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LIBRARY TRUSTEES HAVE THE RIGHT TO PURCHASE LAND FOR A PARKING LOT AND FUTURE BUILDING—SUCH LANDS MAY BE RENTED—§§3375.33, 3375.40, R.C. Opinion No. 2485, O.A.G. 1953, Opinion 2534, O.A.G. 1953.

SYLLABUS:

1. When a board of library trustees appointed pursuant to Section 3375.15, Revised Code, determines that it is necessary for the proper maintenance and operation of a free public library to provide a parking facility at such library and determines that the future needs of such library will require the acquisition of additional land upon which to place a new library building, such board has the authority, pursuant to Section 3375.40, Revised Code, to purchase a parcel of land a part of which may presently be used for parking facilities and the remainder of which may be held by such board for said future building.

2. Where a board of library trustees purchases a parcel of land, a part of which is used for a library parking facility and the remainder of which is held by said

board for a future library building, such board may lawfully rent that part of said property which is not being used for parking facilities and may accept payment for said rental; however, any such rental agreement should provide that the board of library trustees may at any time determine that the property is needed for library purposes and that said board may immediately upon such determination enter upon said property and all rights in said property of the tenant thereof will thereupon immediately terminate. (Opinion No. 2534, Opinions of the Attorney General for 1953, page 158, approved and followed.)

Columbus, Ohio, October 12, 1962

Hon. Forrest H. Bacon, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

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

“The Trustees of our School District Library organized under Section 3375.14, and 3375.15 of the Revised Code of Ohio, desire to purchase a house and lot which lies adjacent to the present library building. The purchase is deemed necessary to secure parking facilities and a future building site.

“The house located on the lot is in excellent repair and until such time that it is deemed expedient by the Trustees to build, they would like to rent the same. In the meantime, the balance of the lot on which the house is situated would provide the necessary parking facilities.

“The question which we would present to you for consideration, does the Board of Library Trustees of a School District Library, under Section 3374.40, Sub-Section (D), Revised Code of Ohio, have authority to purchase land for the purpose of securing parking facilities and the further right to lease for profit a building located on the land to be purchased?”

A board of library trustees, appointed pursuant to Section 3375.15, Revised Code, is governed by the provisions of Section 3375.32, *et seq.*, Revised Code. Section 3375.33, Revised Code, reads as follows:

“The boards of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 375.22, and 3375.30 of the Revised Code are bodies politic and corporate, and as such are capable of suing and being sued, contracting, acquiring, holding, possessing, and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.”

The provisions of Section 3375.33, Revised Code, were formerly found in Section 7628, General Code, and were considered by the court in the case of *Miller v. Akron Public Library*, 60 Ohio Law Abs., 364, wherein the court said beginning at page 369:

“Under Section 7628 GC the legislature, as stated before, made all the various library boards bodies politic and corporate, and as such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law.

“In the court’s opinion this made them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic.”

Considering the above quoted language of the court, the board of library trustees, as an independent agency of government, would have those powers which are granted by law as well as those implied powers which are incidental to said express powers. In determining the extent of such implied power, a board of library trustees would be governed by the ordinary rules of construction which are followed in connection with the statutory powers of other public officers. In this regard, it is stated in 44 Ohio Jurisprudence 2d, 546, Public Officers, Section 60:

“The powers of public officers are limited, and while some exercise powers which are defined in the fundamental law, the larger portion of them are of statutory creation, with duties and powers prescribed and limited by law. As a general rule, therefore, and apart from the powers which are delegated to a public officer by the Constitution or a municipal charter, public officers have only such powers as are expressly delegated to them by statute, and such as are necessarily implied from those so delegated. The rule in respect of implied powers is that in addition to the powers expressly given by statute to an officer or board of officers, he or it has, by implication, such additional powers as are necessary for the due and efficient exercise of the power expressly granted, or as may be fairly implied, from the statute granting the express powers. But the powers of a public officer or public body, functioning by reason of the powers vested by the charter, ordinances, or statutes creating the office or body, cannot be enlarged and extended by the doctrine of estoppel; and it has likewise been said that public officers do not possess and cannot exercise powers which are merely apparent.”

As to the express powers of the board of library trustees, Section 3375.40, Revised Code, reads in pertinent part as follows:

“Each board of library trustees appointed pursuant to sections 3375.06, 3375.10, 3375.12, 3375.15, 3375.22, and 3375.30 of the Revised Code may:

“(A) Hold title to and have the custody of all property both real and personal of the free public library under its jurisdiction;

“* * * * *

“(C) Purchase or lease buildings or parts of buildings and other real property and purchase automobiles and other personal property necessary for the proper maintenance and operation of the free public libraries under its jurisdiction and pay the purchase price therefor in installments or otherwise;

“(D) Purchase, lease, lease with an option to purchase, or erect buildings or parts of buildings to be used as main libraries, branch libraries, or library stations pursuant to section 3375.41 of the Revised Code;

“* * * * *

Pursuant to the provisions of division (C) of Section 3375.40, *supra*, I do not see how there can be any question raised as to the authority of a board of library trustees to acquire property to be used as a parking lot in connection with the operation of a free public library.

The above quoted statutory provisions of Section 3375.40, Revised Code, were considered by a former Attorney General in Opinion No. 2485, Opinions of the Attorney General for 1953, page 139, wherein the syllabus reads as follows:

“The board of trustees of a public school library is authorized by Section 7630, General Code, to construct on land owned in fee or by perpetual lease a building for library purposes, but is without authority to construct such library building on land held under a temporary lease.”

In arriving at the above conclusion, my predecessor said, after quoting the provisions of the General Code which are now found in Section 3375.40, *supra*, beginning at page 140:

“Here, it will be noted that the board has power to purchase, lease, or lease with an option to purchase property for library purposes and also to erect buildings or parts of buildings. While this is quite broad in its provisions, I cannot conclude that there is

any grant of authority to use public funds for the erection of a building on land which the board neither owns nor to which it has any permanent right. In the case you present, the board only enjoys a lease from one of two joint owners, and that only for a short period, which is subject to termination at any time, upon prescribed notice. Consequently, it has only an imperfect leasehold, even for a temporary period.

“Library boards like other public bodies created by the statutes, are subject to the general rule that they have only such powers as the legislature has seen fit to grant, and such implied powers as are essential to the exercise of the powers granted. See 36 Ohio Jurisprudence, page 188, as to boards of education; 11 Ohio Jurisprudence, page 244, as to counties; 25 Ohio Jurisprudence, page 302, as to library boards. That the powers of a school district library board are so measured and limited was held in Opinion No. 2003, Opinions of the Attorney General for 1924, page 652.

“ * * * * * * * * * ”

As can be seen from the above quoted matter from Opinion No. 2485, my predecessor was of the opinion that a board of library trustees could not build a library building on land other than that which was owned in fee or by perpetual lease by such board. Accordingly, the first question to be answered is whether such board may acquire real estate when at least a part thereof will not immediately be used by such board in the operation and maintenance of a free public library.

I have found no authority in Ohio which specifically treats such question. It appears, however, that said question is analogous to one which was considered by the Supreme Court of Ohio in the case of *State ex rel., Preston v. Ferguson*, 170 Ohio St. 450, wherein the court was dealing with the legality of a contract entered into pursuant to the provisions of Section 5501.112, Revised Code. At page 461 of the *Preston* case, *supra*, the court said:

“The only question which remains is whether such prior acquisition is, in the absence of an immediate need of the right of way, such a highway purpose that the General Assembly has the power to authorize the expenditure of public funds therefor. There can be no question that the procurement of rights of way for highways is a highway purpose. Does the acquisition of such rights of way far in advance of actual construction remove such acquisition from its status as a highway purpose? We do not think so.

“The planning and construction of highways is a long-term procedure. It is not an undertaking which can be planned and

consummated on the spur of the moment. The development and construction of the superhighway system essential to the movement of modern traffic necessitates the planning of highways and the acquisition of rights of way far in advance of actual construction. To wait until there is a present actual need for construction purposes before acquiring the right of way is neither economical nor practical. With the mushrooming of metropolitan areas and the expansion of suburban living, it is not only necessary but essential that plans be developed and rights of way acquired far in advance of actual construction, not only to obviate the increase in cost due to the development of areas through which highways must pass but also to afford an opportunity for the planned development of the communities themselves.

“* * * * * * * * *”

It is of course evident that the planning of a full library facility is similar to that described by the court above in connection with the construction of highways. It is also obvious that the responsibility for such planning, with regard to libraries, must rest with the board of library trustees. Accordingly, I am of the opinion that the powers granted to such board by Section 3375.40, *supra*, should be so construed as to imply therein the ability to acquire in advance real estate which will be necessary for the proper maintenance and development of a library facility. It should be pointed out, however, that while the question of the necessity for the acquisition of such property rests first with the board of library trustees, such board could not lawfully exercise its power in determining such issue in an arbitrary or capricious manner. For the purpose of this opinion I presume, as stated in your letter, that the real estate in question is presently necessary for use as a parking lot and that the board of library trustees has a present intention of using the part of said real estate upon which a dwelling house is now located for a future site of a library building. Under such circumstances, it is my opinion that the board of library trustees may purchase the land in advance of an actual immediate need for the whole parcel. We come now to the question of whether a board of library trustees which has lawfully purchased a parcel of real estate, a part of which is being used for library purposes, i.e., a parking facility, may rent out for profit a building which is located upon the remaining part of said parcel. In this regard, your attention is called to Opinion No. 2534, Opinions of the Attorney General for 1953, page 158, wherein the syllabus reads as follows:

“Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of educa-

tion is not authorized to rent or lease property held by it for the public school purposes of its district; but where 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 as 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 the use of the premises by said third parties would terminate. Opinion No. 4588, Opinions of the Attorney General for 1932, p. 1006, approved and followed.

“Such temporary use under such revocable license may properly include the construction and operation of swimming pool facilities by the licensee, which facilities, by agreement of the parties, are to become the property of the board by way of gift upon the unilateral termination of such license by the board.”

Opinion No. 2534, *supra*, was approved and followed in Opinion No. 7225, Opinions of the Attorney General for 1956, page 738, and was treated in my Informal Opinion No. 488, issued on July 11, 1962. While the above quoted syllabus of Opinion No. 2534 does not deal directly with boards of library trustees, I believe that said conclusion is fully applicable to the instant question. (It is again obvious that whether the board of library trustees is acting lawfully in any given instance depends upon the actual intent of such board at the time that the property is acquired and at the time that the rental arrangement between such board and a tenant is entered into.)

In accordance with the above and in specific answer to your question, it is my opinion and you are advised:

1. When a board of library trustees appointed pursuant to Section 3375.15, Revised Code, determines that it is necessary for the proper maintenance and operation of a free public library to provide a parking facility at such library and determines that the future needs of such library will require the acquisition of additional land upon which to place a new library building, such board has the authority, pursuant to Section 3375.40, Revised Code, to purchase a parcel of land a part of which may presently be used for parking facilities and the remainder of which may be held by such board for said future building.

2. Where a board of library trustees purchases a parcel of land, a part of which is used for a library parking facility and the remainder of which is held by said board for a future library building, such board may lawfully rent that part of said property which is not being used for parking facilities and may accept payment for said rental; however, any such rental agreement should provide that the board of library trustees may at any time determine that the property is needed for library purposes and that said board may immediately upon such determination enter upon said property and all rights in said property of the tenant thereof will thereupon immediately terminate. (Opinion No. 2534, Opinions of the Attorney General for 1953, page 158, approved and followed.)

Respectfully,
MARK McELROY
Attorney General