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April 17, 1979

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ATTORNEY GENERAL OPINION NO. 79- 60

Ms. Ernestine Gilliland
State Librarian
Kansas State Library
Third Floor, State Capitol
Topeka, Kansas 66612

Re: State Departments--State Library--Grants-in-Aid
to Local and Regional Libraries

Synopsis: In determining a local public library's eligibility for state grants-in-aid, a comparison of the respective amounts of revenue produced by the ad valorem tax levies for such library from one year to the next constitutes the only basis for determining such eligibility; and a library's receipts from previously unpaid taxes or unencumbered balances carried forward may not be considered in ascertaining whether such library has maintained the local tax effort required for state aid eligibility.

Where a municipality contracts with a library for the furnishing of library services, there is no legal requirement that such contract be written where its duration does not exceed one year.

A municipality contracting with a library for services is defined as a "local public library" by K.S.A. 1978 Supp. 75-2554, and its eligibility for state aid must be determined independently of the contracting library. Thus, such library's state aid entitlement cannot be computed on the basis of the combined populations of the library and contracting municipality.

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Dear Ms. Gilliland:

You have submitted several questions regarding a municipal library's eligibility and contract obligations under the State Grants-in-Aid to Libraries Act (K.S.A. 75-2553 et seq.). As the Act's basic statement of eligibility, K.S.A. 75-2556 provides, in pertinent part, that:

"No local public library shall be eligible for any state grants-in-aid if the amount produced by the local ad valorem tax levies for the current year expenses for such library is less than the amount produced by the ad valorem tax levy for the same library for the previous year: Provided, however, That in those local public library districts when the assessed valuation decreases, such district shall remain eligible for state grants-in-aid so long as the ad valorem tax levy has not been reduced below the levy imposed the previous year."

The question you have raised regarding the above-quoted statute is whether the ad valorem tax levy is the only determining factor, or whether back taxes and any unencumbered balance carried forward may be included in determining eligibility. We find that the language of the foregoing statute is plain and unambiguous in providing that eligibility is to be based on a comparison of the ad valorem tax levies for the current and previous years' expenses. We cannot construe such language as requiring or permitting any unencumbered balances carried forward or receipts from previously unpaid taxes as being included in the amount produced by taxes levied for the current year's expenses. While those amounts initially may have been generated by prior tax levies, they are not provided for by the levy for the current year, and we do not find them to be contemplated by the statute as being factors for determining eligibility for grants-in-aid. In our opinion, therefore, a comparison of the respective amounts of revenue produced by the ad valorem tax levies from one year to the next constitutes the only basis for determining such eligibility.

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We view this conclusion as being consonant with Attorney General Opinion No. 77-83, where it was determined that the above-quoted statutory provision was intended to "encourage the maintenance of local tax effort, and to avoid the substitution of state funds for local levies for operation." Attorney General Opinion Nos. 75-62 and 75-324 are of similar import, and we concur with the conclusions reached in those opinions. To consider back taxes and unencumbered balances in determining a library district's eligibility would correspondingly reduce the tax levy necessary to maintain the previous level of local support, and the effect thereof would be to diminish the local tax burden, which is contrary to our perceived intent of the statute.

We think it also is apparent that a contrary interpretation could have a significant effect on a library's continuing eligibility. That is, if previously unpaid taxes and unencumbered operating balances carried forward are considered in determining the amount of local tax support, then a reduction in these items in subsequent years would render a library ineligible for state aid, even though the amount of the ad valorem levy would remain constant. We cannot discern a legislative intent that such result should obtain.

You also have questioned the provisions of K.S.A. 1978 Supp. 75-2554, which was amended in 1978 (L. 1978, ch. 343, §1) to redefine "local public libraries" to include "municipalities contracting with any library for the furnishing of library services to such municipality pursuant to K.S.A. 12-1230." You have inquired whether a verbal agreement between a municipality and a library is sufficient to satisfy these definitional requirements. It is our understanding that this issue was raised in determining the proportionate amount which the Little River Community Library is entitled to receive, and we are advised that Union Township in Rice County has levied an annual tax, the proceeds of which have been paid to Little River Community Library in return for the furnishing of library services. Previously, such payments have been made and services furnished pursuant to an oral agreement.

While a written contract between Union Township and Little River might be preferable, we are aware of no legal requirement that the contract be written. The oral agreement contemplates the furnishing of library service on an annual basis, and would therefore not violate the statute of frauds (K.S.A. 33-106). See, e.g., Mildfelt v. Lair, 221 Kan. 557, 563 (1977). Moreover, there is no statutory requirement that township contracts be in writing (see K.S.A. 80-101), and as to municipal corporations, generally, "in the absence of a specific statutory requirement . . . it is not necessary that the contract be in writing." 56 Am. Jur. 2d Municipal Corporations §496.

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Thus, Union Township, having entered into an oral contract authorized by its board of trustees, would be bound thereby, and the fact that the contract was oral rather than written would not affect either party's obligations under it. The essential terms of the oral contract would be determined at the time the township budget is prepared and the tax levies therefor are certified to the county commissioners. This would determine the contract's terms sufficiently in advance of the State Librarian's determination of eligibility for grants-in-aid funds.

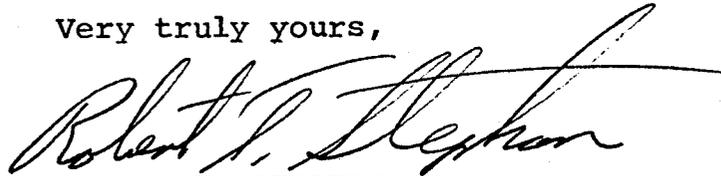
Your final inquiry concerns whether it is permissible to base the determination of a library's proportionate share of state aid under K.S.A. 75-2555 on the combined populations of the municipalities supporting the library, including any municipality contracting with the library pursuant to K.S.A. 12-1230. As noted previously, a municipality contracting with a library pursuant to K.S.A. 12-1230 has been defined as a "local public library" under K.S.A. 1978 Supp. 75-2554(a)(2). Thus, such municipality, as a "local public library," is eligible for grants-in-aid under K.S.A. 75-2556. Even though, as a practical matter, any state aid distributed to such municipality will ultimately be paid over to the library, and the amount of aid so computed should be equal to the sum of the aid to which each such entity is separately entitled on the basis of its own population, we must conclude that the library's eligibility for aid under K.S.A. 75-2556 cannot be computed on the basis of the combined populations of the library district and any municipality contracting therewith for library services.

Since the library and the municipality contracting with the library are each "local public libraries," each such entity must qualify and be eligible for its pro rata distribution of state aid pursuant to K.S.A. 75-2555 and 75-2556. If eligibility of these entities were considered jointly, the ineligibility of one could render the other ineligible. That is, for example, if the contracting municipality failed to maintain the required local tax effort, such failure could preclude the library district, as well as the municipality, from receiving state aid. We do not find such result to be contemplated either by the literal meaning or underlying legislative intent of the pertinent statutory provisions. Therefore, it is our opinion that such qualification and eligibility must be determined for each such entity, independently of the other, and the amount

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of such aid to which each is entitled must be paid to the
respective treasurers of the library and contracting
municipality.

Very truly yours,



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Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk