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ATTORNEY GENERAL OPINION NO. 92- 5

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

Re: Cities and Municipalities--Libraries--City, County
and Township Libraries; Application of K.S.A.
12-1223 and 12-1225

Synopsis: Boards of libraries established or maintained in
accordance with K.S.A. 12-1219 are subject to the
provisions of K.S.A. 1990 Supp. 12-1223 and
12-1225. Cited herein: K.S.A. 12-1219; K.S.A.
1990 Supp. 12-1223; 12-1225; K.S.A. 17-6001;
77-201, as amended by L. 1991, ch. 33, § 37.

* * *

Dear Mr. Johnson:

On behalf of the Paola free library, city of Paola, you request our opinion regarding the statutes applicable to that library board. We are advised that the library was established in 1892 and officially recognized by city of Paola ordinance no. 581 in 1902. The library association was at one time incorporated but its corporate status was cancelled in 1973 as a result of corporation code revision. It has been suggested that, this being the case, the library board is subject to the provisions of K.S.A. 12-1218 to 12-1222, inclusive, but not K.S.A. 12-1223 to 12-1235, inclusive. Your questions are as follows:

"1. Does the provision of K.S.A. 12-1223 apply to those libraries included in the provisions of K.S.A. 12-1219, or is some additional or different form of library establishment necessary for the provision of K.S.A. 12-1223 to have effect?

"2. The specific operational question involved here is, does the Board of Paola Free Library have the authority to operate using the powers and duties of a library board as specified in K.S.A. 12-1225?"

K.S.A. 12-1218 through 12-1235 were enacted by L. 1951, ch. 485, §§ 1-18. All of these provisions are a part of the same act. Thus, the term "this act," when used in K.S.A. 12-1219 through 12-1235, refers to all of the provisions from K.S.A. 12-1219 through 12-1235, inclusive. See K.S.A. 77-201 First, as amended by L. 1991, ch. 33, § 37; Curless v. Board of County Commissioners, 197 Kan. 580, 586-587 (1966).

K.S.A. 12-1219 provides:

"A municipality may establish and maintain a library in the manner provided in this act. Any library heretofore established and being maintained by a municipality shall be maintained in accordance with the provisions of this act, but this section shall not be construed as repealing any law not expressly repealed by this act."
(Emphasis added).

It is agreed that this section brings the Paola free library within the provisions of "this act." K.S.A. 1990 Supp. 12-1223 provides:

"(a) Except as provided by subsection
(b), the library board of a library established under, or governed by the provisions of this act shall constitute a body corporate and politic, possessing the usual powers of a corporation for public purposes, under the name and style of 'the board of directors of _____ (name of municipality) library' and under such name may contract, sue and be sued and acquire, hold and convey real and personal property in accordance with law. The acquisition or disposition of real property shall be

subject to the approval of the governing body of the municipality." (Emphasis added).

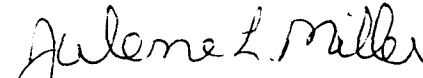
Library boards of libraries governed by the act are statutorily made bodies corporate; no action to incorporate under K.S.A. 17-6001 et seq. is necessary. Thus, while the library board apparently maintained its corporate status with the secretary of state's office from 1951 to 1973, such was not necessary to bring it within the provisions of K.S.A. 12-1223 through 12-1235.

Finally, since K.S.A. 1990 Supp. 12-1225 is also a provision of "the act," boards of libraries created or maintained thereunder are entitled to utilize its provisions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm