



STATE OF KANSAS

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June 29, 1981

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ATTORNEY GENERAL OPINION NO. 81- 144

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

Re: State Departments -- State Library -- Withdrawal
from Regional System of Cooperating Libraries;
Adoption of Administrative Rules and Regulation
So Providing

Synopsis: K.S.A. 75-2550 defines those taxing districts
which may withdraw from participation in a region-
al system of cooperating libraries. Any adminis-
trative rule and regulation adopted by the Kansas
State Library Advisory Commission which goes be-
yond or conflicts with this legislative authori-
zation would be void, as is a portion of existing
K.A.R. 54-1-21. Additionally, while citizens may
recommend that a particular administrative rule
and regulation be adopted, such recommendations
are purely advisory, and do not broaden the admin-
istrative power of the Commission into the power
to legislate. Cited herein: K.S.A. 75-2546,
75-2550, K.A.R. 54-1-21.

* * *

Dear Ms. Tucker:

As Acting State Librarian, you request our opinion concerning a petition which has been presented to the Kansas State Library Advisory Commission, upon which you serve as secretary pursuant to K.S.A. 75-2546. The petition, which was submitted by residents of the city of Lansing, Kansas, raises certain questions concerning the power of the Commission to adopt administrative rules and regulations, and the role of private citizens in the adoption process.

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The language of the petition, which resembles that of a statute or an administrative rule and regulation, states as follows:

"Any city of the third class which levies one-half mill or more annually to pay the cost of providing library services under contract with another taxing district within such regional system of cooperating libraries may petition the state library advisory commission for exclusion from the taxing district of the regional system of cooperating libraries. Such petition for exclusion from the taxing district shall be presented to the state library advisory commission not later than July 1 of each year. If exclusion will do no manifest harm to the regional system of cooperating libraries, the state commission shall enter its order excluding such taxing district from the regional system immediately. Such order shall be filed with the state librarian and the governing body of the regional system of cooperating libraries."

Several hundred signatures are attached, all from residents of Lansing, Kansas. As you are aware, Lansing itself does not have a library, but instead wishes to use its levy for library services to contract with the neighboring city of Leavenworth. The difficulties faced by Lansing in withdrawing from the regional system under present statutes and regulations was addressed by a prior opinion of this office, No. 80-50, which concluded that such a withdrawal could be made only as prescribed by K.S.A. 75-2550 and K.A.R. 54-1-21.

The present petition apparently seeks to provide another, alternative means of withdrawal from a regional system. However, the petition before the Commission can only be advisory in nature, and is without force or effect, in that it seeks to achieve what may be done only by statute or administrative rule and regulation.

Furthermore, it would be our opinion that the Commission itself is without the power to enact an administrative rule and regulation along the lines of the petition's language. As noted above, K.S.A. 75-2550 presently constitutes the only legislative enactment on this subject, stating:

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"Any taxing district which regularly levies one-fourth mill or more of tax for the support of a public library, and which taxing district has been included in a regional system, may petition to be excluded from the regional system. Such petition shall be made and presented to the state commission. The state commission shall consider any such petition and if such taxing district meets the requirement for making such a petition and if excluding such taxing district from the regional system will do no manifest harm thereto, the state commission may enter its order excluding and detaching such taxing district from the regional system and making such adjustment to the organization of such regional system as may be appropriate to continue the operation of the regional system without interruption."

In light of the statutory language, in our opinion any administrative rule and regulation adopted in this area must limit itself to prescribing such details as are authorized, but not addressed by, the statute. This is in keeping with the generally-recognized rule that the power of an administrative agency to adopt rules and regulations is administrative in nature, not legislative, and to be valid such rules and regulations must be within the authority conferred. Willcott v. Murphy, 204 Kan. 640 (1970). As a necessary corollary, it also follows that an administrative regulation which goes beyond or conflicts with legislative authorization is void. Marcotte Realty & Auction, Inc. v. Schumacher, 225 Kan. 193 (1979).

In our view, the pertinent language of K.S.A. 75-2550 quoted above is susceptible of administrative interpretation in only three general areas, i.e., in defining what constitutes "regularly" levying one-fourth mill of tax for the support of a public library, in prescribing the procedure for petitioning for exclusion from the regional system and in providing criteria for guiding the commission in determining whether the exclusion of a taxing district would do "manifest harm" to the regional system. Measured against these criteria, it is clear that the regulation proposed by the petition would exceed the commission's authority to implement the statute by administrative rules and regulations. In particular, by limiting its application to a third class city which levies

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one-half mill or more for contractual library services, the proposed regulation would contravene the statute's clear application to "any taxing district which regularly levies one-fourth mill or more of tax for the support of a public library."

Thus, however meritorious the purpose of the petition may be, the regulation requested thereby would have the effect of changing the statute's application. This the commission cannot do. While possessing the discretion to "fill in the details" of a statute, an administrative agency may not, in effect, rewrite the statute. Gumbhir v. Kansas State Bd. of Pharmacy, 228 Kan. 579, 584 (1980).

Having addressed your initial inquiry, we feel constrained at this point to express our misgivings concerning an existing administrative rule and regulation in this area, K.A.R. 54-1-21. This rule states:

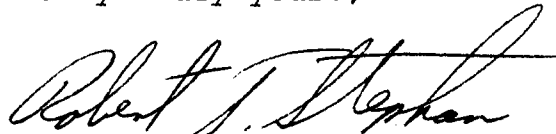
"When a public library taxing district levying less than one-fourth mill of tax at the time of inclusion as a part of a regional system of cooperating libraries, levies one-fourth mill or more of tax support for a public library for a period of not less than two consecutive years, the governing body of the taxing district of such public library may petition for exclusion from the taxing district of the regional system of cooperating libraries in the manner prescribed under rule and regulation 54-1-17." (Emphasis added.)

As we noted above, any regulation in this area must operate within the framework established by K.S.A. 75-2550. However, in our judgment, K.A.R. 54-1021 exceeds the Commission's statutory parameters. The emphasized language in this rule quoted above impermissibly limits the taxing districts which may petition for exclusion from the regional system. While K.S.A. 75-2550 authorizes "any taxing district" which levies one-fourth mill or more for the support of a public library to petition for exclusion, the Commission's rule is limited to such taxing districts which were "levying less than one-fourth mill of tax at the time of inclusion" in the regional system. For the reasons stated above regarding the regulation proposed by the petitioners in Lansing, we believe such limitation contravenes the statute, and is unenforceable. While there would be a number of ways to remedy this defect, the removal of the underscored language above would give uniform effect to the "regularly levies" requirement of K.S.A. 75-2550.

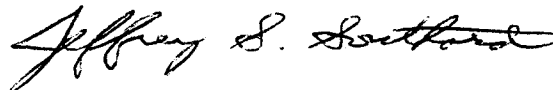
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In conclusion, K.S.A. 75-2550 defines those taxing districts which may withdraw from participation in a regional system of cooperating libraries. Any administrative rule and regulation adopted by the Kansas State Library Advisory Commission which goes beyond or conflicted with this legislative authorization would be void, as is a portion of existing K.A.R. 54-1-21. Additionally, while citizens may recommend that a particular administrative rule and regulation be adopted, such recommendations are purely advisory, and do not broaden the administrative power of the Commission into the power to legislate.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

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