

OPINION NO. 89-068**Syllabus:**

1. A county law library association has no authority, pursuant to R.C. 3375.54, to donate public funds retained under R.C. 3375.56 to a community college civic center for the purpose of maintaining rooms available for public use.
2. Pursuant to a bona fide agreement with a community college civic center, a county law library association may expend public funds retained under R.C. 3375.56 to rent or lease rooms and equipment of the civic center for any purpose authorized in R.C. 3375.54.

To: Stephen A. Schumaker, Clark County Prosecuting Attorney, Springfield, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1989

I have before me your request for my opinion regarding the use of funds held by a county law library association. You indicate that a community college is using local and state funds to construct a civic center in the downtown area of your county seat. The center will be owned and operated by the college and will provide facilities for community, cultural and educational events. The facilities available will include classrooms and meeting rooms equipped with audio, video, videotape and other equipment which could be used by the members of the Springfield Bar and Law Library Association for meetings, continuing legal education programs and seminars. Currently there are no satisfactory facilities for such purposes in the downtown area, where the courts, public offices, county law library, and offices of many association members are located. In light of these facts, you ask specifically:

May the Board of Trustees of a Law Library Association which has retained funds pursuant to R.C. Section 3375.56 make a contribution of part of those funds to the endowment fund of a state community college, which is building a new civic center, to assist in the maintenance of such center and to assure the Association of access to the meeting and class rooms in the center for the purpose of continuing legal education and other membership functions of the Association?

The retained funds, to which you refer in your request, consist of moneys collected as fines and penalties by various courts in the county and which are required to be paid to the county law library pursuant to R.C. 3375.50-.53.¹ R.C. 3375.56 requires that the board of trustees of the law library association report the income and expenses from these court fines and penalties annually to the county auditor and that at least ninety percent of any unencumbered balance be returned to the originating subdivisions. Thus, the law library association may retain up to ten per cent of these funds. These retained funds do not lose their character as public moneys, however, and remain subject to the restrictions imposed on funds received under R.C. 3375.50-.53. See *Greene County Law Library Ass'n v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported) (rejecting the argument that funds retained under R.C. 3375.56 and any interest thereon become private funds of the law library association).

Moneys received under R.C. 3375.50-.53 may be expended only as provided in R.C. 3375.54, which states:

¹ See R.C. 3375.50 (providing certain moneys collected by municipal courts for support of county law library); R.C. 3375.51 (moneys from county courts); R.C. 3375.52 (moneys from common pleas and probate courts); R.C. 3375.53 (fines and penalties for violations of state liquor and traffic laws collected in any court).

The money that is paid to the board of trustees of a law library association under sections 3375.50 to 3375.53 of the Revised Code shall be expended in the support and operation of the law library association and in the purchase, lease, or rental of lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, videotape materials and equipment, audio or visual materials and equipment, and other services, materials, and equipment that provide legal information or facilitate legal research.

R.C. 3375.54 provides the board of trustees with a certain amount of discretion with respect to determining what is necessary for "support and operation of the law library association" and what "other services, materials, and equipment" are needed. At the same time, however, it must be recognized that as a private association,² a law library association may not receive and expend public funds except for a public purpose. See generally *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955) (appropriation of state funds to veterans organizations for rehabilitation of war veterans held constitutional); *State ex rel. Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922) (statute providing county funds to private non-profit agricultural society for public fair held constitutional); *State ex rel. Pugh v. Sayre*, 90 Ohio St. 215, 107 N.E. 512 (1914) (statutes appropriating non-tax moneys to county law library in return for free access by public officials held constitutional).³ The legislature decides whether a particular purpose is public. *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (syllabus, paragraph two), cert. denied sub nom. *Fosdick v. Hamilton County*, 391 U.S. 601 (1968). With respect to county law libraries, the legislature has linked public funding with providing access to public officials. R.C. 3375.55 states:

Judges of the county court in the county and officers of the townships and municipal corporations therein shall have the same free use of the books of the law library receiving moneys under sections 3375.50 to 3375.53, inclusive, of the Revised Code, as the judges and county officers.

See also R.C. 3375.48 (county payment of librarian's and assistants' salaries conditioned upon access for members of the general assembly, county officers, and judges of the several courts of the county); R.C. 3375.49 (county must provide suitable rooms, bookshelves, heat and light in the courthouse for use of a library described in R.C. 3375.48). Thus, the legislature has designated free access for public officials as the public purpose supporting the public funding of law library associations. See *State ex rel. Akron Law Library Ass'n v. Weil*, 16 Ohio App. 2d 151, 154, 242 N.E.2d 664, 666 (Summit County 1968) ("Ohio, by legislation, provided a means of supporting county law libraries for the free use of such facilities by the judges and other public officials").

Because the receipt of public funds is conditioned upon the provision of free access to designated public officials, this public purpose must be understood as an inherent condition of the specific expenditures authorized in R.C. 3375.54. The

² See 1986 Op. Att'y Gen. No. 86-102 at 2-565 (law library association may be formed as a private association or a non-profit corporation); 1984 Op. Att'y Gen. No. 84-087 at 2-300 (trustees of a law library association are not public officers or employees).

³ These cases examine the constitutional prohibitions against the lending of public aid or credit to private individuals and corporations in Ohio Const. art. VIII, §§4, 6. The public purpose limitation exists independently of these constitutional requirements and was not directly addressed by the court. The court found essentially that the constitutional provisions were inapplicable to non-profit corporations receiving funds for a valid public purpose. See 1977 Op. Att'y Gen. No. 77-049 at 2-175; see also 1988 Op. Att'y Gen. No. 88-039 at 2-190 n.3 (discussing public purpose as the consideration which supports the expenditure of public funds).

legislature has not delegated any authority to the law library association to expend public funds for other purposes, either public or private.⁴ Thus, R.C. 3375.54 contemplates that the "services, materials, and equipment that provide legal information or facilitate legal research" will be made available free of charge to the judges and public officials in the county. Similarly, expenses "in the support and operation of the law library association" must be understood to refer to the association in its capacity as the provider of adequate legal information and research facilities to public officials. Thus "support and operation" expenses may logically include not only routine expenses necessary for the upkeep and operation of the law library, but also the internal administrative costs of the law library association, and other expenses reasonably related to the use of the services, materials, or equipment authorized under R.C. 3375.54. As I recently reiterated in 1988 Op. Att'y Gen. No. 88-104, "R.C. 3375.54 continues to exclude authorization for expenditures for bookcases, rent, librarian's compensation, and heat and lights, since those expenditures are delegated to the county elsewhere in the statute. R.C. 3375.48; R.C. 3375.49."

Within the limitations I have set out above, the expenditure of funds received under R.C. 3375.50-.53 is a matter committed to the sound discretion of the board of trustees of the county law library association. As stated by the court in *Greene County Law Library Ass'n v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported) at p. 4:

In the statutory scheme for the establishment and perpetuation of law libraries, exclusive authority was delegated to a board of trustees, and this control extends to the satisfaction of a variety of needs for which a law library association must make expenditures if it is to continue to exist for its intended purpose. Furthermore, we would agree that the board of trustees, because of its expertise in such matters, and pursuant to Section 3375.54, has considerable discretion in determining the needs and requirements of the law library association.

Nonetheless, it is a well established rule of construction that doubts regarding the authority to expend public funds must be resolved in favor of the public and against the exercise of such authority. *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph three); *see also State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one) ("public moneys, whether in the custody of public officers or otherwise...can be disbursed only by clear authority of law"); 1943 Op. Att'y Gen. No. 5914, p. 150 at 151 (applying *Pierce* and *Maharry* to the expenditure of public funds by the county law library association).

Applying these principles within the framework established by R.C. 3375.54 and R.C. 3375.55, I find no authority for the law library association to simply donate its public funds to the endowment fund of a community college for the purpose of assisting in the maintenance of a civic center. The general assembly has not identified the provision and maintenance of facilities for community, cultural, and educational events as a public purpose for which the association may expend its public funds, even though the association, along with the public in general, will be

⁴ The fact that the expenditures of public funds for the provision of a law library and related services to public officials may simultaneously serve additional purposes of the law library association is, of course, entirely acceptable. *See Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (syllabus, paragraph two) (holding that additional benefit to private parties does not invalidate a legitimate public purpose). As a private organization, a law library association may have any number of purposes in addition to serving public officials. I note, for example, many law library associations are formed to provide services to the local bar as well as to public officials. What is prohibited is the use of public funds for any purpose which is totally unrelated and separable from the statutory purpose which is the basis for the public funding.

able to benefit from such facilities. *See generally City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 316, 114 N.E. 247, 249 (1916) (a city cannot make a gift to a school district "notwithstanding such a gift is for the benefit of substantially the same public"); 1988 Op. Att'y Gen. No. 88-018 (county may not distribute funds to its townships and municipalities based on the county's general concern about the financial status of subdivisions within its boundaries).

I note, however, that R.C. 3375.54 does permit the use of R.C. 3375.50-.53 funds for various expenditures which may result in incidental benefits to the civic center. Although R.C. 3375.54 does not expressly mention continuing legal education, such programs or seminars can be characterized as services which provide legal information. If public officials are given free access to such programs or seminars, I see no impediment to the expenditure of moneys collected under R.C. 3375.50-.53 to provide the programs in whole or in part. Furthermore, audio, visual, or videotape equipment and materials used in this context would be available to public officials and therefore, lease or rental of such items is authorized by R.C. 3375.50-.53. Likewise, the rental of a meeting room for such programs can be categorized as a "support and operation" expense of the association in its capacity as provider of legal information to public officials. Although R.C. 3375.49 requires the county to provide rooms "for the use of the law library," I find no obligation for the county to furnish rooms for activities of the association other than the library itself. Thus, there is no prohibition against use of R.C. 3375.50-.53 moneys for rooms for other activities, when those activities provide legal information or research free to public officials. By the same analysis, payment for equipment or rooms in conjunction with the administrative activities of the law library association is within the scope of the association's authority to expend public funds.

The precise nature of the proposed transaction between the law library association and the civic center is not clear from your letter. In order to authorize the expenditure of public funds, however, such a transaction must demonstrate a reasonable relationship between the purposes authorized in R.C. 3375.54, the amount of money spent, and the equipment and facilities received in return. Whether a particular arrangement constitutes a donation or demonstrates a true *quid pro quo* between the parties is a factual determination which cannot be made by means of an opinion of the attorney general. *See generally* 1988 Op. Att'y Gen. No. 88-008 at 2-27; 1983 Op. Att'y Gen.No. 83-087 at 2-342 (attorney general is without authority to render an opinion interpreting a particular agreement or contract).

In conclusion, it is my opinion, and you are hereby advised that:

1. A county law library association has no authority, pursuant to R.C. 3375.54, to donate public funds retained under R.C. 3375.56 to a community college civic center for the purpose of maintaining rooms available for public use.
2. Pursuant to a bona fide agreement with a community college civic center, a county law library association may expend public funds retained under R.C. 3375.56 to rent or lease rooms and equipment of the civic center for any purpose authorized in R.C. 3375.54.