

January 20, 1967



MEMORANDUM IN RESPONSE TO
OPINION REQUEST NO. 452 (1966)
65 (1967)

TO: HONORABLE THOMAS D. GRAHAM

FROM: NORMAN H. ANDERSON, Attorney General

RE: Can the building for the Jefferson City Library be financed by a long term lease with an option to purchase upon payment of a specified rental which is to be applied against the purchase price?

This memorandum is prepared to respond to your letter wherein you requested an opinion of this office whether or not a lease agreement by the Library Board extending over several years with an option to purchase would be legal. If so, could it be used by the Library to construct the Library Building? Rather than limit ourselves with the narrow issue presented by your letter, we propose to discuss the problem of financing the building in view of the comments made by Mr. James Davis to this office subsequent to receiving your letter.

Mr. Davis stated to us that his principal interest was how to finance the cost of the building now that the Board has acquired the land and that he was not interested particularly in the narrow question that he presented in his letter that he had written to you.

To directly answer the question of financing the building of the Library through a long term lease with an option to purchase, we direct your attention to our opinion, dated October 14, 1949, addressed to Mr. Paxton Price, wherein we held:

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"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."

A copy of this opinion is attached for your information. We also are attaching Opinion No. 7, dated March 2, 1964, addressed to Honorable Bill D. Burlison, which may be of interest to you.

In our effort to be of assistance to you and the Library Board by making suggestions that you might explore, this office called Mr. Ichord, United States Representative for this District, to inquire if there were any Federal funds that might be available to help construct the Library Building. A copy of Mr. Ichord's letter is attached to this memorandum. It would appear that the Library Board might possibly be able to apply for matching funds up to the value of the land (not to exceed \$100,000) under Title 2 of the Library Services Act. It also appears that a non-profit corporation might possibly be eligible also for a long term, low interest loan from the "Community Facilities Administration", whose regional office is located in Fort Worth, Texas. The funds obtained from them could be used to finance the building. The details for applying to the agency are contained also in Mr. Ichord's letter.

To restate the factual situation, the land is presently owned by the Library Board. According to Mr. Davis, the Board may be able to arrange for a non-profit corporation to build the building on the land.

At this point we might suggest the Attorney for the Library Board consider such a lease between the corporation and the Library Board drawn and executed on an annual basis with a provision for a unilateral option for successive renewals on an annual basis.

Thus, if the Library Board could lease the bare land to the non-profit corporation then the corporation could build its building on the land. Subsequently, the corporation could lease the land and the building back on an annual basis to the Library Board (at a reasonable rental) until the corporation shall have recouped its money and cost. At that time, the corporation by the terms of the lease agreement could transfer all interest in the building of the non-profit corporation to the Library Board. The lease, of course, must contain a clause providing that when the rentals for the successive annual leases have equaled the cost of the building that the lessor will execute documents conveying all interest of the non-profit corporations to the Library

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Board. We believe the distinction between this procedure and a long term lease is readily apparent.

We suggest a thorough study by the Library Board Attorney and utilization of all federal resources as may be available. If this is inadequate, it may be possible to utilize an annual lease renewable at the option of the Library Board on an annual basis for successive terms as discussed in the paragraphs above to raise the funds necessary to build the Library Building.

The comments we have made in the above paragraphs are submitted for your consideration solely as possible suggestions to afford you different avenues of approach to your problem. In the final analysis, the decisions are yours to make. We suggest finally that you consult in detail with your counsel.

The suggestions herein are merely suggestions and not a ruling by this office and are merely for the consideration of the Library Board and its Attorney.

NORMAN H. ANDERSON
Attorney General

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Enclosures: Opinion No. 71, dated October 14, 1949, to:
Mr. Paxton Price
Opinion No. 7, dated March 2, 1964, to:
Honorable Bill D. Burlison