

COUNTY LIBRARIES)

County Library Board may spend surplus funds for construction of building. May not obtain building under long-term lease with option to buy.

October 14, 1949



Mr. Paxton P. Price
State Librarian
Missouri State Library
State Office Building
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request reads as follows:

"We are writing you at this time for an opinion concerning the problem of purchasing sites and construction of library buildings without an increase in the present tax rate.

"Several counties have unexpected surpluses at the moment as a result of a favorable decision of the Supreme Court in a test case involving the imposition of the library tax upon distributable property of utilities. These surplus funds are in excess of immediate financial needs. This applies to several counties now maintaining tax-supported county libraries and we feel it is a matter which might well be considered by the Attorney General and be the subject of an opinion.

"As you undoubtedly know, the only reason the problem arises is because of the language to be found in Section 14773 of the Missouri Statutes, which section authorized the imposition of an additional tax not to exceed 1-1/2 mills for a period of five years for building purposes. Is this statute preclusive, or are we correct in assuming that it is simply a means whereby a county library can collect additional taxes to enable it to build?

"A related problem is whether there is any way by which a county library can obtain a building costing in excess of any present surplus funds which it may have, or which it can reasonably expect to have prior to the completion of the building. This is a somewhat more difficult problem. What we have in mind, of course, is private financing of the construction of the library, the taking of a lease of the premises with a right to purchase it at any time upon payment of a certain stipulated balance, receiving credit for sums previously paid as rental."

Section 11, Article X, Constitution of 1945, provides in part as follows:

" * * * and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

(Emphasis ours.)

Section 11047.1, Missouri R.S.A., Laws of 1945, page 1387, provides:

"Any county, or other political subdivision otherwise authorized by law to support and conduct a library may levy for library purposes in addition to the limits prescribed in Section 11, Article X of the Constitution a rate of taxation on all property subject to its taxing powers in an amount as now or hereafter prescribed by law: Provided, that political subdivisions now having or hereafter having a population of not less than 300,000 inhabitants nor more than 600,000 inhabitants according to the last Federal decennial census are authorized to levy for library purposes a rate which shall not exceed ten cents on the hundred dollars assessed

valuation, annually, on all taxable property in such subdivision."

Statutes dealing with the formation of county library districts and relevant to the question hereunder consideration are found in Article 6 of Chapter 110, R.S. Missouri, 1939. Section 14767 of that article provides in part as follows:

"* * *And if, from returns of such election, which shall be certified to the county court, the majority of all the votes cast on such propositions at such election shall be

"for establishing ____ county library district,'

"and for the tax for a free county library, the county court shall enter of record a brief recital of such returns and that there has been established

"' _____ county library district,'

"and thereafter such

"' _____ county library district'

"shall be considered and held to be established, shall be a body corporate, and known as such; and the tax specified in such notice shall, subject to provisions herein below of this section, be levied and collected, from year to year, in like manner with other taxes in the rural school districts of said county. The proceeds of such levy, together with all interest accruing on same, with library fines, collections, bequests and donations in money shall be deposited in the treasury of the county and be known as the 'county library fund,' and be kept separate and apart from other moneys of such county, and disbursed by the county treasurer only upon the proper authenticated vouchers of the county library board hereinafter mentioned: Provided, that such taxes shall cease, in case the regular voters of

any such district shall so determine by a majority vote at any annual election held therein, after petition, order of court, and notice of such election and of the purpose thereof, first having been made, filed and given, as in the case of establishing such county library district."

Section 14768 provides that the county library board shall "in general carry out the spirit and intent of this article in establishing and maintaining such free county library and branches thereof."

Section 14769 provides:

"Said ' _____ county library district' as such body corporate, by and through said county library board, shall have power to sue and be sued, to complain and defend, and to make and use a common seal, to purchase or lease grounds, to lease, occupy or to erect an appropriate building or buildings for the use of said county library and branches thereof, and to sell and convey real estate and personal property for and on behalf of the county library and branches thereof, to receive gifts of real and personal property for the use and benefit of such county library and branch libraries thereof, the same when accepted to be held and controlled by such board, according to the terms of the deed, gift, devise or bequest of such property."

Section 14773 provides:

"Whenever, in any county library district, which has decided or shall hereafter decide to establish and maintain a free county library under the provisions of this article, the county library board shall by written resolution entered of record, deem it necessary that a free county library building should be erected in such county and one hundred (100) taxpaying citizens of any such county library district, shall in writing

petition the county court asking that an annual tax be levied at and as an increased rate of taxation for such library building and shall specify in their petition a rate of taxation not to exceed one and one-half mills on the dollar annually, and not to be levied for more than five years on all taxable property in such county library district; then the county court shall, if it finds said petition was signed by the requisite number of qualified petitioners, enter of record a brief recital of such petition, and of its finding aforesaid, and shall order that the proposition of such petition be submitted to the voters of such county library district at the next annual election to be held on the first Tuesday in April; and that the clerk of the county court shall cause to be published the proposition of such petition and said county clerk shall cause said proposition to be published in like manner, as near as may be, with the publication of 'the nominations to office,' as provided in section 11542, R.S. 1939. Such order of court and such notice shall specify the rate of taxation mentioned in said petition; and the county clerk shall make and file in his office return of service of such notice; and every voter within such county library district may, in his proper district, as in section 14767 of this article provided, vote

"for _____ mills tax for erection of free county library building,'

or

"against _____ mills tax for erection of free county library building,'

and if the majority of the qualified voters of such county library district voting on said proposition at such election shall vote

"for _____ mills tax for erection of free county library building'

the tax specified in such notice shall be levied and collected in like manner with other taxes of said county library district, and shall be known as the 'county library building fund,'

and shall be subject to the exclusive control of said county library board and be drawn upon by the proper officers in such county upon the properly authenticated vouchers of said board, and be used for the erection of the library building. The fund hereby provided for the erection of a free county library building in such county shall be in addition to the tax levied for the establishment and maintenance of such county library."

Section 14767, which authorizes the imposition of library taxes, does not make any express provision regarding the expenditures of the funds obtained by the imposition of the library tax. Section 14769 provides that the county library board shall have power "to purchase or lease grounds, to lease, occupy or to erect an appropriate building" for use of the county library. Inasmuch as there is no express limitation on the use of the proceeds of the tax authorized by Section 14767, the board would have authority to use such funds in the performance of its duties and exercise of its powers. However, Section 14773 authorizes the imposition of a tax for the construction of a building and provides a fund "for erection of a free county library building * * * in addition to the tax levied for the establishment and maintenance of such county library." Is the method provided by Section 14773 the exclusive method of raising a fund for the construction of a library building?

Section 14773 was undoubtedly enacted by reason of the provisions of Section 12 of Article X, Constitution of 1875, which was in effect at the time of its enactment. See Section 26(a), (c), Article X, Constitution of 1945. That section provided in part, "No county, city, town, township, school district, or other political corporation or subdivision of the state shall be allowed to become indebted in any matter or for any purpose to an amount exceeding in any year the income and revenue provided for such year without the consent of two-thirds of the voters thereof voting on such proposition at an election held for that purpose; * * *."

In the case of School District No. 14, Stone County v. Middleton, et al., 24 S.W. (2d) 1053, the Springfield Court of Appeals considered the question on the right of a school board to spend current funds for the construction of foot bridges in view of the provisions of Section 11152, R. S. Missouri, 1919, (Section 10359, R. S. Missouri, 1939, now repealed Laws of 1945, page 1629), authorizing the levy of an additional tax for the building, repair and maintenance of foot bridges. In the course of its opinion, the court stated (24 S. W.

(2d) 1.c. 1054):

"Under the laws of this state as found under chapter 102, articles 2 and 3, of the Revised Statutes of Missouri, 1919, the school boards, and they alone, are intrusted with the duty of providing and maintaining school facilities, including sites, schoolhouses, footbridges, and furnishings. Under section 11152, R. S. 1919, it is made the duty of the board of directors to provide for the building, repairing, and maintaining footbridges over a running stream and to provide revenue for the purpose when deemed necessary. The contention of the plaintiff is that this expenditure should not have been made for the construction of footbridges until first submitted to a vote of the qualified voters of the district. We think the plaintiff is in error about this as we view the law as to the duties of the board of directors. We think the duty is incumbent upon the board to construct the necessary footbridges and to furnish supplies for the use of the children in the district, if funds are available, and it is not necessary to submit the question to a vote of the people unless it becomes necessary to increase the taxes for that purpose. We think we are sustained in this contention by the Supreme Court of this state in the case of Hart v. Board of Education, 299 Mo. 36, 252 S.W. 441, where the Supreme Court said:

"Under the statutes of this state (sections 11127, 11134, and 11135, R. S. 1919), the school boards, and they alone, are intrusted with the duty of providing and maintaining facilities, including sites, schoolhouses, and furnishings. The methods and means to be employed in the discharge of these functions are committed wholly to their judgment and discretion. It is unnecessary therefore for them to submit to the electorate the question as to whether, under a given situation, they shall increase the housing facilities of the school district by erecting one new building, or more than one, or the question as

to where such building or buildings shall be located. The only thing that they are required to go to the taxpayer for is authority to borrow money (or to increase the tax rate.)"

(Emphasis ours.)

In the case of Decker v. Diemer, 229 Mo. 296, 129 S.W. 936, the Supreme Court considered the question of the power of the county court to construct a courthouse building from surplus funds rather than from the proceeds of bonds voted for the purpose. In the course of its opinion the court said (229 Mo., l.c. 337):

"* * * Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of the people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made."

In the present situation there is no question of the restriction of the activity of the county library board for the purpose of accumulating a fund for the construction of a building. The funds are now in the hands of the library boards by reason of the decision of the Supreme Court in the case of State ex rel. Benson v. Union Electric Company of Missouri, 220 S.W. (2d) 1. By reason of the decision of the court in that case, public utilities having property in various library districts have paid taxes assessed and payable for the years 1946, 1947 and 1948, and the surplus funds are available by reason of such payment. Inasmuch as the funds are now on hand, we see no reason for their not being used for any legitimate purpose within the authority of the county library board. As set out above, in Section 14769 the board is authorized to erect a building.

This does not appear to be a situation in which the holding of cases prohibiting the transfer of school district funds from one fund to another is applicable. See Russell v. Frank, 348 Mo. 533, 154 S.W. (2d) 63. Statutory provisions relative to school funds

provide expressly for their being held in specific funds and used for such purposes only. Section 10366, R. S. Missouri, 1939. Moreover, school taxes are voted according to such specific funds. Section 10347, R. S. Missouri, 1939.

As for your second question, the county library board may incur indebtedness only if authorized by statute. There is no authority given them to issue bonds or to incur an indebtedness in excess of one year's anticipated revenue, and, therefore, the board would have no authority to obtain funds for private financing for the construction of a building.

Insofar as the question of making a long-term lease with option to purchase is concerned, the Supreme Court considered such an arrangement in the case of Sager v. Stanberry, 336 Mo. 213, 78 S.W. (2d) 431, in the light of the constitutional provision above referred to prohibiting municipal corporations incurring an indebtedness in excess of its anticipated revenue for one year. In the course of its opinion the court stated (78 S.W. (2d), l.c. 437):

"The evidence clearly shows that the city asked for and received bids for the purchase of the machinery included in the Fulton Company contract; that the city proposed to buy this machinery on the installment plan; that the Fulton Company's bid was accepted, and it was agreed, and so understood by the city officials and the representatives of that company, that the purchase price of the machinery with interest be paid in monthly installments over a period of 52 months with title reserved in the vendor until the machinery was paid for. The so-called lease designating the monthly installments as rentals is a patent attempt to disguise the true character of the transaction. The facts and events which we have heretofore stated suffice to demonstrate that it was not a bona fide lease, but in legal effect a purchase and sale of the machinery on the installment plan creating a present indebtedness for the full amount payable in deferred monthly installments. It is said in 19 R. C. L. at page 984: 'The purchase of a single public improvement by installments which in the aggregate exceed the debt limit cannot be accomplished by calling the installments rent, if there is a binding obligation to pay them for a definite period and

upon the payment of the last installment title to the property passes to the municipality, or by pledging the municipality's good faith for the payment of the installments when it is recognized that there can be no legal liability, if it is provided that if any installment is unpaid title to the entire property shall revert to the contracting party.' This device of clothing a sale and purchase, whereby the purchase price is to be paid in installments, in the guise of a lease and denominating the installments as rentals with a view to thereby circumventing constitutional and statutory debt limitations, has been frequently attempted. * * *

In view of the holding of the Supreme Court in this case, we cannot sanction any such plan as this.

CONCLUSION.

Therefore it is the opinion of this Department that county library boards may use the surplus funds now in their hands by reason of the decision of the Supreme Court in the case of State ex rel. Benson v. Union Electric Company of Missouri, 220 S.W. (2d) 1, for the construction of library buildings.

We are further of the opinion that county library boards may not obtain buildings by the device of entering into a lease with an option to purchase upon payment of a specified purchase price with provision for application of rental paid in accordance with the lease upon the purchase price.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW/feh