified service. Accordingly, since the status of assistant law librarians is identical in all pertinent respects to the law librarians themselves, I conclude that such assistants are members of the unclassified civil service pursuant to R.C. 124.01(A) and R.C. 124.11(A)(7)(b).

R.C. 124.01(F) provides, further, that individuals in the civil service are "employees" when they hold "a position subject to appointment, removal, promotion, or reduction by an appointing officer." "Appointing authority," as defined at R.C. 124.01(D), is "the officer, commission, board or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution." Clearly, R.C. 3375.48 vests power in the board of trustees of the law library association to appoint library assistants to their civil service positions. Accordingly, county law library assistants hold "a position subject to appointment" as required by R.C. 124.01(F). Although the law library association itself is a private entity, I note that it is the nature of the position of law library assistant which places it in the civil service and not the nature of the appointing authority. *See, e.g., In re Appeal of Ford*, 3 Ohio App. 3d 416, 419, 446 N.E.2d 214, 216 (Franklin County 1982) ("[t]he key issue, therefore, is not whether the [state teachers retirement board] is a state agency but whether or not employment with the board constitutes employment 'in the service of the state,' within the meaning of those words as used in R.C. 124.01").

It is, therefore, my opinion and you are hereby advised, that assistant law librarians of a county law library, hired under the auspices of R.C. 3375.48, are included in the civil service pursuant to R.C. 124.11(A)(7)(b) and are employees within the meaning of R.C. 124.01(F).