

The procedure for payment for cost of apprehension and return of patient escaped from the state mental hospital is set forth at CL '48, § 330.34; MSA 1956 Rev Vol § 14.824. This section specifically provides that the expense of recapture of a private patient shall be paid by the person responsible to the state for his care and maintenance and if a public patient it shall be paid by the state. See also CLS '61 § 330.25; MSA 1956 Rev Vol § 14.815 providing that the state shall pay all expense incurred by any state institution operated by the State Department of Mental Health in the care, maintenance, custody and treatment of any person admitted to an institution operated by the State Department of Mental Health. This includes the facility at Ionia.

With respect to the expenses of extradition, should this be necessary, the statute specifically provides that the expenses of extradition shall unless otherwise directed by the Governor, be audited by the Auditor General and paid out of the state treasury.⁷

This answers all of your questions. Because of the variety of circumstances that may arise in dealing with criminal sexual psychopathic persons who have left the state without permission with particular reference to the geographic areas from which each may leave the state and the status of each such patient with regard to criminal charges other than those involved in Act 217, PA 1963, I stress the importance of furnishing the criminal division of my office with a list of all such patients who have left the state without permission, of keeping such list current at all times and of working closely with the criminal division to be sure that prompt and appropriate action is taken to reinstate the custody of the State Department of Mental Health as required by the commitment and the statute under which the patient is committed to your care.

FRANK J. KELLEY,
Attorney General.

66/114.2

LIBRARIES: Cooperative and Federated Systems.
SOCIAL SECURITY:

Cooperative or federated library systems, as defined in Act 286, PA 1965, Section 2(b) (3), have no power to employ personnel, also they are not "juristic entities" for purposes of obtaining social security coverage.

No. 4546

November 14, 1966.

Miss Genevieve M. Casey
State Librarian
Lansing, Michigan

You ask whether cooperative or federated library systems established under Section 2(b) (3) of Act 286, PA 1965¹ have power to employ personnel to carry out their approved plans of service; and, if so, whether the library system board may secure social security coverage and retirement

⁷ CL '48 § 776.6; MSA 1954 Rev Vol § 28.1263.

¹ MSA 1965 Cum Supp § 15.1791(102).

benefits for such employees, provide other fringe benefits such as medical insurance for them, and withhold income tax for such employees. Act 286, PA 1965, is usually cited as the "state aid to public libraries act of 1965," and is found at MSA 1965 Cum Supp §§ 15.1791(101) *et seq.* Section 2 of the statute provides in pertinent part as follows:

"(a) 'Public library' means a library, the whole interests of which belong to the general public, lawfully established for free public purposes by 1 or more counties, cities, townships, villages, school districts or other local governments or any combination thereof, or by any general or local act, but shall not include a special library such as a professional, technical or school library.

"(b) 'Library system' means 1 or more public libraries maintained by 1 or more local governments, serving a population of at least 100,000 or serving a population of at least 50,000, if the area served has a population of 35 or less per square mile, which has an approved plan. A library system may consist of any of the following: . . .

"(3) A cooperative or federated library system in which 2 or more libraries or local governments enter into a written agreement to implement a plan of service for the libraries or local governments so contracting." [MSA 1965 Cum Supp § 15.1791(102)]

Section 5 empowers a group of public libraries operating as a library system to submit a plan of library service designating the library which will become the headquarters library of the system, and provides that, upon approval of the state board of such plan, the federated public libraries are to be designated a library system and shall elect a system board as provided in Section 8, or the participating libraries may designate the board of one of the libraries as a system board.

Section 9 provides that the system board shall manage the library system and shall make such by-laws, rules and regulations not inconsistent with the Section as may be necessary for its own government and that of the library system "*none of which shall be deemed to deprive any local board of any of its powers or property.*" (Emphasis supplied)

Also relevant is Act 92, PA 1952, as amended by Act 59, PA 1962, providing for cooperation and coordination of maintenance and operation of libraries open for general public use, authorizing certain contractual arrangements for extension of library services, and authorizing the legislative bodies of political subdivisions authorized by law to establish or maintain libraries or library services to contract and pay therefor.² This statute authorizes those charged by law with maintenance and operation of any library to enter into and perform "contracts or arrangements" with their counterparts in other libraries for "cooperation and coordination in the maintenance and operation of the libraries to avoid unnecessary duplication and at the same time promote the widest public use of books, manuscripts and other materials and facilities. . . ."

It is clear that a federation of existing libraries established by contract with the officers of those libraries is not a separately existing legal entity

² MSA 1965 Cum Supp §§ 15.1792(1) and (2).

with power to employ personnel, but rather a contractually created means, recognized by statute, for managing all public library services in an area. The sole function of the system board is to manage and dispense funds made available by state aid or by local tax for the system, with the objective of promoting the widest possible use of books without unnecessary duplication and expense.

The statute contains no language giving power to employ personnel to the board of a cooperative or federated system. Such power therefore remains with the board of each library participating in the system, as provided by Section 9 of Act 286, PA 1965, *supra*.

I therefore conclude that a federated or cooperative library system is without power to employ personnel to carry out its approved plan of service, but that each participating library may make personnel available to the system under an arrangement contained in the contract by which the cooperative federation is established. The employees engaged in implementing the approved plan of service are employees of the participating units, not of the system.

Turning now to your inquiry concerning social security coverage for employees of cooperative or federated library systems, the question arises in connection with the power of the retirement board of the State Employees Retirement System to contract with a juristic entity for benefits under the federal social security act. Federal authority to enter into such agreement is found at 42 U.S.C.A., 1965 Cum Supp § 418. The authority in the retirement board is found at Act 205, PA 1951, as last amended by Act 25, PA 1964, being MSA 1960 Rev Vol and 1965 Cum Supp §§ 17.801 *et seq*. Because of the language contained in these statutory authorizations, the term "juristic entity" becomes significant, as does the term "political subdivision."

The definition found in Section 2(f) of Act 205, PA 1951, as amended, provides that the term "political subdivision" includes

" . . . an instrumentality (1) of the state, (2) of 1 or more of its political subdivisions, or (3) of the state and 1 or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions:" [MSA 1965 Cum Supp § 17.802(f)]

A cooperative or federated library system operating a state approved plan for affording cooperative service to the area served by the individual cooperating libraries is not a "juristic entity," as so defined by the quoted statute, for reasons hereinabove set forth. Such a federated or cooperative system deprives no local board of any of its powers or property under Section 9 of the state aid to libraries act of 1965. These boards voluntarily cooperate to come under the statute.³

The sole function of the governing body of the system is to manage the

³ OAG 1955-56, Vol II, No. 2600, p. 274, but see OAG 1955-56, Vol II, No. 2454, p. 192.

system in a manner so as not to deprive any local board of powers or property.

In any event, since the federated system may not employ personnel, it follows, *a fortiori*, that it may not provide social security or other benefits therefor. Employees of the participating libraries look to such participants for employee benefits.

FRANK J. KELLEY,
Attorney General.

66/208.1

PUBLIC OFFICES AND OFFICERS: Increase in salary of county officers and employees.

There is no prohibition in either the Michigan Constitution of 1963 or in law against increasing the salary of county officers during their terms. The salaries and compensation of county employees, as distinguished from county officers, may also be increased during their period of service.

No. 4493

December 8, 1966.

Mr. Jerome C. Nadolney
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Bessemer, Michigan

You have requested my opinion as to whether the salary of county officers may be increased during their terms of office. You also inquire as to the authority to increase the compensation of county employees.

Article VIII, Section 9 of the Michigan Constitution of 1908 provided in pertinent part:

“The board of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law.”

The Michigan Supreme Court in *Vetter v. Fowler*, 167 Mich 499 (1911) has ruled that the intention of the framers of the 1908 Constitution as expressed in the final clause “not otherwise provided by law” in Article VIII, Sec. 9 was to place a limitation upon the power granted to boards of supervisors.

Article XVI, Section 3 of the Michigan Constitution of 1908 provided in part:

“Salaries of public officers, except circuit judges, shall not be increased, nor shall the salary of any public officer be decreased, after election or appointment.”

The legislature has enacted Act 154, PA 1879, being CL 1948 § 45.421; MSA 1961 Rev Vol § 5.1101, which provides:

“*The People of the State of Michigan enact*, That the annual salaries of all salaried county officers, which are now or may be hereafter by law fixed by the board of supervisors, shall be fixed by said board