



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

January 7, 1976

ATTORNEY GENERAL OPINION NO. 76- 5

Mr. Park McGee, Secretary
Board of Trustees of the Johnson
County Law Library
539 East Santa Fe, Suite 1
Olathe, Kansas 66061

Re: Libraries--County Law Libraries--Use of Funds

Synopsis: A county law library established under K.S.A. 19-1319 *et seq.* may not assess and collect user charges for use of a computer terminal and access to a data bank for legal research, for use of the library is required by K.S.A. 19-1320 to be "free of charge" to all eligible users. Use of funds of the library to purchase computer access time for one group of eligible users to the exclusion of all other eligible library users represents an impermissible preferential expenditure of library funds for the benefit of less than all of its patrons.

* * *

Dear Mr. McGee:

As secretary of the board of trustees of the Johnson County Law Library, and at the direction of its chairman, you request my opinion concerning authority of the board to implement any of several proposals presently before the board for the placement of a computer terminal for computerized legal research in the library.

The library is established under K.S.A. 19-1319 *et seq.* Questions have arisen concerning the use and funding of computerized legal research under certain provisions of that act. You advise that the

Mr. Park McGee
Page Two
January 7, 1976

computer terminal would be under contract from K-Bar Research, Inc., which is understood to have a contract with Mead Data corporation which maintains a computerized library of reported decisions from Kansas, the federal courts, and certain other state jurisdictions. The contract is believed to restrict the usage of the terminal to practicing attorneys, and to provide a user charge of \$2.75 per minute of computer time for those attorneys who are members of the Kansas Bar Association, and \$4.00 per minute of computer time for other attorneys who are not members of the Association.

You advise that alternative proposals have been made. One proposal provides that the law library would contract for a minimum usage of computer time, and charge actual users in accordance with the above schedule, the library absorbing the loss, if any, resulting from a shortfall of actual usage less than that contracted for. Under a second proposal, the library would merely underwrite the costs of the terminal by agreeing to absorb the losses, if any, incurred by K-Bar Research, Inc., during a trial period of six months or one year. Under a second alternative, the board would contract for a certain amount of time per month to be made available to the judges of the district, magistrate, probate and juvenile courts of the county.

You indicate that the prospect of charges, either by the library or directly by K-Bar Research, Inc., for services provided by the library, as well as the differential between charges for members and non-members of the Kansas Bar Association, have caused particular concern. Funds for support of the library derive from annual registration fees assessed against all attorneys residing in the county, pursuant to K.S.A. 19-1319, and library fees taxed as costs in cases filed in the courts of countywide jurisdiction pursuant to K.S.A. 19-1322. The board of trustees are required to

"use the fees paid for registration, and all other sums, books, or library materials or equipment donated or provided by law, for the purpose of establishing and maintaining such library" K.S.A. 19-1320.

In addition, they may "also direct that any funds collected may be used for any purpose consistent with the establishment and maintenance of a law library." K.S.A. 19-1323. Access to the library is governed by K.S.A. 19-1320 thus:

"The judge or judges of the district court, members of the bar who reside in said county

Mr. Park McGee
Page Three
January 7, 1976

and who have registered and paid the fee provided for in K.S.A. 1973 Supp. 19-1319, as amended, and the judges of all other courts in said county and county officials, shall have the right to use said library *free of charge* in accordance with the rules and regulations established by the board of trustees." [Emphasis supplied.]

A computerized storage of legal material such as state and federal cases is but another form of information storage, differing in form from the storage of such information in the traditional reports. Different techniques of information retrieval are required, of course, involving sophisticated and relatively costly equipment. The purpose of a library is, of course, the storage of information and data, and retrieval for its patrons. In considering the statutory responsibilities of the library, the use of computer techniques to store and retrieve information and data is not legally distinguishable from other information storage and retrieval techniques, including the use of traditional bound volumes. Installation of a terminal providing access to a data bank containing reported decisions of California courts, *e.g.*, is analogous to the acquisition of a set of California reports, and the appropriate digests. Information retrieval through the terminal is, of course, much more efficient and selective, and expensive, as well.

In light of the direction of K.S.A. 19-1320, that those persons described therein shall "have the right of use said library free of charge," the question arises whether, consistent with its statutory mandate, the board may install a terminal and charge for access to the data bank it is designed to serve. If the board proposed to purchase a set of California reporters, for example, it would not be suggested that an additional charge could be assessed registered attorneys for the use of those volumes. Access to a computer data bank containing those cases is legally analogous, in my view. The computerized system provides efficiency and selectivity in case retrieval which far exceeds that available through traditional reports and digests. However, I am not persuaded that this factual difference affords a basis for any legal distinction insofar as it concerns the authority of the board to charge for library services, including information storage and retrieval, provided under its auspices.

The act contemplates that attorney registration fees and library fees taxed as costs in cases, and such other sums as may be donated or provided by law to the board of trustees, shall be used to furnish and maintain the law library available without charge to

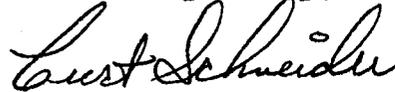
Mr. Park McGee
Page Four
January 7, 1976

eligible users. Additional user charges are prohibited. I can but conclude that the imposition of a charge either by the library or directly by K-Bar Research, Inc., for services provided at the library is prohibited by K.S.A. 19-1320.

There remains the question whether the board may contract for the installation of a terminal and purchase of time to be made available to the judges of courts of countywide jurisdiction. Certainly, the use of library funds to contract for the installation of a terminal serves a "purpose consistent with the establishment and maintenance of a law library," within the ambit of K.S.A. 19-1323. User charges for access to the terminal are prohibited, however. Obviously, the needs of the court must be given great deference in the operation of the library. However, it is established not as a court library, but as a county law library, to serve the bench and the bar equally. The use of library funds to purchase time for but one group of eligible library users would represent a diversion of library funds for the preferential use of one group of patrons, to the exclusion of all other eligible users, and is impermissible, in my judgment.

If further questions arise in subsequent exploration of the matter, I would be happy to furnish such assistance as may be required.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj