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December 27, 1979

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ATTORNEY GENERAL OPINION NO. 79- 309

Duane F. Johnson  
System Librarian  
South Central Kansas Library System  
901 North Main Street  
Hutchinson, Kansas 67501

Re: State Departments--State Library--Regional  
System of Cooperating Libraries

Synopsis: 1) A regional system of cooperating libraries established pursuant to K.S.A. 75-2547 et seq., is subject to such rules and regulations as may be adopted by the state library advisory commission under the authority of K.S.A. 75-2550a and 75-2552. In the absence of such rules and regulations, a regional system is free to establish its own policies and procedures, provided that such are not in violation of general statutes or regulations.

2) The library at McConnell Air Force Base is a "private library" as that term is defined by K.A.R. 54-1-18, and so may participate in a regional system of cooperating libraries in like manner as required for a public library.

\* \* \*

Dear Mr. Johnson:

You have requested the opinion of this office concerning several questions which generally involve the powers of the South Central Kansas Library System (SCKLS), a regional system of cooperating libraries established pursuant to K.S.A. 75-2547 et seq. As we view your request, you are essentially making two inquiries, namely:

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1) In the absence of any statute or regulation, what authority does the State Library Advisory Commission have over the policies and procedures of SCKLS?

2) What is the status of the library at McConnell Air Force Base in Wichita, i.e., can it become a full or merely an affiliate member of SCKLS?

Each of these will be dealt with in turn.

You inform us that SCKLS is governed by a Board of Trustees which is comprised of representatives from each of the participating libraries (79 in all), together with 12 members appointed by the Governor pursuant to K.S.A. 75-2550. The Board meets twice a year to adopt an annual plan and budget, to hold elections and to deal with policy matters requiring the attention of the full Board. However, due to its size, month-to-month operations are supervised by an Executive Committee, pursuant to K.S.A. 75-2550a. The makeup of this Committee is the subject of your first inquiry.

On January 18, 1979, the full Board of SCKLS amended its bylaws to provide in part as follows:

"ARTICLE V, Executive Committee

. . . .

"B. The Executive Committee shall consist of a total of nine members. A representative from each of the following interest areas shall be a member of the committee: 1) Governor's Appointees, 2) school district libraries, 3) community college libraries, 4) college or university libraries, 5) public libraries, 6) HPL. The remaining three members are to be from the general membership of the System Board and may be from any of the above interest areas."

The above change was made in the interest of having all of the various types of libraries represented on the Executive Committee. This was felt to be particularly necessary in the formulation of the annual plan of operations and the annual budget.

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Notice of the change was forwarded to the State Library Advisory Commission, along with the annual plan and budget which the Commission is required to approve by K.A.R. 54-1-5. During its meeting of October 12, 1979, the Commission disapproved the amendment. The SCKLS Board was informed of this fact two days before the election for the 1980 Executive Committee, but in view of the need to proceed with the functions of the organization, it was felt the election should be held as planned, using the representation allowed by the disapproved bylaw. There were no objections from the floor to this procedure. Following the election, the Executive Committee agreed to submit the matter to this office for our opinion.

We would initially note that the State Library Advisory Commission is empowered by K.S.A. 75-2550a and 75-2552 to adopt rules and regulations involving various facets of the operations of a regional system of cooperating libraries. The latter statute authorizes the setting of standards for: "(1) approval of regional system petitions, (2) review and amendment of regional system plans, (3) certification of system librarians, and (4) such other matters as the state commission may deem advisable." (Emphasis added.) The former statute, while permitting a system board to select an executive committee to which all legal functions (except adoption of a budget) may be delegated, makes such action subject to the rules and regulations of the state commission.

Pursuant to the above, the state commission has adopted a number of rules and regulations for the regional systems, which are found at K.A.R. 54-1-1 to 54-1-22, inclusive. However, a reading thereof indicates that, while many other restrictions and requirements are imposed, no standard exists by which the makeup of an executive committee may be measured. Nor do we find any restriction on the power of a regional system to adopt its own bylaws or any procedure by which a bylaw may be rejected or vetoed by the state commission. (While K.S.A. 75-2550a does give the state commission the power to do so, it apparently has not done so as of this date.) In view of this absence of any restriction, it would be our opinion that the board of a regional system may establish its own requirements for the makeup of its executive committee, as was done here.

Of course, such authority is subject to the general statutes of the state, as well as any other generally-applicable rules and regulations found in K.A.R., Article 54-1. The only possible conflict here could come with K.A.R. 54-1-4, which requires each regional system to comply with standards established by the 1964 Federal civil rights act. However, in view of the

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types of categories established by the bylaw in question, we can find no possible violation, in that no interest group is barred from the executive committee. In fact, a seat is allotted to every such interest group in the regional system with three seats (one-third of the committee) left undesignated. We note that in this respect the bylaw is by no means unique, and is in fact much like K.S.A. 75-2546, which establishes the state library advisory commission itself. There, one seat is reserved for the state librarian, one for a representative from the libraries at the University of Kansas or Kansas State University, one for a representative from the Kansas Federation of Women's Clubs, and three at large. There is no civil rights problem created by such a selection process, in that the selection is made upon a rational basis and upon grounds other than those made suspect by the law.

Therefore, a regional system of cooperating libraries established pursuant to K.S.A. 75-2547 et seq., is subject to such rules and regulations as may be adopted by the state library advisory commission under the authority of K.S.A. 75-2550a and 75-2552. In the absence of such rules and regulations, a regional system is free to establish its own policies and procedures, provided that such are not in violation of general statutes or regulations.

You also have requested our opinion on the status of the library at McConnell Air Force Base, and whether it may be admitted as a full member to SCKLS. You advise us that the library serves families of the service men stationed there with programs which are the same as any other library. (We do assume, however, that only base personnel may take advantage of such services.) The library has applied for membership in SCKLS, with such membership application approved and forwarded on to the state commission pursuant to K.A.R. 54-1-3.

That body, during its meeting on September 14, 1979, adopted the following rule:

"When a non-public library applies for membership in a regional system of cooperating libraries that the following be defined:

"1. the library must be designated as an affiliate;

"2. that the affiliate library is willing to loan their library's materials as other system members, free of charge;

"3. that the system services the affiliate will receive will be specified along with related fees."

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The petition of McConnell Air Force Base Library was then tabled, in order to let the library and SCKLS study the new rule.

At the outset, it is clear that this is a situation where the state commission has enacted previous rules and regulations pursuant to K.S.A. 75-2552. Specifically, K.A.R. 54-1-3 requires that any library, whether public or otherwise, must have its membership application approved by both the regional system and the state commission. Additionally, the rules and regulations draw a distinction between public libraries in the traditional sense and others which are somehow more restricted in the people they serve. Included in these latter groups are libraries at public schools, junior colleges or university or colleges, which while tax-supported in a greater or lesser degree are open only to those having some affiliation with the institution. K.A.R. 54-1-19 allows the libraries of such entities to participate in the regional system. As no lesser status is assigned, this participation is, by implication, that of full members. See, also, Attorney General Opinion No. 78-270, in which this fully equal status was recognized in a similar context.

The same is true of "club or private libraries," which are allowed by K.A.R. 54-1-18 to "participate in like manner as required for a public library," subject to some provisos not applicable here. In our opinion, the library at McConnell is such a private library, in that access to it is restricted to a certain class of people and its operations are not financed by state or local tax monies. The presence of this latter factor sets it apart from those libraries admitted above under K.A.R. 54-1-19, and justifies separate treatment. However, we note that the type of membership is the same, including all of the privileges thereto.

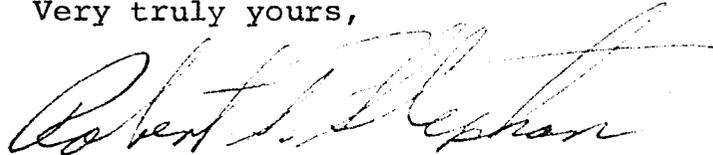
Therefore, the question becomes one of the effect of the "ruling" issued by the state commission at its September 14, 1979 meeting, in which "non-public" libraries may have only "affiliate" membership. Neither one of these terms is defined, and the establishment of a second-class category would appear to contravene rules and regulations already established which were noted above. While the state commission could restrict the membership of both school libraries [see K.S.A. 75-2548(e)] and private libraries, it may do so only by promulgating rules and regulations in the official manner required by law. From the lack of any notice, through publication or otherwise, and any input from the regional systems, it would appear that the "ruling" of September 14, 1979 cannot be considered as having the force and effect of law, as the requirements of K.S.A. 77-415 et seq. were not met. Additionally, we note that the

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terms used ("non-public," "affiliate") are vague and imprecise, and so would cloud the operation of the existing rules and regulations. Finally, the rule was not submitted to this office for approval, as is required by K.S.A. 77-420(b).

It would accordingly be our conclusion that, under the rules and regulations currently in force, the library at McConnell Air Force Base is a "private library" as that term is defined by K.A.R. 54-1-18, and so may participate in a regional system of cooperating libraries in like manner as required for a public library.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

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