

1952 O. A. G.

OFFICIAL OPINION NO. 13

January 30, 1952.

Mr. Harold F. Brigham, Director
Indiana State Library,
140 N. Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion in which you state the following preliminary facts:

“The State Library respectfully requests an official opinion covering two aspects of the Library Law of 1947 which are referred to in the accompanying memorandum.

“The opinion requested relates to the conversion of libraries to the law of 1947, which becomes mandatory January 1, 1953 and therefore affects library budgets and levies to be made in 1952 for the year 1953.

“Slightly more than half of the libraries concerned have effected conversion. The remaining libraries have delayed or avoided converting due to certain provisions of the Act or present interpretation of these provisions. This situation has become increasingly acute as the time limit for conversion approaches and as tax levies for the year 1953 come in question only a few months hence.

“It is necessary to clarify the whole situation just as soon as possible in order that libraries may take action on conversion in time to avoid serious complications and embarrassments. Hence our request for an official opinion in our capacity as advisors to the libraries of Indiana.”

You then proceed to ask certain specific questions and to make various comments concerning those questions.

“I. Effects of non-conversion to the Library Law of 1947 with regard to tax levy in 1952 for the year 1953.

OPINION 13

"The Acts of 1947, Chapter 321, Section 7, requires Class III public libraries to convert to Class I status on or before January 1, 1953. Any Class III library 'failing to convert itself by January 1, 1953 shall on that date cease to be a public library of this state and the property of such library shall become the property of the municipal corporation or corporations which had theretofore provided tax support for said library and may be used by the proper officials of such municipal corporation or corporations in forming a new library or otherwise to the benefit of the municipality.'

"Our Questions:

"1. IN VIEW OF THE ABOVE PROVISION, WHAT WILL BE THE STATUS OF CLASS III (NON-CONVERTED) LIBRARIES WITH RESPECT TO THEIR RIGHT IN 1952 TO ADOPT A BUDGET AND SET A LEVY FOR 1953?

"2. CAN THE COUNTY TAX ADJUSTMENT BOARDS AND STATE BOARD OF TAX COMMISSIONERS APPROVE 1953 BUDGETS AND TAX LEVIES OF LIBRARIES THAT ARE STILL CLASS III AT THE TIME OF THE REVIEW IN 1952?

"II. Definition of 'Library District' and its bearing on conversion to the Library Law of 1947.

"Our Question:

"DOES A CITY OR TOWN, *TOGETHER WITH THE TOWNSHIP(S) SERVED*, CONSTITUTE A 'LIBRARY DISTRICT' UNDER PROVISIONS OF CHAPTER 321 OF THE ACTS OF 1947, THEREBY PERMITTING SUCH TOWNSHIP(S) TO HAVE DIRECT REPRESENTATION ON THE LIBRARY BOARD THROUGH APPOINTMENT OF TOWNSHIP RESIDENTS BY THE CIRCUIT JUDGE?

"Comments:

"1. Many Class III libraries operating under the Acts of 1901, Chapter 55, extend service to townships. Section 3 of that Act provides for membership of a township appointee on a city or town library board, based on financial support of the library by the township. Thus the total library service area, comprising the city or town and township(s), has been,

in the circumstances, under the management of one library board, including the township representatives.

"2. Class III libraries are required to change to Class I status by converting to the law of 1947, cited above, by January 1, 1953. That act in Section 8 provides for township representation on the library board as follows: 'If there are any townships which are a part of such library district, the judge of the circuit court shall in making his appointments endeavor to give such township or townships an equitable representation on such board.'

"3. An inter-department memorandum, dated April 17, 1947, from Winslow Van Horne, then Deputy Attorney General, construed the law to mean that a 'library district' would not embrace the township(s) served by a city or town library. This meant that conversion to the Library Law of 1947 would call for conversion of the city or town library only. This in turn set up the anomalous requirement that the township(s) served by the library find representation on the new library board through one or more of the appointees of the Judge of the circuit court, all of whom were required by Section 8 to be residents of the city or town. This anomaly has discouraged conversion to the law of 1947 because the township(s) would lose their present direct representation, and the library's principal source of income would be jeopardized in consequence."

Your first question is, in substance, whether or not a Class III library which, by provision of Chapter 321 of the Acts of 1947, same being Burns' 41-901 *et seq.*, ceases to exist on January 1, 1953, can adopt a budget and set a levy for 1953.

Section 1 of Chapter 275 of the Acts of 1947, same being Burns' 64-1331, provides for the filing of budgets by local taxing units. In such budgets they are required to anticipate the next year's expenses and revenues.

Inasmuch as Section 7 of the 1947 Act, same being Burns' 41-907, is clear and unambiguous in its provision that Class III libraries cease to exist on January 1, 1953, and it is equally clear under the provisions of Section 5 and Section 7 that the library districts established by conversion, under the provisions of Chapter 321 of the Acts of 1947, are new and independent municipal corporations and separate and distinct tax-

OPINION 13

ing districts. It clearly follows that the present organization (constituted in various manners under various acts) has no authority to act for, or bind, any successor group that may be established, particularly in view of the possibility of different territorial extent. Thus, it is my opinion that a Class III library may not adopt a budget and set a levy for 1953.

My answer to your first question obviates the necessity of answering your second question.

Your third question is, in substance, whether or not a Class III library which is the city or town library, serving township or townships, under contract when converted, includes only the city or town, or both the city or town and the township or townships, in the new library district. As a preliminary observation it is necessary to notice that, under the existing statutes providing for service under contract by a city or town and adjacent townships, the only relationship established is one of contractual obligation; that is to say the library remains a city or town library which, for a stated or determinable price, extends service to other areas in addition to the city or town. Thus, when converted, the new district will remain a town or city library district. Section 10 of the 1947 Act, same being Burns' 41-910, provides for extension of services by such new library district to adjacent townships by the creation of extended service districts. The act also contains authority for merger of library districts and for county library districts.

Thus, although the converted library will remain the library of the district for which it was previously organized, substantially similar provisions are made for continuing service to neighboring townships.