

ANNEXATION: It is the opinion of this office that  
THIRD CLASS CITIES: territory annexed to a third class city  
COUNTY LIBRARY DISTRICT: which maintains a free public library  
PART OF LIBRARY DISTRICT: supported by taxation pursuant to annex-  
OF ANNEXING CITY: WHEN: ation proceedings pending on October 13,  
1965, ceases to be a part of a county  
library district in which such territory was located prior to such  
annexation and becomes part of the municipal library district.

Opinion No. 421 (1967)  
Opinion No. 92 (1968)

February 22, 1968



Honorable Bill Burlison  
Prosecuting Attorney  
Cape Girardeau County  
Cape Girardeau, Missouri 63701

Dear Mr. Burlison:

This office is in receipt of your request for a legal opinion upon the matter presented in your letter and which reads as follows:

"Section 182.480 Missouri Revised Statutes, enacted in 1965, provides for creation of municipal library districts, and purports to govern areas annexed after October 13, 1965.

Though early in the statute there is some indication of intent to include "any annexation pending on October 13, 1965..." as within the municipal library district, this language is completely abandoned throughout the balance of the statute, and the terms "annexation" and "annexed areas" are those exclusively used and in apparent disregard of annexations "pending".

There were annexation proceedings pending in Cape Girardeau on October 13, 1965, and certain territory was finally annexed in 1967. The city contends the annexed area is within the municipal district. The county contends it remains within the county district. Please decide..."

Supplementing the opinion request is your letter of January 8, 1968, reading as follows:

Honorable Bill Burlison

"This letter is in response to your inquiry of December 26, 1967.

My previous statement that annexation boundaries were changed after October 13, 1965, was in error. The initial annexation suit was dismissed and a new one filed on September 20, 1965. There were no subsequent changes made in the boundaries.

As to your question about proceedings still pending, there are none. The decision of the Common Pleas Court was appealed to the St. Louis Court of Appeals, and there affirmed some months ago..."

Cape Girardeau is a City of the third class. Section 77.020 R.S. Mo. 1959, provides how the city limits of a third class city may be altered and reads as follows:

"The mayor and council of such city, with the consent of a majority of the legal voters of such city voting at an election thereof, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city."

Section 71.015, R.S. Mo. 1959, requires a city the governing body of which has adopted a resolution to annex unincorporated land, before proceeding further, to bring a suit in the circuit court of the county in which the unincorporated area sought to be annexed is located, for a declaratory judgment authorizing the annexation in accordance with that section, commonly referred to as the Sawyers Act.

Since the City of Cape Girardeau filed suit for a declaratory judgment authorizing the annexation of the territory forming a part of the county library district, there was an annexation pending insofar as such territory is concerned, on October 13, 1965.

Section 182.470, R.S. Mo. Cum. Supp. 1967, gives the purpose of 182.470 to 182.510 and reads as follows:

"The purpose of Sections 182.130 and 182.470 to 182.510 is to eliminate taxation of certain property which is now being taxed for the support and maintenance

Honorable Bill Burlison

of a county library district and a city library or a public library supported and maintained by a school district and as of October 13, 1965, to permanently fix the geographical boundaries of both city and county library districts, and to preserve the territorial integrity of both city and county library districts."

Section 182.480 R.S. Mo. Cum. Supp. 1967, is in regard to city library districts and what property is subject to taxation therein. Said section reads as follows:

As of October 13, 1965, and any other provisions of law to the contrary notwithstanding, all of the area or territory included within the geographical boundaries of a city, including any area or territory which becomes a part of any city pursuant to any annexation pending on October 13, 1965, which maintains a free public library supported at least in part by taxation, shall be a "municipal library district" and shall have as its purpose the furnishing of free public library services to residents of the district, and the district shall be known as "The City of \_\_\_\_\_ Municipal Library District," and each such district shall be a political subdivision of the State of Missouri and a body corporate with all the powers and rights of like or similar corporations, and as of the effective date of Sections 182.130 and 182.470 to 182.510 all of the area or territory which is hereby included within a municipal library district shall be excluded from the boundaries of any existing county library district, and all of the taxable property located in the municipal library district shall only be subject to taxation by the municipal library district and shall hereafter not be subject to taxation by the county library district; provided, however, that after October 13, 1965, any annexation by a city having within its boundaries a municipal library district shall not extend the boundaries of the municipal library district, and any annexed areas shall remain in the county library district, and the taxable property in any such annexed areas shall only be subject to taxation by the county library district and shall not be subject to taxation by the municipal library district; except, that in any county not

Honorable Bill Burlison

having a county library any such annexation shall likewise extend the boundaries of any existing municipal library district.

From the facts given in the opinion request and supplemental letter of January 8, 1968, it appears that the annexation suit, i.e., the one in which the judgment was affirmed by the St. Louis Court of Appeals, was started on September 20, 1965, although the territory of the unincorporated area was not actually taken into the City of Cape Girardeau, until 1967. The territory annexed to said city was part of a county library district and the county authorities contend that part of the territory annexed contained within the county library district, is still a part of that district. The city authorities contend that the annexed territory is no longer a part of the county library district, but that the territory of said county library district annexed to the city is within the municipal library district.

From the factual situation involving the opinion request, it will be recalled the annexation proceedings were pending on October 13, 1965, the date fixed by Section 182.480, supra, when such section became effective.

It will be recalled that part of the territory of the county library district was included in and finally taken into the city by the annexation proceedings, which had the effect of excluding such territory from the county library district and including it within the boundaries of the city library district, under provisions of Section 182.480 supra. All taxable property within the municipal library district is subject to taxation in that district and is not taxable in the county library district except as provided in Section 182.500 R.S. Mo. Supp. 1967. Under the proviso of Section 182.480 supra only when annexation proceedings are instituted after October 13, 1965, does the county library district remain intact.

We repeat that the annexation proceedings under consideration were begun prior to and were pending on October 13, 1965, and the proviso of said section is inapplicable here. In view of the foregoing, our answer to the inquiry of the opinion request is that the annexed territory which was part of the county library district became a part of, and is now included within the territory of the municipal library district of the City of Cape Girardeau, and is no longer part of the county library district.

#### CONCLUSION

It is the opinion of this office that territory annexed to a third class city which maintains a free public library supported by taxation pursuant to annexation proceedings pending on October 13, 1965,

Honorable Bill Burlison

ceases to be a part of a county library district in which such territory was located prior to such annexation and becomes part of the municipal library district.

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

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General