

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 24, 1977

ATTORNEY GENERAL OPINION NO. 77- 210

Mr. Clyde P. Daniel
City Attorney
Post Office Box 499
Garden City, Kansas 67846

Re: Cities--Libraries--Funds

Synopsis: The funds of a city library board, and responsibility therefor, cannot be delegated or assigned by said board to a private nonprofit corporation. Accumulated funds derived from gifts, donations and bequests received by the board are equally public funds as are tax revenues of the board, and as such, may not be transferred to a private corporation for its control and direction of the expenditure of such funds.

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Dear Mr. Daniel:

We have your letter of June 21, 1977, and enclosures transmitted therewith, concerning the transfer of certain funds of the Garden City Public Library Board to a domestic nonprofit corporation, Friends of the Garden City Public Library, Inc., for its use in promoting and developing the library and its services. I understand that the officers and directors of the corporation are the same persons who comprise the membership of the Library Board.

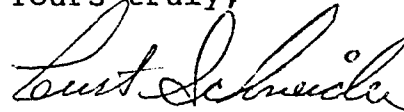
K.S.A. 12-1225(h) authorizes the board to receive any gift or donation to the library. Over a period of years, I understand, the Board has received a number of gifts and bequests, which have been deposited in interest-bearing accounts, and that monies accumulated from such gifts and donations, together with interest earned thereon, have been or are proposed to be transferred to

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the corporation. You inquire concerning the legality of this transfer. I fully concur in your opinion, shared by Mr. Parker, that the transfer is not authorized by law.

Gifts and bequests to the library, when accepted by the Board, become public funds just as tax revenues of the Library Board become public funds, which the Board may disburse only as provided by law. The management of all public funds of the library is a public trust, which rests by law upon the duly appointed members of the Library Board, which the Board cannot delegate to any third party. Although the members of the Library Board are also the officers and directors of Friends of the Garden City Public Library, Inc., the corporation remains a separate legal entity, as a private nonprofit corporation. Once funds of the board are transferred to the corporation, they become funds of the corporation, and subject to its direction and control, and are no longer subject to the control of the Board itself. Members of the Library Board act entirely in a private capacity as officers and directors of the corporation. There is absolutely no authority for action by the Library Board transferring control of its funds, from whatever source derived, to that of a private body, regardless of the fact that the Board and the corporation share a common membership. They remain two separate bodies, one public and the other private, and it is a settled principle that the control of public funds rests with those who are responsible by law for those funds. The Library Board cannot unilaterally transfer its funds to a private body for disbursement as that body deems appropriate. Nothing in this opinion should be taken as implying any possible misuse of the funds by the corporation. I have no doubt whatever that the organization was created to further the best interests of the library, and is dedicated to spend its funds toward that end. However, by law, decisions how the funds of the Board will be spent must be made by the Board itself, and those funds, as well as the responsibility for decisions as to the expenditure thereof, cannot be delegated or assigned to a private body.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj