

1970

PROSECUTING ATTORNEY—NO LONGER REQUIRED TO ACT AS LEGAL ADVISER AND REPRESENTATIVE OF COUNTY LIBRARY DISTRICT—SECTION 7643-10 G. C. REPEALED.

SYLLABUS:

Since the repeal of Section 7643-10, General Code, the prosecuting attorney of a county is no longer required to act as the legal advisor and representative of a county library district.

Columbus, Ohio, June 29, 1950

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“During the year 1949, a county library district for Montgomery County was created under the provisions of Section 7643-1a G. C., which section became effective September 20th, 1949.

“A board of library trustees was appointed and qualified under the provisions of Section 7643-2, G. C.

“Under the provisions of former section 7643-10 G. C. that was repealed September 4, 1947, the Prosecuting Attorney was the legal adviser of the county library district, and required to represent the trustees in all cases in Court.

“Section 7643-1a which became effective in September 1947 provided for the transfer by all the library boards and taxing districts of the title to and interest in all property, both real and personal in the name of the public library under their jurisdiction to the board of trustees of the county library district.

“The legislature since its repeal of Section 7643-10 by which repeal, the Prosecuting Attorney of the county was removed as the legal representative of the county library district, has made no provision requiring the Prosecuting Attorney to act as the legal representative of the county library district. Therefore I am asking your opinion, should my office be required to perform the legal duties of the county library board as now re-organized.”

The question which you presented involves the definition of the expression "county boards" within the meaning of Section 2917, General Code. That section reads in part as follows:

"The prosecuting attorney shall be the legal advisor of the county commissioners and all other county officers and county boards * * *"

While it is true that with the repeal of Section 7643-10, General Code, effective September 4, 1947, removed from the act providing for county library districts a specific provision that the prosecuting attorney should be the legal advisor of the board of trustees of such county library districts, I think it is clear that if such boards of trustees can be considered county boards the prosecuting attorney would nevertheless be required to continue to serve them in the capacity of legal advisor by reason of Section 2917, General Code.

The question of the status of boards of trustees of county library districts was considered in an opinion of one of my predecessors, No. 593, Opinions of the Attorney General for 1927, page 1006. That opinion stated in part on page 1008:

"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."

Since the rendition of this opinion the statutes applicable to county library districts have been changed in the following respect:

- (a) Sections 7643-3 and 7643-6, General Code, vesting sole taxing authority in the board of trustees of the county library district have been repealed effective September 4, 1947.
- (b) The following sections have been enacted effective September 4, 1947:
 1. Section 7643-3:

“The board of library trustees of a county district free public library may annually, during the month of May, certify to the board of county commissioners of a county in which such library district is situated the amount of money required to maintain and operate said free public library during the ensuing year and the amount of revenue anticipated from all sources other than a tax levy on the taxable property of said county library district. The board of county commissioners of said county may annually levy a tax on the taxable property of the county library district not to exceed one mill for the purpose of providing funds for library operation pursuant to said certification. The tax so levied shall be in addition to all other levies authorized by law and subject to no limitation of tax rates as herein provided.”

2. Section 7643-11:

“The commissioners of any county, which has a county library district shall constitute the taxing authority of such county library district and shall have power to issue notes and bonds of such county library district under the provisions of the uniform bond act for the acquisition of land and the construction of buildings and equipment of one or more buildings, but no notes or bonds shall be issued for such purpose except in accordance with the vote of the electors of such county library district.”

3. Section 7643-12:

“All funds provided by the issue of county bonds or notes, or in any other manner, for the acquisition of property and the construction and equipment of library buildings shall be deposited in a special library fund, which shall be expended only on the order of the county library district board, to be handled and disbursed in the same manner as other funds of the county library district. The title of all property so acquired shall remain in the name of the county, and the consent of the county commissioners shall be essen-

tial to its ultimate sale or disposition, but the board of the county library district shall have full charge of the said property and building, with power to do all things as if it held title to the same, and section 2433-1 of the General Code shall not apply thereto."

4. Section 7628:

"The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall be bodies politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property and of exercising such other powers and privileges as are conferred upon them by law."

With these changes in mind, it can be seen that some of the reasons in the opinion of my predecessor why a county library district should be considered an entity separate and distinct from the county itself no longer exist. It is to be noted, however, that county library districts under the present statutes may or may not be coextensive with the territorial limits of the county. The taxes levied for the support of such districts are not levied on all the property in the county but only on those within the county library districts. Although the management and control of the library board has been restricted with respect to the conveyance of property acquired by it, it is still vested with the complete control of the purely library functions. And finally, Section 7628, General Code, now provides in express terms that the county library district shall be a body politic and corporate.

All of these considerations, I think, pretty clearly indicate that such county library district is not essentially a subdivision of the county nor a subordinate department of the county. From this it would follow that the general provisions of Section 2917, General Code, would not be applicable so as to constitute the prosecuting attorney as the legal advisor of the board of trustees of such county library district.

Accordingly, if the board of trustees of a county library district cannot be considered a county board within the meaning of Section 2917, General Code, it is clear that the county prosecutor would not be the legal advisor of such board unless special statutory provision were made therefor. Because prior to September 4, 1947, such a special statutory pro-

vision did exist and because that special statutory provision was expressly repealed on that date, I think it is clear that it was the legislative intent to remove the requirement that the prosecuting attorney should continue to act in that capacity. In view of the foregoing and in specific answer to your inquiry, it is my opinion that since the repeal of Section 7643-10, General Code, the prosecuting attorney of a county is no longer required to act as the legal advisor and representative of a county library district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.