

OPINION NO. 65-119**Syllabus:**

1. A free public library established in a school district by the board of education prior to September 4, 1947, shall continue in existence, when two or more school districts having such libraries consolidate into one school district.
2. There can be only one school district library system per school district, irrespective of the number of individual library units.
3. When two or more school districts, which have school district libraries and boards of trustees of such libraries, consolidate to form one school district, the board of education of the successor school district shall appoint a board

of trustees for the school district library system, in accordance with the provisions of Section 3375.15, Revised Code.

To: Harlan R. Spies, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William B. Saxbe, Attorney General, July 2, 1965

I have before me your request for my opinion which reads as follows:

"Please be advised that we are making a request for an opinion concerning a recent consolidation of three school districts into one local school district. In said newly created school district, there are two school district public libraries. The question now arises as to the operation of said libraries and the affect upon them by said consolidation.

"Question: When two or more school district libraries have been consolidated into one school district, what affect does the said consolidation have upon the operation of the respective school district libraries' operations? Specifically, how many libraries should remain in existence and how should their Board of Trustees be appointed?

"Reference was made to your Opinion Number 1291, issued as of August 13, 1964, wherein the syllabus held that a public school library continues in existence under the management and control of an existing board of library trustees upon the consolidation of the school district, and further providing, that upon the completion of the terms of office by any member of the Board of Trustees, their successors shall be appointed by the new Board of Education of the consolidated district. In the specific set of facts presented to you in that Opinion, only one library was in question, whereas in the particular case at hand, there are two distinct and separate school district libraries, now operating.

"Please advise whether they should continue to operate as separate entities, or whether they should be consolidated into one library."

Section 3375.15, Ohio Revised Code, reads in part as follows:

"In any school district in which a

free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members."

In referring to the General Code sections, which preceded Section 3375.15, *supra*, Hurd, P. J. stated in State, ex rel. Library v. Main, 83 Ohio App., 415 (1948) at page 422:

"The statutes under which the Shaker Heights Library and county district library were respectively created (Section 7635 and Section 7643-1) remained unchanged from 1937 to 1947. In 1947, the General Assembly enacted a recodification and revision of laws relating to public libraries, which materially changed the law on this subject. Such legislation is known as House Bill 125 (122 Ohio Laws 166). It was passed May 14, 1947, filed in the office of the Secretary of State on June 5, 1947, and became effective September 4, 1947.

"One of the principal changes effected by House Bill 125 was the termination of authority for the creation of township, municipal school district and county libraries."

At Page 423 it is stated as follows:

"An examination of the new provisions of the General Code, with respect to school district libraries, as set forth in Sections 4840-1 to 4840-5, inclusive, indicates a clear intentment of the General Assembly to continue the existence of school district public libraries created before the effective date of such provisions."

Assuming that the school district public libraries involved in the consolidation of school districts referred to in your request letter were established before September 4, 1947, the language of the Court of Appeals quoted above declaring the continuing existence will apply to them, even though these school district public libraries will, subsequent to the consolidation of districts, serve a successor board of education. See Opinion No. 1291, Opinions of the Attorney General for 1964; Opinion No. 1300, Opinions of the Attorney General for 1964; Opinion No. 119, Opinions of the Attorney General for 1959.

The Legislature has not spoken with regard to the management and operation of school district public libraries in such a situation as presented by your inquiry, i.e., the consolidation of several school districts, more than one of which has a school district library. None of the Ohio Revised Code Sections governing boards of library trustees of school district public libraries refers to other than one board. See Sections 3375.17 (Tax levy by board of education

for library purposes) and 3375.15 (School district public library; trustees), Ohio Revised Code. It is a logical conclusion that one school district may have only one school district public library system, and that this system be governed by one board of trustees.

Section 3375.15, *supra*, states in part that: "such library shall be under the control and management of a board of library trustees consisting of seven members." (Emphasis added) In Opinion No. 1291, Opinions of the Attorney General for 1964, page 2-315, I had occasion to render an opinion in a situation somewhat analogous to the instant problem, yet in other respects different. I stated at page 2-317 as follows:

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"Therefore, it is my opinion and you are advised that a public school library continues in existence under the management and control of the existing board of library trustees upon the consolidation of the school district of which it is a part with one or more school districts; provided that upon the completion of the terms of office of the existing trustees their successors shall be appointed by the board of education of the consolidated school district."

This conclusion, I feel, is logical and exhibits a correct application of the law to the facts presented in that situation. Additional problems arise for consideration herein.

You state that there are presently two boards of trustees, each having seven members. Patent is the fact that Section 3375.15, Revised Code, provides for only one board of trustees composed of seven members. In view of the conclusion reached hereinabove, that upon consolidation there can be only one school district library system, even though there will be more than one library unit; the matter of deciding on the composition of the board of trustees must be considered.

Being committed to the logic that there can only be one seven man board per school district, a solution similar to that reached in Opinion No. 1291, *supra*, is not available. A new board of library trustees must be appointed to govern the school district library units. The appointments should be made by the successor board of education pursuant to the provisions of Section 3375.15, *supra*.

Accordingly, it is my opinion and you are advised as follows:

1. A free public library established in a school district by the board of education prior to September 4, 1947, shall continue in existence, when two or more school districts having such libraries consolidate into one school district.
2. There can be only one school district library system per school district, irrespective of the number of individual library units.

3. When two or more school districts , which have school district libraries and boards of trustees of such libraries consolidate to form one school district, the board of education of the successor school district shall appoint a board of trustees for the school district library system, in accordance with the provisions of Section 3375.15, Revised Code.