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ATTORNEY GENERAL OPINION NO. 87- 108

Duane F. 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; Petition for
Exclusion from Regional System

Synopsis: In order to be excluded from a regional system of
cooperating libraries and the tax imposed thereby
pursuant to K.S.A. 75-2551, a taxing district must
petition the state library advisory commission.
Such petition must show that the taxing district
has regularly levied one-fourth mill or more of
tax for the support of a public library for a
period of not less than two years. Thus, a taxing
district with a newly established public library
must remain in the regional system until it can
show that it has levied for two consecutive years
an amount equal to or in excess of one-fourth
mill for support of such library. Cited herein:
K.S.A. 75-2547; 75-2549; 75-2550; 75-2551; 75-2552;
K.A.R. 54-1-17; 54-1-21.

Dear Mr. Johnson:

As State Librarian and on behalf of the Southwest Kansas
Library System (SWKLS), you request our opinion regarding
the ability of a taxing district to exclude its territory from
a regional system of cooperating libraries. Specifically, you

question the procedure by which a county clerk may exclude a new library district's valuation from the system's tax district.

The statutory basis for forming a regional system of cooperating libraries is found at K.S.A. 75-2547 et seq. Pursuant to K.S.A. 75-2549, any one or more library boards may petition the state library advisory commission for establishment of a regional system of cooperating libraries. Such regional system is to be:

". . . [C]omprised of territory which includes one or more counties, except territory supporting a library regularly subject to a tax levy of one-fourth ($\frac{1}{4}$) mill or more shall be excluded from the proposed regional system upon request of the governing body of the district making such levy. . . ." K.S.A. 75-2549.

Upon approving a petition presented to it, the state commission is to adopt a resolution officially designating the regional system and describing the territory thereof, "but shall exclude the territory of any taxing district which regularly levies one-fourth ($\frac{1}{4}$) or more mills of tax for the support of a public library upon the request of the governing body of the district making such levy." K.S.A. 75-2550.

A taxing district which has been included in a regional system of cooperating libraries may petition to become excluded from the regional system pursuant to K.S.A. 75-2550 which provides in part as follows:

"Any taxing district which regularly levies one-fourth mill or more 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."

To further define the requirements for exclusion eligibility, the state commission has adopted K.A.R. 54-1-17 which states:

"Whenever (1) a public library is established according to law after the date of establishment of a regional system of cooperating libraries in which such public library is included as a part of the taxing district of the regional system of cooperating libraries and (2) if the governing body of such public library has regularly levied one-fourth mill or more of tax for support of said public library for a period of not less than two years, then, such governing body may petition the state library advisory commission for exclusion from the regional system of cooperating libraries taxing district. Such petition for exclusion shall be presented to the state library advisory commission not later than November 15 of each year. Such petition shall include but shall not be limited to the following:

"(a) The official name of the public library;

"(b) The official name of the governing body and the name of the county in which such public library is located;

"(c) The number of persons served by the public library within the taxing district supporting such public library;

"(d) Official evidence of support by tax levy for a period of not less than two years;

"(e) Evidence of adequacy of service by such public library;

"(f) Evidence of the legality of establishment of such public library;

"(g) Any other information as may be required by the state library advisory commission.

"The state library advisory commission shall within thirty (30) days after the receipt of a petition for exclusion set a date for a hearing to consider said petition.

"If the petition meets the requirements for making such petition and if exclusion will not manifest harm to the regional system of cooperating libraries, the state commission may enter its order excluding such taxing district from the regional system. Such order shall be filed with the state librarian and the governing body of the regional system of cooperating libraries."

Additionally, K.A.R. 54-1-21 provides:

"When a public library taxing district, regularly levies one-fourth mill or more of tax for a period of not less than two consecutive years for the support of a public library, and which taxing district has been included in a regional system, the governing body of the taxing district may petition for exclusion from the taxing district of the regional system of cooperating libraries in the manner prescribed under K.A.R. 54-1-17."

The above-quoted statutes and administrative regulations require the governing body of a taxing district to petition for exclusion from a regional system of cooperating libraries. In order to petition for exclusion, a taxing district must be able to show that it "regularly levies one-fourth mill or more of tax for the support of a public library." K.S.A. 75-2550. The state commission, under the authority of K.S.A. 75-2552, has by regulation interpreted "regularly" levying to mean not less than two consecutive years. K.A.R. 54-1-17 and 54-1-21. In Attorney General

Opinion No. 80-50 this office concluded that such interpretation is justified by the language of the statute. See also Attorney General Opinion No. 81-144. This opinion is supported by case law in that the regulation merely prescribes a detail which is authorized by, but not specifically addressed by, the statute. Gumbhir v. Kansas State Board of Pharmacy, 228 Kan. 579, 584 (1980). The regulation is not an attempt to exceed the authority conferred by the statute, nor is it in conflict with the statutory provisions. Wesley Medical Center v. Clark, 234 Kan. 13, 18, 19 (1983).

We affirm the conclusion of Attorney General Opinion No. 80-50 that the regulation interpreting "regularly levies" as meaning not less than two consecutive years is within the state commission's authority to adopt.


Rules and regulations properly adopted by an administrative agency have the force and effect of law. K.S.A. 1986 Supp. 77-425; State ex rel., v. Columbia Pictures Corporation, 197 Kan. 448, 454 (1966). Thus, it is our opinion that when a public library is established in a taxing district which is included in a regional system of cooperating libraries, the governing body of such taxing district may exclude itself from the regional system only as provided in K.A.R. 54-1-17, and therefore must show that it has regularly levied one-fourth mill or more of tax for support of the new public library for a period of not less than two years. In reaching this conclusion, we are not unmindful of K.S.A. 75-1551 which provides in part:

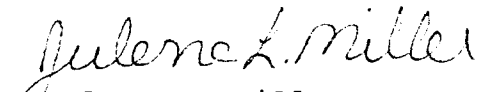
"Each system board is hereby authorized to levy not in excess of 3/4 mill of tax to be used for library purposes on all of the taxable property within the boundaries of the regional system of cooperating libraries that is not within a district supporting a library with funds of the district."

In a previous opinion, this office looked at K.S.A. 75-2551 in conjunction with K.S.A. 75-2550 and concluded that "until [a taxing district] has been duly excluded from the regional system, it remains within the boundaries of the regional system, and is subject to its tax levy, notwithstanding it is also within a district which levies a tax for the support of another public library." Attorney General Opinion No. 73-312, VIII Opinions of the Attorney General 132, 133.

In conclusion, in order to be excluded from a regional system of cooperating libraries and the tax imposed thereby pursuant to K.S.A. 75-2551, a taxing district must petition the state library advisory commission. Such petition must show that the taxing district has regularly levied one-fourth mill or more of tax for the support of a public library for a period of not less than two years. Thus, a taxing district with a newly established public library must remain in the regional system until it can show that it levied for two consecutive years an amount equal to or in excess of one-fourth mill for support of such library.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL


Julene L. Miller
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