



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

May 30, 1974

OPINION LETTER NO. 5

Honorable Joseph S. Kenton
State Representative, 32nd District
8553 Holmes
Kansas City, Missouri 64131

Dear Representative Kenton:

This is in response to your request for an opinion on the following question:

"Does a free public library have the right to charge a free public school a fee for audio-visual equipment and materials if the school district is entirely within the library district and the citizens of the school district pay taxes to support the library?"

From the facts stated in your opinion request, we are able to ascertain that the library district in question is actually a multi-county public library service organization formed pursuant to a cooperative agreement under Chapter 70, RSMo, made up of several county library districts. However, with respect to this opinion request this fact is not material and for the purposes of our answer we will assume that the district in question is a county library district.

Article IX, Section 10 of the Constitution provides as follows:

"It is hereby declared to be the policy of the state to promote the establishment and development of free public libraries and to accept the obligation of their support by

Honorable Joseph S. Kenton

the state and its subdivisions and municipalities in such manner as may be provided by law. When any such subdivision or municipality supports a free library, the general assembly shall grant aid to such public library in such manner and in such amounts as may be provided by law."

Chapter 182 provides that county library districts are under control of a board of trustees. The board of trustees of such districts are authorized to establish a "free county library", Section 182.060, RSMo 1969.

Your opinion request presents the issue of whether the charging of school districts for the use of films is inconsistent with the provisions in the statutes and the State Constitution for free public libraries. In our opinion, such charges are consistent.

We understand that the library district contains two 16mm film collections. One is available to the public, the other to schools. With respect to the school collection, which is particularly suited for school instructional purposes, the library makes collections available to school districts at a specified charge per booking. By this method numerous school districts in the area have access to a larger film collection than would be available if each district were to depend upon its resources.

No state law requires that the libraries contain film collections for the use of school districts. Therefore, the maintenance of such a collection is not among the primary or essential purposes for which the library exists. Rather, the maintenance of such a collection is incidental to the library's primary functions. In Opinion No. 66, May 7, 1973, this office considered various questions posed by local schools in view of the provision of Article IX, section 1(a) of the Constitution providing for the maintenance of "free public schools". We held that a school district may charge for extracurricular activities such as yearbooks and athletic events since such activities were not a necessary element of attending school. Likewise, we find that the providing of 16mm films to school districts by a library is not a necessary element of providing a free public library, but of an "extracurricular" nature.

Such a position is consistent with the views expressed by the Rhode Island Supreme Court in Gregory's Book Store v. Providence Public Library, 46 R.I. 283, 127 A. 150 (1924). There the Rhode Island Court held that a library could impose a charge for the use of a duplicate collection of recent fiction volumes, even

Honorable Joseph S. Kenton

though the library was classified as a "free public library". The court determined that the phrase "free public library" should be used in the popular sense of "a library the use of the books of which are free to the public", and that the service at issue was an additional, supplemental service provided by the library for a small fee beyond the basic service of providing free books. In a similar vein the maintenance of a special film collection for schools is an additional, supplemental activity of a Missouri "free public library" and charging school districts for use of such film is not inconsistent with the statutes of a library as a "free public library."

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 66
3-7-73, Mallory