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ATTORNEY GENERAL OPINION NO. 91- 64

Duane Johnson
State Librarian
Kansas State Library
Capitol Building
Topeka, Kansas 66612

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

Synopsis: The southeast Kansas library system (SEKLS) may
charge non-taxed participating libraries for
services the SEKLS renders to those participating
members except as otherwise provided by state and
federal appropriation conditions. Cited herein:
K.S.A. 75-2550; 75-2551; K.A.R. 54-1-21.

* * *

Dear Mr. Johnson:

You request our opinion regarding the powers and duties of the
board of a regional system of cooperating libraries. The
questions presented pertain to the southeast Kansas library
system (SEKLS), though you explain that our opinion will
have relevance to all seven regional systems located in
Kansas. Specifically you inquire:

"Can SEKLS legitimately charge the
Coffey County Library for services used
by school districts when those districts
are affiliate members of the system?"

Further, can the system reduce or refuse service to those school districts if it does not treat other affiliated members in the same manner?

"SEKLS is charging the county library for some services extended to blind and physically handicapped patrons. Since this is a federally mandated program, financed by state and federal funds, are such charges legal?

"Additionally, in light of the fact that the system receives State Aid and ILDP funds, can it refuse to fill interlibrary loan requests which originate in Coffey County following expiration of its present service contract with the Coffey County Library?"

It is our understanding that the taxing district for the Coffey county public library was excluded from the SEKLS pursuant to K.S.A. 75-2550 and K.A.R. 54-1-21. Thus the territory comprising the school districts within Coffey county was in effect excluded from the taxing district of the system. However, the Coffey county public library and three school district libraries located in Coffey county are still participating members of the SEKLS.

Since Coffey county has been excluded from the SEKLS taxing district, SEKLS can no longer levy a tax in the rural area of that county, or in urban areas supporting a public library. K.S.A. 75-2551. Thus, services which were previously paid for by this tax levy are no longer being funded in this way. The question therefore arises as to the system's authority to charge participating libraries in territory excluded from the system taxing district for services the system renders to those participating members. K.S.A. 75-2551 seems to contemplate this:

"Participating boards shall have the power and are hereby authorized to pay for services purchased from the system board."

Additionally, K.S.A. 75-2550 provides in part:

"The system board shall have the authority and power to . . . (4) . . . contract with

any one or more participating libraries. .
.."


If Coffey county chooses not to contract and pay for services to the school district libraries located within the county, the SEKLS board may contract directly with the school district libraries. K.S.A. 75-2550(4). We have found nothing in the statutes which would require the system to provide services to participating libraries without some form of reimbursement for those services. Further, there is nothing in the statutes to require that all contracts with participating libraries be identical, although the SEKLS by-laws may contain requirements in this regard. Any distinctions in contract terms should be reasonably based.

You question whether the SEKLS may charge fees for services which are federally mandated and financed by state and federal funds. K.S.A. 75-2551 states that "[f]ederal funds for public library service made available to the state which are administered by the state librarian or state commission may be used in support of any one or more regional system of cooperating libraries within the provisions of such federal legislation." That statute further provides that the use of such funds may be established by contracts with participating libraries. Of course federal and state appropriations may have conditions attached to them, but as long as such conditions are met, we find no requirement that library systems provide services to all participating libraries for the blind and physically handicapped "free of charge." Thus, we believe reasonable charges for such services in lieu of taxing are appropriate.

Similarly, if no conditions are attached to receipt and expenditure of interlibrary loan development plan (ILDLP) funds and state aid requiring systems to fill loan requests free of charge, we find no statutory requirements to do so.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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