

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2853.

LIBRARY—WHERE NOT MAINTAINED BY PUBLIC FUNDS—
EMPLOYEES DO NOT COME WITHIN PROVISIONS OF
PUBLIC EMPLOYEES RETIREMENT SYSTEM.

SYLLABUS:

Employes of libraries within the State of Ohio which serve public interests but are not actually maintained by public funds, do not come within the provisions of the Public Employes Retirement System.

COLUMBUS, OHIO, August 20, 1938.

HON. WILSON E. HOCE, *Secretary, Public Employes Retirement System, Columbian Building, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"We will sincerely appreciate your advice on the following subject:

The provisions of House Bill 776, passed by the recent special session of the General Assembly includes the employes of public libraries in the Public Employes Retirement System without consideration as to where the maintenance funds are received by the library. The question is:

Do employes of libraries within the State of Ohio who call themselves 'public libraries,' and who serve public interests, but who are not actually maintained by tax funds come within the amended provisions of the Retirement Law?

Your usual capable consideration of the above question will be sincerely appreciated by this Board."

Section 486-33, General Code, reads in part, as follows:

"For the purpose of this act, * * 'public library employe' shall mean any person holding a position in a public library in the State of Ohio, and/or paid in full or in part by the board of trustees of a public library. * *"

I am unable to find any case in Ohio wherein "public library" is defined. However, assuming that a library not maintained by public funds but which is open to the general public can be considered as a "public library"; and that a librarian within the State of Ohio, who is employed in a "public library" that serves "public interests" but is "not actually maintained by tax funds" can be considered as a person "holding a position in a public library in the State of Ohio, and/or paid in full or in part by the board of trustees of a public library", it must be determined whether or not such a librarian and public library not maintained by tax funds comes within the provisions of the Public Employes' Retirement System Act (Sections 486-32 to 486-75, inclusive, General Code).

Reviewing briefly the said Public Employes Retirement System Act, we find therein certain mandatory requirements which must be performed by employe and employer. I shall limit discussion of the same to "public library employes" and board of trustees of a public library.

Section 486-33e, General Code, provides for the contribution by a public library employe to be deducted by the head of the department from the compensation of such public library employe.

Section 486-33f, of the General Code, sets forth the manner of contribution to be paid by the board of trustees of the public library for each public library employe to "employers' accumulation fund" for normal and deficiency contributions.

Section 486-33g, General Code, makes it mandatory for the retirement board to prepare and submit to the board of trustees of each public library prior to September 15th of each year, the amount necessary to pay its obligations to the retirement system for its employes; and further provides that such amount be included in the budget, allowed by the budget commission and sufficient funds appropriated for such obligations of the public library.

Section 486-71, General Code, mandatorily requires the head of each department to transmit to the secretary of the retirement board a copy of the original payroll, showing all deductions for the retirement system for each employe together with warrants and checks covering the total of such deductions.

Assuming that each and every such public library would voluntarily make its contributions to the "employes' accumulation fund", when we consider that no machinery has been set up whereby the Public Employes Retirement Board has authority to require each and every public library in the state not maintained by tax funds to comply with the provisions of Sections 486-33f, 386-33g, and 486-71, *supra*, and no authority exists whereby moneys coming from private institutions can be mingled with public funds in the "employes' accumulation fund" and

used for the purpose of paying disability or superannuation allowances, the conclusion must be reached that the provisions of the Public Employes' Retirement System Act are not applicable to employes of public libraries not maintained by public funds.

Therefore, in specific answer to your question it is my opinion that, "employes of libraries within the State of Ohio who call themselves 'public libraries' and who serve public interests but who are not actually maintained by tax funds" do not come within the amended provisions of the Retirement Law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2854.

MEMBER BOARD OF EDUCATION—WHERE EMPLOYEE OF CORPORATION SUCH COMPANY CANNOT SUBMIT SEALED BIDS FOR CONTRACTS TO FURNISH SUPPLIES TO BOARD—SEE SECTIONS 4757 AND 12910, GENERAL CODE.

SYLLABUS:

A company whose local manager is also a member of the board of education cannot submit sealed bids for contracts to furnish supplies to the board of education when competitive bidding on such contract is not required by law, as a contract made under such circumstances comes within the provisions set forth in Sections 4757 and 12910, General Code.

COLUMBUS, OHIO, August 22, 1938.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge your recent communication. Your letter reads as follows:

"A member of the City Board of Education is employed as branch manager of a corporation, operating a retail lumber yard in the city. The Board of Education, in purchasing lumber, takes sealed bids for all lumber purchased, and awards the sale to the lowest bidder. So long as this manager is a member of this Board of Education, can this lumber company legally file bids to sell the City Board of Education material, and be awarded the sale, if they are the low bidder?"