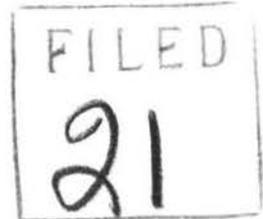


CITY LIBRARIES: City council is unauthorized to convey real
REAL ESTATE: estate, legal title of which is in board of
OWNERSHIP: SALE OF: trustees of city library for use and benefit
of library. When board of trustees of city
library uses library tax funds to purchase
real estate to be used for library purposes,
deed of conveyance should be to board of
trustees.

OPINION NO. 21 (1966)
OPINION NO. 279 (1965)

April 8, 1966



Honorable Charles O'Halloran
State Librarian
State Office Building
Jefferson City, Missouri

Dear Mr. O'Halloran:

This office is in receipt of your request for a legal opinion regarding ownership of property by a city library board and asks two questions. The first inquiry reads as follows:

"May the City Council of a city sell a building to which a library board has clear title on the theory that the library board is a 'creature of the city?' "

The above inquiry does not state that the real estate was purchased by the library board of trustees for the purpose of providing a library building, site, grounds or for other purposes necessary or useful to the city library. However, we assume such facts in this opinion.

Sections 182.140 to 182.301, RSMo 1959, as amended, is the statutory law of Missouri pertaining to public libraries in all classes of cities, and we shall presently refer to some of these sections.

Honorable Charles O'Halloran

Section 182.200, provides for the organization of the board of trustees of a city library, which procedure shall be followed immediately after the members have been appointed. Paragraph 4 of said section provides that the board shall have exclusive control of the expenditure of all moneys collected to the credit of the library fund, as well as exclusive control over the construction, supervision and custody of all library buildings and grounds. All money received for the library shall be deposited in the city treasury to the credit of the library fund, which fund shall be kept separately from other funds of the city, and the library fund shall be disbursed only upon the properly authenticated warrants of the library board.

Paragraph 5 of Section 182.200, is of particular significance to the above inquiry, and reads as follows:

"The board, as a body corporate, 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 or buildings for the use of the public library and branches thereof, sell and convey real estate and personal property for and on behalf of the public library and branches thereof, receive gifts of real and personal property for the use and benefit of the public library and branch libraries thereof, the same when accepted to be held and controlled by the board of trustees, according to the terms of the deed, gift, devise or bequest of such property."

From the above quoted section the board of trustees has been granted certain specific powers, among which, as a body corporate, are those of purchasing, leasing, occupying or erecting an appropriate building or buildings for the library and branches, selling and conveying real and personal property for and on behalf of the library; receiving and controlling gifts of real and personal property for benefit of the library and branches, according to the terms of the deed, gift, devise or bequest of such property.

It is noted that the above mentioned powers have been granted to the library board, and while Section 182.170 provides for the appointment of a nine-member library board by the mayor, with the approval of the city council, and Section 182.190 author-

Honorable Charles O'Halloran

izes the filling of vacancies on the library board in the same manner as original appointments are made, these two sections are the only Missouri statutes authorizing any connection or dealings between the mayor and city council, and the library board of trustees. Legally, the mayor and council have no directory or supervisory control over the library board, nor can the council perform the official duties of the library board. It necessarily follows that the mayor and council, the mayor, or the council are unauthorized by any Missouri statute to sell real estate of which the legal title is in the library board of trustees. It is also true that the city is legally unauthorized to take title of city library property. Clearly, Section 182.200 (5), supra, grants exclusive control over all library funds and other property, including the purchasing and selling of real estate belonging to the library.

Therefore, in view of the foregoing, our answer to the first inquiry is that a city council is legally unauthorized to sell and convey real estate of a city library when the legal title of such property is in the board of trustees of such library.

The second inquiry of the opinion request reads as follows:

"If tax funds levied and collected for library purposes are used to purchase real estate, must the title to that real estate be in the city, or may it be in the city library board?"

We have previously noted that Section 182.200(5), supra, grants exclusive control over all library funds to the library board, and when the proper procedure has been followed, in compliance with the section, such funds or any part of same may be used to purchase real estate for a public library (building) or grounds.

When real estate is purchased for library purposes, the deed of conveyance should be to the "City Library Board of Trustees," as grantee. It is unnecessary and undesirable to name each board member as a trustee-grantee, because the Board is a corporate body. A deed to the Board as grantees, without naming them is sufficient to vest title of the real estate in such city library. *Missouri Wesleyan College v. Shulte*, 142 S.W. 2d 644.

Honorable Charles O'Halloran

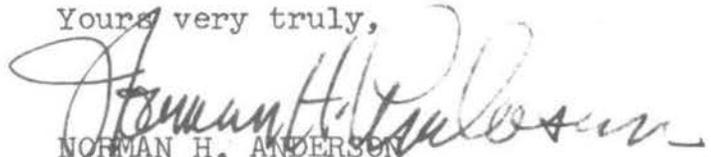
CONCLUSION

Therefore, it is the opinion of this office that a city council is unauthorized to sell and convey real estate, the legal title to which is in the board of trustees of such city library.

It is the further opinion of this office that when the board of trustees of a city library uses library tax funds to purchase real estate to be used for library purposes, as provided by Section 182.200(5), RSMo, a deed of conveyance to such trustees as grantee is proper.

The foregoing opinion which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Yours very truly,



NORMAN H. ANDERSON
Attorney General