

OPINION NO. 92-028**Syllabus:**

1. Pursuant to R.C. 5705.32, the county budget commission is required to allocate moneys from the county library and local government support fund to qualified libraries on the basis of the needs of the libraries. A determination as to how the moneys are to be allocated requires the exercise of judgment and discretion of the county budget commission and may not be delegated to any other entity.
2. Boards of library trustees are authorized by R.C. 3375.40 to participate in library associations and to use public funds for that purpose. A library association may carry out activities reasonably intended to benefit the libraries of participating trustees, including the preparation of proposals regarding the allocation of the county library and local government support fund. There is no requirement that trustees from all qualified libraries approve such proposals, and the county budget commission is in no way bound to adopt such proposals.
3. Pursuant to R.C. 5705.32(E)(2), each board of public library trustees must have an opportunity to appear before the county budget commission to explain the library's financial needs before the commission may finally determine how the county library and local government support fund is to be allocated.

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio

By: Lee Fisher, Attorney General, June 26, 1992

You have requested an opinion concerning the distribution of tax moneys to public libraries. The questions that you have submitted concern the role that a library, or an organization of libraries, may take to influence the allocation of library moneys.

State and County Library and Local Government Support Funds

Your questions relate to moneys derived from the state library and local government support fund ("the State Fund"). The State Fund is created by R.C. 5747.03(A)(2) and consists of state income tax proceeds. See R.C. 5747.02; R.C. 5747.03. Moneys from the State Fund are distributed to the various counties in accordance with the provisions of R.C. 5747.47 and are placed in the county library and local government support fund ("the County Fund"). See R.C. 5747.48. Each county treasurer distributes moneys from the County Fund among the county, boards of public library trustees, municipal corporations, and boards of township park commissioners in the proportions fixed by the county budget commission. See R.C. 5705.32; R.C. 5747.48; see also *DeCourcy v. Public Library of Cincinnati & Hamilton County*, 47 Ohio App. 3d 83, 547 N.E.2d 369 (Hamilton County 1988).

Procedures for Determining Distributions From A County Fund to Libraries

Pursuant to R.C. 5705.28(D), a public library that was organized and operating prior to January 1, 1968, and that extends its services to all inhabitants of a county on equal terms, is qualified to request money from the County Fund. The board of library trustees of such a library may, annually, specify the amount that it requests from the County Fund, and the taxing authority of the library must include that amount in the budget submitted to the county budget commission. See R.C. 5705.28(D).

The county budget commission considers the requests made by the various qualified libraries and fixes the amount of the County Fund to be distributed to each in the following fiscal year. See R.C. 5705.28; R.C. 5705.32; R.C. 5705.48. R.C. 5705.32(B) sets forth a minimum amount to be paid to all libraries in the county, based on the amounts of classified taxes that were distributed to libraries in 1982, 1983, and 1984. R.C. 5705.32(B) also specifies the criteria to be considered in determining the allocation for each library, as follows: "The commission shall base the amount for distribution on the needs of such library for the construction of new library buildings, parts of buildings, improvements, operation, maintenance, or other expenses." See, e.g., *Montpelier Public Library v. Williams County Budget Commission*, 61 Ohio St. 3d 390, 575 N.E.2d 152 (1991); see also *Cleveland Public Library v. Cuyahoga County Budget Commission*, 28 Ohio St. 3d 390, 504 N.E.2d 421 (1986).¹ The county budget commission is prohibited from reducing its allocation to a particular library on account of increased taxes or service charges voted by the electorate, federal or state grants, projects, or programs, or grants from private sources. R.C. 5705.32(B). After fixing the amount of the County Fund to be distributed to libraries, the county budget commission "shall fix the amount, if any," to be distributed to the county, municipal corporations, and boards of township park commissioners. R.C. 5705.32(C).

The county budget commission is required by statute to provide notice of any meeting at which it plans to discuss the distribution of the County Fund. R.C. 5705.32(E)(1). Notice must be given to each entity that is eligible to participate in the distribution of the County Fund, including each board of public library trustees.

¹ Prior to January 1, 1986, the funds that were available for distribution to libraries pursuant to R.C. 5705.32 were derived from classified property taxes, rather than income taxes. See 1985-1986 Ohio Laws, Part I, 1472, 1488-89 (Am. Sub. H.B. 146, eff. Sept. 11, 1985, with certain sections effective on other dates); 1983-1984 Ohio Laws, Part II, 2872, 3175, 3231 (Am. Sub. H.B. 291, eff. July 1, 1983); see also 1986 Op. Att'y Gen. No. 86-001. Classified property tax proceeds were at issue in *Cleveland Public Library v. Cuyahoga County Budget Commission*, 28 Ohio St. 3d 390, 504 N.E.2d 421 (1986), which concerned the allocation of funds for 1984, and also in earlier authorities cited in this opinion. Those authorities are useful precedent, however, because the statutory language providing for distribution according to need has remained unchanged.

R.C. 5705.32(E)(1). The commission is also required, before determining the amount to be allotted to each subdivision from any source, to "permit representatives...of each board of public library trustees to appear before it to explain its financial needs." R.C. 5705.32(E)(2).

Library Organizations

Your request concerns a situation in which various libraries within a county have formed an organization that annually adopts a plan for allocation of the County Fund. The information you have provided indicates that the plan is adopted by vote of the member libraries, and that approval of the majority is considered sufficient to present the plan to the county budget commission. The organization has based the percentage allocations in its plan upon the population within the geographical boundaries of the various library districts. One of the libraries in the county disagrees with the practice of basing the allocation solely upon population and would like to have other criteria, such as usage or growth, considered in the allocation of funds. That library apparently did not join the library organization; it questions whether it is proper for libraries to form a group that makes budget decisions without the participation of nonmember libraries, and whether public moneys may be used to fund such a group.

County Budget Commission Has Authority to Determine Allocation of Money From the County Fund.

It must be emphasized that the authority to allocate money from the County Fund rests with the county budget commission. See R.C. 5705.32. The materials that you have submitted refer to the plan prepared by the library organization as a "determination" or "decision" as to the distribution of funds; an exercise of "control" over the budget process; or a "solution" or act of "dictating" the allocation of funds. These characterizations of a plan prepared by a library organization are not accurate. As a matter of law, when a library organization prepares a plan for allocating the County Fund, that plan must be considered a mere proposal. See R.C. 5705.32.

R.C. 5705.32(B) states that the budget commission "shall fix" the amount of the County Fund to be distributed to each qualified library on the basis of the needs of the library for construction, improvements, operation, maintenance, or other expenses. The Ohio Supreme Court has recognized the exercise of judgment required in making such a determination: "Although it is an extremely difficult task to pare down each library's proposed budget to only those items each 'actually needs,' this is the duty placed on the budget commission...by R.C. 5705.32." *Cleveland Public Library v. Cuyahoga County Budget Commission*, 28 Ohio St. 3d at 394, 504 N.E.2d at 425 (1986); see also, e.g., *Cleveland Public Library v. Cuyahoga County Budget Commission*, 23 Ohio St. 2d 27, 29, 261 N.E.2d 117, 119 (1970) ("[a]n allocation of the nature here in question involves a factual determination and the exercise of sound judgment"); *State ex rel. Cleveland Heights v. Davis*, 131 Ohio St. 380, 3 N.E.2d 49 (1936) (syllabus) (the powers of the county budget commission to allocate classified tax funds to public libraries "are broad and discretionary in nature"); 1955 Op. Att'y Gen. No. 5954, p. 561; note 1, *supra*. The factors that may be considered in determining the needs of a particular library include population and area to be served, library use, facilities, and programs. See, e.g., *Montpelier Public Library v. Williams County Budget Commission*; *Cleveland Public Library v. Cuyahoga County Budget Commission* (1986). Because of the factual issues and matters of judgment involved in determining the needs of a particular library, it is clear that no organization of libraries has authority to dictate to the county budget commission the manner in which the commission should allocate the County Fund. It is also clear that the county budget commission is not permitted to delegate to any other body its statutorily-designated duty of determining how the County Fund should be divided. That task requires the exercise of discretion, and it is a duty that must be performed by the duly-authorized commission. See, e.g., *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909, 911 (C.P. Fulton County 1965) ("[w]here the powers of judgment and discretion are by law reposed in a public officer, the presumption is that such officer was selected because of his fitness and competency to exercise that judgment and discretion, and unless the authority to do so is expressly conferred upon him, he may not delegate his powers and duties to another" (citation omitted)).

Boards of Library Trustees

Boards of library trustees are independent agencies of government created pursuant to statute. See R.C. 3375.06 (county free public library); R.C. 3375.10 (township free public library); R.C. 3375.12 (municipal free public library); R.C. 3375.15 (school district public library); R.C. 3375.22 (county library district); and R.C. 3375.30 (regional library district). R.C. 3375.33 grants boards of library trustees the status of "bodies politic and corporate" with authority to sue, contract, hold property, and exercise other powers and privileges conferred by law. In addition to those powers that are expressly granted by law, boards of library trustees have implied powers that are incidental to express powers. See, e.g., 1962 Op. Att'y Gen. No. 3339, p. 825 at 827.

R.C. 3375.40 sets forth various powers of boards of library trustees, including the authority to "[e]xpend for library purposes, and in the exercise of the power[s] enumerated in this section, all moneys...credited to the free public library under its jurisdiction and generally do all things it considers necessary for the establishment, maintenance, and improvement of the public library under its jurisdiction." R.C. 3375.40(B). This language "manifests an intention on the part of the legislature to give these library boards very wide discretion." 1948 Op. Att'y Gen. No. 4122, p. 586 at 588; accord 1961 Op. Att'y Gen. No. 2705, p. 731. Pursuant to the authority granted by R.C. 3375.40(B), a board of library trustees, if it deems it necessary for the maintenance and improvement of its library, may meet with other boards of library trustees to consider matters of mutual interest, and may expend public moneys for that purpose.² See 1948 Op. No. 4122. More specifically, R.C. 3375.40(M) authorizes boards of library trustees to "[p]lay reasonable dues and expenses for library trustees in library associations."

A board of library trustees, or an association in which the trustees participate, has authority to undertake activities that are reasonably intended to benefit libraries of participating trustees. See, e.g., 1960 Op. Att'y Gen. No. 1504, p. 464 (approving voluntary cooperative action that extends the "general idea of uniformity of public libraries in the state"); 1961 Op. No. 2705; 1948 Op. No. 4122. It is clear that a board of library trustees, or an association in which those trustees participate, may not exercise its power in an arbitrary or capricious manner or for an unlawful purpose. See, e.g., 1962 Op. No. 3339. Within these limitations, the library trustees have broad discretion to determine what activities will benefit their libraries. It follows that, if the participating library trustees deem it appropriate, a library association may consider the matter of allocation of the County Fund and may prepare a proposal for the allocation of the County Fund among various libraries.

Library Association Determination Cannot Bind County Budget Commission

As discussed above, however, a proposal prepared by a library association cannot bind the county budget commission. Further, even though such a proposal has been prepared, the board of trustees of each qualified library retains the right to appear before the county budget commission pursuant to R.C. 5705.32(E)(2) to explain the financial needs of its library. Thus, when statutory procedures are followed, a board of library trustees that chooses not to participate in a particular

² Other provisions of R.C. Chapter 3375 authorize public libraries to form chartered library systems. Libraries in two or more counties may form an area library service organization pursuant to R.C. 3375.70-.73, and libraries within a metropolitan area may form a metropolitan library system pursuant to R.C. 3375.90-.93. Chartered library systems are formed upon application to, and approval by, the State Library Board for the purpose of developing plans of service on an area-wide basis. They are organized and governed by statute and are eligible for state funding. See R.C. 3375.70-.73; R.C. 3375.81-.82; R.C. 3375.90-.93; 1991 Op. Att'y Gen. No. 91-073. It does not appear that these are the types of organizations to which your questions refer.

library association, or that takes a minority position in opposition to the association's proposed plan, has an opportunity to present to the county budget commission a statement of its library's needs in support of its proposal for receiving an allocation from the County Fund. Further, a board of library trustees may appeal the allocation of the County Fund made by the county budget commission, and the Board of Tax Appeals will consider the matter in a de novo proceeding. See R.C. 5705.37; see also, e.g., *Montpelier Public Library v. Williams County Budget Commission*.

The materials that you have provided describe in detail the inequities alleged by a board of library trustees that sought greater funding than was proposed in the plan prepared by a local library organization. This opinion is not an appropriate forum for determining the facts involved in that situation or resolving all conflicts that may exist. It is not clear whether the trustees in question were prohibited from participating in the library organization or whether they simply chose not to join. Further, it is not clear that a different proposal would have resulted if the dissenting library trustees had participated in the budget discussions of the library organization; it appears that the position of the dissenting library was known to the organization, but that the organization chose not to adopt it. The dissenting library trustees are, thus, in the same position as a member of a library organization who votes against a proposal adopted by a majority of the organization's members. The statutory scheme provides that the decision as to how the County Fund is to be allocated is in the hands of the county budget commission, and that each board of library trustees must be given an opportunity to appear before the commission to explain the financial needs of its library. Library trustees are permitted to join together to make proposals to the county budget commission, but there is no requirement that such proposals be approved by trustees from all qualified libraries. The county budget commission has the responsibility of determining whether a particular proposal fairly recognizes the needs of all qualified libraries, and that determination is reflected in the manner in which the commission allocates the County Fund.

On the basis of the discussion above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 5705.32, the county budget commission is required to allocate moneys from the county library and local government support fund to qualified libraries on the basis of the needs of the libraries. A determination as to how the moneys are to be allocated requires the exercise of judgment and discretion of the county budget commission and may not be delegated to any other entity.
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