



STATE OF KANSAS

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August 7, 1986

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ATTORNEY GENERAL OPINION NO. 86- 116

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

Re: State Departments; Public Officers and
Employees--State Library and Library
Services--Regional System of Cooperating Libraries

Synopsis: When a county and city are both participating members in a regional system of cooperating libraries, the county may enter into a contract with the city to provide funding for the city library. However, such contract is independent of the provisions for assuring access to the city library for county residents, and the city may not require such county funding in order to assure library access for county residents. A county mill levy does not affect the regional system tax unless such levy is equal to or greater than the regional system tax. Cited herein: K.S.A. 12-1230; 19-117; 75-2547; 75-2549b; 75-2551; 75-2552; 75-2554; 79-1947; K.A.R. 54-1-8 (1984).

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Dear Mr. Johnson:

You have requested our opinion concerning the Regional System of Cooperating Libraries, which is operated under the authority of K.S.A. 75-2547, et seq. Your questions stem from a disagreement between the City of Hoxie, Kansas

and the County of Sheridan. You have indicated that both political subdivisions are participating members of the Northwest Kansas Library System, which system was validated by K.S.A. 75-2549b. You have furthered indicated that Hoxie and Sheridan County are parties to an existing contract, whereby the county levies a tax of 23/100 mill in order to generate funds, with which to pay the City of Hoxie for the extension of library services to Sheridan County residents. Due to financial difficulties, the Hoxie city library board has asked for an increase in the contractual fee, and has discussed the idea of refusing library services to county residents if such increase is not given.

Your first inquiry is whether a city library, located in a county which participates in a regional system of cooperating libraries, can refuse to serve patrons who live in the county. This issue is resolved by K.A.R. 54-1-8, which states:

"Libraries participating in a regional system of cooperating libraries shall permit any citizen of the territory comprising the system to borrow materials or receive services without charge, subject to reasonable library rules."

K.A.R. 54-1-8 is authorized by K.S.A. 75-2552, and is consistent with the purpose of the regional system, which is to provide adequate library services to all citizens of the state through the regional system. K.S.A. 75-2547. As previously noted, both political subdivisions are participating members of the Northwest Kansas Library System. The regulation thus clearly applies to the Hoxie city library. As long as both the city and the county are participants in the regional system, the city may not refuse library services to residents of the county, absent a violation of reasonable rules which relate to library operations. The relationship between the city library and county residents is dependent, therefore, on the statutes and regulations, rather than on the contract between the city and the county.

Our opinion regarding this matter does not vitiate the contract between the city and county. Such contract is authorized by K.S.A. 12-1230. We opine only that, irrespective of the contract, the citizens of Sheridan County may use, free of charge, the library located in and operated by the city of Hoxie. If the city library board wishes to deny services to the county residents, either the

city or the county must cease to be a participating member of the regional system.

Your second inquiry regards the maximum amount of property tax which can be levied on real and personal property for the purposes of providing library services without a vote of the people or without affecting the regional system tax. From the outset, it should be noted that two taxing units are involved: Sheridan County and Northwest Kansas Library System. Both units possess clear statutory authority to levy taxes for support of a library. However, the relationship between the taxing powers is not as clear.

The board of county commissioners is authorized by K.S.A. 79-1945 to levy taxes in an amount not to exceed applicable limits. K.S.A. 79-1947 authorizes a rate of levy up to 1.50 mills to support a contract which was entered into pursuant to K.S.A. 12-1230. Whether or not voter approval is required is governed by the provisions of K.S.A. 19-117.

The regional system board is authorized, pursuant to K.S.A. 75-2551, to levy a tax not in excess of 3/4 mill. Exempt from this tax is property within a taxing district which supports a library with funds of the district. We are not given the benefit of a definition for the term "supporting a library." While the term on its face may infer any financial assistance ranging from nominal to full support, the legislative intent indicates otherwise. The regional system levy is not to be duplicative of another taxing unit's levy. We do not believe that this precludes all overlap, however. To construe the statute as precluding a regional system's levy in any district wherein a levy, regardless how small, is taxed to support a library could result in an outcome repugnant to the purpose of the act. Such construction would allow a taxing district to enter into a contract with an existing library for the purpose of providing the library with nominal financial support, then levy a nominal tax to fund such contract, thus assuring its citizens access to the library, while relieving its citizens of the tax which the regional system may otherwise lawfully impose.

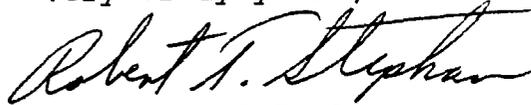
Based on the foregoing, it is our opinion that, when levying a tax to support a contract entered into pursuant to K.S.A. 12-1230, a participating taxing district is not "supporting" a library within the meaning of K.S.A. 75-2554 if the tax levied by such district is less than the tax levied by the regional system. We therefore opine that the county commissioners may levy a tax of up to 1.50 mills, and whether or not voter

or not voter approval is required depends on the factors as provided in K.S.A. 19-117. A mill levy by the county will not affect the regional system tax unless such mill levy is equal to or greater than that imposed by the regional system. We note that the taxing district is not required by law to levy its own tax for support of the library.

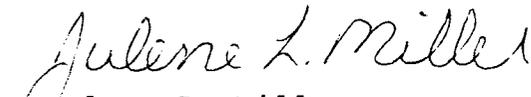
Finally, you have inquired whether legal recourse is available to the Northwest Kansas Library System in the event library service is refused by the Hoxie City Library. The act concerning regional systems does not contemplate noncompliance of the statutes and regulations. While no express penalties are provided for noncompliance, we do not believe that the regional system or individuals who have been refused service are without a remedy. However, such remedy, whether at law or in equity, depends upon the nature and method of noncompliance. Until such matter is ripe, we decline to opine on what action may be appropriate. Such action can only be determined on individual facts.

In conclusion, when a county and city are both participating members of a regional system of cooperating libraries, it is our opinion that the city library may not refuse service to county residents as a means of pressuring the county to increase funding to the individual library. While a county is not required to give financial assistance to the city library in order to assure access to the library for county residents, it may do so. However, such financial assistance does not constitute support of a library for purposes of determining the effect on the regional system mill levy if the county levy is less than the regional system levy.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm