

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 16, 1978

ATTORNEY GENERAL OPINION NO. 78- 74

Mr. Thomas A. Glinstra
Acting City Attorney
100 West Santa Fe
Post Office Box 768
Olathe, Kansas 66061

Re: Cities--Libraries--Funds

Synopsis: The proceeds of a general obligation bond issue, approved and sold for the purpose of erecting and equipping a public library which is operated pursuant to K.S.A. 12-1218 *et seq.*, should be paid over by the city treasurer to the treasurer of the library board for its use and disbursement.

* * *

Dear Mr. Glinstra:

You advise that on November 8, 1977, the City of Olathe, Kansas, held a special election pursuant to K.S.A. 12-1736 and -1737, at which the voters approved the issuance of \$1,600,000 in general obligation bonds for the purpose of acquiring a site for and the construction and equipping of a public library. A question has arisen, however, whether the city commission or the library board is empowered to receive and disburse the proceeds derived from the sale of bonds.

Under K.S.A. 12-1233, the library board of a library established pursuant to K.S.A. 12-1218 *et seq.* is constituted a "body corporate and politic, possessing the usual powers of a corporation for public purposes," and "may contract, sue and be sued and acquire, hold and convey real and personal property in accordance with law. K.S.A. 12-1225 enumerates the powers of the library

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board. Under subparagraph (b), it may, "with the approval of the governing body of the municipality, . . . purchase or lease a site or sites and . . . lease or erect a building or buildings for the use of the library." In other provisions of this section, the board is given broad powers for the complete operation and maintenance of a library facility and the furnishing of library service. Indeed, by statute, the broad powers of the municipality itself respecting the erection or acquisition of a facility, the acquisition of library materials and equipment, the employment of library staff, the receipt and disbursement of gifts, donations and grants, and virtually all other powers necessary and incidental to the furnishing and operation of library service under the act are vested in the library board. The act does reserve to the city governing body the authority to approve or disapprove the purchase or lease of sites and the erection of buildings for library purposes, and the acquisition or disposition of real property. Subject to express reservations of power in the city governing body, the library board is expressly authorized by the broad grants of power in K.S.A. 12-1225 to do all things necessary and appropriate for the furnishing of library services and facilities. Moreover, as you point out, K.S.A. 12-1226 provides that the treasurer of the municipality

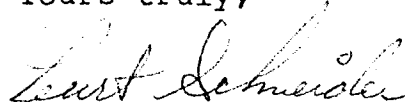
"shall pay over to the treasurer of the library board all funds collected for the maintenance of the library, and the treasurer of the library board shall payout said funds on orders of the board signed by the secretary and chairman thereof."

Although K.S.A. 12-1226 requires the city treasurer to turn over to the library treasurer all funds collected for the "maintenance" of the library, there is no reason in the act to distinguish between funds for maintenance and funds for erection and equipping of a new library, because the powers both to establish a new library and to maintain an existing facility are both vested in the library board, subject, of course, to approval by the city governing body of any proposal to acquire a site for and erect a building for library purposes. The authority to undertake the actual purchase of property and to enter into contracts for the construction and furnishing of the facility is vested in the library board, and in my judgment, the proceeds of the bond issue

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which was sold for that purpose should be paid over to the treasurer of the library board for its use and disbursement.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj