

March 2, 1964



Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Mr. Burlison:

This is in answer to your letter in which you ask several questions regarding the "Riverside Regional Library." You state that the county library districts of Cape Girardeau, Scott and Perry Counties and the city library of Perryville, Missouri, have contracted with each other under the provisions of Section 70.210 to 70.360, RSMo, for cooperative services as "The Riverside Regional Library".

You ask six questions regarding the power and authority of such so-called regional library to purchase real estate for the use of such regional library.

Your first question is whether "Riverside Regional Library" can purchase real estate and incur indebtedness therefor in an amount less than the yearly gross income of such regional library but in an amount greater than the yearly income of one or more of the individual contracting libraries. As you pointed out, the so-called regional library came into existence as a matter of contract between the various county library district boards and the city library board under provisions of Sections 70.210 to 70.320. Such regional library does not have any other existence than the result of the contract between such libraries and does not exist as a statutory political or other subdivision.

Section 70.240 and Section 70.250, RSMo, provide as follows:

"70.240. Lands may be acquired--how.--
The parties to such contract or cooperative

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action or any of them, may acquire, by gift or purchase, or by the power of eminent domain exercised by one or more of the parties thereto in the same manner as now or hereafter provided for corporations created under the law of this state for public use, chapter 523, RSMo, and amendments thereto, the lands necessary or useful for the joint use of the parties for the purposes provided in section 70.220, either within or without the corporate or territorial limits of one or more of the contracting parties, and shall have the power to hold or acquire said lands as tenants in common.

(Emphasis added.)

"70.250. Method of financing.--Any such municipality or political subdivision may provide for the financing of its share or portion of the cost or expenses of such contract or cooperative action in a manner and by the same procedure for the financing by such municipality or political subdivision of the subject and purposes of said contract or cooperative action if acting alone and on its own behalf."

Section 70.240 confers no power on the so-called regional library to hold real estate. Such statute provides that the parties to the cooperative action or contract or one party to the cooperative action or contract may acquire land and where more than one of such parties to the contract or cooperative action acquire land to be used by the parties to the cooperative action or contract, title to such land is to be taken by such parties as tenants in common.

Section 70.250 makes plain that each party to the contract which makes a purchase can do so only in the manner and by the same procedure as if such party were purchasing the property alone. Therefore, the so-called regional library cannot acquire land in its name as a regional library as though it were a legal entity, but one or more of the parties to the contract creating such "regional library" may acquire land and if two or more of such contracting parties do acquire land they hold title to such land as tenants in common.

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The next five questions in your request are apparently based on the assumption that the regional library does have power to purchase land. Since we have ruled otherwise in answer to your first question, it becomes unnecessary to answer questions two through six.

However, we believe that you are fundamentally concerned with the question of how the individual library boards may make the purchase of the land to be used for library purposes and to be held as tenants in common.

We further assume that you are concerned with the right of your county library district to make this purchase, because you as prosecuting attorney would have no official duties regarding the city library of Perryville, Missouri.

Section 26(a) of Article VI of the Constitution of Missouri provides as follows:

"No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution."

Section 182.070 provides that a county library district is a body corporate. Such county library district would, therefore, be a political corporation and would be prohibited by the provisions of Section 26(a) of Article VI of the Constitution from becoming indebted in an amount greater than the current year's revenue, plus unencumbered balances from prior years except as provided in the Constitution. The provision of Section 26(a) of Article VI of the Constitution reading, "* * * except as otherwise provided in this constitution" refers to other provisions of Section 26 of Article VI of the Constitution, which authorize the incurring of indebtedness in an amount greater than the current year's revenue and unencumbered balances from prior years by a two-thirds vote of the electors in the county, city, incorporated town or village, school district or other political corporation or subdivision which wishes to incur the debt.

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Section 182.070 provides in part as follows:

"The county library district, as a body corporate, by and through the county library board of trustees, may sue and be sued, complain and defend, and make and use a common seal, purchase, or lease grounds, purchase, lease, occupy or erect an appropriate building for the use of the county library and branches thereof out of current funds if such funds are available above those necessary for normal operations or, as provided in section 182.105, * * *"

(Emphasis added.)

Under the provisions of such section the county library district may lease or purchase grounds or buildings out of current funds, or may issue bonds for such purposes under provisions of Section 182.105, RSMo. Current funds are those voted by electors of the county library district under provisions of Section 182.010 and 182.100, RSMo. Section 182.020 provides that taxes for the levy authorized by the voters under Section 182.010 shall be disbursed by the county treasurer only on warrants of the county library board, and Section 182.100 provides that building taxes authorized by such section shall be disbursed only by the county treasurer on warrants of the county library board.

Sections 182.020, 182.100 and 182.105 are the only sources of funds for county library boards to acquire lands or buildings for library purposes. If the funds raised from a levy under one of such sections are insufficient to finance a building or the district's part thereof, additional funds may be raised under any of such sections.

We construe your question numbered three to be whether the county library board may purchase land either alone or as a tenant in common with other parties to the "Regional Library" contract by signing a promissory note and giving a deed of trust on the real property. It is our view that the county library district board cannot execute a promissory note and deed of trust for land or for a building or for its share of such land or building to be used for library purposes. Section 182.070,

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supra, sets forth the power of a county library board, and under such section the county library board can purchase land or buildings only from current funds or from moneys derived from a bond issue and may make payment from current funds only by warrant. We are unable to find any authority in the statutes giving a county library district board power to execute a promissory note and a deed of trust securing such note for any purpose, and in the absence of statutory authority such board has no power to do so. The rule regarding the power of public bodies is tersely stated in Volume 67, C.J.S., §107, p. 378, as follows:

"The powers and authority of boards, commissions, and other public bodies are usually defined and limited by law. Boards, commissions, and other public bodies have only such power and authority as are expressly conferred by law or as arise from necessary implication, and any power sought to be exercised must be found within the four corners of the statute under which they proceed. * * *"

You also inquire as to the right of a county library district board to enter into a "lease purchase agreement". We assume that this is a "lease purchase" providing for payment over a number of years of an amount greater than the present unencumbered "current funds". We are enclosing an opinion rendered under date of October 14, 1949, to Paxton Price, which answers this question. Section 182.105 authorizing issuance of bonds by a county library district has been enacted since such opinion was written, but the holding in such opinion is still applicable insofar as a "lease purchase" contract is concerned.

In view of the above holding, we believe it is apparent that title should be taken as tenants in common to the real property by the county library districts which are signatories to the contract creating the "Regional Library" and which districts do purchase the real property in such proportion as such county library districts contribute to the purchase price of such real property.

Yours very truly,

THOMAS F. EAGLETON
Attorney General