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LIBRARY, SCHOOL DISTRICT—NOT ESTABLISHED PRIOR TO SEPTEMBER 4, 1947—BOND ISSUE FOR—NOT AUTHORIZED BY SECTION 3375.43, RC—LIBRARY BUILDING FOR PRIVATE ASSOCIATION—FREE PUBLIC LIBRARY SERVICE—BOND ISSUE NOT AUTHORIZED.

## SYLLABUS:

Section 3375.43, Revised Code, does not authorize the issuance and sale of bonds for the establishment or construction of a library by a school district which had not prior to September 4, 1947, established a school district library; nor does it authorize any school district to issue bonds for the erection of a library building for a private association even though it renders free library service to the public.

Columbus, Ohio, July 10, 1956

Hon. Oliver R. Marshall, Prosecuting Attorney  
Lake County, Painesville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Perry Library is an association library which has operated in Lake County for a number of years. This association was apprised of the changes in the laws relating to libraries in 1947, and chose to remain an association library, but supported by public funds. Now, however, the library has need for a new building and has been advised that its public funds cannot be used for the purpose of constructing a building. The Perry Local School District is willing to make available the necessary land, and the problem is how to raise the funds to construct a building. The library has been located in a private dwelling in Perry Village and the school property site is also located in Perry Village. The library serves the pupils in the Perry Local School District as well as the citizens of Perry Village and Perry Township, and the rules of the library association extend its services throughout Lake County, Ohio.

Section 3375.43 of the Revised Code of Ohio provides in part as follows:

“Any public library board of trustees charged with the title, custody, control, and maintenance of a public library in the state may request the taxing authority of the political

subdivision to the jurisdiction of which such board is subject to submit to the electors of such subdivision the question of issuing bonds for the purpose of purchasing, erecting, constructing, enlarging, extending, or improving a building for library purposes, including a site therefor, and equipping and furnishing the same.'

"This section of the code was originally enacted in Volume 115 Ohio Laws, Part 2, 275, effective March 8th, 1935. Subsequent thereto in 1947 the library laws of the State of Ohio were almost completely revised and the political subdivisions which in 1935 had the power to establish libraries, no longer have any such power."

"My questions are :

"1. Does Section 3375.43 of the Revised Code of Ohio permit the issuance and sale of bonds to construct an association library building?

"2. If your answer to question (1) is affirmative then to what political subdivision or subdivisions should the question of the issuance of bonds be referred?"

Prior to the enactment of House Bill No. 125, effective September 4, 1947, 122 O. L. 166, school districts were by Section 7635, General Code, given express authority to establish public libraries. That section reads as follows :

"The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided, which board shall hold title to all such library property.

"Such boards of education shall also have the power for such purpose or purposes to purchase, erect, construct, enlarge, extend or improve a building or buildings for library purposes, including a site or sites therefor, and equipping and furnishing the same."

There were similar provisions found in Section 3403, General Code, as to townships; in Section 3620, as to municipal corporations; and in Section 2976-11, as to counties.

By the Act of 1947 above referred to, all of these sections were repealed, and since that time a board of education has had no authority to establish a new library or appoint a library board. This situation was

recognized and commented upon by the Court of Appeals of Cuyahoga County, in State, ex rel. Shaker Heights Public Library v. Main, 83 Ohio App., 415. In the course of the opinion the court said :

“As the statutes now stand, no kind of public library except a county district library can be created.”

However, the court recognized that the powers of library boards which had established libraries prior to this new legislation remained in full force. Referring to Section 4840-1 through Section 4840-5, General Code, which were embodied in the new Act, the court said :

“In the enactment of Sections 4840-1 through 4840-5, General Code, the General Assembly clearly manifested its intention to recognize free public libraries established by virtue of Section 7635, General Code, in any school district prior to the effective date of such new General Code sections.”

Sections 4840-1 through 4840-5, General Code, now appear as Sections 3375.15 through 3375.18, of the Revised Code. Section 3375.15 provides in part as follows :

“In any school district in which a free public library has been established, by resolution adopted by the board of education of such school district, prior to September 4, 1947, such library shall be under the control and management of a board of library trustees consisting of seven members. \* \* \* This section does not affect the term of any member of a board of library trustees of a school district free public library appointed prior to September 4, 1947.”

Section 3375.17, Revised Code, authorizes the board of library trustees of the school district library annually to certify to the board of education of the school district the amount of money needed to maintain and operate said library during the ensuing year and the board of education is authorized to levy a tax not to exceed one and one-half mills for that purpose. Section 3375.18, Revised Code, reads as follows :

“The board of education of any city, exempted village, or local school district in which a free public library has been established by resolution of such board of education, prior to September 4, 1947, may purchase, erect, construct, enlarge, improve, equip, or furnish a building for the purpose of rendering free public library service to the inhabitants of said school district.”

It will thus be seen that the legislature has limited the above powers strictly to those library boards of school districts which had established

such library prior to September 4, 1947, the effective date of the new Act, and there has been no subsequent legislation conferring upon any board of education the right to create a library board or provide for the establishment of a school district library.

In Section 3375.43, Revised Code, from which you have quoted, it appears that the authority there given to request the political subdivision under whose authority the library board exists, to submit the question of issuing bonds, is limited to any such board as is "charged with the title, custody, control and maintenance of a public library." The language used would not by any possibility permit the exercise of this authority by any library board which did not have a library prior to the effective date of the act. And certainly it could not authorize the trustees of a private library association to request such bond issue, even though it is furnishing free public library service to the community. The language of the section plainly limits its application to public bodies.

Your letter refers to a library association which had maintained a library for a number of years. A library association, which is sometimes referred to as a private library, has no standing as a public body even though it may furnish a valuable service to the public, and I know of no authority in the law whereby such a library may receive public funds either for its construction or maintenance. There is a provision in Section 3375.42, Revised Code, whereby the board of education may make a contract with such private organization for library service. That section reads in part, as follows:

"The board of county commissioners of any county, the board of education of *any school district*, the legislative authority of any municipal corporation, or the board of township trustees of any township may contract with the board of library trustees of any public library, or with any private corporation or library association maintaining a free public library, situated within or without the taxing district, to furnish library service to all the inhabitants of said taxing district, and may levy a tax, or make an appropriation from its general fund, therefor." \* \* \*

(Emphasis added.)

The authority here given to a board of education to contract with a private organization for library service, is not limited to a district which has a library, but is open to any board of education, and accordingly it furnishes a district which is barred from establishing a library of its own, a means of partially supplying that want. That it is the policy of

the law to encourage such private library organizations while not directly supporting them, is shown by Section 3375.16, Revised Code, which provides:

“The board of education of any school district may, by resolution, transfer, convey, or lease any property of the school district, real or personal, suitable for public library purposes to the board of trustees of any free public library rendering free public library service to the inhabitants of the school district, upon such terms as are agreed upon between the board of education and the board of trustees of the library rendering such service.”

It seems quite clear that the power given by Section 3375.43 supra, to make the request for the issuance of bonds for “purchasing, erecting \* \* \* a building for library purposes”, is limited to a library board which has the authority to establish a library, and such power is further limited to a board which is “subject to the jurisdiction” of a political subdivision. This would also exclude a private association from initiating such a request, since it is in no sense subject to the jurisdiction of any political subdivision. Furthermore, a school district such as the one referred to in your letter, having no library of its own, and being without power to establish one, certainly cannot request such bond issue on behalf of a private association. And the board of education would be wholly without authority to submit such request to the electors.

In specific answer to your question it is my opinion that Section 3375.43, does not authorize the issuance and sale of bonds for the establishment or construction of a library by a school district which had not prior to September 4, 1947, established a school district library; nor does it authorize any school district to issue bonds for the erection of a library building for a private association even though it renders free library service to the public.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General