

593.

JANITOR OF COUNTY LIBRARY BUILDING OF COUNTY LIBRARY  
DISTRICT—NOT UNDER CIVIL SERVICE.

## SYLLABUS:

*The janitor of a library building of a county library district is not within the civil service of the state or of a county, city or city school district and may be employed or dismissed at the will of the board of library district trustees of such district without the necessity of charges being filed as provided in Section 486-17a, General Code, or any of the procedure therein being followed.*

COLUMBUS, OHIO, June 9, 1927.

*The State Civil Service Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your communication reading as follows:

“The following is a part of a letter received from Hon J. Carl Marshall, Prosecuting Attorney of Greene County, Ohio, in which he requests the opinion of this commission, and we are forwarding same to your office and respectfully request your opinion in the matter:

“The Xenia Library Association which is organized under the laws of Ohio as a corporation not for profit but for library purposes only, after operating several years, became short of funds and in 1913 made an agreement with the county commissioners whereby the commissioners were to make a levy for the maintenance of the library and the trustees of the association made a conveyance of the real estate and also the personal property, including books, to the commissioners in trust for library purposes. However, the janitor was not under civil service until probably 18 months or 2 years ago. Your records, however, will disclose this: the name of the janitor being S. S. This janitor has not been satisfactory and charges of incompetency can be established.

At the last general election, November, 1926, the Greene County Library District was created by a vote of the people as provided in Section 7643-1 and the library property, including real and personal property will be conveyed back to the county district library trustees as provided in Section 7643-4a.

It is true that a levy will be made to maintain this library but it is on account of the vote of the people and not a levy of the commissioners as before. Therefore, I believe that the janitor of the new library district would not be under civil service, as the only way the position could come under the civil service before was for the reason that he was considered an employee of the political subdivision, namely, the county; but that is no longer the case and in my opinion since the district has been created by a vote of the people, the janitor would no longer be under civil service. If my opinion is correct that the janitor is no longer under civil service, it would obviate the filing of charges and the trustees would be free to employ some one else.

I will be greatly pleased to have the opinion of the commission on the above matter and hope that I may have an early reply.”

Additional information obtained from the prosecuting attorney is to the effect that the question of the creation of the Greene County Library District was submitted to a vote of the electors at the November, 1926, general election pursuant to a petition signed by more than twenty-five per cent of the electors and filed with the probate judge.

The proceedings for the creation of the Greene County Library District were undoubtedly had under Section 7643-7a, General Code, which provides:

"In any county in which at the time this act (G. C. Sections 7643-1 et seq.) takes effect a county tax is being levied for a county library organized under Sections 2454, 2456, 2976-11 to 2976-17 of the General Code or for county library service by contract with a public library under Section 2455 of the General Code, by mutual agreement between the governing body of such county library or contracting public library and the county commissioners, a county library district may be created composed of all or part of the county, to which all the provisions of this act shall apply, or upon petition of not less than twenty-five per cent of the electors residing in the district, the question of creating a county library district shall be submitted to the electors as provided in Section 7643-1 of the General Code. After the creation of such county library district, property belonging to the county library, both real and personal, shall by resolution of its governing body be transferred to the county library district trustees."

The provisions of the law of Ohio with reference to the creation and maintenance of county library districts are contained in Section 7643-1 to 7643-9, General Code, both inclusive. Without setting out in full all of said sections they provide briefly as follows:

Section 7643-1 provides that county library districts may be created in any county composed of taxing districts, in which public library service supported in whole or in part by tax moneys is not furnished to the citizens thereof. The procedure as outlined in said section calls for the filing in the probate court of a petition signed by not less than ten per cent of the electors residing in the proposed district, specifically describing the territory in such proposed district, whereupon the probate judge shall fix a day for the hearing thereof not more than thirty days after the filing of such petition. If the probate judge finds the territory sufficiently described he shall certify such fact to the deputy state supervisor of elections of the county who shall submit the question to the electors residing in the territory comprising such proposed district at the next regular or general election. A majority of the votes cast is required to create the district.

Section 7643-2, provides that the management of the county library district shall be vested in a board of five trustees to be appointed by the common pleas judge or judges and by the county commissioners.

Section 7643-3 provides:

"Such board shall levy annually for district library purposes a tax on all the taxable property of the county library district of not less than two-tenths of a mill nor more than one mill."

Section 7643-6 provides:

"The county library district trustees shall serve without compensation,

but their necessary expenses shall be allowed and paid out of the county district library fund. They shall have power to receive bequests or gifts of real or personal property, or of money; to purchase, lease or dispose of grounds and buildings; to construct buildings and to furnish, equip and maintain the same for library purposes. They shall render an efficient library service in their respective districts. They shall submit an annual report of service, statistics and finances to the county commissioners and the state director of library service in such form as shall be required by the latter. They shall draw up annually a budget, showing in detail the purposes for which it is proposed the money be expended during the succeeding year, and certify same to the budget commission, which amount shall be allowed by the budget commission in addition to all other levies, provided such amount shall be within the limits as set forth in section three."

Section 7643-7 provides that all moneys realized from the levy made for the district under the provisions of the act, including interest on library funds, and all moneys received or collected by the trustees for the district be placed in the county treasury subject to the order of such board of trustees. The funds shall be known as the county library district fund of such county of which fund the county treasurer shall be the custodian and no money shall be withdrawn therefrom except upon proper requisition of the board of trustees of such library district, certified by the president and secretary of such board, directed to the county auditor, who shall draw his warrant upon the county treasurer therefor. Any part of said funds unexpended during any year shall remain to the credit of the library district fund.

A county library district as established under Sections 7643-1, et seq., General Code, or under Section 7643-7a, where as in the case under consideration there is already a county library service supported in whole or part by tax moneys, may or may not be coextensive with the territorial limits of the county. It is not essentially a county function when so established. It is a separate entity within the county. It is true that such a district is established and maintained by taxes levied and expended in accordance with Sections 7643-3 and 7643-7, supra, but such taxes are levied on property within the library district and not on property within the county generally. The management and control of the library is entirely within the hands of the five trustees appointed under Section 7643-2, supra, and the action of such trustees in fixing the budget of proposed expenditures for any year is not even subject to the control of the budget commission. As provided in Section 7643-6, supra, the budget commission must allow the amount of such budget in addition to all other levies provided such amount is not less than two-tenths of a mill and does not exceed one mill. It will, therefore, be seen that a county library district is an entity separate and distinct from the county itself irrespective of whether or not it is coextensive with the territorial limits of the county.

Section 486-1, General Code, provides in part:

"1. The term 'civil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof."

Section 486-8, General Code, provides:

"The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified and the classified service."

These and the related sections of the General Code were enacted pursuant to the provisions of Section 10, Article XV, of the Constitution of Ohio, which reads as follows:

“Appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.”

By their terms, the sections of the General Code, above quoted, are limited to the “civil service of the State of Ohio and the several counties, cities and city school districts”. Thus far, the legislature has not seen fit to make any provisions with reference to the civil service of county library districts, and it seems clear that the position of janitor of a library building of a county library district does not fall within the civil service of the state, a county, city or city school district.

It is therefore my opinion that the janitor of a library building of a county library district is not within the civil service of the state or of a county, city, or city school district and may be employed or dismissed at the will of the board of library district trustees of such district without the necessity of charges being filed as provided in Section 486-17a, General Code, or any of the procedure therein being followed.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

594.

APPROVAL, CONTRACT FOR INSTALLATION OF SIDE TRACKS CONNECTING STATE HIGHWAY GARAGE WITH D. T. & I. R. R. TRACKS AT WASHINGTON C. H., OHIO.

COLUMBUS, OHIO, June 9, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of June 7th resubmitting for my approval corrected agreement in duplicate between the state of Ohio and the D. T. & I. R. R. Company, pertaining to the establishment of a side track connecting the state storage yard located at Washington C. H., Ohio, with the tracks of the railroad company.

Having carefully examined this agreement, and finding the same correct in form and legal, I am therefore approving the same.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*