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May 25, 1979

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ATTORNEY GENERAL OPINION NO. 79- 94

Ms. Marty Tucker
Assistant State Librarian
Third Floor, State Capitol
Topeka, Kansas 66612

Re: Cities and Municipalities--Libraries--
Board Members

Synopsis: The term "ex officio," as applied to the holding of an office, is not a term of limitation, merely of qualification, and an ex officio member of any body is one who is a member by virtue of his title to a certain office. Thus, in the absence of any limiting or qualifying language in the relevant statutes, ex officio members of a municipal or regional library board have the same rights, privileges, powers and duties as members appointed to either board.

* * *

Dear Ms. Tucker:

You have requested us to reconcile or distinguish two prior opinions of this office. The opinions in question are Attorney General Opinion Nos. 73-361 and 78-350. Both of these opinions had occasion to construe the phrase "ex officio member" contained in a statute prescribing membership on a library board, but they reached opposite conclusions as to the term's meaning. Even though you have noted that each of these opinions required interpretation of a different statute, you have questioned why a different result should obtain, and you have asked our opinion as to which of the two prior opinions is correct.

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As a summary answer to your question, it is our opinion that Attorney General Opinion No. 78-350 correctly construes the phrase in question. In that opinion, the following portion of K.S.A. 12-1232 was at issue:

"The library board of a regional library shall consist of six (6) appointed members and, in addition thereto, the official head of each participating county or township shall be an ex officio member with the same powers as appointed members." (Emphasis added.)

The opinion concluded that the emphasized phrase in the foregoing quotation (as applied to a regional library consisting of two or more counties) "means no more than that the county officer is a member of the library board by virtue of his or her county office." Based on that definition, the opinion further concluded that the ex officio members of regional library boards under 12-1232 have the same voting rights and privileges as the appointed members of the board.

We agree with these conclusions, and we are unable to justify the differing results reached in Attorney General Opinion No. 73-361. There, K.S.A. 12-1222 (concerning municipal library boards) was being construed, with the pertinent portion thereof stating:

"In addition to the appointed members of the board the official head of the municipality shall be ex officio a member of the library board with the same powers as appointed members"

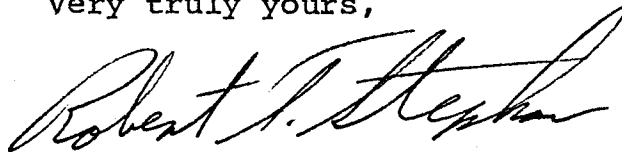
For the purposes of that statute, "municipality" is defined in K.S.A. 12-1218(a) as meaning "a county, township or incorporated city," and, accordingly, subsection (c) of the latter statute defines "official head" as meaning "the mayor of a city, the chairman of the board of county commissioners of the county, and the township trustee of a township." Within the context of this terminology, the 1973 opinion answered the question whether the official head of a municipality, as an ex officio member of a library board, has the same voting powers as appointed members of such board. In response, the opinion stated: "Such official head, as of a city, county or township, has no voting rights whatever, for he is not a member of the library board and has no voice in the conduct of its affairs, save in the appointment of persons thereto."

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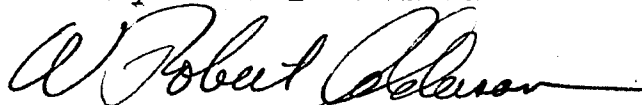
We are unable to determine the basis for such conclusion and must respectfully disagree therewith. To the extent that it is in conflict with this opinion, Attorney General Opinion No. 73-361 is modified in accordance with the conclusions reached herein, i.e., in the absence of any limiting or qualifying language in the relevant statute, ex officio members of a municipal or regional library board have the same rights, privileges, powers and duties as members appointed to either board. Our conclusion is predicated, in part, on the fact that the term "ex officio" means "by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office." Black's Law Dictionary 661 (4th ed. 1957). It is apparent, then, that "ex officio" as applied to the holding of public office, is not a term of limitation, merely of qualification. Thus, an ex officio member of any body is one who is a member by virtue of his title to a certain office. 15A W. & P. Perm. 392, citing State ex rel. Hennepin County v. Brandt, 31 N.W. 2d 5, 9, 225 Minn. 345.

We trust that the foregoing adequately answers your inquiry.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk