

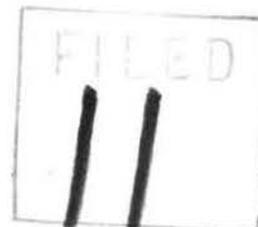
LIBRARY:
CITY LIBRARY:
COUNTY LIBRARY DISTRICTS:

County Library Districts and City Libraries established under Chapter 182 RS 1959 are required to prepare annual budgets under the provisions of Chapter 67 Cum. Supp. 1961.

(Opn. No. 307 - 61)

No. 11 - 62

April 18, 1962



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

Dear Mr. Price:

This office is in receipt of your request for a legal opinion, which reads as follows:

"Will the provisions of Senate Committee Substitute for Senate Bill No. 171, 71st General Assembly, apply to public libraries established and operated under the library laws of Missouri, when the bill goes into legal effect?"

Further inquiry indicates that your request relates to those public libraries which may be established under the provisions of Chapter 182, RSMo 1959. As we understand it, the question is - does Committee Substitute for Senate Bill No. 171, 71st General Assembly (67.010 to 67.100, Supp. RSMo 1961), apply to public libraries established under Chapter 182, RSMo 1959, so as to require such libraries to prepare annual budgets.

Section 67.010, RSMo 1961 Cum. Supp. provides, in part, as follows:

Mr. Paxton P. Price

"Each political subdivision of this state, as defined in section 70.120, RSMo, except those required to prepare an annual budget by chapter 50, RSMo, and sections 167.130, 167.160, 167.200, and 167.240, RSMo, shall prepare an annual budget. * * *"

The exceptions above mentioned in this statute are immaterial to your inquiry.

Section 70.120, RSMo 1959, defines "political subdivision" as follows:

"(2) 'Political subdivision' shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied."

Chapter 182, RSMo 1959, deals with several types of libraries. We will deal first with county libraries which are covered by Sections 182.010 to 182.120, RSMo 1959.

Section 24, Article VI of the Constitution provides that as prescribed by law, counties, cities and other legal subdivisions of the state shall have an annual budget and file annual reports of their financial transactions. This constitutional provision is expressive of the policy of Missouri. Chapter 67 accords with this policy.

Our Constitution and statutes contain a number of different definitions of "political subdivisions". There is no reason why the legislature may not define "political subdivisions" differently for some purposes than for others except only where a specific constitutional definition is applicable. The legislative purpose in defining "political subdivision" is primarily to assure that a particular agency, unit or instrumentality will be governed by the particular statute in question. Hence, whatever may be the classical concept of "political subdivision", it is irrelevant in ascertaining the legislative intent in enacting a statute related to political subdivisions as defined in such statute.

Mr. Paxton P. Price

The obvious purpose of Senate Committee Substitute for Senate Bill 171, 71st General Assembly (Chapter 67, RSMo, 1961 Cum. Supp.) is to require every agency or unit of the state except those specifically excepted to prepare budgets, provided only that such agency or unit is either authorized to levy taxes or empowered to cause taxes to be levied. This legislative intent is manifested by incorporating into Chapter 67 the definition of "political subdivision" contained in Section 70.120, RSMo. Such definition is extremely broad and comprehensive. Moreover, by simply incorporating the definition of the term as contained in Section 70.120 the Legislature evidenced an intent to exclude the balance of the provisions of Chapter 70 insofar as they relate to rural resettlement or rehabilitation agreements from consideration in ascertaining the meaning to be ascribed to the term "political subdivision".

It follows, therefore, that the question to be determined is whether a county library district established under Chapter 182 is an "agency or unit of this state which now is * * * authorized to levy taxes or empowered to cause taxes to be levied."

Section 182.010, RSMo 1959, provides for the creation of a county library district, a unit distinct and separate from the county. Excluded from such districts are those municipalities which have established their own municipal libraries. The district is created by the majority vote of the voters of the district rather than the voters of the county. So too, the tax rate is voted on and must be approved by the voters of such district.

A brief review of the applicable statutes makes it clear to us that a county library district is a political subdivision within the meaning of the term as used in Chapter 67. Section 182.010, RSMo 1959, specifically provides for the creation of a library district. Prior to its amendment in 1955 this section specifically provided that the county library district "shall be a body corporate and known as such". Although this language is not in the amended section, there is no change in the law, inasmuch as Section 182.070 as amended by the laws of 1955 specifically provides that the district is a body corporate.

Mr. Paxton P. Price

Hence, there can be no question but that the county library district is a public corporation separate and apart from the county itself. It is an agency or unit of the state for the purpose of providing the educational benefits to be derived from a free public library.

Section 182.010, RSMo 1959, provides that the voters in the county library district may vote for a mill tax for a county library and for an increase in such tax. Section 182.020 provides that if a majority of the votes cast in the district is in favor of the proposed tax, then the tax specified shall be levied and collected from year to year. The tax so authorized by the voters of the district may be reconsidered at an election of said district held at least five years after the district has been established. Section 182.100 provides means whereby the district may vote upon the question of whether or not a library building should be erected and a tax levied therefor. Section 182.105 which authorizes the voters of a district to pass upon the question of issuing bonds for the purchasing of grounds and erection of public library buildings specifically provides that before incurring any such indebtedness the county library board shall provide for a tax sufficient to pay the interest and principal of such indebtedness. The foregoing provisions clearly authorize the voters of the district to cause taxes to be levied for the various purposes and functions of operating the library district. In some circumstances the submission of such issue to the voters is caused by the action of the library board, which is expressly declared to be in exclusive control of the property and affairs of the district. Inasmuch as it is required by the statute that the voters of the district as such must approve the levy of the tax, this can only mean that the district itself causes such taxes to be levied. It is true that the district has no authority to levy taxes for library purposes, inasmuch as only the county court can do so. However, in determining whether the "district" is empowered to cause taxes to be levied, there is no reasonable basis for attempting to distinguish between the "district" as such and the voters of the district. Obviously, a "district" can act only through people, and the voters of the district are in truth and in fact such district for the purpose of determining whether the district is "empowered to cause taxes to be levied".

Mr. Paxton P. Price

In State ex rel Benson v. Union Electric Co., Mo. Sup., 220 SW2d 1, 4, the Supreme Court en banc referred to "the fact of the district's lawfully voting the tax."

In our opinion, therefore, a county library district established under the provisions of Chapter 182, RSMo 1959, is a "political subdivision" within the meaning of that term as used in Chapter 67 RSMo, 1961 Cum. Supp., and therefore is required to comply with said chapter respecting the preparation and submission of budgets.

We next consider whether city libraries under Section 182.140 to 182.301 are political subdivisions as that term is defined in Section 70.120 and by reason thereof required to prepare budgets by Chapter 67, RSMo 1961 Cum. Supp.

Section 182.140, RSMo 1961 Cum. Supp. applicable to cities containing more than five thousand and less than six hundred thousand inhabitants provides in paragraph 1 that a free public library established under said section "shall be a body corporate, and known as such". The proceeds of the tax levied for library purposes by the voters as well as other moneys of the library are required by the statute to be kept in the city treasury separate and apart from other moneys of the city, and disbursed by the proper city officer only upon properly authenticated warrants of the city library board of trustees. Paragraph 2. To the same effect is paragraph 4, Section 182.200 RSMo 1959. That section also provides that the library board of trustees "shall have the exclusive control of the expenditure of all moneys collected to the credit of the library fund, and of the construction of any library building, and of the supervision, care and custody of the grounds, rooms or buildings constructed, leased, or set apart for that purpose". Paragraph 5 of said section grants additional powers to the board "as a body corporate".

The legislative intent is clearly manifested to treat city free public libraries as public corporations separate and independent of the cities in which they have been established. The cities are without any power whatever to exercise control over the funds of the library, all such control being committed to the library boards. While it is true that Section 182.140, prior to its amendment in 1955, did not in terms refer to the

Mr. Paxton P. Price

library as a "body corporate" as does the more recent statute, it is our view that when all of the statutes are read as a whole the legislative intent is manifested to create a body corporate with respect to the library.

That the legislature deemed city libraries to be units comparable to county library districts is evidenced by the references in Section 182.030 to an "existing municipal library district". Inasmuch as no statute of which we are aware ever previously referred to the city library as a municipal library "district", it is evident that the legislature undoubtedly believed that such city libraries were in fact library districts. The mere fact that the establishment of such city libraries and the approval of a tax therefor is to be submitted to the voters of the city does not militate against our view. County library districts do not necessarily comprehend an entire county, so that the statute could not very well require a vote of all the voters of the county. Hence, the matter would be submitted to the vote of those who resided within the territorial limits of the district as such. On the other hand, with respect to city libraries they are for the use and benefit of the entire city, no part thereof being excluded from the territorial limit of the area served by the library. Hence, the voters of the city are, in truth and in fact, the voters of the city library corporation or "district". There is no magic in the use of the word "district" as applied to libraries. A "district" is simply a defined portion of a state, county, or municipality for administrative, electoral or other purposes. The term is descriptive of the territory within which specific authority is exercised for certain statutory purposes. When the voters of the city authorize the library and approve the tax they do so in their capacity as voters of the city library "district".

In State ex rel Carpenter v. City of St. Louis, Mo. Sup., 2 SW2d 713, it was held that a public library is an educational institution over which the state may exercise local control, and that it is not a matter of purely municipal concern. By the Library Act, the legislature was held to assume authority to promote education in localities throughout the state by means other than through the instrumentality of schools. In our view, therefore, a city library established pursuant to the provisions of Chapter 182 is at the very least an agency of the state for educational purposes. It was said in the Carpenter

Mr. Paxton P. Price

case, "Education is not limited to schools and it is within the control of the General Assembly, in the exercise of the State's police powers to provide for other educational agencies * * *."

As a state policy, the General Assembly has assumed control of public free libraries as educational institutions. That is a legislative determination that they are a matter of state concern. As we have pointed out, the library functions through an independent board as a body corporate, which has exclusive control over the expenditure of all moneys constituting the library fund. The Board is not accountable to the city authorities, who must make all payments out of the fund upon proper warrants of the board. In our view, therefore, such city libraries are agencies of the state and are "empowered to cause taxes to be levied". The municipal authorities as such have no power to levy the taxes until they are authorized to do so by the proper vote of those upon whom the burden of the tax levy would fall - the voters within the territorial limits served by the library. These libraries, therefore, come within the clear intent of the definition contained in Section 70.120 RSMo 1959, as agencies of the state "empowered to cause taxes to be levied", and therefore are political subdivisions subject to the provisions of Chapter 67.

As we have stated above, the legislative intent manifested in Chapter 67 is to broaden as far as possible the requirements that all agencies or units of the state prepare budgets. If the statute be construed to apply to county library districts but not to city libraries, the result in our view would be absurd and contrary to the legislative purpose. There is no essential difference in the powers, duties and functions of county library districts and city libraries. The board of each such library has exclusive control over the expenditure of library funds. We can conceive of no possible legislative purpose which would be served by requiring that only county library districts prepare budgets and that city libraries be under no obligation to do so. Inasmuch as the city authorities have no power over the library fund, the result would be that neither the city nor the city library board would be required to prepare a budget for the library, whereas under identical circumstances the county

Mr. Paxton P. Price

library board would be compelled to do so. In our opinion, Chapter 67 is equally applicable to both county and city libraries which are governed by Sections 182.010 to 182.301. It follows that such city libraries are political subdivisions within the meaning of Section 70.120 and required to prepare budgets as required by Chapter 67, RSMo, 1961 Cum. Supp.

In arriving at our conclusion, we have not overlooked the statement of our Supreme Court en banc in State ex rel Board of Directors of St. Louis Public Library v. Dwyer, 234 SW2d 604, 606:

"Of course, the Library is not a political subdivision of the State under the definition of Sec. 15, art. X of the Constitution (or any other definition); but we do not think that determines the matter as the City contends."

What was said in that case must necessarily be read in the light of the question for decision. As was said in State ex rel Bixby v. City of St. Louis, 241 Mo. 231, 145 SW 801, 803:

"The language used by a judge in his opinion is to be interpreted in the light of the facts and issues held in judgment in the concrete case precisely as in every human document . . . It would be a wide and very mischievous departure from correct canons of interpretation to disconnect general language from the issues and facts of a given case and to apply that general language mechanically or automatically to the different facts and different issues of another case; for the sense must be limited according as the subject requires, the words take color from their context."

The Dwyer case involved the right of the library to a share in the intangible taxes returned by the Director of Revenue to the City of St. Louis. The question for determination in that case was stated by the Court as follows:

Mr. Paxton P. Price

"The question involved is whether Sections 4 and 15, art. X, 1945 Constitution, Mo. R.S.A., prevents these amounts from going to the Library Fund."

Hence, when the Court was considering whether the library was a political subdivision, its parenthetical reference to "any other definition" meant only any definition which might be applicable to the question for determination in that case. Obviously, the Court did not search through the statute books to ascertain whether any of the many definitions of political subdivision might apply to city libraries, because no such question was before the Court. It is equally obvious that the Court did not have before it any question comparable to that here involved, namely whether the 1961 legislative intent manifest in Chapter 67 was to include city libraries as among those agencies or units of the state which should be required to prepare budgets.

CONCLUSION

It is the opinion of this office that both county library districts and city libraries established under Chapter 182, RSMo 1959, are required to prepare annual budgets under the provisions of Chapter 67, Cum. Supp. 1961 (Senate Committee Substitute for Senate Bill 171, 71st General Assembly).

This opinion, which I hereby approve, was prepared by my assistants, Mr. Gordon Siddens and Mr. Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JGS:JH:ms