

LIBRARIES:

The Jefferson City Library Board is not authorized to pay lease rentals on buildings from the funds derived from a tax levy to erect public library buildings.

May 20, 1969

OPINION NO. 46

Honorable Thomas D. Graham  
Representative  
122 District  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Graham:

This opinion is written to respond to your inquiries which you posed as follows:

"If the Jefferson City Library Board leases the site to (a) not-for-profit corporation and that corporation then builds the library building on the land and leases it back to the Library Board on an annual basis until the corporation has recouped its money and costs, at which time the corporation would transfer all interest to the Library Board, can the Library Board use funds realized from the levy under Section 182.260 'for the erection of free public library buildings in the city' to pay the rentals to the not-for-profit corporation necessary to permit that corporation to recoup its investments and costs?"

You state in your letter that the Jefferson City Library Board is receiving annual revenues from a two mill levy authorized by the electorate under Section 182.260, RSMo 1959, for the erection of free public library buildings. You further state that the Library Board has purchased a library site and employed an architect who has prepared preliminary plans, all from current revenues under the two mill levy.

For disposition of your inquiries we will consider initially the question of whether the money received from the two mill levy imposed under Section 182.260, RSMo 1959, (for the erection of city library buildings) can be used to pay lease rentals. Our answer is in the negative.

Honorable Thomas D. Graham

The courts have considered this problem and in Stephens v. Bragg City, (MA) 27 SW2d 1063, 1064, the court said:

"It is also said by plaintiff in error that since the city had used \$1,500 of this money to pay attorneys' fees in litigation to recover the money from a defaulting city treasurer, that manifested an intention to use this money for general purposes and that took away from it its character as a trust fund. With that contention we do not agree. This money did not belong to the general revenue fund of the city. It was the product of bonds voted by the people of the city to secure money for a specific purpose, and when the bonds were issued and sold the money received thereby could not legally be used by the city for any other purpose. The city authorities had no power under the law to transfer this money to the general revenue fund of the city and use it to pay ordinary debts of the city. Thompson v. City of St. Louis et al. (Mo. Sup.) 253 S.W. 969."

See also Thompson v. St. Louis et al, (Mo.) 253 S.W. 969, 972, error dis 46 Sct. 12, 269 US 589, 70 L ed 427.

This utilization of the funds in the manner you propose would constitute an unauthorized diversion inasmuch as the funds have the attributes of a trust and can be applied only for the purposes voted upon by the electorate.

Under the facts of this case, the ballot, as submitted to the voters, provided by its terms, that the levy of a two mill tax was "for the erection of free public library buildings in Jefferson City". The fund derived from this levy, by force of the above cited decisions had impressed upon its ultimate use by the Board the purpose of the erection of free public library buildings.

The payment from the funds created by this tax levy of lease rentals would not be within the ambit or purpose for which the tax levy was voted by the electorate.

Accordingly, we feel the utilization of the funds for the purpose and in the manner proposed, as set forth in your letter, would not be proper.

Inasmuch as we hold that funds derived from the tax levy "for the erection of the public library buildings" can not be utilized to pay rentals to the not-for-profit corporation, the issue of the library board's leasing the land to the not-for-profit corporation becomes moot under the facts. For this reason, we will not undertake to express an opinion on that point at this time.

Honorable Thomas D. Graham

CONCLUSION

It is the opinion of this office that the Jefferson City Library Board is not authorized to pay lease rentals on buildings from the funds derived from a tax levy to erect public library buildings.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General