

**OPINION NO. 2004-023**

**Syllabus:**

1. For purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund, a "library association" is an incorporated or unincorporated organization of people for the common purpose of establishing and operating a public or private institution in charge of the care and circulation of books, periodicals, musical scores, and other similar type items.

2. Pursuant to R.C. 5705.32(B), the county budget commission determines whether a private entity is a "library association" for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund.
3. A library association that does not afford library services to all the inhabitants of the county may extend such services to all the inhabitants of the county so as to be eligible to receive moneys from the county library and local government support fund when such authority is granted to the association under the statutes and documents establishing the association.
4. A library association may change the boundaries of the territory in which it provides library services so as to overlap territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board when such authority is granted to the association under the statutes and documents establishing the association.
5. Pursuant to R.C. 5705.32(B), a county budget commission may allocate moneys from the county library and local government support fund to a library association that provides library services in territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board, provided the library association qualifies under R.C. 5705.28 for such moneys.

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**To: Joanne Budler, State Librarian, State Library of Ohio, Columbus, Ohio**  
**By: Jim Petro, Attorney General, July 6, 2004**

Your predecessor requested an opinion concerning the distribution of moneys from the county library and local government support fund to library associations. His request presents the following questions:

1. What is the definition of a "library association" for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund? Does the term "library association" include an historic collection of materials, such as the Women's Temperance Union Society materials; a special library collection, such as the medical library of the Cleveland Clinic; or a current branch library established and maintained by a trust fund and operated with money from a public library system?
2. If the original charter or trust instrument establishing a library association does not afford library services to all the inhabitants of the county, may the association amend the charter or trust instrument to extend such services to all the inhabitants of the county so as to be eligible to receive moneys from the county library and local government support fund? Is there some restriction on that expansion?

3. May a library association redefine its boundaries to overlap territory that is served by another public library that has boundaries established pursuant to statute or by the State Library Board? If so, may a county budget commission distribute moneys from the county library and local government support fund to the library association, notwithstanding that the territorial boundaries of the two libraries overlap?

### **Disbursement of Moneys in the County Library and Local Government Support Fund to Public Libraries**

Before turning to your predecessor's specific questions, it is helpful to first review the statutory scheme governing the distribution of moneys from the county library and local government support fund to public libraries. Pursuant to R.C. 5747.03(A)(2), a portion of the state income tax revenues collected under R.C. Chapter 5747 are credited to the library and local government support fund, which is created in the state treasury. *See* R.C. 5747.02 (providing for the levying of the state income tax). Moneys in this fund are distributed by the tax commissioner to the various counties in accordance with the provisions of R.C. 5747.47 and placed in each county's library and local government support fund. *See* R.C. 5747.48. Moneys in the county library and local government support fund are distributed by the county treasurer to the county, boards of public library trustees, municipal corporations, and boards of township park commissioners in the proportions fixed by the county budget commission. *See* R.C. 5705.32; R.C. 5747.48; *see also DeCourcy v. Public Library of Cincinnati & Hamilton County*, 47 Ohio App. 3d 83, 547 N.E.2d 369 (Hamilton County 1988).

With respect to the disbursement of moneys in the county library and local government support fund to public libraries, R.C. 5705.28(D) provides as follows:

The board of trustees of any public library desiring to participate in the distribution of the county library and local government support fund shall adopt appropriate rules extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules have been so certified or where the adoption of such rules is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from the county library and local government support fund, and in its budget of expenditures the full amounts requested therefrom by such board. No library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county library and local government support fund or other public funds unless such association was organized and operating prior to January 1, 1968.

R.C. 5705.32(B) requires the county budget commission to consider the requests made by the various qualified public libraries and "fix the amount of the county library and local government support fund to be distributed to each board of public library trustees that has qualified under [R.C. 5705.28] for participation in the proceeds of such fund."<sup>1</sup> *See* R.C.

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<sup>1</sup>Prior to January 1, 1986, moneys distributed to public libraries pursuant to R.C. 5705.32 were derived from classified property taxes, rather than income taxes. *See* 1985-1986 Ohio Laws, Part I, 1472, 1488-89 (Am. Sub. H.B. 146, eff. Sept. 11, 1985, with certain sections

5705.28; R.C. 5747.48; *see also* R.C. 5705.32(C). Before meeting to discuss the distribution of the county library and local government support fund, the county budget commission is required to provide notice of the meeting to each entity that is eligible to participate in the distribution of the fund, including each board of public library trustees. R.C. 5705.32(E)(1). The county budget commission is also required, before determining “the amount to be allotted to each subdivision from any source,” to “permit representatives of each subdivision and of each board of public library trustees to appear before [the commission] to explain its financial needs.” R.C. 5705.32(E)(2). A subdivision or board of public library trustees that is dissatisfied with the county budget commission’s determination as to how the moneys of the county library and local government support fund are to be allocated may file an appeal with the Board of Tax Appeals. R.C. 5705.37.

For the purpose of receiving moneys from the county library and local government support fund, libraries established by library associations may be considered to be public libraries.<sup>2</sup> *See* R.C. 5705.28(D); R.C. 5705.32; R.C. 5705.37; 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1996 Op. Att’y Gen. No. 96-023 at 2-80; *see also* 1962 Op. Att’y Gen. No. 2956, p. 292; 1955 Op. Att’y Gen. No. 5670, p. 392; 1935 Op. Att’y Gen. No. 4271, vol. I, p. 586. As explained in 2002 Op. Att’y Gen. No. 2002-016 at 2-93:

Even though associations libraries are private entities,<sup>3</sup> they are included as public libraries for some purposes, among them the receipt of certain public funding. As Ohio’s public library system developed, it was recognized that the provision of library services and facilities serves a public purpose, and association libraries were included among the libraries supported by public moneys. Under existing law, library associations that were organized and operating prior to January 1, 1968, may be eligible to receive public funds from the county library and local government support fund, provided that they extend the benefits of their library service to all the inhabitants of the county on equal terms. Such association libraries are considered to be public libraries. (Footnote added; citations and footnotes omitted.)

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effective on other dates); 1983-1984 Ohio Laws, Part II, 2872, 3175, 3231 (Am. Sub. H.B. 291, eff. July 1, 1983); 2002 Op. Att’y Gen. No. 2002-016 at 2-93 n.2.

<sup>2</sup>Syllabus paragraph one of 1935 Op. Att’y Gen. No. 4216, vol. I, p. 514 advised that, “[a] library owned, maintained and operated by a library association organized under the General Corporation Act of Ohio, as a corporation not for profit, is not a public library.” The second syllabus paragraph of the opinion further advised that such a library was ineligible to receive public moneys under G.C. 5625-20 (now R.C. 5705.28). This advice was clarified by 1935 Op. Att’y Gen. No. 4271, vol. I, p. 586, which stated that 1935 Op. Att’y Gen. No. 4216, vol. I, p. 514 concerned a private library that was not free and open to the public.

<sup>3</sup>Libraries established by library associations are libraries that originated, for the most part, under charters from associations such as reading clubs in the late nineteenth and early twentieth centuries or associations established by a will or trust instrument. *See* 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1955 Op. Att’y Gen. No. 5670, p. 392; 1935 Op. Att’y Gen. No. 4271, vol. I, p. 586. These libraries and the associations that establish them thus are private entities, rather than governmental entities. 2002 Op. Att’y Gen. No. 2002-016 at 2-93. Whether a library association is incorporated or unincorporated, the association must operate under relevant statutes, and in accordance with the documents establishing the association. *Id.*; *see, e.g.*, R.C. Chapter 1702; R.C. 1713.28; R.C. Chapter 1719; R.C. Chapter 1745.

Accordingly, a library association organized and operating prior to January 1, 1968, is eligible to participate in the distribution of moneys from the county library and local government support fund when it adopts appropriate rules extending the benefits of its library service to all the inhabitants of the county on equal terms. R.C. 5705.28(D); 2002 Op. Att'y Gen. No. 2002-016 at 2-93; 1996 Op. Att'y Gen. No. 96-023 at 2-80; *see also* R.C. 5705.32(F) (if any public library receives and expends funds allocated to it under R.C. 5705.32 for the construction of new library buildings or parts of buildings, the library must be free and open to all the inhabitants of the county in which it is located).

### Definition of a "Library Association"

We will now turn to your predecessor's first question, which has two parts concerning the scope of the term "library association." The first part asks for a definition of this term, while the second part asks whether this definition includes certain entities. We will consider the two parts of his question separately.

The first part specifically asks about the definition of a "library association" for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund. For this scheme, the term may be construed as meaning an incorporated or unincorporated organization of people for the common purpose of establishing and operating a public or private institution in charge of the care and circulation of books, periodicals, musical scores, and other similar type items.

No statute or Ohio court has defined the term "library association" as that term is used in the library statutes. This term thus must "be read in context and construed according to the rules of grammar and common usage." R.C. 1.42.

*Black's Law Dictionary* 119 (7th ed. 1999) defines an "association" as, among other things, "[a] gathering of people for a common purpose; the persons so joined." *Accord Webster's New World Dictionary* 84 (2nd college ed. 1986). A "library" is "a room or building where a collection of books, periodicals, musical scores, etc. is kept for reading or reference[,] ... a public or private institution in charge of the care and circulation of such a collection[,] ... a collection of books, etc., esp. a large, systematically arranged collection for reading or reference." *Id.* at 814. Construing the words "association" and "library" according to the rules of grammar and common usage, it is evident that a "library association" for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund is an organization of people for the common purpose of establishing and operating a public or private institution in charge of the care and circulation of books, periodicals, musical scores, and other similar type items.

In addition, reading this term in context further discloses that the term "library association" includes organizations of people that are incorporated or unincorporated. *See* 2002 Op. Att'y Gen. No. 2002-016 at 2-93; *see also* note three, *supra*. R.C. 5705.28(D) states that, "[n]o library association, *incorporated or unincorporated*, is entitled to participate in the proceeds of the county library and local government support fund or other public funds unless such association was organized and operating prior to January 1, 1968." (Emphasis added.) The language of R.C. 5705.28(D) thus plainly indicates that the term "library association" includes an organization of people that is incorporated or unincorporated. Accordingly, for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund, a "library association" is an incorporated or unincorporated organization of people for the common purpose of establishing and operating a public or private institution in charge of the care and circulation of books, periodicals, musical scores, and other similar type items.

The second part of your predecessor's first question concerns the breadth of the term "library association." In particular, he asks whether this term includes an historic collection of materials, such as the Women's Temperance Union Society materials; a special library collection, such as the medical library of the Cleveland Clinic; or a current branch library established and maintained by a trust fund and operated with money from a public library system. For the reasons that follow, the determination whether a private entity is a "library association" for purposes of the statutory scheme governing the distribution of moneys from county library and local government support funds must be made on a case-by-case basis by county budget commissions, rather than by the Attorney General in an opinion.

This determination requires the resolution of factual matters concerning the establishment, operation, and purpose of the private entity. It has been established that an opinion of the Attorney General cannot resolve such factual matters. *See* 1991 Op. Att'y Gen. No. 91-016 at 2-82 n.2 ("[t]he opinion-rendering function of the Attorney General is not an appropriate forum for making findings of fact"); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by [the office of the county prosecuting attorney] or, ultimately, by the judiciary"). Moreover, "[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials." 2001 Op. Att'y Gen. No. 2001-032 at 2-193; *accord* 2003 Op. Att'y Gen. No. 2003-028 at 2-235 and 2-236; 2003 Op. Att'y Gen. No. 2003-019 at 2-153; 2002 Op. Att'y Gen. No. 2002-025 at 2-169; 1986 Op. Att'y Gen. No. 86-076 at 2-422. Under R.C. 5705.32(B), the county budget commission has been given responsibility for determining whether a private entity is a "library association" for purposes of the statutory scheme governing the distribution of moneys from county library and local government support fund. As discussed previously, R.C. 5705.32(B) requires the county budget commission "to fix" the amount of the county library and local government support fund to be distributed to each qualified "library association" on the basis of the needs of the library for construction, improvements, operation, maintenance, or other expenses. 1992 Op. Att'y Gen. No. 92-028 examined this language and advised that:

Pursuant to R.C. 5705.32, the county budget commission is required to allocate moneys from the county library and local government support fund *to qualified libraries* on the basis of the needs of the libraries. *A determination as to how the moneys are to be allocated requires the exercise of judgment and discretion of the county budget commission and may not be delegated to any other entity.* (Emphasis added.)

*Id.* (syllabus, paragraph one). *See generally Cleveland Public Library v. Cuyahoga County Budget Comm'n*, 23 Ohio St. 2d 27, 29, 261 N.E.2d 117 (1970) (an allocation of moneys under R.C. 5705.32 "involves a *factual* determination and the exercise of sound judgment[,] which "[i]nitially, the law imposes the duty upon the Budget Commission"); *State ex rel. City of Cleveland Heights v. Davis*, 131 Ohio St. 380, 3 N.E.2d 49 (1936) (syllabus) (the authority of a county budget commission to allocate moneys to libraries is "broad and discretionary in nature").

R.C. 5705.32(B) thus expressly delegates to the county budget commission the authority to allocate moneys from the county library and local government support fund to "library associations." Such delegation indicates the General Assembly's intention to vest the county budget commission with the implied power to determine on a case-by-case basis whether a private entity desiring to participate in the distribution of moneys under R.C. 5705.32(B) is a "library association." *See generally State ex rel. Corrigan v. Seminatore*, 66



Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981) (a power “may be fairly implied where it is reasonably related to the duties of the public agency”); 2003 Op. Att’y Gen. No. 2003-022 at 2-171 (intrinsic to a township’s authority to provide for zoning “is the power of township officials to prepare and adopt plans for land use”); 1973 Op. Att’y Gen. No. 73-057 at 2-218 (“each specific detail of the carrying out of an express purpose need not be expressly stated before the board may exercise its authority with respect to such detail, for an express authority to do an act carries with it the authority to do the necessary incidental acts to accomplish the purpose for which the express authority was given as fully as though each such incidental detail were expressly authorized in separate and distinct terms”).

The bestowal of this power to the county budget commission also follows from the duty of the commission to exercise reasonable discretion when allocating moneys from the county library and local government support fund. See generally *Cleveland Public Library v. Cuyahoga County Budget Comm’n*, 23 Ohio St. 2d at 29, 261 N.E.2d 117 (an allocation of moneys under R.C. 5705.32 requires “the exercise of sound judgment” by a county budget commission); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 11, 112 N.E. 138 (1915) (“[i]f a master commands a servant to do a particular thing, without directing him in detail how he shall do it, it is a fair and necessary presumption that the servant is to exercise an intelligent discretion in doing the thing commanded to be done”), *aff’d*, 241 U.S. 565 (1916); *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”). In order to do this, the commission must have the concomitant power to determine on a case-by-case basis whether an entity is a “library association” for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund. *Fed. Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917) (a public officer or body “is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly” in the public’s interests to perform the act, provided such things are not prohibited by statute), *appeal dismissed*, 248 U.S. 547 (1919); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. at 12, 112 N.E. 138 (an officer who is required to perform a duty “has implied authority to determine in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded; otherwise, full directions would have been given the officer or the duty would not have been imposed upon him”). Absent such authority, it would be impossible for the county budget commission to exercise reasonable discretion when deciding how to allocate moneys from the county library and local government support fund. Accordingly, pursuant to R.C. 5705.32(B), the county budget commission determines whether a private entity is a “library association” for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund.<sup>4</sup>

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<sup>4</sup>Although the county budget commission may determine that a private entity is a “library association,” such determination in and of itself does not make the entity eligible to receive moneys from the county library and local government support fund. For example, the entity is not eligible to receive any moneys from this fund unless the commission also determines that the entity was organized and operating prior to January 1, 1968, and that the entity has established rules extending the benefits of its library service to all the inhabitants of the county on equal terms. See R.C. 5705.28(D); 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1996 Op. Att’y Gen. No. 96-023 at 2-80; see also R.C. 5705.32(D).

### Expansion of the Service Territory of a Library Association

Your predecessor's second question, which has two parts, concerns the authority of a library association to expand the territory in which it provides library services. The first part asks whether a library association that does not afford library services to all the inhabitants of the county may amend the charter or trust instrument establishing the association to extend its library services to all the inhabitants of the county so as to be eligible to receive moneys from the county library and local government support fund. The second part asks whether a library association that does not afford library services to all the inhabitants of the county is restricted from extending its library services to all the inhabitants of the county.

Because both parts of his second question relate to the authority of a library association to expand the territory in which it provides library services, we will consider them together. After reviewing the statutory scheme governing the distribution of moneys from the county library and local government support fund and the general powers of library associations, it appears that a library association may expand the territory in which it provides library services when the statutes and documents establishing it authorize it to do so.

There is no statute that prohibits a library association that does not afford library services to all the inhabitants of the county from extending the association's library services to all the inhabitants of the county. Instead, R.C. 5705.28(D) states that, "[t]he board of trustees of any public library desiring to participate in the distribution of the county library and local government support fund shall adopt appropriate rules *extending* the benefits of the library service of such library to all the inhabitants of the county on equal terms." (Emphasis added.) This language indicates a legislative intent to permit a library association that does not afford library services to all the inhabitants of the county to extend its library services to all the inhabitants of the county so as to become eligible to receive moneys from the county library and local government support fund. See 1955 Op. Att'y Gen. No. 5670, p. 392 (a library association may extend its library services to all the inhabitants of a county on equal terms in order to be eligible for moneys distributed under R.C. 5705.32); 1935 Op. Att'y Gen. No. 4271, vol. I, p. 586 (syllabus) (a library association may participate in the distribution of moneys under G.C. 5625-24 (now R.C. 5705.32), "provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts"). Accordingly, the territory in which a library association may provide library services is neither established nor restricted by statute. See 1996 Op. Att'y Gen. No. 96-023 at 2-80; 1955 Op. Att'y Gen. No. 5670, p. 392, at 395; see also 2002 Op. Att'y Gen. No. 2002-016 at 2-93 and 2-94.

A library association has such boundaries or limitations regarding the territory in which it may provide services as may be set forth in the documents establishing the association. See 1996 Op. Att'y Gen. No. 96-023 at 2-80; see also 1955 Op. Att'y Gen. No. 5670, p. 392, at 395 (a library association "would not have any territorial boundaries other than that which it desired to service"). See generally 2002 Op. Att'y Gen. No. 2002-016 (syllabus) ("[t]he authority of the State Library Board under R.C. 3375.01(G) to amend, define, and adjust the boundaries of library districts does not extend to amending, defining, and adjusting the boundaries of Ohio public libraries established by library associations"). Hence, if the documents establishing a library association do not permit it to provide library services to all the inhabitants of a county, the association is prohibited from extending its library



services to all the inhabitants of the county.<sup>5</sup> *See generally* R.C. 1702.04 (the articles of incorporation of a nonprofit corporation must include “[t]he purpose or purposes for which the corporation is formed” and may include “[a]ny lawful provision for the purpose of defining, limiting, or regulating the exercise of the authority of the corporation, the incorporators, the directors, the officers, the members, or any class of members”); R.C. 1713.28 (the articles of incorporation of an association incorporated for library purposes may prescribe “the administration and management of the property, trust, and other funds of the corporation, and such other organic rules as are deemed expedient or acceptable to donors, which shall be the permanent organic law of the corporation”); R.C. 1719.02 (“[a] charitable trust incorporated as provided in [R.C. 1719.01] shall adopt and maintain a code of regulations for its government, and for the administration of the trust, in conformity with the deed or will”).

A library association may, however, amend the documents establishing it through appropriate procedures so as to extend its library services to all the inhabitants of a county when such authority is granted to the association under the statutes and documents establishing the association. *See* 1996 Op. Att’y Gen. No. 96-023 (syllabus, paragraph one) (“[t]he board of trustees of the Mt. Gilead Free Public Library Association may change the territory in which the library operates to be coterminous with the Mt. Gilead Exempted Village School District by amending the association’s articles of incorporation through the appropriate procedures”). *See generally* R.C. 1702.38(B) (the articles of incorporation of a nonprofit corporation may be amended to “[c]hange, enlarge, or diminish its purpose or purposes” or to “[c]hange any provision of the articles or add any provision that may properly be included therein”); R.C. 1719.11 (“[t]he board of directors of a charitable trust incorporated under [R.C. 1719.06-.12] may adopt and change organic rules, regulations, and bylaws”). Accordingly, a library association that does not afford library services to all the inhabitants of the county may extend such services to all the inhabitants of the county so as to be eligible to receive moneys from the county library and local government support fund when such authority is granted to the association under the statutes and documents estab-

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<sup>5</sup>Whether the documents establishing a library association permit it to extend its library services to all the inhabitants of a county requires a determination of the association’s rights and responsibilities under the documents establishing the association. It is inappropriate for a formal opinion of the Attorney General to determine the rights and responsibilities of persons or entities under particular documents. *See* 1988 Op. Att’y Gen. No. 88-059 at 2-298 (the Attorney General may not “use the opinion-rendering function to determine the rights of particular persons or to analyze the provisions of particular agreements”); 1986 Op. Att’y Gen. No. 86-039 at 2-198 (the opinion-rendering function of this office may not be used “to make determinations concerning the validity of particular documents, or the rights of persons under such documents”); 1983 Op. Att’y Gen. No. 83-087 at 2-342 (the Attorney General is “without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties’ rights is a matter which falls within the jurisdiction of the judiciary”). Rather, the determination of a library association’s rights and responsibilities under the particular documents establishing it is best made by the governing body and legal counsel of the library association since they are familiar with the specific provisions of these documents. *See generally* 1996 Op. Att’y Gen. No. 96-051 at 2-192 (“[i]ssues concerning appropriate contractual language are best decided by counsel who works closely with a particular client and is familiar with facts, goals, and practical limitations, as well as with relevant issues of law”).

lishing the association.<sup>6</sup> See generally *Cuyahoga County v. Budget Comm'n of Cuyahoga County*, 152 Ohio St. 351, 356, 89 N.E.2d 456 (1949) (“[n]othing in [G.C. 5625-20 (now R.C. 5705.28)] prevents the subsequent change of the ‘appropriate rules and regulations’ required of such a library where it desires to participate in the proceeds of classified property taxes collected in the county. Consequently, such a library could, after such participation in a particular year and if it did not seek such participation in subsequent years, change those rules and regulations for subsequent years so as to deprive the inhabitants of substantial portions of the county from equal benefits of its library service”); *State ex rel. Brickell v. Frank*, 129 Ohio St. 604, 196 N.E. 416 (1935) (the board of trustees of a free public library may extend its library services and participate in the proceeds of the classified property taxes).

### **The Service Territory of a Library Association May Overlap Territory That Is Served by Another Public Library**

Your predecessor’s final question also has two parts. Part one asks whether a library association may redefine its boundaries to overlap territory that is served by another public library. Part two concerns the authority of the county budget commission to allocate moneys from the county library and local government support fund when the service territories of two public libraries overlap. For clarity, we will consider the two parts of his final question separately.

The first part of his question specifically asks whether a library association may redefine its boundaries to overlap territory that is served by another public library that has boundaries established pursuant to statute or by the State Library Board.<sup>7</sup> Based on current law, a library association may expand its service territory so as to overlap territory that is served by another public library when the statutes and documents establishing the association permit the expansion.

Unlike library districts and libraries established by political subdivisions, the territorial boundaries within which a library association provides library services are not established or regulated by statute. See 1996 Op. Att’y Gen. No. 96-023 at 2-80; 1955 Op. Att’y Gen. No. 5670, p. 392, at 395; see also 2002 Op. Att’y Gen. No. 2002-016 at 2-93 and 2-94; cf. R.C. 3375.06-.07 (boundaries for county free public libraries); R.C. 3375.09-.10 (boundaries for township free public libraries); R.C. 3375.12-.13 (boundaries for municipal free public libraries); R.C. 3375.14-.17 (boundaries for school district free public libraries); R.C. 3375.19-.24 (boundaries for county library districts); R.C. 3375.28-.31 (boundaries for

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<sup>6</sup>A library association that changes the boundaries of the territory in which it provides library services to be coterminous with the boundaries of the county is not entitled to moneys from the county library and local government support fund unless the county budget commission determines that the association is entitled to such moneys. See R.C. 5705.32(B); 1992 Op. Att’y Gen. No. 92-028.

<sup>7</sup>The boundaries of various public libraries and public library districts are established pursuant to R.C. Chapter 3375. See, e.g., R.C. 3375.06-.07 (county free public library); R.C. 3375.09-.10 (township free public library); R.C. 3375.12-.13 (municipal free public library); R.C. 3375.14-.17 (school district free public library); R.C. 3375.19-.24 (county library district); R.C. 3375.28-.31 (regional library district). In addition, R.C. 3375.01 authorizes the State Library Board in certain instances to define and adjust the boundaries of library districts. See also 5 Ohio Admin. Code Chapter 3375-4 (procedures for establishing, redefining, amending, and adjusting library boundaries).

regional library districts). No statute prevents a library association from changing the boundaries of the territory in which the association provides library services. *See generally* 1996 Op. Att’y Gen. No. 96-023 (a library association is permitted to change the territory in which it provides library services to be coterminous with an exempted village school district); 1955 Op. Att’y Gen. No. 5670, p. 392 (a library association may extend the territory in which it provides library services to be coterminous with the county so as to receive moneys from the county library and local government support fund); 1935 Op. Att’y Gen. No. 4271, vol. I, p. 586 (a library association may change the territory in which it provides library services in order to participate in the distribution of moneys under G.C. 5625-24 (now R.C. 5705.32)). This is the case even when a library association changes the boundaries of the territory in which it provides library services so as to overlap territory that is provided library services by another public library.

Nevertheless, as explained earlier, a library association may not change the territory in which it provides library services unless it is authorized to do so by the statutes and documents establishing it. *See* 1996 Op. Att’y Gen. No. 96-023 at 2-81; 1955 Op. Att’y Gen. No. 5670, p. 392, at 395. The documents establishing a library association set forth the boundaries and limitations regarding the territory in which the association may provide library services. *See* 1996 Op. Att’y Gen. No. 96-023 at 2-80. Therefore, a library association may change the boundaries of the territory in which it provides library services so as to overlap territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board when such authority is granted to the association under the statutes and documents establishing the association.

#### **Distribution of Moneys from the County Library and Local Government Support Fund to Public Libraries Whose Service Territories Overlap**

We will now turn to part two of your predecessor’s final question, which concerns the distribution of public moneys to public libraries whose service territories overlap. Specifically, he asked whether a county budget commission may allocate moneys from the county library and local government support fund to a library association that provides library services in territory that is provided library services by a public library that has boundaries established pursuant to statute or by the State Library Board.<sup>8</sup> In accordance with R.C. 5705.32(B), the commission is permitted to allocate moneys from the county library and local government support fund to a qualified library association whose service territory overlaps territory that is served by another public library.

R.C. 5705.32(B) authorizes the county budget commission to allocate moneys from the county library and local government support fund to qualified library associations. R.C. 5705.32(B) states, in part:

The [county budget] commission *shall fix the amount of the county library and local government support fund to be distributed to each board of public library trustees that has qualified under [R.C. 5705.28] for participation*

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<sup>8</sup>It is assumed, for the purpose of this question, that the library association is eligible in all other respects to receive moneys from the county library and local government support fund. *See generally* 2002 Op. Att’y Gen. No. 2002-016 at 2-93 (“[u]nder existing law, library associations that were organized and operating prior to January 1, 1968, may be eligible to receive public funds from the county library and local government support fund, provided that they extend the benefits of their library service to all the inhabitants of the county on equal terms” (footnotes omitted)).

*in the proceeds of such fund....* The commission shall base the amount for distribution on the needs of such library for the construction of new library buildings, parts of buildings, improvements, operation, maintenance, or other expenses. In determining the needs of each library board of trustees, and in calculating the amount to be distributed to any library board of trustees on the basis of its needs, the commission shall make no reduction in its allocation from the fund on account of additional revenues realized by a library from increased taxes or service charges voted by its electorate, from revenues received through federal or state grants, projects, or programs, or from grants from private sources. (Emphasis added.)

Thus, pursuant to R.C. 5705.32(B), a library association is eligible to receive moneys from the county library and local government support fund when the association “has qualified under [R.C. 5705.28] for participation in the proceeds of such fund.” *Accord* 1962 Op. Att’y Gen. No. 2956, p. 292; *see* 1955 Op. Att’y Gen. No. 5670, p. 392; 1935 Op. Att’y Gen. No. 4271, vol. I, p. 586; *see also* 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1996 Op. Att’y Gen. No. 96-023 at 2-80; 1992 Op. Att’y Gen. No. 92-028 at 2-104. *See generally State ex rel. Brickell v. Frank*, 129 Ohio St. at 616, 196 N.E. 416 (“[t]he statutes under interpretation give the board [of library trustees], on complying with the prescribed terms, the right to participate in the proceeds of classified property taxes in extending the educational opportunities afforded by the public library to people residing in its environs who would otherwise be without such facilities”).

The qualifications that a library association must satisfy before it may be eligible to receive moneys from the county library and local government support fund are set forth in R.C. 5705.28(D). This division provides that a library association that was organized and operated prior to January 1, 1968, and that extends its services to all inhabitants of the county on equal terms is qualified to request moneys from the county library and local government support fund. *See* 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1996 Op. Att’y Gen. No. 96-023 at 2-80; 1992 Op. Att’y Gen. No. 92-028 at 2-104. No language in this division or elsewhere in R.C. 5705.28 expressly states or implies that a library association that provides library services in territory that is served by another public library is not qualified to participate in the distribution of moneys from the county library and local government support fund. Absent such language in R.C. 5705.28, it reasonably follows that a library association that is otherwise qualified under R.C. 5705.28 to request moneys from the county library and local government support fund is eligible to participate in the distribution of moneys from such fund pursuant to R.C. 5705.32(B), notwithstanding the fact that the association provides library services in territory that is served by another public library. *See generally Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910) (“an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience”); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) (same). *See generally also Columbus-Suburban Coach Lines, Inc. v. P.U.C.O.*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969) (“[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used”). Accordingly, pursuant to R.C. 5705.32(B), a county budget commission may allocate moneys from the county library and local government support fund to a library association that provides library services in territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board, provided the library association qualifies under R.C. 5705.28 for such moneys.

### Conclusions

To the extent that it is possible to provide general guidance on library associations, it is my opinion, and you are hereby advised as follows:

1. For purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund, a "library association" is an incorporated or unincorporated organization of people for the common purpose of establishing and operating a public or private institution in charge of the care and circulation of books, periodicals, musical scores, and other similar type items.
2. Pursuant to R.C. 5705.32(B), the county budget commission determines whether a private entity is a "library association" for purposes of the statutory scheme governing the distribution of moneys from the county library and local government support fund.
3. A library association that does not afford library services to all the inhabitants of the county may extend such services to all the inhabitants of the county so as to be eligible to receive moneys from the county library and local government support fund when such authority is granted to the association under the statutes and documents establishing the association.
4. A library association may change the boundaries of the territory in which it provides library services so as to overlap territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board when such authority is granted to the association under the statutes and documents establishing the association.
5. Pursuant to R.C. 5705.32(B), a county budget commission may allocate moneys from the county library and local government support fund to a library association that provides library services in territory that is served by another public library whose boundaries have been established pursuant to statute or by the State Library Board, provided the library association qualifies under R.C. 5705.28 for such moneys.