

of the director of agriculture, the assistant director cannot legally exercise the functions and powers of the director during his absence or incapacity, unless such assistant be designated by the director so to do.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4226.

NOTES—ISSUED BY TRUSTEES OF PUBLIC LIBRARY UNDER AMENDED SENATE BILL NO. 323—FEDERAL RESERVE BANKS MAY INVEST IN SUCH.

SYLLABUS:

The notes issued by a board of trustees of a public library under the authority of Section 7, of Am. S. B. 323, enacted by the 89th General Assembly, are legal investments for Federal Reserve Banks under the provisions of Title 2, Section 355, U. S. Code.

COLUMBUS, OHIO, April 2, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for opinion on the question as to whether public libraries are "political subdivisions" within the meaning of that term, as used in Section 14-B, of the Federal Reserve Act, and also your enclosure of letter from the president of a board of education library. The section to which you refer is U. S. Code, Title 12, Section 355, and reads as follows:

"Every Federal reserve bank shall have power to buy and sell, at home or abroad, bonds and notes of the United States, and bills, notes, revenue bonds, and warrants with a maturity from date of purchase of not exceeding six months, issued in anticipation of the collection of taxes or in anticipation of the receipt of assured revenues by any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage and reclamation districts, such purchases to be made in accordance with rules and regulations prescribed by the Federal Reserve Board."

Your question might well be stated: Are notes issued by authority of Section 7, of Am. S. B. 323, enacted by the 89th General Assembly, by the board of trustees of a public library, legal investments for Federal reserve banks? This office has repeatedly held since the enactment of "The Uniform Bond Act" and prior to the enactment of Am. S. B. 323 that such boards of trustees have no authority to borrow money or issue bonds. See Opinions of the Attorney General for 1928, page 3097, and Opinions of the Attorney General for 1930, page 800. A like decision was reached by the Court of Appeals of Lucas County, in the case of *State ex rel. Finegold vs. Board of County Commissioners*, 29 O. A. 364.

In Opinion 4118 rendered to your Bureau under date of March 2, 1932, (Opinions of the Attorney General for 1932) I held that by virtue of the language

contained in Section 7, of Am. S. B. 323, enacted by the 89th General Assembly, boards of trustees of public libraries could borrow funds in the amounts and upon the terms and conditions set forth in such section, which, in so far as material, reads as follows:

"In the years 1932 and 1933, any board of public library trustees or any board of township park trustees may, in anticipation of the distribution herein authorized, borrow not to exceed one-third of the distributable share of such board and issue its notes therefor, payable not more than six months after date, bearing not to exceed six per cent. interest."

Your inquiry raises the question as to whether a public library comes within the classification of any of the issuing subdivisions mentioned in Title 12, Section 355, U. S. Code. It is an almost universal rule that when a statute enumerates certain bodies and gives them power to do certain things, such enumeration shall exclude all others of similar kind. See *Cincinnati vs. Roettinger*, 105 O. S. 145; *Weirick vs. Lumber Company*, 96 O. S. 386.

From the language of the statute itself, it is self-evident that a public library can come within none of the classifications unless it constitutes a "district" or a "political subdivision."

"District" is defined in Bouviers Law Dictionary as:

"A certain portion of the country separated from the rest for some special purpose."

"District" is defined in 18 Corpus Juris, page 1292 as:

"A defined portion of a state, county, town, borough, or city for legislative, judicial, fiscal, or election purposes; a precise portion of territory or division of a state; a portion of territory of undefined extent. It may be given the same meaning as county, although an area larger or smaller than a county may be intended by the use of the word. The term does not necessarily mean a civil division in a state, but may be synonymous with 'region', section of country, or locality."

In each of the classes of public libraries authorized by the General Code, definite territorial limits are fixed. In the case of a "county library district library" the limit may be co-extensive with the county; a municipal library co-extensive with the city, etc. Each public library is supported in whole or in part by means of taxes derived from, and assessed upon the citizens of such library district. It is therefore evident that a "public library district" is a district within the meaning of Section 355, Title 12, U. S. Code. Since bonds or notes of a district can only be issued by its governing officers, Congress must have intended to authorize Federal reserve banks to invest in bonds or notes of the type mentioned in such section when issued by the governing officers of a district.

"Political subdivision" has been defined by the Supreme Court of Mississippi, in *Standard Oil Company vs. National Surety Company*, 143 Miss., 841:

"A political subdivision of a state is a subdivision thereof to which has been delegated certain functions of local government."

An examination of authorities discloses that the term "political subdivision" is not used in the same sense in each type of laws. When used in the Election Law the term is held to mean the district from which any public officer is authorized by law to be elected. *Matter of Richards*, 167 N. Y. Supp. 152.

In Missouri, where the term has been used in the Constitution as limiting the indebtedness of any political subdivision (Constitution, Article X, Section 12) the term has been construed to include a school district and a levee district. *Morrison vs. Morey*, 146 Mo., 543. I do not find any definition of such term within the Federal Reserve Act, nor do I find any decision of the Federal Courts defining such term.

The term "political subdivision" is not used in the Ohio statutes. The term "subdivision" has been defined by statute in the Uniform Bond Act and in the Budget Act (Sections 2293-1 and 5625-1, General Code) as:

"'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state."

This same definition is contained in both acts. These definitions are for the purposes of the act of which they are a part and would not bind a court on any other subject.

From the foregoing, it might be deduced that a public library is either a district or a political subdivision.

It must be borne in mind that it is peculiarly within the province of the Federal courts to interpret the meaning of the Federal statutes, and such rulings, when made, become binding upon State courts. Therefore, my opinion herein expressed cannot have any binding effect upon the administrative officers of the Federal Reserve Bank, nor upon their duly constituted legal advisers.

Specifically answering your inquiry, it is my opinion that the notes issued by a board of trustees of a public library under the authority of Section 7 of Am. S. B. 323, enacted by the 89th General Assembly, are legal investments for Federal Reserve Banks under the provisions of Title 12, Section 355, U. S. Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4227.

WATER RIGHTS—CHANNEL FLOWING THROUGH LANDS OWNED BY STATE—STATE MAY NOT DIVERT WATER SO AS TO INJURE ADJOINING RIPARIAN OWNER—MAY USE WATER FOR FISH HATCHERY.

SYLLABUS:

When the source of water flowing in a natural channel or water course on and through lands owned by the state and thence on and through lands of an adjoining proprietor is a spring on the lands owned by the state, the state has no legal right to divert the water from the spring on to adjoining non-riparian land,