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SCHOOL DISTRICT PUBLIC LIBRARY—CLEVELAND—
 FIFTY-ONE QUESTIONS PERTAINING TO EXPENDITURES IN RE: EMPLOYEE, TUITION, AT WESTERN RESERVE UNIVERSITY; TRAVELING TO CONVENTION AND ELSEWHERE, AUTOMOBILE MILEAGE, INSURANCE, LIBRARY DUES, REAL ESTATE APPRAISAL AND COMMISSIONS, FEES FOR EXAMINATION PAPERS, BOOK SURVEYS, PUBLIC ACCOUNTANTS, PAINTING PORTRAITS, PURCHASING PICTURES AND FRAMES, ENGRAVING EXPENSE, LOUDSPEAKERS, PLATFORMS, FLOWERS, MUSIC, ENGRAVING, DETECTIVES, UNIFORMS, PRINTING, LOST ARTICLES, HOSPITAL FEES, REFRIGERATORS, ADVERTISING, PAMPHLETS, OFFICE RENT, OVERDUE BOOK FINES, SINKING FUND COMMISSION—TRUSTEES LIABLE FOR UNLAWFUL EXPENDITURES OF PUBLIC FUNDS.

SYLLABUS:

The trustees of a school district public library do not have authority to pay tuition to Western Reserve University, for the employes of such school district public library; to pay the traveling expenses of the librarian to a convention held in Europe; to pay the traveling expenses of the librarian and secretary-treasurer of the school district public library—to Columbus in regard to legislative matters and bills being sponsored for libraries; to purchase automobile and elevator liability insurance; to pay institutional membership dues to the American Library Association and the Ohio Library Trustees' Association; to pay to a real estate agent commissions for purchasing property for the library; to pay to a real estate agent commissions for selling real estate owned by the library; to pay fees for preparing, conducting and correcting examination papers of employes; to pay fees to a firm of public accountants for making an audit of the books and accounts of the library; to pay fees for painting portraits, and the necessary frames for the same; to pay for engraving and binding memorial resolutions for deceased members of the Board of Trustees and employes; to pay for engraving resolutions of appreciation for work done for the library board; to pay the cost of installing a loudspeaker address system in connection with the ceremonies of the laying of the cornerstone of the main building of the library; to pay the cost of building a platform in conjunction with the ceremony of laying the cornerstone of the Public Library; to pay the cost of palms and flowers to decorate platform at dedication ceremonies of the laying of the cornerstone of the Public Library; to employ an orchestra for the reception at

the ceremony; of laying the cornerstone; of such a library; to pay the cost of engraving invitations sent to various individuals for the reception ceremony of the laying of the cornerstone of a school district public library; to employ detectives for the ceremony and reception of the laying of the cornerstone; to purchase a silver trowel to be used in laying the cornerstone of a school district public library; to pay the cost of a marble tablet for a deceased member of the board of trustees of a school district public library; to pay the cost of making and dismantling an exhibition sign sent to Philadelphia; to pay for photographs of various schools, hospitals, branch libraries, trucks, employes, paintings used in conjunction with publicity for a public library; to pay for photographs of the Sesqui-Centennial map to show in Mexico City Exposition; to pay for items lost in the checkroom of the school district public library; to pay doctor fees, hospital fees, and ambulance fees for individuals who become ill, or are injured while in the library; to pay doctor fees, hospital fees for employes; to pay for refrigerators for use of the employes of a school district public library; to pay for clipping service relative to progress being made and publicity on bills in the legislature, affecting libraries; to pay for the cost of multigraphing and drafting bills and amendments to be presented in the Legislature; to pay for the lettering of pedestals on which are set busts of various prominent people; to pay for a float used at the Berca Public Fair; to pay for reading glasses for employes of the school district public library and for the general public using such library; for paying making plaster busts of former librarians; to pay for materials necessary for making a county publicity map; to pay fees for appraising real estate that is owned by the library which may be sold, and for appraising real estate which it contemplates purchasing; to pay for a suit of clothes which was torn on the sidewalk in front of library property; to pay for publishing bulletins, leaflets and charts that are prepared solely to give general information concerning the library, and publicity and advertising relating to the library; to pay the cost of making electrical connections, and the current for exhibits at a radio show and Women's Exposition; to pay mileage to employes of a school district public library for driving European and other visitors around the City of Cleveland; to pay for the publishing of an elaborate bound booklet which contains a report of the city school district public library, and is not a report in writing, as provided for in Section 7638, General Code.

The trustees of a school district public library do have authority to pay:

For pictures and frames that are used as wall decorations for such library; for fees for making a survey of book collections; for the expense of preparing annuity tables in conjunction with the purchase of Retirement and Pension Insurance; for uniforms for employes of a school

district public library to act as guards and who are commissioned "special policemen" in such library, and for armbands for pages, and for the altering and dry-cleaning of such uniforms and armbands, providing, however, consideration is given to such items in the fixing of the compensation of such guards and pages; to print leaflets that furnish information to the library user, concerning the books he or she can secure from the library; fees to the City of Cleveland for inspecting elevators.

The trustees of a school district public library are not authorized to purchase pamphlets from the American Library Association, to be sold to the general public.

The trustees of a school district public library are authorized to rent an office room to a staff member of the Readers Digest if such room or office is not needed for library purposes.

The trustees of a school district public library are authorized to provide that various books may be taken out of the library for various lengths of time, and to adopt a schedule of penalties to be paid by the user if a book is not returned within the time specified in the schedule.

Where salaries and expenses were incurred and paid by the Sinking Fund Commission of the School District Public Library after January 1, 1928, a finding must be made for such incurred expenditures.

There are no statutes imposing restrictions upon school district public libraries for the purchase of supplies and letting of construction contracts for school district public libraries.

Where the trustees of a school district public library authorize unlawful expenditures of public funds from the library fund of the school district public library, they must be held financially responsible for the same.

COLUMBUS, OHIO, January 7, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

"Will you please advise whether the following expenditures, made from public funds by the Cleveland Public Library, which is a school district library, organized under the provisions of Sections 7631, et seq., General Code, are legal; and if not, should findings for recovery be made?"

1. Tuition paid to Western Reserve University for employes;
2. Traveling expense of the librarian to a convention held in Europe;

3. Traveling expenses of the Librarian and Secretary-Treasurer to Columbus in regard to legislative matters and bills being sponsored for libraries;
4. Automobile and elevator liability insurance;
5. Institutional membership dues to the American Library Association and the Ohio Library Trustees' Association;
6. Commissions paid to a real estate agent for purchasing property for the library;
7. Commissions paid to a real estate agent for selling real estate owned by the library;
8. Fees paid for preparing, conducting and correcting examination papers of employes;
9. Fees paid for making a survey of book collections;
10. Fees paid to a firm of public accountants for making an audit of the books and accounts of the library;
11. Fees paid for painting portraits and the necessary frames for same;
12. Purchase of various pictures and frames for wall decorations;
13. Payments made for engrossing and binding memorial resolutions for deceased members of the Board of Trustees and employes;
14. Engrossing resolutions of appreciation of work done for the library board;
15. Cost of installing a loudspeaker address system in connection with the ceremonies of the laying of the cornerstone of the main building of the library;
16. Cost of building a platform in conjunction with the ceremony of laying the cornerstone of the Public Library;
17. Palms and flowers to decorate platform at dedication ceremonies;
18. Employing an orchestra for reception at the new building;
19. Cost of engraving invitations sent to various individuals for the reception ceremony of the public library;
20. Employing detectives for the ceremony and reception;
21. Purchase of a silver trowel in connection with the laying of the cornerstone;

22. Purchasing uniforms for employes who act as guards, and are commissioned special policemen in the main public library;
23. Cost of a marble tablet for a deceased member of the board of trustees;
24. Cost of arm bands for pages, and altering and dry cleaning uniforms of guards;
25. Cost of making and dismantling an exhibition sign sent to the Sesqui-Centennial Exposition at Philadelphia. (This sign was later returned and exhibited in the main library);
26. Photographs of the Sesqui-Centennial map to show in Mexico City Exposition;
27. Photographs of various schools, hospitals, branch libraries, trucks, employes, paintings used in conjunction with publicity (enclosed sample);
28. Payment of items lost in the checkroom of the Main Public Library. (It is compulsory for all packages to be checked upon entering the library);
29. Expense and labor for preparing annuity tables in conjunction with the purchase of retirement and pension insurance;
30. Doctor fees, hospital fees, and ambulance fees for individuals who become ill or are injured while in the library, and also employes;
31. Refrigerators for use of employes at branch libraries;
32. Clipping service relative to progress being made and publicity on bills affecting libraries, in the State Legislature;
33. Cost of multigraphing and drafting bills and amendments for the Legislature;
34. Lettering pedestals on which are set various busts of prominent people;
35. Float used at Berea Public Fair;
36. Reading glasses for employes and general public;
37. Making plaster bust of former librarian;
38. Materials for county publicity map;
39. Fees for appraising real estate that is owned by the library, which may be sold;
40. Fees for appraising real estate which the library contemplates purchasing;
41. Payment for suit of clothes which was torn on the sidewalk in front of library property;

42. Enclosed copies of various publications—some purchased outside and some printed in the library; if the publications edited and printed in the library are held illegal, should finding be made for salary paid in the printing department, and for the editing?
43. The library purchases pamphlets from the American Library Association to be sold to the general public. No sales tax is charged or collected. Is this legal?
44. Fees paid to the City of Cleveland for inspecting elevators;
45. Cost of making electrical connections and the current for exhibits at a radio show and Women's Exposition;
46. Mileage paid to employes for driving European and other visitors around the city of Cleveland;
47. Is it legal to rent or furnish a private office to a staff member of the Readers Digest?
48. Publishing an annual report, as per copy enclosed;
49. Is it legal to charge an overdue fine on the following schedule—Magazines - after 2 days
Some books - " 1 day
Some books - " 14 days
50. Shall finding be made for salaries and expenses incurred and paid by the Sinking Fund Commission of the Cleveland Public Library which, according to Attorney General's Opinion No. 909, of 1937, and Opinion No. 1903, of 1930, should have been transferred to the Sinking Fund Commission of the Cleveland Board of Education?
51. What restrictions, if any, are imposed upon school district libraries in the purchase of supplies and letting of construction contracts?"

The Cleveland Public Library is a school district public library. Section 7635, General Code, which provides for the creation of a school district public library, reads in part, as follows:

"The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided, which board shall hold title to all such library property. * *"

Section 7636, General Code, provides for a board of seven library trustees and the eligibility of such trustees.

In Sections 7637 and 7638, General Code, the powers of the trustees of such library board are set forth in the following language:

“Sec. 7637. In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed.”

“Sec. 7638. By a two-thirds vote of its members such library board may purchase or lease grounds and buildings, and erect buildings for library purposes. It also may appropriate land for library purposes if the owner and the board cannot agree upon terms, and dispose of land when, in its opinion, it is no longer needed for library purposes. Conveyances made by the board shall be executed in its name by its president and secretary. In the event any balance to the credit of the library fund shall remain in the treasury at the close of any fiscal year, such surplus or any part thereof may be set aside by a two-thirds vote of the members of the board as a special building and repair fund. It may accept any gift, devise or bequest for the benefit of such library. No member of the library board shall have directly or indirectly any pecuniary interest in any contract made by the board or be employed in any manner for compensation by the board of which he is a member except as clerk and/or treasurer. It shall report annually in writing to the board of education.”

Section 7638-1, General Code, reads as follows:

“For the transaction of its business the board of library trustees shall elect a president, vice-president, secretary and treasurer, and such other officers as shall be deemed expedient or necessary, and with the exception of the offices of president and vice-president, may repose the duties of such officers, who need not be members or member of the board, in one person, provided, however, that the treasurer of said library board shall be required to give bond in such amount and form as the library trustees may prescribe, to secure

such funds in his custody, as may not be otherwise prescribed by law.

The name of the board of trustees under which it may acquire or convey property, contract, or be contracted with, sue or be sued, or perform any other official acts, may be The.....Public Library, the blank being filled with the name of the municipality or township or school district, (if the name of the municipality or township is not part of the name of the school district) in which the principal library is situated, or with the name of any donor or other person the board of trustees may wish to designate.”

Section 7640, General Code, sets forth the manner in which the county auditor shall pay over the proceeds of the tax levy for a school district public library and that all payments from the library fund shall be made only upon the warrant of the board of library trustees.

It is obvious that the board of trustees of a school district public library is a purely statutory board. Therefore, being a statutory board it has only such powers as are provided in the statutes, and such other powers as are reasonably necessary to execute such granted express powers. This principle of law was well stated in an opinion appearing in Opinions of the Attorney General for the year 1924, Volume I, page 652, wherein it was held, as follows:

“A board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board.

The rule of law that the powers of a statutory board are limited strictly to such powers as are expressly granted, and such others as are absolutely necessary to execute such express powers, has been enunciated by the Supreme Court of Ohio, in a number of cases, among which are the following:

Board of Education vs. Best, 52 O. S., 138, at 152:

“The authority of boards of education, like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to mode of exercising the powers vested in them are resolved against them.”

State, ex rel. Clarke vs. Cook, Aud., 103 O. S., 465:

“Boards of education, and *other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted.*”

State, ex rel. Locher, Pros. Atty. vs. Menning, 95 O. S., 97, approved and followed. (Italics the writer's.)

Schwing vs. McClure, et al., Trustees, 120 O. S., 335:

“Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.”

It is an equally well established principle of law that if the authority of an administrative board to act, is doubtful, the doubt is resolved against the exercise of its authority. This principle of law is evidenced in a great variety of cases that have been determined by our Supreme Court.

In *State, ex rel. Locher, Prosecuting Attorney, vs. Menning*, 95 O. S., 97, at page 99, it was stated as follows:

“The legal principle is settled in this state that county commissioners, in their financial transactions are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

The limitation or restriction upon an administrative board to expend public funds, in case of doubt, is clearly evidenced in the case of *State, ex rel. A. Bentley & Sons Co. vs. Pierce, Auditor*, 96 O. S., 44, as follows:

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

In the case of *State vs. Maharry*, 97 O. S., 272, the court tersely defined the status of public funds, and the purpose for which they could be disbursed, in the following language:

“All public property and public moneys whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law.”

The statutes and general principles of law pertinent to the determination of the questions herein presented, having been set forth, it probably is advisable, before proceeding to answer such questions, to make the following observation:—that, in the rendition of an opinion, it is an established policy of this office to restrict its expressions solely to the questions and facts as presented in the communication. This policy is strictly adhered to in the case of a request submitted by the Bureau of Inspection and Supervision of Public Offices, based upon an audit that has been made. The Attorney General must assume that such Bureau has investigated all facts, and that the questions submitted are based on existing facts. It is for this reason that I cannot take into consideration information that has come to me from other sources, and which is at variance with the facts presented in the request.

No direct authority exists for payment of public funds to a college or university by a public library for the tuition of one of its employes. Such an expenditure cannot be considered as necessary or incident for the purpose of carrying out any of the duties imposed upon a board of trustees of a school district public library. Such payment would amount to an employe of the library receiving compensation or remuneration in addition to the employe's salary. It would result in expending public funds for the benefit of the individual, even though the employe may secure further knowledge in library work. It must be presumed that an employe is fitted by education and knowledge for the position for which he is employed and is paid in proportion to his fitness.

In *Richardson vs. State, ex rel. Prosecuting Attorney*, 66 O. S., 108, in the body of the opinion, p. 113, the Supreme Court stated:

“It is well settled that the compensation of public officers cannot be enlarged, by implication, beyond the terms of the statute. *De Bolt vs. Trustees*, 7 Ohio St., 237; *Clark vs. Commissioners*, 38 O. S., 107.”

In an opinion appearing in *Opinions of the Attorney General for 1929*, Volume III, page 1906, it was held:

“The Kent State College has no authority to grant an extended leave of absence to an instructor and pay him for such period, when such leave is for the purpose of rest, recreation and

education of the instructor. Such a procedure would result in expending the public funds for the benefit of the individual."

In an opinion appearing in Opinions of the Attorney General for 1931, Vol. II, page 772, there was under consideration the rules and regulations adopted by the Board of Trustees of a certain city school district public library which permitted a certain number of weeks' leave of absence to its employes for study in a library school. The amount of time for such leave of absence to which an employe was entitled, depended upon the number of years of service that such employe had rendered. For five years' service the library granted a leave of absence up to nine months, plus four weeks vacation, all on half pay; for three years' service, six to ten weeks leave of absence; and for a full year's service leave was granted to take college work up to three hours a week on library time with full pay. It was held in the first branch of the syllabus of that opinion, as follows:

"The board of trustees of a school district library is without authority to grant a leave of absence with pay, to the librarian or his assistants, for the purpose of study in a library school or college, or for any other purpose, during which time he renders no service whatever, even though such leave of absence is granted in the guise of compensation for services rendered."

SECOND QUESTION—

In the second and third branches of the syllabus of an opinion appearing in Opinions of the Attorney General for 1924, Vol. I, page 652, it was held as follows:

"2. The board of trustees of a library has no authority to pay the expenses of its librarian or other employes while in attendance on conventions.

3. The board of trustees of a library may pay the expenses of its secretary or other employes incurred in traveling to other cities for the purpose of purchasing books for the library, if the board in its sound discretion believes that such travel is reasonably necessary for the proper purchase of such books."

The ruling in the second branch of the syllabus above quoted, is wholly responsive to your second question, which relates to the legality of the payment of traveling expenses of the librarian for the purpose of attending a convention held in Europe. From your question it must be

assumed that the purpose of the librarian's attendance at the convention was to acquire more knowledge and information regarding library work.

Probably the most outstanding case in Ohio, wherein there was discussed the legality of the payment of expenses of a public official for attendance at a convention, is *State ex rel. Virgil G. Harasic vs. Hiland B. Wright, Auditor of the City of Cleveland*, 17 O. C. C., (N. S.), 396, wherein the Court laid down the following test:

"We hold that in the absence of any specific statutory provision for such cases, the test of the city's liability must be deemed to be:— the trip or journey in which the expenses were incurred necessarily implied in or reasonably and directly incident to the prescribed duties of the municipal officer who undertakes such journey."

The Court then proceeded in the body of the opinion, to state:

"Here, however, the purpose of the journey was to acquire such information in regard to the duties of his office as the building inspector might reasonably acquire while in attendance upon a convention of officials holding like positions, in various cities. We are unable to see how such an object relates itself either directly or with reasonable necessity to the duties of the relator's office. He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, and the salary paid him is presumably adapted to secure the degree of efficiency in these respects which the city desires that its building inspector shall possess. If a person relatively uneducated, inexperienced and inefficient in the discharge of the duties of the position of building inspector were appointed at a salary proportioned to his fitness, it might well be argued that his deficiencies may thereafter be supplemented at the charge of the municipality which he serves by directing him to attend an architectural school and to render his bills for board and tuition to the city. The salary attached to the office of building inspector is presumed to be sufficient to enable him to maintain his professional or official efficiency at proper standard."

In an opinion appearing in Annual Reports of the Attorney General for the year 1912, Volume I, page 432, it was held, as follows:

"1. The director of public safety, the chief of the fire department, the general superintendent of the waterworks department, the health officer and the physician of the health depart-

ment, may not be allowed their expenses incurred in attending conventions for the mere purposes of general education.

2. The director of public safety and the chief of the fire department may be reimbursed for expenses incurred in attending fire chiefs' conventions, providing such a visit is the most economical and efficient method of promoting a purchase, held in immediate contemplation by the department of public safety."

In the body of the opinion, at page 433, it was stated :

"In view of the well established principle that municipalities and statutory officers possess only such powers as are conferred by statute and those which are necessary to carrying into effect the powers so conferred, I am unable to find any provisions of the General Code, from which by any implication, the expenses incurred, by the officers named, of attending national conventions for the purpose of merely general instructions or information with reference to the duties of their offices, could be made a charge against the city. The acquirement of a knowledge of the general affairs and detailed workings of his office is a responsibility resting upon the officer himself, not upon the city; and the possession of requisite skill and information is to be presumed."

To the same effect is an opinion appearing in Annual Reports of the Attorney General for the years 1910-1911, Volume I, page 942, wherein it was stated as follows :

"As a matter of law it cannot be said that the city would gain anything by sending any of its representatives to such a convention for no specific purpose but merely for the acquisition of general knowledge relating to the duties of officers and the problems of employments. To say that the municipality is justified in expending its money for the purpose of permitting its employes and officers to acquire information of this sort, is to say that the public money may be expended for the education of public servants. This it seems to me, is fallacious and the power to make such an expenditure must be denied. Putting it in another way, the possible good that might result to the department and to the municipality from the acquisition of such general information, is too remote and indefinite upon which to found a public expenditure; the real and direct benefit accrues to officer or employe and the city is not justified in paying for this. From still another viewpoint, officers are required to qualify and continue to be qualified, and employes, likewise,

are presumed to be cognizant of the matters within the scope of their employment. It is in each case for the individual, at his own expense to make and keep himself qualified, not for the city."

THIRD QUESTION—

The question of the legality of payment of traveling expenses of municipal officers in attending a meeting of mayors and city solicitors held for the purpose of considering and drafting legislation was considered in an opinion appearing in Opinions of the Attorney General for 1919, Vol. I, page 143. The then Attorney General held as follows:

"The public funds of a non-charter city cannot be used for the purpose of paying the expenses of municipal officers in attending a meeting of mayors and city solicitors held for the purpose of considering and drafting legislation for the relief of municipalities; nor can the funds of a charter city be used for such purpose in the absence of a valid provision in its charter warranting such payment."

In this opinion an exhaustive research was made of all decisions in Ohio relating to the payment of expenses of public officers incurred in the discharge of their official duties, and the following conclusion was reached:

"The policy of the state against the allowance of claims of public officers for expenses incurred in the discharge of official duties, except in cases where the incurring and payment of such expenses are clearly authorized by statute, is most forcibly shown by the fact that the legislature has from time to time, and in a great number of cases, expressly provided for the payment of the traveling and other expenses of certain officers, thereby negating, in my opinion, the right to the payment of such expenses except in cases clearly and specifically provided for. * *

No statute has been found imposing a duty upon or authorizing municipal officers generally, or mayors and city solicitors, to attend meetings or conventions held for the purpose of discussing and drafting legislation for the relief of municipalities, or making the expenses of such attendance a burden on the public funds. As was well said in *Richardson vs. State*, supra, 'An intention to do so will not be implied.' If it had been intended to permit the expenditure of public funds for such purposes, it is reasonable to presume that the legislature would have spoken on the subject, as it has done in numerous instances herein before referred to."

To the same effect is an opinion appearing in Opinions of the Attorney General, reported in Annual Report of the Attorney General for 1910-1911, page 354, wherein it was held that the expenses of the city solicitor and other officers and employes of the city government, incurred in appearing at Columbus before a legislative committee for the purpose of securing legislation deemed advantageous to the city, cannot be lawfully paid from the city treasury. In that opinion it was said:

“I do not believe that a city government as such may incur expenses for the purpose of procuring legislation deemed advantageous to the community. No such power is conferred by the municipal code, or by any of the provisions of the constitution and laws of this state upon municipal corporations as such. No such power flows by implication from any of the powers expressly conferred by law upon municipal corporations. If there is any rule of public policy at all applicable to the question, such a rule would, in my judgment, be against a public corporation engaging for any reason in the enterprise of influencing legislation.

The city as such then had no right to appear before any legislative committee. The citizens of the city might lawfully undertake this service for their common good. The city solicitor has no powers broader than those of the city itself, his client. However praiseworthy it may have been for him to appear before a legislative committee in behalf of the general good of the citizens of the city he could not be reimbursed for expenses so incurred by the city.”

No contention can be advanced that the presence of the librarian and Secretary-Treasurer of a city school district public library in Columbus, in order to lobby for bills being sponsored for the library is necessary to execute any of the express powers granted to the board of trustees of such a library. The payment of such expenses from public funds without a clear right and authorization by statute would lead to a dangerous practice. It would open the way for a staggering drain from the public funds of the state when we consider the thousands upon thousands of political subdivisions, administrative and statutory boards in the State of Ohio that would be just as much entitled as a library board to the payment of expenses of their officers to Columbus in order to lobby for certain legislation.

By the same reasoning, questions 32 and 33 must be answered in the negative, that is, a board of trustees of a school district public library is not authorized to expend public funds for multigraphing and drafting

bills and amendments for the legislature and for payment for a clipping service relative to progress being made on bills affecting libraries in the state legislature.

A free public library is a governmental unit and part of the educational system of the state, created for the purpose of providing, as set forth in Section 7635, *supra*, library service "free to all the inhabitants" of a city school district, or a village school district, or a rural school district.

In 25 Ohio Jurisprudence, page 291, it is stated :

"Public libraries are a part of the educational facilities of the state."

A city school district public library being engaged in a governmental function, it must be said that the common law rule of non-liability of a board performing a governmental function is applicable in the case of a city school district public library. This well established rule of law was cogently expressed by the Supreme Court of Ohio in the case of *Board of Education of Cincinnati vs. Volk*, 72 O. S., 469, wherein, at page 485, it stated as follows :

"The board is a mere instrumentality of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state. As heretofore stated, these boards are but arms of the sovereign and state, and the latter has neither authorized nor permitted, by any law, its agents to be sued for tort to either person or property."

See also : *Alice Finch, by her next Friend, vs. Board of Education of City of Toledo*, 30 O. S., 37; *Conrad, a minor, vs. Board of Education of Ridgeville Township*, 29 O. A., 317.

In 36 Ohio Jurisprudence, page 381, Section 380, it is stated that, "there was no liability of the board of education at common law for damages for its negligence or want of care, and there is no statute creating such a liability for a tort to either person or property, either expressly or impliedly, by either a general or special provision."

Since there is no statutory provision making a public library liable to third persons for damages for its negligence or want of care in the operation of its automobiles or elevators, there would be no reason for a board of trustees of a city school district public library to expend public funds to purchase liability insurance.

In an opinion appearing in Opinions of the Attorney General for 1929, Volume II, page 1013, it was held :

"1. County commissioners and boards of education may not lawfully carry public liability and property damage insurance payable to others on account of damages growing out of the operation of motor vehicles by such boards in connection with their official duties, for the reason that when acting in such capacity they are performing a governmental function and no liability arises under such circumstances."

At page 1014, in the body of the opinion it is stated:

"The question of liability insurance in connection with the operation of motor vehicles by the various subdivisions of the state has been under consideration many times by the Attorney General. Without attempting to review the many opinions upon the subject, it may be stated to have been conclusively established as a proposition of law, that, in the exercise of the various duties of boards of education, township trustees and county commissioners, such boards act in a governmental capacity as contradistinguished from a proprietary capacity, and, therefore, there is no liability to third persons for damages growing out of the operation of motor vehicles in connection with the performance of such duties as such boards are required under the law to perform, in the absence of statutes expressly creating such a liability. Where there is no liability, it follows that there is no consideration for such expenditure and the same would be illegal."

To the same effect is an opinion appearing in Opinions of the Attorney General for 1927, Volume II, page 814:

"A board of county commissioners cannot legally enter into a contract and expend public moneys for the payment of premiums on 'public liability' or 'property damage' insurance covering damages to property and injury to persons caused by the negligent operation of county owned motor vehicles; there being no liability to be insured against the payment of premiums would amount to a donation of public moneys to the insurance company."

Following the reasoning and conclusion reached in the answer to the fourth question, it follows that Questions Nos. 28, 30 and 41, must be answered in the negative, that is, that the board of trustees of a city school district public library is not authorized to pay for items lost in

the check-room of the library, or, for doctors' fees, hospital fees and ambulance fees for individuals who became ill or are injured while in the library, and also employes, or, for payment for a suit of clothes which was torn on the sidewalk in front of library property.

The case of *State, ex rel. Thomas vs. Scmple*, 112 O. S., 559, is responsive to your fifth question, relating to the authority of the board of library trustees to pay institutional membership dues to the American Library Association and the Ohio Library Trustees Association. That case was an action in mandamus, which presented the question of the authority of the City of Cleveland to pay for a membership in the "conference of Ohio municipalities, an organization of the municipalities of the state, the purpose and object of which is to serve as an agency of common action in all matters of common concern to municipalities of Ohio, and to publish a periodical." The court held, "that there was no express provision of the charter of the City of Cleveland relative to the contribution from the treasury of the city to a fund made up of contributions of various municipalities * * and no general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization, with offices and officers entirely separate from that of the city."

In an opinion appearing in Opinions of the Attorney General for 1935, Vol. I, page 677, it was held:

"A board of education is without authority to expend public school funds for the payment of annual dues to 'The Ohio State Association of Boards of Education' or any similar organization."

In a recent opinion rendered by me on July 28, 1937, being No. 930, I held as follows:

"1. Neither funds arising from the provision of poor relief legislation nor any public funds may be expended in payment of dues for membership in a private organization which is an association of various relief agencies though that association may render useful information, investigation services and periodicals to its members, because the power to so expend public funds is not expressly given by statute and can not be implied from any provisions of law applicable.

2. Where the county commissioners and the county auditor have in violation or neglect of their official duties permitted an unauthorized expenditure of public funds, a

finding may be made against the county commissioners and county auditor.”

Questions 6, 7, 39 and 40, can be considered at the same time.

Section 7638, *supra*, vests the board of trustees of a city school district public library with the power to purchase grounds and buildings, “appropriate land for library purposes if the owner and the board cannot agree upon terms, and dispose of land when, in its opinion it is no longer needed for library purposes.”

It is assumed that the trustees of a public library are cognizant of the duties imposed upon them by law as such trustees; and that when they are elected to serve, and accept the responsibilities of service, as such trustees, they are qualified and fitted in both knowledge and experience, to perform their duties.

It therefore must be said that when the board of trustees contemplates to sell or purchase real estate, the value of the particular property in question is within knowledge of the members of the board, or, they are so fitted in intelligence and experience that they can ascertain the value of the real estate from the market value of similar surrounding property.

The employment of appraisers to determine the value of the real estate to be purchased or sold, would in effect be a delegation of the powers of the trustees to the appraisers. The vesting of the board of trustees with the extraordinary power of appropriation of lands for library purposes, if the owner and board fail to agree as to price, negatives any authority of the board to delegate any part of the transaction of the sale or purchase of land to any other person.

In an opinion appearing in *Opinions of the Attorney General for 1918, Vol. I, page 478*, the question was presented as to the authority of a board of education to employ a man to secure options for property on a commission basis.

It was held therein :

“A board of education, in securing a site for a school building, is not empowered by statute to employ a person to secure options at a rate per cent commission on the purchase price.”

In the body of the opinion at page 480, it is stated as follows :

“So that the board of education cannot be considered as being authorized to take options unless that authority could be clearly implied as a matter of necessity in carrying out the provisions of the authority to purchase or acquire real estate.

But it cannot be urged that such implied authority is necessary, for a board of education is not subjected to the sharp business practice experienced by individuals in the purchase of real estate, for if a board is unable to agree with the owner upon the price which should be paid for property desired by it for a schoolhouse site, it may appropriate the same. * **

“Even if a board could take an option upon property as incident to the purchase of same, it cannot delegate its authority to any other person to take same for the board, and I know of no authority for the board to hire any person to purchase property for it or take options therefor if the same could be considered being incident to such purchase.”

To the same effect is the opinion for the same year, at page 580.

It appears to me that ascertaining the value of property which is to be purchased or sold by the trustees of a public library board is to be considered a personal trust of confidence to be performed by the trustees of the public library board. It also appears to me that the reasoning by which the conclusions were reached in the two following cases, are applicable herein :

John S. Wills vs. Cowper and Parker, 2 Ohio, 124, p. 127 :

“It is a general and well settled rule, both in law and equity, that a power given by will to the executor to sell and convey land, is to be considered as a personal trust. In contemplation of law, the power is given in consequence of the confidence which the testator had in the judgment, discretion, and integrity of the executor, and the execution of that power cannot, by the executor, be delegated to any other person. 3 East. 410; 4 Johns. Ch. 368; 2 Sch. & Lef. 350. * **

Whenever a power is of a kind that indicates personal confidence, it must, in equity as well as at law, be considered to be confined to the individual to whom it is given, and will not, except by express words, pass to others than the trustees originally named; though they may, by legal transmission, sustain the same character. 16 Ves. 27.”

Ingham vs. Lindemann, 37 O. S., 218, at page 221 :

“A trustee, whose duty it is under the direction of the court to make sale of property, should perform the duties of auctioneer himself, unless in the opinion of the court the services of a professional auctioneer are deemed necessary.

The presumption is that everyone charged, by law, with the performance of a duty, he must perform it himself, or employ others at his own expense. The suggestion of a usage or custom to the contrary is of no avail."

From the foregoing it must be said that a board of trustees of a city school district public library is not authorized to pay a real estate agent for purchasing property for a city school district public library or selling real estate owned by such a library; nor is it authorized to pay fees for appraising real estate that is owned by the library which may be sold or which the library contemplates purchasing.

Section 7637, *supra*, vests the board of trustees of a city school district public library with authority to employ a librarian and assistants.

From your eighth question, I assume that before the board employs any of its employees it subjects them to a written examination in order to determine their qualification and fitness for the employment and ascertain the employe's adaptability to quick thinking, the manner in which he or she sets forth his or her thoughts on paper, etc., all of which can, to a great degree, be determined from reading an examination paper.

It is my judgment that the employment of the employes of the library is a personal duty to be performed by the board, and if an examination is the means that the board has determined for ascertaining its knowledge concerning the fitness and qualifications of the persons to be employed, before they are employed, then the board of trustees of a school district public library is not authorized to pay fees to any person for preparing, conducting and correcting examination papers of employes. The same reasoning would be applicable herein, as set forth in the answers to questions 6, 7, 39 and 40.

Webster's Twentieth Century Dictionary defines "survey," as follows:

"An examination or inspection of all the parts or particulars of anything, with a view of ascertaining the condition, quantity, quality, value, etc."

I assume that the "survey" referred to in your ninth question really amounts to an inventory of the amount, condition, etc., of the books in the library. If such assumption is correct, it appears to me that it is within the power of the board of library trustees of a school district public library to have such a survey or inventory made, as a means of preserving the books in the library, by having a complete

check of same. The board having authority to make such a survey or inventory, it follows that by virtue of the provisions of Section 7637, supra, the board has authority to employ a proper person to make such survey, and pay therefor.

Opinion No. 689, rendered by me on June 2, 1937, is wholly responsive to the tenth question. It was held therein, as follows:

“A board of trustees of a school district library established under the provisions of Section 7635, General Code, is not authorized to employ a public accountant to audit the accounts of the library.”

Section 7638, supra, empowers a library board to purchase or lease grounds, and erect buildings for library purposes.

Section 7637, supra, vests the library board with control of all libraries, branches, stations, reading rooms, of all library property, real and personal.

It is elementary that the power to acquire and maintain a building, carries with it the authority to furnish such building with the furniture necessary to equip the building in such manner that it can be used for the required purposes. In the case of a library, this would mean the power to purchase chairs, tables, reading lamps, pictures and other furniture that is customarily used in a library. This would authorize a board of trustees of a public library to purchase a reasonable number of pictures and frames for wall decorations.

This same conclusion, however, cannot be reached in answer to your eleventh, thirteenth, fourteenth, twenty-third, thirty-fourth and thirty-seventh questions.

The primary purpose of having the (1) portraits painted; (2) the engrossing and binding of memorial resolutions for deceased members of the board of trustees and employes; (3) the engrossing of resolutions of appreciation of work done for the library board; (4) the purchasing of a marble tablet for a deceased member of the board of trustees; (5) the lettering of pedestals on which busts of prominent people were placed and (6) the making of a plaster bust of a former librarian, was to honor and pay recognition to certain employes and librarians of the library and to some certain prominent people. The object of having the portraits painted, the bust sculptured, the resolutions engrossed, etc., and then placed in the library, was for a purpose other than that they should serve as decorations, or, furnishings. Paying honor to worthy and sacrificing employes and librarians, and large donors to the library, is very commendable indeed, but no authority, either express or implied, exists for the expenditure of public funds for such purpose.

It must be remembered that a city school district public library, is a public institution, a governmental unit, established for the purpose of furnishing free library service to *all inhabitants* of the school district. Signaling out honor to certain individuals is something entirely foreign to the purpose of such an institution.

Therefore, it is my opinion that the trustees of a city school district public library have no authority to spend public funds to have portraits painted, and purchase necessary frames for same; to have resolutions for deceased members of the board and employes engrossed and bound; to have engrossed resolutions of appreciation for work done for the board; to have a marble tablet made for a deceased member of the board; to have pedestals lettered for the use of busts of prominent people, and to have a plaster bust made of a former librarian.

Section 7638, *supra*, authorizes a board of trustees of a city school district public library to erect buildings for library purposes. There is not any express authority for such a library board to pay the expense of installing an address system for the ceremonies of laying the cornerstone, or, the building of a platform for such "cornerstone laying ceremonies," or, the decorating of such platform with palms and flowers, or, the employing of an orchestra for the reception at such ceremonies, or, the sending of engraved invitations to various individuals for the reception ceremony, or, the employing of detectives for the ceremony, or, the purchasing of a silver trowel to be used in connection with the laying of the cornerstone. It cannot be said that the ceremonies that accompany such "cornerstone laying" are necessary to carrying out or executing the express power that is vested in the board to erect a library building.

It may be observed that, assuming the board had the authority (which it does not) to stage a "cornerstone-laying ceremony and reception," the expenditure of public funds for such "cornerstone-laying ceremony and reception" would have been illegal. From your nineteenth question, it appears that attendance at such ceremony and reception was limited to those various individuals who had received engraved invitations. The holding of such a reception and ceremony is entirely inconsistent with the purpose of a free public library established and maintained with public funds for the benefit of all the inhabitants in the city school district.

Under the provisions of Section 7637, *supra*, the board of trustees of a city school district library has authority to employ librarians and employes that are necessary in operating and conducting the library. By virtue of this authority, it would be within the discretion of the board to employ employes as guards and as pages if the board deemed such guards were necessary to protect and preserve the books

and other valuable contents of the library, and such pages were necessary in order to render the proper service to the public, which consists of the individuals that use the library. It further would be within the discretion of the board to determine that the particular services of such guards were more effective if they were attired in uniform, similar to that of a policeman, and the particular services of the pages more effective if they wore arm bands indicating the capacity in which they serve. If the board determined that such guards should wear a certain uniform, it would be within its discretion, in employing such a guard, to take into consideration the necessity of wearing the uniform and determine that it would be cheaper for the library to purchase and furnish the uniform and thereby retain control of the same (so it could be used by other employes), than it would be for the board to require the guard to furnish his own uniform, and thereby fix the salary accordingly. Therefore, if the board of trustees of the Cleveland Public Library determined that the guards should wear uniforms and the pages arm bands, and that the library furnish the same and fixed the salaries of the guards and pages accordingly, it must be said that the board of trustees of the Cleveland Public Library had authority to purchase the uniforms and arm bands and pay for the altering and cleaning of the same.

Questions 25, 26, 35 and 45 relate to the authority of the board of trustees of a city school district public library to exhibit an exhibition sign at the Sesqui Centennial Exposition at Philadelphia, to show photographs of the Sesqui Centennial Exposition at the Mexico City Exposition, to exhibit a float at Berea Public Fair and to incur the cost of making electrical connections and the current for exhibits at a radio show and Women's Exposition. It is obvious that there is not any express authority for a board of trustees of a city school district public library to present the described exhibits at the various expositions. It cannot be said that the presenting of such exhibits are necessary in order to execute any granted express powers of the board. I do not know of any argument that can be advanced to show that the presenting of such exhibits made for the rendering of more efficient library service to the inhabitants of the city school district of Cleveland, Ohio. Probably the most terse argument that can be presented to show that a board of trustees of a city school district public library does not have authority to present such exhibits at the various expositions mentioned is to say that the State of Ohio, of which the library is an instrumentality, has no authority to expend public funds for displaying exhibitions at the various expositions without a special act or appropriation by the Legislature.

Questions 27, 38 and 42 will be considered at this point. Included among the various publications and leaflets submitted along

with question 42 were the following leaflets:—One, entitled “Books Enjoyed by Men,” that contained a list of books “especially liked by men readers”; one, entitled “Good Biographies,” containing a list of books dealing with biographies of men and women; one, entitled “Consumers Cooperation,” containing a list of books pertaining to principles and theories of consumer cooperation, of consumers’ cooperative societies, etc.; one, entitled “Cookery,” containing a list of standard and useful books on home cooking; one, entitled “Science,” containing a list of books on different science subjects; one, entitled “The Pre-School Child,” containing a list of books of interest and assistance to parents; one, entitled “Home Crafting with Tools,” containing a list of books of interest to men whose hobbies are making things with tools; one, entitled “Braille Titles of 1935-36” and another entitled “Braille Titles of 1936-37,” each of which contains a list of various project books for the blind on various subjects; one, entitled “The History Division,” containing a list of books of history, biography, etc.; one, entitled “The John Friswold White Collection, Folklore and Orientalia,” describing in general the books contained in this collection; and one entitled the “Open Shelf,” giving a complete list of “a few of the newer books.” There is stated, in effect, in each of the above named pamphlets that the books may be borrowed from the main or branch libraries, and also, in most instances a short description of the book is given.

As stated hereinabove, the purpose of a city school district public library is to furnish free library service to the inhabitants of the school district. Furnishing library service really means the furnishing of books to those who desire to borrow and take out the same from the library, or to those who desire to use the books in the reading or reference rooms of the library. It may be said that in order for the library to furnish this service of books to the user, it is first necessary for the user to be acquainted with, or have some knowledge of, the books in the library, in order to help the user determine what book or books he or she prefers. The leaflets hereinabove described can be considered as serving such a purpose. It, therefore, can be said that an implied power is granted to the Cleveland board of trustees of a school district public library to print such leaflets in order to furnish to the library user information relating to the books he or she can secure from the library, and thereby the library be placed in a position to fulfill its purpose of furnishing books.

There were also submitted the following:—A bulletin (1) “The New Cleveland Public Library,” which contains a complete description of the library, its various departments and many illustrations of the various rooms in the library; (2) a chart, entitled “Cleveland Public Library Organization Chart; the following leaflets:—(3)

"Rapid Reading," a treatise on the manner in which to read rapidly and effectively; (4) "Technical Facts for Engineers," a sketchy picture of the information and service available to the technical man; (5) "Applying the Library to the Home," setting forth the services that the library can offer to the home; (6) "A Message from the Cleveland Public Library," a description of what the library offers; (7) "Cleveland Public Library," setting forth the advantages that one can obtain from the library; (8) "Why You Are Asked to Show Your Books at the Door," gives the reason for such requirement; (9) "Library for the Blind," explains the service it offers to the blind; (10) "Cleveland Public Library School Department," explains the relation of the library with the board of education and the service the library offers to the various school libraries; (11) "Trends in Reading," discusses the general trend in reading in 1935, also a report of the service rendered during that year; (12) "Gains and Losses in Your Library 1936," is prepared similar to the "Trends in Reading for 1935"; (13) "Cleveland Public Library," a complete description of the building, each of the floors and rooms therein; (14) "General Information and Instruction," sets forth information and guidance for New Members of the staff. There was also included (15) a photograph of the inner right court of the Cleveland Public Library.

It can be said that the fifteen last numbered and mentioned bulletins, leaflets and charts are for the sole purpose of publicizing the Cleveland Public Library. It may too be added that such was the sole purpose in having prepared photographs of the various schools, hospitals, branch libraries, trucks, employes and paintings referred to in question 27 and the county publicity map referred to in question 38.

In opinion numbered 3447 rendered by me on December 23, 1938, I held in the second branch of the syllabus as follows:

"A board of education is not authorized to have compiled and printed a handbook which contains general information in regard to the aims of the high school, the management of the high school, its extra-curricular and athletic activities, and a list and description of all courses offered in the high school, along with other information."

In opinion numbered 3489 rendered by me on January 3, 1939, I held in the second branch of the syllabus as follows:

"A board of education does not have authority to pay for the publication of books and pamphlets such as the following: (a) "Illustrated Courses of Study for Junior and Senior High Schools"; (b) "School Topics," a publication

for teachers; (c) "Give Yourself a Fair Start," an illustrated brochure on the advantages of a high school education; (d) "Cleveland School Directory"; and (e) "Cleveland Schools and Your Dollar," a pamphlet of information relating to the schools, to be distributed to the parents of the pupils."

In the last two mentioned opinions, there was discussed the authority of the board of education to publish bulletins and leaflets similar to the last fifteen that are hereinabove described and were submitted along with question 42. On page 15 of opinion numbered 3489, supra, I stated as follows:

"An examination of 'School Topics,' 'Cleveland School District,' and 'Cleveland Schools and Your Dollar' shows that the real purpose of the bulletins is the giving of information to the pupils and public and really conducting a campaign of advertising the schools to the public."

I am of the opinion that a city school district public library does not have any more authority than a board of education to conduct a campaign of advertising its library by means of publishing bulletins and leaflets; and that, therefore, the Cleveland Public Library does not have authority to publish the following bulletin, charts, leaflets and photograph:

The New Cleveland Public Library
 Cleveland Public Library Organization Chart
 Rapid Reading
 Technical Facts for Engineers
 Applying the Library to the Home
 A Message from the Cleveland Public Library
 Cleveland Public Library
 Why you are asked to show your Books at the Door
 Library for the Blind
 Cleveland Public Library School Department
 Trends in Reading
 Gains and Losses in your Library, 1936
 Cleveland Public Library
 General Information and Instruction for New Members
 of the Staff
 Photograph of Inner Right Court of Cleveland Public
 Library

Section 7889, General Code, reads as follows:

“The governing board of any public library, created or existing, under the provisions of sections 7635 to 7640-1, inclusive, or sections 14993 to 15005, inclusive, or section 15060, of the General Code, which has not less than 75 full time employes, may provide for the retirement with annuities, insurance, or other provision of employes of any such library. The library board of such library may provide for a system of retirement, insurance, or other provision for its employes and may appropriate and pay the board's portion provided in such system or plan out of the funds received to the credit of such board by taxation or otherwise. Each employe of such library who is to be included in a system of retirement shall contribute to the retirement fund not less than four per centum per annum of his salary from the time of his eligibility to join the retirement system to the time of his retirement. If a group insurance plan is installed by any such library, not less than fifty per centum of the cost of such insurance shall be borne by the employes included in such plan.”

The provisions of Section 7889, *supra*, authorize a library board of trustees to provide for a system of retirement with annuities, or insurance provisions. It is obvious that if the board desired to provide for a system of retirement with annuities, it would have the implied power to have a mortality and service table made up appropriate for the use as a basis for calculating the cost of any benefits which may become payable under the rules and regulations of such a system; and also to incur any and all other services necessary to provide for a retirement and pension system.

The thirty-first question refers to the authority to purchase refrigerators for use of employes at branch libraries. The installation of drinking fountains in a library or any other public building is considered as a necessary part of the equipment. I assume that the branch libraries herein referred to, have such equipment. If this assumption is correct, such refrigerators would only be used by the employes for keeping therein personal supplies of food and drinks. The proposition that a library board of trustees does not have any authority to pay or furnish to any employe anything other than his or her salary, has been hereinabove thoroughly discussed. Therefore, it is obvious that a library board of trustees does not have authority to furnish refrigerators for the use of its employes. The same conclusion must be reached in answer to the thirty-sixth question, that is, a library board of trustees does not have authority to furnish reading glasses for employes, and also, it cannot furnish reading glasses to the general public.

From the forty-third question I gain that the public library purchases pamphlets from the American Library Association, and thereafter, sells the same to the general public. The purchasing of such pamphlets would require an expenditure from the library fund. This would in effect be investing public funds. Such investment being made on the assumption that the pamphlets would be sold to the public in the future and the money returned to the library fund. Such procedure is contrary to the well recognized and established principle of law, that no expenditure can be made from public funds without authority of law. In an opinion appearing in Opinions of the Attorney General for 1918, Vol. I, p. 497, it was held:

“A board of education is not authorized to invest funds at its disposal.”

This proposition of law would be just as applicable in the case of a library board as it would be in the case of a board of education.

In answer to your forty-fourth question it must be said that, if the City of Cleveland charges a fee for inspecting elevators situated in various buildings in Cleveland, the Cleveland Public Library would not be exempt from inspection of its elevators and the payment of the fee therefor. The situation would be analogous to the payment of water rentals which a city school district public library is under obligation to pay to the municipality.

It has been held that a board of education is authorized to pay mileage to its employes for the use of their own automobiles only when such automobiles are used for the transaction of official business.

In Opinions of the Attorney General for 1931, Vol. I, page 198, it was held:

“A board of education may not pay mileage to its employes for the use of their privately owned cars, from their homes to the office or school or from the school or office to their homes.”

To the same effect is an opinion appearing in Opinions of the Attorney General for 1921, Vol. II, page 1191, wherein it was held in the first branch of the syllabus:

“Boards of education are impliedly authorized under the provisions of Sections 7620 and 4750, General Code, to expend and provide for the payment of automobile mileage to officers and employes, using their private automobiles in the performance of official duties, when such transportation services are required

by said board, and deemed necessary for the best interests of the schools under their jurisdiction.”

It is my opinion that the propositions of law stated in the two opinions above quoted, are equally applicable in the case of a board of library trustees.

Therefore, applying the conclusions reached in the said two opinions it must be held that since the conducting of European and other visitors around the City of Cleveland is not the performance of an official duty, a board of library trustees is not authorized to pay mileage to an employe for such services.

In answer to your forty-seventh question it is my opinion that:— the well established rule that a political subdivision may permit the temporary use of, and charge rental for any property not needed for its own purposes, is applicable in the case of property belonging to a city school district public library; that the Cleveland Public Library is authorized to rent a private office in the library to a staff member of the Reader's Digest, provided, however, that the room or office is not needed for library purposes. I submit the following two opinions to substantiate this conclusion:

Opinions of the Attorney General for 1931, Vol. I, p. 127:

“1. In the absence of specific statutory authority therefor, boards of education do not possess the power to rent or lease school property held by them in their corporate capacity in trust for the use of the public schools.

2. When a board of education incidentally becomes possessed of buildings which are not needed for school purposes, and which can not immediately be advantageously disposed of, they may lawfully permit those buildings to be occupied for uses which are not strictly school purposes and may lawfully accept rental for such uses. Such occupancy, however, should be temporary, and until such time as the building may be sold in compliance with Section 4749, General Code.”

Opinions of the Attorney General for 1932, Vol. II, p. 1006:

“1. Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district.

2. When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than

a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to use the premises by said third parties would terminate."

Section 7638, *supra*, imposes a mandatory duty upon the trustees of a city school district public library to "report annually in writing to the board of education."

The Annual Report referred to in question No. 48, is a 112 page bound booklet containing the "Sixty-Second Annual Report" of the Cleveland Public Library. Its contents consist of:

President's Report; Librarian's Report; detailed report of circulation—main library—branch department—children's department—school department—Stations department—editorial department—order department—catalog department—binding department—Building Equipment; library organization; statistical Report of Library operation; detailed report of circulation; Auditor's Report; Sinking Fund Commission; Financial Report; and Investments.

It is evident that the report in writing, referred to in Section 7638, *supra*, does not contemplate the *publishing* of such an elaborate bound booklet as hereinabove described.

In an opinion No. 3489 rendered by me on January 3, 1939, I reviewed several opinions that had been rendered by some of my predecessors in office in regard to the authority of statutory boards to publish various bulletins. I reached the conclusion that "this office has consistently held that without any statutory authority, an administrative board is not authorized to publish bulletins of the reports of the activities of the board or reports of any of the officers or employes of the board."

It therefore is my opinion that the trustees of a city school district public library do not have authority to publish and distribute an elaborate bound booklet such as the booklet published by the Cleveland Public Library; and that, such library board is limited to preparing a "report annually in writing to the board of education."

It is true that by the provisions of Section 7635, *supra*, that a school district public library must furnish library service free to all the inhabitants of the school district.

In the fifth and sixth branches of the syllabus of an opinion appear-

ing in Opinions of the Attorney General for 1931, Vol. I page 319, it was held as follows:

“5. A public library established by authority of Section 7635, General Code, must furnish free library service to all the inhabitants of the school district in which it functions, including school pupils, teachers, and school authorities and all of said inhabitants are equally entitled to said service.

6. A board of trustees of a school district library established by authority of Section 7635, General Code, is a distinct, independent unit of government created for the purpose of providing free library service to all the inhabitants of the school district in which it functions.”

Question No. 49, however, presents a phase of the subject different than a per diem rental charge for books. The charges are in the nature of fines. That is, no rental charge is made for the use of a book that is taken from the library. However, a fine is imposed if a magazine that is taken out “free”, is held for more than two days; certain other books for more than one day; certain for more than seven days; certain others for more than fourteen days. In other words, the board of library trustees has set up a schedule of penalties in order to prevent the user of a book from having same for an unnecessary length of time, and thereby deprive another of securing and reading the same book. I am informed that this schedule is prepared on the basis of the amount of time that is required by the average reader to read the magazine or book. That is, two days for a magazine, one day for light fiction, seven and fourteen days for the other books.

It is obvious that a board of library trustees has the authority to adopt such a schedule which is both a disciplinary and a protective measure to insure the return of the library's property—the books. Such a schedule does not deprive “any inhabitant” of the free use of the books in the library. The user is entitled to the free use of the book for the period of time that it requires to read the same. If the user desires to take longer to read the same he can do so by paying for the extra privilege.

It therefore must be said that the board of library trustees of a city school district public library has authority to adopt a schedule that provides for a reasonable time a user may retain a book, and if such book is not returned within the time specified in the schedule, to charge a reasonable amount for each day it is held overdue.

There are no statutes imposing restrictions upon school district public

libraries for the purchase of supplies and letting of construction contracts for school district public libraries.

Opinion No. 1903, referred to in question No. 50, and appearing in Opinions of the Attorney General for 1930, Vol. I, page 800, holds as follows:

“Sections 4013 to 4018, General Code, both inclusive, are repealed by implication by the Uniform Bond Act and the Budget Law, enacted by the 87th General Assembly, notwithstanding the fact that there may be outstanding bonds issued by a board of library trustees of a school district prior to the effective date of such acts.”

Any library sinking fund that was established pursuant to Sections 4013, et seq., General Code, was abolished by the enactment of the Budget Law. Section 5625-39, General Code, provided that this act (Budget Law) “shall in no manner affect existing funds established in any subdivision or the expenditures therefrom until January 1, 1928.” Therefore, it must be said that the Sinking Fund Commission of the Cleveland Public Library was abolished instantaneously, on January 1, 1928.

Section 286, General Code, provides for the rendition of a finding if the report of the examiners of the Bureau of Inspection and Supervision of Public Offices shows that any public money has been illegally expended. The conclusion is therefore evident that a finding must be made for salaries and expenses incurred and paid by the Sinking Fund Commission of the Cleveland Public Library after January 1, 1928.

Section 7640, supra, provides that payment from the library fund of a city school district public library “shall be made only upon the warrant of the library board of trustees, when signed by the president and secretary thereof, and issued for lawful purposes.”

In regard to the expenditures that I have hereinabove held to have been unauthorized, I am constrained therefore, to reach the conclusion that the trustees of the library board who authorized such unlawful expenditures of public funds from the library fund of the public library of the Cleveland City School District, must be held financially responsible for the same. The second branch of the syllabus of Opinion No. 930, rendered by me on July 28, 1937, tersely states this rule of liability, in the following language:

“Where the county commissioners and the county auditor have in violation or neglect of their official duties permitted an

unauthorized expenditure of public funds, a finding may be made against the county commissioners and county auditor.”

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3528.

OHIO STATE REFORMATORY—BOARD OF EDUCATION, VILLAGE—MAY PURCHASE FROM—SCHOOL HOUSE FURNISHINGS, WHERE COST IN EXCESS OF ONE THOUSAND DOLLARS, WITHOUT ADVERTISING FOR BIDS—“OPEN MARKET” NOT CREATED—SEE SECTIONS 7623, 2228-1, G. C.

SYLLABUS:

Where a board of education of a village school district determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of one thousand dollars, the provisions of Section 7623, General Code, are not applicable, and it is not necessary for the board of education to advertise for bids. It not being necessary for the board of education of a village school district to advertise for bids when it determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of one thousand dollars, an “open market” is not created, and therefore the provisions of Section 2228-1, General Code, do not prohibit the purchase of furnishings for a school house by the board of education of a village school district from the Ohio State Reformatory.

COLUMBUS, OHIO, January 7, 1939.

HONORABLE FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

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

“A question of state-wide importance has arisen in this county by reason of an agreement on the part of a Board of Education of a village to purchase from the Ohio State Reformatory certain furnishings for a new high school which is now being constructed. It is our understanding that the furnishings will cost in the aggregate approximately \$6,000.00 and that