



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 105

Duane F. Johnson
State Librarian
Kansas State Library
State Capitol, Third Floor
Topeka, Kansas 66612-1593

Re: Cities and Municipalities--Libraries--Library
Districts; Election on Building, Equipment and
Site; Bonds

Synopsis: K.S.A. 12-1244 authorizes a library district board of directors to call an election for the purpose of building, erecting and equipping a library building and procuring a site therefor. The district may issue bonds to fund the building, equipment and site if the issuance is approved by district electors. In our opinion, K.S.A. 12-1244 includes authority for the district board of directors to call an election for the purpose of issuing bonds to acquire an existing building to be used as a library. Cited herein: K.S.A. 12-1244.

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Dear Mr. Johnson:

You have requested our opinion concerning the authority of the Louisburg District Library Board to issue bonds, pursuant to K.S.A. 12-1244, to fund the purchase of an existing building to be used as a library. The purchase of an existing building is not specifically mentioned by the statute, however, it is our opinion that the statutory authorization to build, erect, equip, and provide a site for a library and to pay the costs

thereof through the issuance of bonds includes authorization to purchase an existing building for library purposes.

It is well-settled that municipalities cannot issue bonds unless the authority to do so is expressly or impliedly conferred by the legislature. If there is a reasonable doubt as to the authority, such doubt should be resolved against the existence of authority. Kaw Valley Drainage Dist. v. Kansas City, 119 Kan. 368 (1925). This rule was extended in School District No. 6 v. Robb, 150 Kan. 402 (1939), to apply not only to the existence of authority to issue bonds, but also to the power to issue bonds for a particular purpose. Robb, 150 Kan. at 403.

In School District No. 6 v. Robb, it was held that legislative authority to equip and erect a school building did not include the authority to repair. The Court noted that the purpose of the statute was to provide facilities as a unit, and not to provide for component parts of a building already owned by the district. Were the proposed work completed, the district would not have a building that was different from the one then owned. 150 Kan. at 404.

We believe the converse of the logic in School District No. 6 v. Robb indicates that, since the proposed purchase of a library building will result in the acquisition of a facility not currently owned by the district, the Louisburg Library District board would be acting within its authority to offer the electors the question of funding such a purchase through the issuance of bonds. The source of this authority is K.S.A. 12-1244, which provides in part:

"The board of directors of said library district shall have authority to call an election of said district for the purpose of building, erecting and equipping a library building and procuring a site therefor and may issue bonds of such district for the purpose of paying the costs of such building, equipment and site. Before issuing any bonds hereunder the question of such issuance shall be submitted to the qualified electors of the district."

The statute does not specifically mention the purchase of an existing building, however, there is no indication that the legislature intended that the library facility be a newly

constructed building. The restrictive language is more indicative of an intent not to extend the use of bond proceeds for maintenance and repair.

A similar result was reached in Ostrander v. City of Salmon, 20 Idaho 153, 117 Pac. 692 (1911), cited in 15 McQuillin, Municipal Corporations, Municipal Bonds §43.22 (1985). In Ostrander, it was held that a statute authorizing the construction of necessary waterworks facilities included the authorization to purchase existing facilities, even though such purchase was not specifically listed. In citing case law from other jurisdictions, the Idaho court noted that the term "provide" would have been a better term to use than "construct." The term "construct" was given a broad meaning so as not to "defeat the operation of what is probably the most important feature" of the statute. Ostrander 117 Pac., at 696.

We believe the analysis of the Idaho court is sound. Since the purpose of K.S.A. 12-1244 is to make library facilities available for persons residing within the district, denying the district an option to purchase an existing building would defeat the operation of the most important feature of the statute. It is therefore our opinion that the Louisburg Library District may submit to the electors the question of whether bonds should be issued to purchase an existing building to be used as a district library.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

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