



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 5, 1975

ATTORNEY GENERAL OPINION NO. 75- 330

Mr. Carl B. Anderson
County Attorney
Sublette, Kansas 67877

Re: Counties and County Officers--County Buildings--
Public Building--Acquisition and Construction

Synopsis: Although there exists other statutes which specifically empower the county government to separately authorize construction of a courthouse facility and library, the term "public building" is defined in K.S.A. 19-15-114(a) broadly enough to include a building which combines both the function of a courthouse and a library facility.

* * *

Dear Mr. Anderson:

You have requested an opinion from this office concerning whether a county, by and through its Board of County Commissioners, has authority to erect a courthouse facility with certain additional space being included in the construction in order to provide a location for a proposed township library. That portion of the building designed for library purposes would be leased to the particular township desiring its inclusion in the courthouse.

Counties, through the Board of County Commissioners, are given authority by virtue of K.S.A. 19-15, 115 to:

"...erect or construct, acquire by gift, purchase, condemnation in fee simple or lease, a public

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building or buildings and may acquire any necessary site thereafter by gift, purchase or condemnation in fee simple, or make use of any site or sites previously acquired by the county under authority of any other statute and may improve any existing public building. The authority herein conferred may also be exercised jointly or in cooperation with any other political subdivision of this state so empowered, upon such terms and conditions as shall be agreed upon by the board of county commissioners of the county and the governing body of such cooperating political subdivision."

"Public building" is defined by K.S.A. 19-15-114(a) to mean and include "...any building or structure determined by the board of county commissioners to be necessary to the county for any public county purpose." The only limitation then that appears on the county's authority under this statute is that the building be necessary to the county for public county purposes. This determination is vested in and made at the discretion of the county commissioners. Although there exists other statutes which specifically empower the county government to separately authorize construction of a courthouse facility and a library, the term "public building" is defined in K.S. A. 19-15-114(a) broadly enough to include a building which combines both the function of a courthouse and a library facility. Since there appears no other limitation upon the county commissioners' discretion to determine what facilities are necessary or are to be included in a proposed public building, it is the opinion of this office that it is permissible under K.S.A. 19-15-115 for the county to construct a public building which combines both a county courthouse facility with additional space being included for a lease as a proposed township library.

The proposed leasing arrangement between the county and township is controlled by K.S.A. 19-15-117 which provides as follows:

"Any county owning or hereafter acquiring any public building may, except as otherwise specifically provided by law, lease any such building or any part thereof, when the board of county commissioners shall be resolution determine that the same is not required for county purposes for

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a period not exceeding one (1) year at a time, upon such terms and conditions as the board of county commissioners may deem to be in the best interest of the county."

Accordingly, the county can lease a portion of the new public building to a township within the guidelines set out in the above statute.

The township's role in this proposed leasing arrangement is governed by K.S.A. 12-1218 et seq. Specifically, K.S.A. 12-1219 provides:

A municipality may establish and maintain a library in the manner provided in this act. Any library heretofore established and being maintained by a municipality shall be maintained in accordance with the provisions of this act, but this section shall not be construed as repealing any law not expressly repealed by this act.

The emphasized portion underscores the practical limitations to this type of leasing arrangement. Although the term "maintain" as used in K.S.A. 12-1219 is defined by K.S.A. 12-1217 to include "...the general and usual cost and expense of operating such free public library but shall not include the cost of erecting or equipping a public building therefor or the cost of a site for such building" and thereby impliedly permits the construction costs to be borne by a separate municipality, the establishment of such a library by the township requires prior compliance with the statutory requirements of K.S.A. 12-1220 et seq.

Finally, K.S.A. 12-1227 specifies that:

Every library established under, or governed by the provisions of this act shall be free to the use of the inhabitants of the municipality in which located, subject always to such reasonable rules and regulations as the library board may adopt, and said board may exclude from the use of said library any and all persons who shall

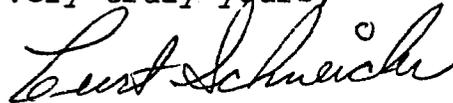
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willfully violate such rules. The library board may extend the use and privilege of such library to nonresidents of the municipality and may make exchanges of books with other library upon such terms and conditions as said board may from time to time by its regulations prescribe.

Whether the township library provides free access to the non-residents of the township is discretionary with the library board. Such a matter may be appropriately negotiated and included as a term in the lease under the provisions of both K.S.A. 12-1227 and K.S.A. 10-15, 117.

Accordingly, it is the opinion of this office that it is permissible under K.S.A. 19-15, 115 for the county to construct a courthouse facility with additional space being included for the purpose of housing a township library.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv