

OPINION NO. 2002-016**Syllabus:**

The authority of the State Library Board under R.C. 3375.01(G) to amend, define, and adjust the boundaries of library districts does not extend to amending, defining, and adjusting the boundaries of Ohio public libraries established by library associations.

To: Michael S. Lucas, State Librarian, The State Library of Ohio, Columbus, Ohio

By: Betty D. Montgomery, Attorney General, June 12, 2002

We have received your request for a formal opinion concerning the powers and duties of the State Library Board. You have asked the following question: "Does the State

Library Board's power to amend, define, and adjust the boundaries of Ohio public libraries extend to amending, defining, and adjusting the boundaries of those Ohio public libraries established by library associations?"

In order to answer your question, it is necessary to review the nature of Ohio's public libraries. As your request notes, association libraries are libraries that originated, for the most part, under charters from associations such as reading clubs in the late nineteenth and early twentieth centuries. Library associations and the libraries they establish are not governmental entities. Rather, they are private entities. Library associations may be incorporated or unincorporated. They operate under relevant statutes and in accordance with their charters or articles of incorporation. *See, e.g.*, R.C. 1713.28; R.C. 5705.28(D); 1996 Op. Att'y Gen. No. 96-023; 1995 Op. Att'y Gen. No. 95-018; 1962 Op. Att'y Gen. No. 2956, p. 292; 1955 Op. Att'y Gen. No. 5670, p. 392.

Even though associations libraries are private entities, they are included as public libraries for some purposes, among them the receipt of certain public funding. As Ohio's public library system developed, it was recognized that the provision of library services and facilities serves a public purpose, and association libraries were included among the libraries supported by public moneys. *See, e.g.*, 1962 Op. Att'y Gen. No. 2956, p. 292; 1935 Op. Att'y Gen. No. 4271, vol. I, p. 586; *see also* 1996 Op. Att'y Gen. No. 96-023. Under existing law, library associations that were organized and operating prior to January 1, 1968,¹ may be eligible to receive public funds from the county library and local government support fund,² provided that they extend the benefits of their library service to all the inhabitants of the county on equal terms.³ R.C. 5705.28(D); *see also* 1996 Op. Att'y Gen. No. 96-023. Such association libraries are considered to be public libraries. *See* R.C. 5705.28; R.C. 5705.32; 1996 Op. Att'y Gen. No. 96-023; *see also* 1962 Op. Att'y Gen. No. 2956, p. 292; 1955 Op. Att'y Gen. No. 5670, p. 392; 1935 Op. Att'y Gen. No. 4271, vol. I, p. 586.

As private entities, association libraries are different from the other public libraries of Ohio. The other public libraries have been created as public entities, operate pursuant to R.C. Chapter 3375, and have boards of trustees appointed by a public official or entity. These public entity libraries are established as county libraries, township libraries, municipal libraries, school district libraries, county district libraries, or regional libraries. Each of these public entity libraries is subject to the jurisdiction of a political subdivision and has a taxing authority that is empowered to levy taxes for library purposes within either the

¹"No library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county library and local government support fund or other public funds unless such association was organized and operating prior to January 1, 1968." R.C. 5705.28(D).

²The county library and local government support fund receives state income tax moneys. *See* R.C. 5747.03(A)(2); 1996 Op. Att'y Gen. 96-023, at 2-80. Previously, funding for public libraries was derived from classified property taxes. *See* 1996 Op. Att'y Gen. No. 96-023, at 2-80 n.1; 1992 Op. Att'y Gen. No. 92-028, at 2-104 n.1; 1962 Op. Att'y Gen. No. 2956, p. 292; 1955 Op. Att'y Gen. No. 5670, p. 392.

³The requirement that library services be available to all inhabitants of the county on equal terms extends to "any public library desiring to participate in the distribution of the county library and local government support fund." R.C. 5705.28(D); *see also* R.C. 5705.32(F) (if any public library expends funds allocated to it under R.C. 5705.32 for the construction of new library buildings or parts of buildings, the library must be free and open to all the inhabitants of the county in which it is located).

political subdivision or a defined library district. See R.C. 3375.06-.07 (county library; board of county commissioners is taxing authority); R.C. 3375.09-.10 (township library; board of township trustees is taxing authority); R.C. 3375.12-.121 (municipal library; taxing authority of municipal corporation is taxing authority); R.C. 3375.14-.18 (school district library; board of education is taxing authority); R.C. 3375.19-.24 (county district library; board of county commissioners is taxing authority); R.C. 3375.28-.31 (regional library district; boards of county commissioners are taxing authorities); *see also* R.C. 3375.32-.35; R.C. 3375.40; R.C. 5705.06(B); R.C. 5705.19(D); R.C. 5705.21; R.C. 5705.23; 1996 Op. Att'y Gen. No. 96-057; 1996 Op. Att'y Gen. No. 96-023; 1993 Op. Att'y Gen. No. 93-031; 1985 Op. Att'y Gen. No. 85-017; 1982 Op. Att'y Gen. No. 82-056.

As a private entity, an association library is not subject to the jurisdiction of a political subdivision, does not have a taxing district, and does not have a taxing authority that is empowered to impose a tax on its behalf. 1996 Op. Att'y Gen. No. 96-023;⁴ *see also* 1956 Op. Att'y Gen. No. 6814, p. 523. Therefore, an association library does not have district boundaries.⁵

⁴Our 1996 opinion has the following discussion about differences between the funding of association libraries and the funding of public entity libraries:

Provisions governing the funding of association libraries, which are private entities, differ in significant respects from those governing governmental library entities created pursuant to R.C. Chapter 3375. These differences reflect the fact that an association [library] does not have a taxing authority for purposes of placing an issue on the ballot.

For example, trustees of the various governmental libraries -- county, municipal corporation, school district, and township -- have express statutory authority to require that the appropriate taxing authority submit to the voters the question of adopting a levy for library purposes. R.C. 5705.23; *see also* 1988 Op. Att'y Gen. No. 88-013. Association libraries are not named in the statute authorizing special levies for public libraries and, therefore, are not authorized to seek levies pursuant to its provisions. *See* [R.C.] 5705.23. The omission of association libraries is consistent with the fact that an association library is not a governmental entity and is not subject to the jurisdiction of a political subdivision. *See* 1956 Op. Att'y Gen. No. 6814, p. 523.

A different statute authorizes "[a]ny public library board of trustees" charged with the ownership and maintenance of a public library to "request the taxing authority of the political subdivision to whose jurisdiction the board is subject" to submit to the voters the question of issuing bonds for library purposes. R.C. 3375.43; *see also* 1988 Op. Att'y Gen. No. 88-013. This provision has been found not to apply to an association library both because an association library is not a governmental body and because "it is in no sense subject to the jurisdiction of any political subdivision." 1956 Op. Att'y Gen. No. 6814, p. 523 at 527; *see also* 1985 Op. Att'y Gen. No. 85-017. Again, the conclusion is that an association library, as a private entity, does not have a taxing authority for purposes of submitting an issue to the voters.

1996 Op. Att'y Gen. No. 96-023, at 2-82 to 2-83 (footnotes omitted).

⁵As discussed in detail in 1996 Op. Att'y Gen. No. 96-023, the board of county commissioners is designated as the taxing authority of an association library for the limited purpose

Having reviewed the status of the various public libraries, let us now consider the powers of the State Library Board. Your question pertains to R.C. 3375.01, which creates the State Library Board and makes it “responsible for the state library of Ohio and a statewide program of development and coordination of library services.” R.C. 3375.01. The State Library Board is given certain authority over the boundaries of library districts. For example, the State Library Board may establish county district libraries and determine the boundaries of their districts, and may also define and adjust the boundaries of a new public library district resulting from school district consolidation. R.C. 3375.01(E) and (F); 5 Ohio Admin. Code 3375-4-01 to 3375-4-04; *see also* R.C. 5705.23.

With respect to your question, the express powers of the State Library Board include the power, “[u]pon application of one or more boards of library trustees,” to “amend, define, and adjust the boundaries of the library districts making such application and the boundaries of adjacent library districts.” R.C. 3375.01(G);⁶ *see also* 5 Ohio Admin. Code 3375-4-05. This power permits the State Library Board, upon the request of a board of library trustees, to make changes in the boundaries of the requesting library district and any adjacent library districts. Any library district boundary changes made pursuant to this power take effect only after two certified copies of the boundary change order in final form are filed with the Secretary of State and with the Director of the Legislative Service Commission, subject to referendum under R.C. 3375.03. R.C. 3375.01(G); *see also* R.C. 3375.03.⁷

Any action taken by the State Library Board with respect to the determination or adjustment of library district boundaries must be certified to boards of elections, taxing authorities, the boards of trustees of libraries affected, and other appropriate bodies. R.C.

of representing the association library in activities related to the creation of a county library district pursuant to R.C. 3375.20. 1996 Op. Att’y Gen. No. 96-023, at 2-81 to 2-83. Although an association library, as a private entity, is not empowered to levy taxes, there are procedures through which it may receive moneys from taxes that are levied by political subdivisions. *Id.* at 2-84 to 2-85; *see also* R.C. 3375.18 (agreement to operate facilities for a board of education); R.C. 3375.42 (contract with board of county commissioners, board of education, legislative authority of municipal corporation, or board of township trustees).

⁶The relevant portion of R.C. 3375.01 states:

The state library board is responsible for the state library of Ohio and a statewide program of development and coordination of library services, and its powers include the following:

...

(G) Upon application of one or more boards of library trustees and in accordance with Chapter 119. of the Revised Code, to amend, define, and adjust the boundaries of the library districts making such application and the boundaries of adjacent library districts. A library district boundary change made by the state library board pursuant to this division shall take effect sixty days after the day on which two certified copies of the boundary change order in final form are filed on the same date with the secretary of state and with the director of the legislative service commission unless a referendum petition is filed pursuant to section 3375.03 of the Revised Code.

⁷The right of referendum is extended to electors of territory that is to be transferred from one library district to another library district, unless the affected boards of library trustees have agreed to the transfer. The persons qualified to vote on the question are the electors residing in the territory proposed to be transferred. R.C. 3375.03.

3375.01(H). Such notification is essential for the imposition of taxes within a taxing district and the submission of tax levies to voters of the district. *See, e.g.*, R.C. 5705.23; 1996 Op. Att'y Gen. No. 96-023.

Let us now turn to your specific question, which is whether the State Library Board's power to amend, define, and adjust the boundaries of Ohio public libraries extends to amending, defining, and adjusting the boundaries of public libraries established by library associations. The authority of the State Library Board under R.C. 3375.01(G) to amend, define, and adjust boundaries extends, by the terms of the statute, only to "library districts making such application and the boundaries of adjacent library districts." R.C. 3375.01(G); *see also* R.C. 5705.23; 5 Ohio Admin. Code 3375-4-05 (procedure for amending, defining, and adjusting library boundaries pursuant to R.C. 3375.01(G) is made available to "library districts"). The authority to make boundary adjustments thus clearly encompasses the various public entity library districts. However, a library that is not a "district" is not authorized to make application under that provision, and the State Library Board is not authorized to amend, define, or adjust its boundaries under that provision. Because association libraries are not districts, they do not have district boundaries and cannot come within the terms of R.C. 3375.01(G). *See* 1996 Op. Att'y Gen. No. 96-023. Therefore, the authority of the State Library Board under R.C. 3375.01(G) to amend, define, and adjust the boundaries of library districts does not extend to amending, defining, and adjusting the boundaries of Ohio public libraries established by library associations.

Related statutory provisions support this conclusion. The authority of the State Library Board to define library district boundaries is referred to specifically in R.C. 5705.23. That statute authorizes the board of library trustees of a county, municipal corporation, school district, or township public library to declare that it is necessary to levy a tax in excess of the ten-mill limitation and to direct "the taxing authority of the political subdivision to whose jurisdiction the board is subject" to submit the question of such a tax "to the electors of the subdivision, or, if the resolution so states, to the electors residing within the boundaries of the library district, as defined by the state library board pursuant to section 3375.01 of the Revised Code." R.C. 5705.23. In the case of a county library district, the question is submitted to the voters of the district. *Id.* The definition of library district boundaries thus is required for taxing purposes. *See* 1996 Op. Att'y Gen. No. 96-023, at 2-83 n.7 ("[i]f a library district has been created and the board of trustees of the library district requests the levy, the question is submitted to voters within the library district and, if approved, the tax is levied within the library district. If there is no library district, the question is submitted to all the electors of the political subdivision and, if approved, the tax is levied throughout the political subdivision"). The State Library Board's authority to define library district boundaries extends to public entity library districts named in the statute, which are entities with the power to tax. It does not extend to association libraries, which are private entities, not named in the statute and having no power to tax.

For the reasons discussed above, it is my opinion and you are advised that the authority of the State Library Board under R.C. 3375.01(G) to amend, define, and adjust the boundaries of library districts does not extend to amending, defining, and adjusting the boundaries of Ohio public libraries established by library associations.