



STATE OF KANSAS

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May 31, 1979

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ATTORNEY GENERAL OPINION NO. 79- 99

Mr. Robert D. Beall
Leavenworth City Attorney
818 North Seventh Street
Leavenworth, Kansas 66048

Re: Cities of the First Class--Commission Form of
Government--Disqualification of Relatives of
Mayor and Commissioners to Hold City Office

Synopsis: Membership on the board of directors of a city
library established in a city of the first class
pursuant to K.S.A. 12-1218 et seq. constitutes
holding a city office. Thus, by virtue of the
prohibitory provisions of K.S.A. 13-2903, any
such member who is related by blood or marriage to
the mayor or commissioner of such city is dis-
qualified from serving on said library board.

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Dear Mr. Beall:

We agree with your opinion that the wife of a Leavenworth City
Commissioner is disqualified from serving as a member of the
city's library board. Our conclusion is based, in part, on the
provisions of K.S.A. 13-2903, which states:

"The relatives by blood or marriage of
the mayor or any commissioner are hereby
disqualified from holding any city office
during the term for which said mayor or
commissioners are elected."

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Because of our opinion that being a member of a city library board constitutes holding a city office, we believe that the foregoing statute operates to preclude the wife of a city commissioner from serving on such board.

This office previously has held that a city library established and operated pursuant to K.S.A. 12-1218 et seq. is a city function. In a letter opinion to the city attorney of Larned, Kansas, dated March 7, 1960, Attorney General John Anderson, Jr. stated: "This office has expressed the opinion that city libraries, administered by a board, remain an activity of the city." Further, in his opinion of October 6, 1959, Attorney General Anderson again stated:

"We view a library maintained by a city pursuant to G. S. 1957 Supp., 12-1218, as essentially a city library, administered by a library board with certain powers. The library belongs, not to the library board which administers it, but to the city which established it and maintains it by taxes." 1 Op. Att'y Gen. 46 (1961)

We concur with these opinions regarding a library established by a city pursuant to K.S.A. 12-1218 et seq. Even though the library's governing board is given separate corporate status by K.S.A. 12-1223, other statutes in this series plainly establish the library as a city function and activity. For example, K.S.A. 12-1219 provides that the library is to be established and maintained by a city. Further, the moneys necessary to establish and maintain such library are derived from taxes levied by the city, with K.S.A. 12-1220 providing that "[s]uch tax shall be levied and collected in like manner as other taxes of the municipality and shall be kept in a separate fund to be known as the library fund of such municipality."

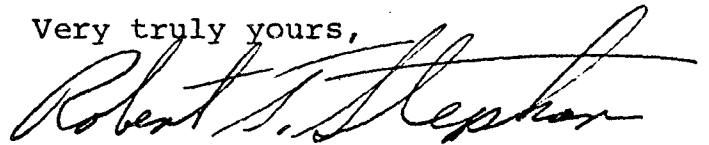
Because of these statutory provisions, we cannot escape the conclusion that a library established and maintained by a city pursuant to these provisions is an integral part of such city. It is an activity and function of city government, rather than being the responsibility of a political entity that is separate and apart from the city. As a result, we also believe that any person serving as a library board member is an officer of the city, as opposed to being an employee thereof. K.S.A. 12-1225, as well as other sections of K.S.A. 12-1218 et seq. vests the library board with sufficient powers and duties to warrant this conclusion. These statutes clearly indicate that a library board is provided

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with a significant portion of the city's power to administer a city library, and the board is vested with considerable discretion in exercising such authority. Collectively, then, the library board members occupy supervisory, decision-making positions.

Therefore, it is our opinion that, in any city of the first class having a commission form of government, a person serving on the city library's board of directors who is related "by blood or marriage" to the mayor or any commissioner of the city is disqualified from serving on said board during the mayor's or commissioner's term of office. In the situation prompting your inquiry, it will be necessary for the Leavenworth City Commissioner's wife to resign her position as a member of the Leavenworth Library's Board of Directors.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:jm

cc: Honorable Clyde D. Graeber
Honorable Edward F. Reilly