

library service of the state into departments and determine the number of assistants and other employes therein."

"Sec. 154-54. The state librarian shall be secretary of the state library board. Under the direction and supervision of the state library board and subject to the rules and regulations established by it, the state librarian shall, through such departments as may be created by the board, exercise all powers and perform all duties vested by law in the state board of library commissioners, the librarian heretofore appointed by the state board of library commissioners, the library organizer heretofore appointed by the state board of library commissioners and the legislative reference department and the director thereof."

Section 792 of the General Code, provides as follows:

"The librarian shall have charge of the state library and shall give personal attendance therein and attention thereto. He shall enforce the rules and regulations established by the general assembly and the board of library commissioners for its government."

All of the foregoing laws are still in full force and effect.

You are therefore advised that neither the Governor's veto nor the recommendations in the veto message to the effect that the state library should be abolished constitute the abolition of said library.

You are further advised that the failure of the enactment of the appropriation in itself does not mean the permanent abandonment of the department and you should act upon the assumption that the means of support of the state library are merely temporarily lacking.

Salary is not necessarily an incident of office. In other words, abolishing the salary does not abolish the office. The office remains even if the officer resigns.

So long as you remain librarian it will be your duty to remain in charge of the state library, to give your personal attendance and attention thereto and to enforce the rules and regulations established by law and by the board of library commissioners for the government of the library.

Under Section 154-53, above quoted, it will be the duty of the state library board to make such special rules for the government of the state library, the use and location of the books and other property therein or the transfer thereof as may be necessary to meet the situation brought about by the Governor's veto of the legislative appropriation for your department.

The foregoing conclusions render unnecessary any discussion of Section 196-12.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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STATE LIBRARY BOARD—NO AUTHORITY IN LAW TO ACCEPT POPULAR SUBSCRIPTIONS FOR SALARIES AND EXPENSES OF STATE LIBRARY—DIRECTOR OF HIGHWAYS AND PUBLIC WORKS MUST PROVIDE SUITABLE QUARTERS FOR LIBRARY.

SYLLABUS:

No authority in law for acceptance and administration of popular subscription by state library board for salaries and expenses of state library.

Duty of Director of Highways and Public Works to provide suitable quarters for state library.

COLUMBUS, OHIO, June 9, 1927.

HON. HERBERT S. HIRSHBERG, *State Librarian, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your request for opinion reading as follows:

“Friends of the state library are now considering the possibility of a popular subscription to provide funds for the operation of the library beginning July 1, 1927. The question arises whether this procedure would be legal and if so whether the library board is empowered to accept funds so raised and to continue occupancy of rooms in the State Capitol without the consent of the Director of Highways. Your prompt opinion in this matter will be greatly appreciated.”

Taking up the second branch of your question and answering it first: Section 154-41 of the General Code provides as follows:

“The Department of Highways and Public Works shall have the supervision and control of the state house and heating plant therein, the fixing and placing of all departments and offices of the state therein, the full control and supervision of fixing and placing all departments and offices in offices, buildings and rooms outside the state house when the same cannot be placed therein, materials and persons employed in and about the state house, the grounds and appurtenances thereof and all work or materials required in or about them. The department shall rent all offices, buildings and rooms for all departments and offices of the state located outside the state house, and execute all leases in writing for the same on behalf of the state, and deposit a copy thereof in the office of the Secretary of State within ten days after the lease has been executed. The department shall keep the state house, grounds and appurtenances constantly protected and in order, except that the legislative halls shall be under the control of the general assembly. A competent number of employees of the department shall be designated as policemen, and as such shall take an oath of office, wear a proper uniform and badge of office, have the same authority to make arrests as policemen of cities, and shall deliver all persons arrested by them to the police authorities of the city of Columbus to be dealt with as those arrested by the police of said city.”

In an opinion to you of even date herewith, I have advised you that all of the laws now in the General Code applicable to the state library, its control and management, are still in full force and effect, notwithstanding the veto by the Governor of all items in the appropriation bill for the support of the library and of the recommendation in his veto message to the effect that the state library should be abolished.

I now advise you that it would not be within the power of the Department of Public Works to remove the state library from its present quarters without providing other suitable quarters for the carrying on of the business and activities of the library. In other words, the Director of Highways and Public Works has no power or authority either to close the library or to store your books. His duty is to furnish you suitable quarters.

Coming now to the first part of your question, I can find no authority for the acceptance from the general public of funds for the operation of the library unless it be contained in Section 18 of the General Code, which is extremely doubtful.

Section 18 of the General Code provides as follows:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

While the above section attempts to authorize the state to receive gifts, yet this amounts to but little for the reason that the legislature which enacted that section could not bind the legislature which would have to accept and provide for the administration of the gift. There is no statute authorizing the administration of any gift to the state.

You will note that while counties, townships, municipalities, cemetery associations, and benevolent, educational, penal or reformatory institutions, wholly or in part under the control of the state, may receive and administer such gifts, there is no authorization for any officer or department of the state government to do so. Therefore the question resolves itself into whether the state library board is a part of the state government or is an "educational institution" within the meaning of Section 18.

It seems to me that this latter question is quickly answered by reference to the Administrative Code, Section 1 of which (G. C. 154-1) provides:

"In order that the governor may exercise the supreme executive power of the state vested in him by the constitution and adequately perform his constitutional duty to see that the laws are faithfully executed, the administrative functions of the state are organized as provided in this chapter.

All powers vested in and duties imposed upon the lieutenant governor, the secretary of state, the auditor of state, the treasurer of state and the attorney general by the constitution and the laws shall continue except as otherwise provided by this chapter."

In this same Code and as a part of the administrative functions of the state, the state library board is organized under Sections 154-51, 154-52, 154-53 and 154-54, all of which have been quoted in another opinion to you of even date herewith. Clearly then, the state library must be considered as a part of the state government and not as an "educational institution wholly or in part under the control of the state."

Throughout the General Code various specific provisions are made authorizing the receipt and administration of gifts, bequests, et cetera. For an illustration, see Section 1840 G. C., where the Ohio Board of Administration (now the Director of Welfare) is authorized to accept and administer any grant, gift, devise or bequest.

I am therefore of the opinion that there is no authority in law for the acceptance

and administration by the state library board of funds raised by public subscription or in any other manner save through appropriation by the legislature.

The question then presents itself: If not authorized, is it forbidden?

Public officers have no powers except those specifically conferred either expressly or by necessary implication, as incidental.

The legislature having provided in the appropriation bill the money necessary for the carrying on of the activities of your department, the governor having vetoed all of such items, and the legislature having failed to re-appropriate such items over the governor's veto, we have a clear declaration of legislative policy to the effect that the state library is to be operated for the ensuing eighteen months, so far as may be, without the use of public funds.

There being no authority for the board to accept private funds, I see no lawful way to escape the situation created by the governor's veto except that the officials and employees connected with the state library shall serve without compensation, depending for financial reward, if any, upon some future session of the legislature.

It is my opinion that a future session of the legislature could make an appropriation to cover the salaries and expenses of the officials and employees of the library who had served during the ensuing eighteen months without pay. However, there would be no lawful obligation upon the state to make such payment.

To hold that where the legislature fails to appropriate for a department, its activities may be carried on by private funds, would be entirely contrary to my views of the law.

To hold that the employees of one state department may accept pay for their public work from private sources is to hold that the employees of all departments may do the same, there being no law making any distinction thereon between the departments. The dangers incident to such a policy must be readily apparent.

It will be your positive obligation to discharge all of the duties placed upon you by law, notwithstanding that the governor vetoed your means of monetary recompense. Resignation or removal is the alternative. You have certain duties to discharge, and the fact that there is no money available for your salary or expenses does not alter your obligation. You could not be compelled to disburse your own funds for expenses.

I should add to this opinion that I know of no criminal statute which would be violated if the board accepted such subscriptions.

Where the immediate end sought is laudable, there is usually a desire to find some way around. However, it must be remembered that a bad precedent may be set in a good cause.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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APPROVAL, NOTE OF LEWIS RURAL SCHOOL DISTRICT, BROWN COUNTY, \$1,824.00.

COLUMBUS, OHIO, June 9, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.