



STATE OF KANSAS

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October 30, 1989

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ATTORNEY GENERAL OPINION NO. 89- 133

Duane F. Johnson
State Librarian
Kansas State Library
Capitol Building
Topeka, Kansas 66612-1593

Re: Cities and Municipalities--Libraries--City, County
and Township Libraries

Synopsis: K.S.A. 1988 Supp. 12-1222, and the act of which it
is a part, contain provisions which are not
uniformly applicable to all cities. Accordingly, a
city may use its home rule authority to charter out
from the provisions of that statute, including the
requirement that members appointed to a library
board be residents of the municipality. Cited
herein: K.S.A. 1988 Supp. 12-1222; Kan.
Const., Art. 12, § 5.

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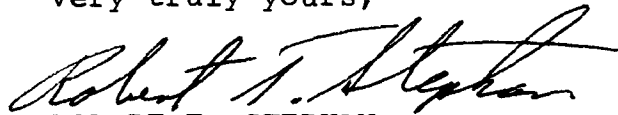
Dear Mr. Johnson:

You request our opinion as to whether K.S.A. 1988 Supp.
12-1222 is subject to charter ordinance under article 12, §5
of the Kansas Constitution. You indicate that the city of
Gypsum has exempted itself from the requirement that library
board members be residents of the municipality, and
substituted a requirement that board members be residents of
the city of Gypsum or two surrounding townships. This
substitute requirement was apparently adopted because the city
had difficulty recruiting city residents to serve on the
library board.

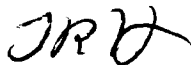
Under article 12, § 5 of the Kansas Constitution, a city may exempt from the application of a state statute by enacting a charter ordinance which provides substitute or additional provisions on the same subject. However, in the event that the statute is contained in an enactment applicable uniformly to all cities, the city may not employ a charter ordinance to supersede the statute. The use of home rule has accordingly often hinged upon the presence of some non-uniform provision in an act, for even one such section is sufficient to "taint" an otherwise uniformly applicable act. City of Junction City v. Griffin, 227 Kan. 332 (1980).

K.S.A. 1988 Supp. 12-1222 is not uniformly applicable to all cities for the reason that cities having a population of more than 250,000 may provide for a library board composed of ten members, whereas all other cities are limited to a seven-member library board. Thus, a city may adopt a charter ordinance exempting itself from the provisions of K.S.A. 1988 Supp. 12-1222, including the requirement that members of a library board be residents of a municipality. Additionally, we are unaware of any other statutory or constitutional provision which would require that library board members be residents of the municipality.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General