

MAY 29, 1959

HON. JOSEPH E. CLAYTON  
*Assistant Commissioner of Education*  
175 West State Street  
Trenton, New Jersey

## FORMAL OPINION 1959—No. 10

DEAR COMMISSIONER :

You have requested our opinion as to the validity of a so-called "personnel ordinance" of a municipality insofar as it purports to apply to the board of trustees of the free public library of that municipality. The question arises because of the apparent conflict between such an ordinance and N.J.S.A. 40:54-12, which among other things authorizes the board of library trustees to "hire librarians, and other necessary personnel, and fix their compensation."

Ordinances of the type in question may include substantially the following provisions:

1. The governing body shall establish an employment policy relating to all municipal government operations, and shall approve the creation of any new position.
2. A new position cannot be filled by any municipal department without prior authorization from the governing body, which must also provide in its budget a specific amount for the compensation of each new appointee.
3. Vacancies in positions are to be filled by the governing body by selection from a list of applicants, such list in some cases being compiled by a central personnel office.
4. All positions in the municipal service shall be classified according to duties and responsibilities, with a view to establishing similar requirements as to training and experience and similar rates of compensation with respect to positions in each class.
5. Schedules of annual or hourly rates of compensation are prescribed for the respective classes of positions.
6. Schedules are also prescribed to govern hours of work, attendance requirements and their enforcement, and similar matters. The schedules may either be established by the governing body or by a personnel office.
7. Rights to and the extent of vacation leave, sickleave, and special leave are set forth on a uniform basis.
8. Promotions and dismissals must be approved by the governing body or by a personnel office.
9. Retirement policies and procedures are established, including provisions for an optional and for a mandatory retirement age.
10. In some cases, grievance procedures are provided for, with jurisdiction being given to a personnel office to adjudicate the matter.

Provisions such as the foregoing may presumably be adopted pursuant to N.J.S.A. 40:48-1 and 40:48-2, which together authorize the governing body of every municipality to make ordinances which "prescribe and define, except as otherwise provided

by law, the duties and terms of office or employment, of all officers and employees; and to provide for the employment and compensation of such officials and employees, in addition to those provided for by statute, as may be deemed necessary for the efficient conduct of the affairs of the municipality," and to make such other ordinances "not contrary to the laws of this State or of the United States, as it may deem necessary and proper \* \* \* to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law."

Our opinion, in brief, is that the library trustees and the governing body of the municipality each have certain prerogatives vested in them respectively by statute, that these should be reconciled and given effect as far as possible; but that those sections of the ordinance which plainly conflict with the powers granted to the library trustees expressly or by fair implication must be ruled invalid so far as library personnel are concerned. It is well settled that to the extent an ordinance conflicts with the mandate of the State Legislature, it is of no effect. N.J.S.A. 40:48-2; *Strauss v. Bradley Beach*, 117 N.J.L. 45, 46 (Sup. Ct. 1936), *aff'd* 118 N.J.L. 561; *Pennsylvania R. R. Co. v. Jersey City*, 84 N.J.L. 716 (E. & A. 1913); *Hertz Washmobile System v. South Orange*, 41 N.J. Super. 110 (Law Div. 1956).

N.J.S.A. 40:54-1, et seq. provides for the establishment of a free public library within the corporate limits of any municipality by a referendum vote of the people. Section 40:54-11 provides that the board of trustees "shall be a body corporate," with corporate powers of succession and to sue and be sued. Appointments are made by the mayor or other chief executive of the municipality, N.J.S.A. 40:54-9. Section 40:54-12 reads, so far as here pertinent, as follows:

"The board shall hold in trust and manage all property of the library. It may rent rooms, or, when proper, construct buildings for the use of the library, purchase books, pamphlets, documents, papers and other reading matter, hire librarians, and other necessary personnel, and fix their compensation, make proper rules and regulations for the government of the library, and generally do all things necessary and proper for the establishment and maintenance of the free public library in the municipality."

Tax support for the library is provided by N.J.S.A. 40:54-8, which requires the governing body of every municipality governed by this statute to appropriate annually and raise by taxation a sum equal to one-third of a mill on every dollar of assessable property within such municipality; and the section further authorizes the governing body to appropriate and raise by taxation annually such additional sum as in its judgment is necessary for the proper maintenance of the library. The trustees have the power to hold and manage any devise, bequest or donation for the establishment or maintenance of the library (N.J.S.A. 40:54-19), and to accept gifts and bequests of paintings and other art objects (N.J.S.A. 40:54-20); but where gifts are made for the purpose of building a library, they must be accepted by the governing body, which thereafter must raise annually by taxation such amount as may be required by the condition of the gift for the support and use of the library (N.J.S.A. 40:54-21). Any gift accepted by the governing body for library purposes shall be expended by and under the direction of the library board of trustees, in the same manner as other funds are expended by such board (N.J.S.A. 40:54-22).

The foregoing sections of the law indicate a general scheme under which a free public library shall receive its financial support partly by mandatory taxation and partly through the exercise of discretion by the governing body, and that once such

funds have been obtained for library purposes, their expenditure is a matter resting solely with the trustees. The evident legislative intent was to give the library trustees a large measure of autonomy and independence, in a manner somewhat analogous to the independent status given chapter 7 school districts under N.J.S.A. Title 18. By express mandate of the statute, the custody and control of the library, its property and its funds are vested in the trustees; they are specifically authorized to hire librarians and other personnel and to fix their compensation; and they are given all the incidental powers necessary and proper to the exercise of the duties specifically imposed upon them. By implication, the statute plainly excludes any interference by the municipal governing body with the exercise of the powers granted to the trustees.

On the other hand, our courts have placed limitations upon this seemingly autonomous statutory power. In *Newark Library Trustees v. Civil Service Commission*, 86 N.J.L. 307 (E. & A. 1914) the court held that the employees of the free public library of the city of Newark were "in the paid service of the municipality," and that since the city had accepted the provisions of the Civil Service Act, the library employees were subject to the provisions of that act and could accordingly be classified by the Civil Service Commission. More recently, the Supreme Court held in *Glick v. Trustees of Free Public Library*, 2 N.J. 579 (1949) that the free public library of Newark was "an agency of the municipality notwithstanding its incorporation as a body politic," so that it was embraced within the provision of N.J.S.A. 40:50-1 forbidding a "municipality" from entering into a contract of the class specified unless competitive bidding procedures had been followed. The opinion of the court, rendered by Mr. Justice Heher, noted that "it would be contrary to the plain policy of the statute to hold that the central government is bound by the provision for competitive bidding but the library board is not merely because, for the purpose of convenience in administration, it has been given a corporate status." (2 N.J. at p. 584). In reviewing the legislative and judicial authority it was stated at page 583 that:

"\* \* \* the old Supreme Court ruled that the Trustees form 'a branch or a board of the municipal government, \* \* \* to manage educational matters for the benefit of the whole community,' and not an 'independent entity,' and, while given a corporate existence 'for \* \* \* convenience and for the purposes of \* \* \* administration,' the corporate body is yet 'a mere branch or agency for that special purpose.' The Court of Errors and Appeals found it sufficient to rest affirmance of the particular judgment on the narrower ground that the employees of the Library are 'in the paid service of the municipality,' and therefore subject to the provisions of the Civil Service Act. *Trustees of Free Public Library of Newark v. Civil Service Commission*, 83 N.J.L. 196 (Sup. Ct. 1912); affirmed, 86 N.J.L. 307 (E. & A. 1914).

"There is no need to delineate the statutory scheme. It suffices to say that the function delegated to the library management is local and municipal in legislative concept; the instrumentality is an adjunct of the local government in the field of education and intellectual recreation, and under its control. It is the municipality that is empowered to 'establish a free public library within its corporate limits.' R.S. 40:54-1. There is provision for a referendum. R.S. 40:54-2 et seq. The cost of operation is borne by local taxation; and the money is appropriated by the local governing body or appropriate board. R.S. 40:54-8. The trustees are appointed by the mayor or chief executive; and the mayor and one of the local superintendents of schools or the supervising principal are made members of the board. R.S.

40:54-9. Library funds are deposited in the municipal treasury, and drawn upon by municipal officers on the vouchers of the trustees. R.S. 40:54-18. And, as we have seen, the library employees are in the paid service of the municipality. It is an agency of the municipality notwithstanding its incorporation as a body politic. That in itself does not give rise to a relationship radically different in character from that which would otherwise exist. It is that substance and not the form of the creation that is the key to the legislative design. \* \* \*

We are thus presented with the problem of pinpointing the fine line which limits the autonomy given by the Legislature to the library trustees. Some light is shed on the problem by the recent decision of Judge Kolovsky in *Grosso v. City of Paterson and Board of Health of the City of Paterson*,—N.J. Super.—(Law Div. 1959), which involved a statute (N.J.S.A. 26:3-19) giving to local boards of health the power to “employ such personnel as it may deem necessary \* \* \* to carry into effect the powers vested in it” and to “fix the duties and compensation of every appointee.” The court held that even though the municipality determines the amount of moneys to be appropriated to the local board of health (N.J.S.A. 26:3-43), the former has no power to intrude upon the prerogative of the local board in appointing its agents and employees and fixing their compensation, nor could the municipal governing body veto salaries fixed by ordinance of the board of health.

In the light of the statutes and the decisions above cited, we believe the situation under discussion is governed by the general principle that the municipality cannot enforce in respect to the library any provision of the ordinance which attempts to detract from the statutory power of the trustees to hire employees, fix their compensation, and make personnel rules and regulations peculiarly needed for or appropriate to the maintenance of a free public library.

We find it significant that the foregoing view is consistent with constructions given to the law for many years by the Attorney General and the Director of Local Government, as well as by the former Public Library Commission. For example, Attorney General Wilentz, by an opinion to the State Librarian dated June 16, 1942, ruled that the library law places the hiring of librarians and other necessary servants and the fixing of their compensation in the hands of the board of trustees, who were thus authorized by section 40:54-12 to select a librarian and other necessary personnel. On November 1, 1951, in a letter to the Division of the State Library, the Director of Local Government advised that in municipal budgets it was not required that the appropriation for the maintenance of a free public library be subdivided into (a) salaries and wages, and (b) other expenses; the appropriation for the library is a line item in a given amount. On December 5, 1951, the Director of Local Government further advised the Division of the State Library that the moneys raised for the library trustees are expended at their discretion, and that so long as they are properly used for library purposes, the governing body of a municipality has no jurisdiction over the matter. On November 29, 1944, the Attorney General advised the State Librarian that the library trustees had the authority to allow one or more of the employees of the library to attend meetings or conferences and to pay their expenses, and that in matters of this kind “much must be left to the judgment of the trustees.”

A construction of a statute indulged in for many years by those charged with its administration and interpretation is entitled to great weight. *State v. Clark*, 15

N.J. 334 (1954); *Burlington Co. v. Martin*, 129 N.J.L. 92, 93 (E. & A. 1942). We find no reason for departing from the opinions just enumerated.

The board of library trustees and the governing body of the municipality are public officials serving the same group of citizens, and the spirit of the law calls for the closest cooperation between them, with the trustees adopting different policies and practices only to the extent that these are specially needed for the maintenance of the library committed to their charge.

Very truly yours,

DAVID D. FURMAN  
*Attorney General*

By: THOMAS P. COOK  
*Deputy Attorney General*

JUNE 19, 1959

HON. SALVATORE A. BONTEMPO, *Commissioner*  
*Department of Conservation and*  
*Economic Development*  
205 West State Street  
Trenton, New Jersey

FORMAL OPINION 1959—No. 11

DEAR COMMISSIONER BONTEMPO:

You have requested our opinion as to whether a "Meadowlands Regional Development Agency" may be created to reclaim and develop the New Jersey meadowlands and if so, whether a municipality which has authorized its local housing authority to proceed with the redevelopment of blighted areas may participate in the creation of the Agency. Although the meadowlands embrace areas along the Arthur Kill, Newark Bay and Hackensack River in the Counties of Union, Essex, Hudson and Bergen, we understand that it is contemplated that the agency will function only in fourteen municipalities in the latter two counties. There are approximately 14,500 acres of meadowlands in these municipalities. It is our opinion that both questions require affirmative answers.

The Redevelopment Agencies Law, Laws of 1949, c. 306, N.J.S.A. 40:55C-1 et seq., provides that the governing body of any municipality may create a redevelopment agency, a body corporate and politic, which shall be an instrumentality of the creating municipality. The law further authorizes two or more municipalities to create a regional development agency which shall be a body corporate and politic and deemed the instrumentality of all the municipalities joining in its creation. N.J.S.A. 40:55C-6. While the law carefully distinguishes in the creation and concept of redevelopment and regional development agencies, they are vested with identical substantive powers. N.J.S.A. 40:55C-12 confers general and specific powers to all agencies created by this act. Therefore, a regional agency possesses the same authority as a municipal agency.

Under the law an agency may propose a redevelopment plan which upon proper approval by the municipality or municipalities in which the redevelopment is to take