

October 17, 1967

OPINION NO. 213
Answered by Letter (Chitwood)

Mr. Charles O'Halloran
State Librarian
State Office Building
Jefferson City, Missouri 65101



Dear Mr. O'Halloran:

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

"In 1965, in connection with a demonstration of library service to Miller County, the attached agreement was signed between the Missouri State Library and the Board of Trustees of the Eldon Public Library. You will note in paragraph two of this agreement the statement 'should the Eldon Public Library decide not to enter into cooperative arrangements with the resulting library district, then the books contained in the basic collection will be returned to the Missouri State Library.'

"The resulting library, the Miller County Library, has been created and has entered into contract with the county libraries of Maries, Miller, Osage and Cole, and with the Jefferson City Public Library, to create the Thomas Jefferson Public Library Service.

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"* * * * Thus, although the Eldon Library has offered to 'enter into cooperative arrangements with the resulting library district', the resulting district has refused to accept the method of cooperation offered by Eldon, * * *. Thus, the provision in this agreement calling for a cooperative arrangement has not been accomplished and the State Library wishes to consider removing the book collection from the Eldon Public Library under terms of this agreement."

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"I should like your opinion on the propriety and the legality of the State Library attempting to remove the books. Further, I should like to inquire whether the Attorney General would defend this agency were action brought against it? Last, inasmuch as I am not anxious to forcefully remove the books, will the Attorney General be willing to institute court action to retrieve these books should it become necessary to do so?"

Your inquiries relate to, and are based upon the contract entered into between the Missouri State Library and the Eldon Public Library, and the circumstances involving such contracting parties, consequently, our discussion and answers to the inquiries will be limited to such matters.

In this connection we wish to point out that you have informed us subsequently to the present inquiries that you claim to have power only to loan state owned books to various public libraries, and that you do not have power to convey title of said books to such public libraries. In view of this additional information, the conclusions reached upon your three inquiries will be upon the assumption that title to the books has not been conveyed to the Eldon Public Library but that if the terms of the contract have been followed by that library, it has received a "permanent loan"; and not title to the books.

With reference to the facts here involved, it appears that a contract for a library service demonstration was signed between representatives of the libraries, and that the Missouri State Library was to conduct the demonstration at the Eldon Public Library. We understand the demonstration did begin in 1965, although the contract fails to specify the beginning or ending date for same, and it has ended.

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In accordance with contractual provisions, particularly paragraph 2, the Missouri State Library did place a basic collection of books in the Eldon Public Library. The number of books in the collection is not given in the opinion request or contract, and the only description given of them in the contract is that they should include both adult and juvenile materials, upon fiction, non-fiction and reference material. Said paragraph 2 of the contract reads as follows:

"The Missouri State Library agrees to provide for the Eldon Public Library a basic collection of books - which would include both adult and juvenile materials and both fiction and non-fiction and some reference materials. Books contained in the basic collection placed in the Eldon Public Library for the period of the Library Systems Demonstration will become a permanent part of the Eldon Public Library's collection at the end of the Demonstration if the Eldon Public Library decides to cooperate with the library district which results from the Demonstration. Should the Eldon Public Library decide not to enter into cooperative arrangements with the resulting library district, then the books contained in the basic collection will be returned to the Missouri State Library."

We quote paragraph 2 in full, as it is the only portion of the contract in question by the parties thereto, and it is the subject of the present inquiries. After the demonstration period had ended, the Miller County Library District was created, and has been referred to as the resulting public library (from the demonstration).

The basic collection of books are still in the possession of the Eldon Public Library, which insists that it has fulfilled provisions of above quoted paragraph 2, entitling it to keep the books, while the Missouri State Library insists the former library has not complied with the contract, in that no "cooperative arrangements", have been accomplished by the Miller County Library and the Eldon Public Library, which is a condition precedent to be performed before the latter district can retain the books.

Neither the contract nor the opinion request define the terms "cooperate" and "cooperative arrangements", although they appear in both. You have informed us these terms were intended to refer to contractual relationship created, or to be created, when the Eldon Public Library contracted with the resulting, or Miller County Library District, and by which contract library services are to be provided to the latter district, in accordance with Section 182.080, RSMo., 1959.

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It appears that the Eldon Public Library did offer to "enter into cooperative arrangements" with the Miller County Library District as the opinion request informs us:

"* * * * the resulting district has refused to accept the method of cooperation offered by Eldon, with the result that since February 1, no cooperative arrangements between the libraries exist. Thus, the provision in this agreement calling for a cooperative arrangement has not been accomplished and the State Library wishes to consider removing the book collection from the Eldon Public Library under the terms of this agreement."

It is clear that no "cooperative arrangements" now exist between the two libraries, as the offer made by the Eldon Library to the Miller County Library was rejected, but what was to happen to the books in such an event is not clear. In fact, the above quoted paragraph 2 makes no provision whatsoever for such a contingency.

We cannot agree with your construction of paragraph 2 that since the two libraries were unable to accomplish "cooperative arrangements" between themselves that the books would be returned to the Missouri State Library, as that paragraph certainly does not go that far. The paragraph merely provides that, at the end of the demonstration period, if the Eldon Public Library decided to enter into cooperative arrangements with the resulting library, it could retain the basic collection of books received from the State Library. If it decided not to enter into such cooperative arrangements with the resulting library, the books should be returned to the Missouri State Library.

As a matter of fact the Eldon Public Library did decide in favor of and did offer to enter into "cooperative arrangements" with the resulting library, which the latter would not accept. In the absence of any showing of facts to the contrary, the Eldon Public Library has made at least a prima facie showing of compliance with its part of the contract, and also in the absence of any provision in paragraph 2, or any other portion of the contract that in case the resulting library district should refuse the offer of the Eldon Library to enter into "cooperative arrangements", then the books should be returned by it to the Missouri State Library; the Missouri State Library has no such rights under the contract, and cannot legally remove the books.

Our answer to the first inquiry is that the Missouri State Library is without any legal right under the above mentioned contract to remove the books from the Eldon Public Library.

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Your second question as to whether or not the Attorney General would defend the Missouri State Library if (legal) action were brought against it is not clear. Such inquiry fails to state what legal action, by whom, and under what circumstances any such action might be brought against the State Library. However, in the first paragraph of page two of the opinion request, you do state the Eldon Public Library has informed you they feel they have a legal and moral right to retain the books, and would seek to prevent their removal, probably by court action.

In the event your second inquiry refers to a possible situation in which the State Library or its agents were to be prevented by court action from removing the books from the Eldon Public Library, would the Attorney General defend the Missouri State Library. We have previously stated the Missouri State Library has no legal right to remove the books under contract, therefore, if the Missouri State Library were to be sued in a court proceeding, this office would not defend the State Library in any such proceeding.

For the same reasons given above, our answer to the third inquiry is that the Attorney General is not in a position to do so, and will not institute any court proceedings against the Eldon Public Library in an effort to regain possession of the basic collection of books from that library, for the Missouri State Library.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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