

not contain thereafter the words "its successors and assigns." In view of the provisions of Section 8510-1, General Code, as enacted by the act of March 5, 1925, 111 O. L. 18, this omission is probably immaterial. It is suggested, however, that in the execution of the new deed that these words of perpetuity be inserted in their proper place in said habendum clause.

As a matter of precaution, it is suggested that the notary public in taking the acknowledgment of the grantors and their respective wives to the corrected deed, observe the requirements of Section 123, General Code, as amended by the act of March 30, 1929, 113 O. L. 56.

From a comparison of the description of the property set out in the deed with the description set out in the caption of the abstract, and with the map of the land which is made a part of the abstract, I am inclined to the view that there is a mistake in the first call of the description set out in the deed tendered, and that said call should read "Beginning at a pin oak as described in former deeds N. 77½° W. 6.6 poles to two pines." In any event care should be taken to see that a correct description of the land is contained in the corrected deed.

Said deed is disapproved for the reason first above assigned. The corrected deed, of course, should be submitted to this department before the transaction with respect to the purchase of this property is closed.

I have examined encumbrance estimate No. 5844, submitted as a part of the files relating to the proposed purchase of this property and find the same to be defective as submitted, for the reason that it has not been signed by the Director of Finance. Otherwise said encumbrance estimate is in proper form and shows that there are sufficient balances in a proper appropriation account to pay the purchase price of this property. It is likewise noted from the certificate of the Controlling Board that the necessary money to pay the purchase price of this property has been released by said Controlling Board.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate No. 5844 and Controlling Board certificate above referred to.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1436.

COUNTY LAW LIBRARY ASSOCIATION—MONEY ARISING UNDER PROVISION OF SECTION 3056, GENERAL CODE, PAYABLE TO SUCH ASSOCIATION—TRANSFERRING TITLE TO PROPERTY, PURCHASED WITH SUCH MONEY, TO MUNICIPAL LAW LIBRARY ILLEGAL.

*SYLLABUS:*

1. *Under the provisions of Section 3056, General Code, as amended by the 88th General Assembly, 113 O. L. 249, Municipal Courts are required to turn over to the county law library association all fines and penalties assessed and collected for offenses and misdemeanors prosecuted in the name of the state after deducting a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court, excepting such fines and penalties as the law specifically provides shall be paid into some definite and specific treasury. Provided, however, that in no month shall the amount turned over to the law library be less than fifteen per cent of such fines and penalties so collected, without the deduction of the allowances above mentioned.*

2. *There is no provision of law authorizing a county law library association to transfer the title to property received by it from such fines and penalties, to a municipal law library. However, the trustees of a county law library association may authorize such municipal library to use books purchased by the county association under the supervision of the county librarian.*

COLUMBUS, OHIO, January 21, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“The first paragraph of Section 3056 of the Ohio General Code (effective July 21, 1929) reads as follows:

‘All fines and penalties assessed and collected by a Municipal or Police Court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said Municipal or Police Court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.’

QUESTION ONE: Is such county law library entitled to *all* of such fines and penalties assessed and collected for offenses and misdemeanors prosecuted in the name of the state after deducting ‘a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases . . . ’; or is the clerk of such Municipal or Police Court obliged to pay to such law library association under said Section 3056 only *15 per cent* of the amount so remaining after deducting said allowance by the county commissioners?

QUESTION TWO: Upon the clerk of such Municipal Court paying said legal share to the law library association, may said law library legally purchase law books for the libraries of such Municipal Courts and permit such books so purchased to become the separate property of said Municipal Courts?

Briefly, the situation in Stark County is that we have three Municipal Courts, in Canton, Alliance, and Massillon, and, apparently, the Canton court pays us only 15% of such excess as set forth in QUESTION ONE.

The Alliance and Massillon courts have not paid the Stark County Law Library Association anything at any time, and upon calling their attention to said Section 3056 of the General Code, effective July 21, 1929, they seem to be willing to pay our law library association their just share but the statute seems to be ambiguous as to the share to be paid. Also, Alliance and Massillon desire that our association purchase law books for their courts to become their separate property, since said courts are located 15 miles and 8 miles respectively, from the Stark County Law Library in Canton.

This office would appreciate it if you would render us an official written opinion as to questions one and two herein set forth, and we thank you very much for same.”

In connection with your inquiry you are referred to my opinion No. 929, issued under date of September 27, 1929, a copy of which is inclosed herewith, which gave consideration to the procedure to be taken under the provisions of Section 3056 of the

General Code, as amended by the 88th General Assembly, 113 O. L. 249. It is believed that said opinion will be of assistance to you in determining the methods of procedure. In view of said opinion it seems unnecessary to make an extended discussion of the questions you present.

Suffice it to say that the section as amended requires the Municipal Court to turn over to the county law library association all fines that are not otherwise specifically required to be paid into another treasury over and above the portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases, provided that if said sum, after making such deductions for the judges, clerk and prosecuting attorney, is not equal to the sum of fifteen per cent of the penalties collected, then there shall be turned over to said library association a sum equal to fifteen per cent.

In other words, the fifteen per cent mentioned in said section has reference to a minimum which is to be paid to the library association. The foregoing, it is believed, will dispose of the first inquiry.

In reply to your second inquiry, it is suggested that there is no provision in the law whereby Municipal Courts are to receive property purchased from the moneys turned over to the law library association or receive the title to property purchased by the law library association. That is to say, the statute requires certain fines and penalties to be turned over to the law library association for the uses and purposes mentioned in Sections 3054 et seq. of the General Code, and there is no further provision with reference thereto.

Under the sections last above mentioned, the county commissioners are required to provide at the expense of the county, a suitable room with sufficient bookcases in it in the county court house for the use of such library association. However, if there is no suitable room to be had therein, said commissioners shall provide any other suitable room at the county seat and shall provide heat and light therefor. Section 3057, General Code, provides:

“Justices of the peace in the county and officers of the townships, villages and cities therein, shall have the same free use of the books of the library receiving such moneys, as the judges and county officers.”

However, it is believed that there is nothing in the statutes which would inhibit the trustees of the law library association purchasing books and authorizing the use of the same by the Municipal Courts under the supervision, of course, of the county librarian. While the statute requires the library proper to be established at the county seat, it would seem that there is no serious objection under such circumstances as you mention, to the establishment of a branch library for the benefit of such persons as are entitled to the use thereof, if the same is authorized by the board of trustees of the library association and the librarian appointed maintains supervision thereof. However, as above stated, there is no authority whereby funds or the title to property may be transferred to the library of such Municipal Courts by the library association.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that:

1. Under the provisions of Section 3056, General Code, as amended by the 88th General Assembly, 113 O. L. 249, Municipal Courts are required to turn over to the county law library association all fines and penalties assessed and collected for offenses and misdemeanors prosecuted in the name of the state after deducting a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court, excepting such fines and penalties as the law specifically provides shall be paid into some definite and specific treasury. Provided, however, that in no month shall the amount turned over to the law library be

less than fifteen per cent of such fines and penalties so collected, without the deduction of the allowances above mentioned.

2. There is no provision of law authorizing a county law library association to transfer the title to property received by it from such fines and penalties, to a municipal law library. However, the trustees of a county law library association may authorize such municipal library to use books purchased by the county association under the supervision of the county librarian.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1437.

BOARD OF EDUCATION—ONE OF FIVE NEWLY ELECTED MEMBERS  
NOT QUALIFIED—HOW VACANCY FILLED.

SYLLABUS:

*In the event a person who has been elected as a member of a board of education fails to qualify within ten days after the organization of the board, as provided in Section 4747, General Code, a vacancy exists under the provisions of Section 4748, General Code, which vacancy should be filled as therein provided.*

COLUMBUS, OHIO, January 22, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The following question has arisen in one of the village school districts of this county and the board, the Board of Elections of Clinton County and this office ask your opinion on the status of this case.

About two years ago during the year 1928, a new village school district was created in this county from an existing village school district and certain contiguous rural territory. The county board of education appointed the five members of the board of education of the newly created village school district and the new members thereof were elected at the November, 1929, election.

At the November, 1929, election there were four candidates for the three positions for the long term of four years for members of the board, and two candidates for the two positions for the short term. Of the four candidates for the long term three were the old appointed members with one new name. Two of the old appointed members were elected and the new person defeated the third appointed member. The new person failed to qualify and the question has arisen as to the right of the defeated member to retain his seat for the failure of his successor to qualify.

The question is, therefore, does this old appointed member hold over until the next general election at which time a successor may be elected and qualified or do the four elected members have a right to select the fifth member of the board? This case involves an interpretation of G. C. Sec. 4745 and G. C. Sec. 4736.”

Section 4748, General Code, provides: