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1. LIBRARIES, PUBLIC—TRUSTEES MENTIONED IN SECTION 7630 G. C.—HAVE AUTHORITY TO EXPEND FOR LIBRARY PURPOSES, SUBJECT TO LEGAL LIMITATIONS, ALL MONIES CREDITED TO FREE PUBLIC LIBRARY—AUTHORITY TO DO ALL THINGS NECESSARY TO ESTABLISH, MAINTAIN AND IMPROVE PUBLIC LIBRARY.
2. TRUSTEES MAY SUBSCRIBE TO MEMBERSHIP IN LITERARY ORGANIZATION SUCH AS NATIONAL GEOGRAPHIC SOCIETY—USE OF LIBRARY.
3. TRUSTEES MAY SEND A MEMBER OR EMPLOYEE OF THE BOARD TO A LIBRARY MEETING OR CONFERENCE—EXPENSES MAY BE PAID FROM LIBRARY FUNDS.
4. TRUSTEES, MUNICIPAL LIBRARY—AUTHORITY TO PROCURE LIABILITY INSURANCE—POSSIBLE LIABILITY FOR INJURY OR LOSS TO PERSONS OR PROPERTY—OPERATION, BOOKMOBILE OR OTHER VEHICLE.
5. NO LIABILITY FOR DAMAGES ATTACHES TO BOARDS OF TRUSTEES, COUNTY, TOWNSHIP, PUBLIC SCHOOL OR COUNTY DISTRICT LIBRARIES OR POLITICAL SUBDIVISIONS WHICH CREATE AND SUPPORT THEM—PERSONS OR PROPERTY—OPERATION BOOKMOBILES OR OTHER VEHICLES—TRUSTEES WITHOUT AUTHORITY TO PROCURE INSURANCE AGAINST LIABILITY AND PAY FOR SAME OUT OF LIBRARY FUNDS.

SYLLABUS:

1. Under the provisions of Section 7630, General Code, the trustees of any of the public libraries mentioned in that section have authority to expend for library purposes, subject to the limitations of law, all moneys credited to the free public library under their jurisdiction and generally to do all things they may deem necessary and proper for the establishment, maintenance and improvement of the public library under their jurisdiction.

2. Under such authority, said trustees, for the purpose of securing for such library a magazine published by a literary organization such as the National Geographic Society and distributed only to members, may subscribe to membership in such society where no further financial support of such organization is undertaken.

3. Under such authority said trustees may if they deem it necessary and proper in the conduct of such library, send a member or employe of such board to a library meeting or conference relative to library affairs, and pay his expenses out of library funds.

4. The trustees of a municipal library have authority to procure liability insurance against possible liability created by Section 3714-1 of the General Code, for injury or loss to persons or property growing out of the operation of a bookmobile or other vehicle used on the public highways of the state.

5. No liability attaches to boards of trustees of county, township, public school or county district libraries or to the political subdivisions which create and support them for damages to persons or property, growing out of the operation of bookmobiles or other vehicles operated by any of such libraries, and accordingly, said boards of trustees are without authority to procure insurance against such liability and pay for the same out of library funds.

Columbus, Ohio, December 15, 1948

Hon. Earl Henry, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir :

I have before me your communication, requesting my opinion on certain questions relating to the conduct of public libraries, submitted to you by the Librarian of the Cambridge Public Library. The questions submitted are as follows :

"1. May a library become a member of a society in order to receive the publications of that society, thereby making them available for public use. For example, the National Geographic Magazine, which is issued by the National Geographic Society, and distributed to members ?

"2. May a library board pay the travel expenses of a member of its board or an employe of the library to a library meeting or conference relating to library affairs ?

"3. May a library board take out liability insurance on its bookmobile or other vehicles which it may own, should they deem it proper to do so ?"

1. The 97th General Assembly passed an act codifying and revising the laws of Ohio pertaining to public libraries. This act is found in 122 O. L. 176. Among others Section 7630, General Code, was enacted providing in part as follows :

"The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of

the General Code shall have the following general powers to wit:
* * *

“2. To expend for library purposes, subject to the limitations of law, all monies credited to the free public library under their jurisdiction and generally do all things they may deem necessary and proper for the establishment, maintenance and improvement of the public library under their jurisdiction; * * *

“6. To establish and maintain branches, library stations and traveling library service in any school district, outside of the territorial boundaries of the subdivision or district over which they have jurisdiction of free public library service upon application to and approval of the state library board, pursuant to the provisions of section 154-53a of the General Code; * * *”

The sections referred to in the first paragraph of the above quotation relate respectively to county libraries, township libraries, municipal libraries, school libraries and libraries maintained by a county library district, provision for which was made by this act. Accordingly, the very broad powers above quoted are conferred upon the library boards of all types of public libraries in the state. The language used as to the authorized expenditure of the library funds to “generally do all things they may deem necessary and proper” certainly manifests an intention on the part of the legislature to give these library boards very wide discretion.

Of course, it is recognized that any public board or officer may abuse his discretion but so long as it is conferred in such terms as we find here, a court would be very slow in restraining the board from using its funds for such purpose as the board considers conducive to the successful operation of the library. It appears from your statement, and is a matter of common knowledge that such magazines as the National Geographic Magazine, are issued only to members of the society publishing them. Membership in the National Geographic Society involves no obligation whatsoever except the act of applying for and receiving membership, the fee for such membership being the amount that represents the price of the magazine. In my opinion it would be an absurd and technical conclusion to hold that a library board could not under the broad power given it, obtain for the use of its patrons the magazine mentioned, or any other worth while magazine which involved a similar process of membership in an organization of the character in question.

I am aware of a decision of the Supreme Court in the case of State ex rel. Thomas v. Semple, 112 O. S., 559, where it was held in a per

curiam, joined in by only a portion of the court, that a writ of mandamus would not be issued to compel the director of finance to issue a voucher for the payment of the membership dues of the city of Cleveland in an organization known as the "Conference of Ohio Municipalities", although the city council had authorized such expenditure. That case was filed by the assistant director of law of the City of Cleveland, on behalf of the clerk, and was defended by the director of law, on behalf of the director of finance. The court remarks that members of the force of the director of law "had taken opposite sides in a rather perfunctory presentation of the question". It will be noted that the court did not expressly hold that the proposed expenditure was illegal, but refused to grant a writ of mandamus to compel its payment, merely suggesting that it would be possible for a municipal council to go beyond its broad powers of home rule and spend funds indiscriminately and unlawfully. The decision, which has too often been quoted as an authority, is weakened by the fact that the court said that it did not find any provision in the charter of the city authorizing such a contribution or any from which such authority might be inferred. Just as though a municipal charter could confer upon a city powers which the constitution did not confer in granting it "all powers of local self government".

I do not consider it necessary to apply this opinion to the circumstance which you present in your question because here at least is strong language of the legislature conferring broad discretionary power. It is my opinion, and you are advised that any public library in the state which desires to avail itself of a magazine published by a society which cannot be obtained except by enrolling as a member in such society, has authority to subscribe to such membership for that purpose.

2. Your second question is as to the power of a library board to pay the expenses of its employes in attendance at conventions and conferences. It has frequently been held that in the absence of express authority given by law, public bodies are not authorized to expend public funds in paying the expenses of their employes while attending conventions of a general character even though relating to the duties of their respective offices. However, it has also been held that the payment of expenses of public employes on trips for the purpose of attaining information relative to some specific public project either in progress or in contemplation is lawful. See *Richardson v. State*, 66 O. S., 108; *Clark v. Commissioners*, 58 O. S., 107; 1937 Opinions of the Attorney General, p. 2723; 1939 *id.*, p. 326; 1939 *id.*, p. 1131.

Prior to the enactment of Section 7630, General Code, which I have quoted, giving very broad powers to all library boards, Section 7643-8, General Code, was in force. It provides as to the librarian of a county library and his assistants, that they shall be allowed the necessary traveling expenses incurred on the business of the librarian within the county, "and in addition, the county librarian shall attend and take part in an annual state convention of county librarians for which railroad expenses shall be allowed out of the county library district fund." As to municipalities I note Section 4678-3, General Code, enacted by the 97th General Assembly, which provides that "any elected or appointed municipal officer, deputy, assistant or employe of any municipality, may attend, at the expense of the municipality, any conference or convention relating to municipal affairs, if authorized by the mayor, the chairman of the commission, or the city manager, as the case may be", subject to the certificate of the fiscal officer as to available funds.

As to school district libraries and township libraries, I do not find any similar provision expressly authorizing the payment of such expenses. However, Section 7630 *supra*, which is new to the law, appears to me to afford sufficient authority to the boards of trustees of all public libraries, if they deem it necessary and proper for the conduct and maintenance of the library under their jurisdiction, to send their employes to a convention or conference at the expense of the library fund. The inclusion of all public libraries in this grant of power appears to me to evidence an intention to treat them all alike, regardless of any preexisting partial grants of authority. I cannot give full effect to the broad powers that the legislature has seen fit to confer upon these library boards, without conceding to them the right to do such things as they consider beneficial and helpful to the library. This, of course, like all other discretionary powers is subject to abuse, but the courts are very reluctant to control the discretion of public officers when power has been granted to them by law, as long as they are acting within the general scope of their duties.

3. As to the right of a library board to take out liability insurance on its bookmobile or other vehicles, we may start with the general proposition that no public body would be authorized to expend its funds for liability insurance unless there is an existing liability from which it should be protected. As to those public bodies which are created by statute, such as boards of county commissioners, boards of township trustees and boards of education, it is well settled that in the absence of statute making them

liable for damages occasioned by the negligence of their employes, there is no such liability. The reason for this rule is clearly stated by Williams, J., in *Dunn v. Agricultural Society*, 46 O. S., 93:

“There is a class of public corporations, sometimes called civil corporations, and sometimes quasi corporations, that, by the well settled and generally accepted adjudications of the courts, are not liable to a private action in damages, for negligence in the performance of their public duties, except when made so by legislative enactment.

“Of this class, are counties, townships, school districts and the like. The reason for such exemption from liability, is that organizations of the kind referred to, are mere territorial and political divisions of the state, established exclusively for public purposes, connected with the administration of local government. They are involuntary corporations, because created by the state, without the solicitation, or even consent, of the people within their boundaries, and made depositaries of limited political and governmental functions, to be exercised for the public good, in behalf of the state, and not for themselves.”

This principle was applied by my immediate predecessor in an opinion found in 1943 Opinions of the Attorney General, page 181, as against the right of the county commissioners to take out liability insurance, insuring the county against liability for damages sustained by persons attending privately promoted events taking place in a memorial building of the county.

In an opinion which I rendered, found in 1945 Opinions of the Attorney General, page 607, the same rule was applied denying the right of township trustees to procure insurance to protect the township from liability by reason of the death or injury to a member of the township fire department.

There being no statute, so far as I can find, imposing any liability on counties or townships by reason of negligence of their employes in the conduct and management of a library, it is my opinion that the boards of trustees of township or county libraries are without authority to expend library funds in procuring liability insurance.

Attention may be called to Section 2413-3, General Code, enacted in 1945, whereby county commissioners are authorized to procure insurance protecting “officers and employes of the county” against liability for damage growing out of injury to persons or property in the operation of

county owned vehicles. This statute does not purport to authorize such insurance to protect the county, and nothing in its provisions could possibly be interpreted as intending to create a liability against the county.

As to boards of education and boards of library trustees of a school district library, the same rules to which I have just referred, will also apply. The rule of non-liability, so far as it relates to boards of education, is expressly stated in *Finch v. Board of Education*, 30 O. S. 37, and *Board of Education v. Volk*, 72 O. S., 469. See also 32 O. Jur. 967; 43 *Amer. Juris.*, 94. See 1947 *Opinions of the Attorney General*, 431, where a like ruling was applied, denying the right of the Trustees of Bowling Green State University to procure and pay for liability insurance against damages occurring by reason of the operation of a bus purchased by such board.

As to municipal corporations, somewhat different rules apply. Generally, a municipal corporation is held not liable for torts arising out of the negligence of its employees if the activity in which they are engaged is a part of the governmental function of the municipality, but it may be liable if the function being exercised is proprietary and in pursuance of private and corporate activities, as for instance, the operation of water-works, municipal light plant or other like municipal institution. I do not deem it necessary to go into the rather fine distinction which the courts have drawn as between these classes. It would appear however that the operation of a public library would probably fall within the class of governmental rather than proprietary activities. However, I do not consider it necessary in this connection to determine that question. Your inquiry is limited to possible liability growing out of the operation of a bookmobile or other vehicle, and it would appear that the liability of a municipality in that case would be determined by the provisions of Section 3714-1 of the General Code, which reads in part as follows:

“Every municipal corporation shall be liable in damages for injury or loss to persons or property and for death by wrongful act caused by the negligence of its officers, agents, or servants while engaged in the operation of any vehicles upon the public highways of this state under the same rules and subject to the same limitations as apply to private corporations for profit but only when such officer, agent or servant is engaged upon the business of the municipal corporation.”

There follow certain provisions granting exemption when the officer

or servant of the municipality was acting as a member of the police department engaged in police duty or as a member of the fire department engaged in duty at a fire or answering a fire alarm. This statute has the effect of imposing a liability upon a municipality for damages caused by the negligence of one of its agents while operating a bookmobile or other vehicle in connection with a municipal library.

I do not distinguish between a municipality and trustees of a municipal library because such library is after all established and supported by the municipality as one of its proper functions, its trustees being appointed by the mayor and its support being furnished by taxes levied by the municipality or by bonds issued by the council, at the request of the trustees.

Accordingly, it is my opinion that since this positive liability does exist against a municipality, it is proper that liability insurance be procured, and since the board of library trustees is charged with the full control of this branch of the municipal government, it would be within their power to procure such insurance and pay for same out of library funds.

Specifically answering your several questions it is my opinion :

1. Under the provisions of Section 7630, General Code, the trustees of any of the public libraries mentioned in that section have authority to expend for library purposes, subject to the limitations of law, all moneys credited to the free public library under their jurisdiction and generally to do all things they may deem necessary and proper for the establishment, maintenance and improvement of the public library under their jurisdiction.

2. Under such authority, said trustees, for the purpose of securing for such library a magazine published by a literary organization such as the National Geographic Society and distributed only to members may subscribe to membership in such society where no further financial support of such organization is undertaken.

3. Under such authority said trustees may if they deem it necessary and proper in the conduct of such library, send a member or employe of such board to a library meeting or conference relative to library affairs, and pay his expenses out of library funds.

4. The trustees of a municipal library have authority to procure liability insurance against possible liability created by Section 3714-1 of the General Code, for injury or loss to persons or property growing out of the operation of a bookmobile or other vehicle used on the public highways of the state.

5. No liability attaches to boards of trustees of county, township, public school or county district libraries or to the political subdivisions which create and support them for damages to persons or property, growing out of the operation of bookmobiles or other vehicles operated by any of such libraries, and accordingly said boards of trustees are without authority to procure insurance against such liability and pay for the same out of library funds.

Respectfully,

HUGH S. JENKINS,
Attorney General.