

COUNTY LIBRARY: County library board has sole right to determine qualifications, pay and number of county library employees.

February 18, 1947



Honorable Melvin E. Fish
House of Representatives
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"The Library District and Free County Library was authorized by a vote at the April school election in Putnam County as provided by Article 6, Chapter 110 R. S., 1939.

"The Library tax will bring an approximate \$10,000 yearly under the present assessment of valuation.

"Section 14768 provides that the board shall 'Appoint a properly qualified Librarian and necessary assistants'. A representative from the State Library Commission advised that the county should spend approximately \$7,000 per year in salaries. The qualified Librarians, whom they recommend ask from \$4,000 to \$5,000 per year. They further state that we are required, under the State Board regulations, to hire an experienced librarian with a degree in library work. We have not been able to find any such person unemployed.

"I, therefore, request your opinion as to the following questions relating to this matter.

- "(1) Does the State Commission have the right to pass on the qualifications of an employee of the local board?
- "(2) Can the State Commission dictate in any manner the number of employees or what salaries shall be paid?

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"(3) Where it is impossible to find a Librarian, recommended by the State Commission at a reasonable figure, can the State Boards' requirements on the qualifications be waived? (This is assuming that the State Board does have a right to make these regulations)

"If the county is forced to spend more than one half of its income on a salary or even salaries, we know the public will be very indignant about the matter and will desire to take whatever steps are necessary to end the Library Tax."

In answering your request we consolidated the first two questions asked into one question to wit: Does the State Library Advisory Board have the right to pass on the qualifications, salaries and number of the persons hired by a county library board?

Article 6 of Chapter 110, Revised Statutes of Missouri 1939, provides for the establishment of a county library district. Section 14768 of that article provides for a county library board. One of the powers and duties of that board as set forth in Section 14768, is that the board shall, in case such library district establishes its own free county library, appoint "a properly qualified librarian and necessary assistants."

Section 14776, R. S. Mo. 1939 provides:

"All free county libraries established under the provisions of this article shall be visited from time to time by the secretary or organizer of the Missouri library commission, for the study of conditions, and to render such assistance as may be needed. After each such visits, said secretary or organizer shall report, in writing, to the president of the board in charge of each free county library visited, as to the existing conditions, with such recommendations as may be deemed proper. Copy of such reports and recommendations shall be filed in the office of the Missouri library commission."

It will be seen from the above statutes that power to appoint a librarian and assistants is vested by the Legislature in the county library board. The only

right that the Missouri Library Commission which is now the State Library Advisory Board has, insofar as county libraries are concerned, is to visit such libraries and to render assistance to said library, "as may be needed and after such visit to make regular recommendations to the county library board."

A reading of Senate Bill 369, enacted by the 63rd general Assembly, which establishes the State Library Advisory Board discloses that the only function of such board is to govern the State Library and to gather statistics and information which will be available to the other libraries in the state.

It is true that under Section 14736a, Senate Bill 369, the State Library Advisory Board is given the right to make rules and regulations relating to the administration and allocation of State aid to public libraries, but this power only goes to the distribution of the money, and does not in any way take away the right of self-government and control vested in the county library board.

It is a fundamental principle of law that the power of appointment to public office or employment belongs where the people have chosen to place it by their constitution or laws. State ex rel. Hadley v. Washburn, 167 Mo. 680, 67 S. W. 592. As was said in 42 Am. Jr. 950: "As the lawmaking power, a legislature may, when not restrained by the Constitution, provide for the exercise of the appointing power by any department of the government or by any person or association of persons whom it may choose to designate for that purpose."

In 46 Corpus Juris 952, it is said that: "An appointment consists in the choice by the appointing power of the person appointed, and involves the exercise of discretion. While the appointing power may listen to the recommendation or advice of others, * * * * yet the selection must finally be the act of the appointing power." The same rule is stated in 42 Am. Jur. 951.

The above rules of law show that the county library board has the absolute power and discretion as to the persons who will be the librarian and assistants in the county library. Such board is the sole arbiter as to the number of such employees and as to the pay to be given such employees, and the State Library Advisory Board has no power or authority to interfere with this discretion other than to make recommendations.

The question next presents itself as to whether the rule or regulation is proper or not, of the State Library

Advisory Board that a person with a degree in library work must be employed as librarian by the county library board.

As pointed out above the State Library Advisory Board has the right to make rules and regulations only as to the governing of the State Library and as to the allocation of the money appropriated for state aid to public libraries. They have no authority to make any rules or regulations as to the employees of a county library. The question however still is present whether a county library board must hire as county librarian a person with a degree in library work. It will be noted that Section 14768, supra, provides that the county library board shall appoint, "a properly qualified librarian."

It is a rule of statutory construction that words of common use are to be construed in their natural and ordinary meaning (Bellriva Investment Company v. Kansas City, 13 S. W. (2d) 628; Mannibal Trust v. Elzea, 215 Mo. 485, 286 S. W. 371) and it can not be assumed that the Legislature in the use of a word in a statute intended to give it a meaning radically different from that which ordinarily attaches to it, without some explanation of such intention. State v. Platner, 283 Mo. 82, 22 S. W. 767.

The word "qualification" has been defined by our courts as meaning, "endowed with qualifications fit or suitable for the purpose." State Ex Rel. Attorney General v. Seay, 64 Mo. 89.

In 51 Corpus Juris 113, the word qualified is defined as, "possessed of endowments or accomplishments, or intellectual capacity, or moral worth to discharge the duties of an office."

We do not find the word librarian defined by any court, but Funk and Wagnall's Standard Dictionary defines the word as: "A librarian is one who has charge of the books and appointments of a library, usually with the duty of overseeing the arrangement of the books, and classification, indexing, and use by readers.

Therefore, a "properly qualified librarian" is a person who is endowed with the qualities suitable for being in charge of books and appointments of a library. To hold that this work could be done only by a person with a college degree in library work would give to the term "properly qualified librarian" a distorted construction.

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That it was not the intent of the Legislature to so construe the term is shown by the fact that in Senate Bill 369, the General Assembly specifically stated that: "Such State Librarian shall be a graduate of an accredited college or university, and be graduated from an accredited library school, and must have library experience." If the Legislature had so intended the county librarian to possess such qualifications they could have said so as they did in Senate Bill 369.

Therefore, whether the person hired by the county library board is a properly qualified librarian is a matter vested in the sound discretion of the county library board and their finding that the person whom they hire is qualified, is final.

CONCLUSION

It is therefore the opinion of this department that a county library board has the sole right to appoint a county librarian and assistants and such board determine the qualification, salary and number of such employees, which determination cannot be controlled by any state or county agency.

Yours very truly

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APPROVED

J. E. TAYLOR
Attorney General

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