

July 12, 1974

OPINION LETTER NO. 52

Answer by letter-Blackmar

Mr. Charles O'Halloran
State Librarian
Missouri State Library
308 East High Street
Jefferson City, Missouri 65101

Dear Mr. O'Halloran:

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

- "1. Must an individual be a resident of a city or a county library district in order to be appointed to the board of trustees?"
- "2. Should an individual, serving as a member of a board of trustees, remove his residence from the library district, may he continue to serve as a member of the board of trustees?"

With respect to a city library district, Section 182.170, RSMo 1969, provides:

"When any city establishes and maintains a public library under sections 182.140 to 182.301, the mayor or other proper official of the city, with the approval of the legislative branch of the city government, shall proceed to appoint a library board of nine trustees, chosen from the citizens at large, with reference to their fitness for the office. No member of the city government shall be a member of the board."

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Section 182.190, RSMo 1969, goes onto provide that vacancies on the board of trustees are to be filled in the same manner, except that when the vacancy is an unexpired term, the appointment shall be made only for the unexpired portion of the term.

We believe that the words "chosen from the citizens at large" in Section 182.170 indicate a legislative intent that the board members of a city library district are to be residents of the city. Otherwise, those words would have no meaning.

The Missouri courts have held that when residency is a requirement for election or appointment to a public position an officer who ceases to be a resident forfeits his position. See State ex rel. Johnston v. Donworth, 105 S.W. 1055 (St.L.Ct.App. 1907) and State ex rel. City of Republic v. Smith, 139 S.W.2d 929 (Mo. Banc 1940).

When a member of the city library board ceases to be a resident of the city, he forfeits his office and the vacancy may be filled by appointment as provided for by Section 182.190. Until the vacancy is filled, the city library district board member would be a de facto board member and his acts as a board member would be valid. See State v. Smith, supra, and Opinion No. 81, Gant, 1972.

With respect to a board member of a county library district, there is no statutory or constitutional requirement that the board member be a resident of the county library district (although under Article VII, Section 8 of the Constitution, the board member must be a resident of the state). In particular, Section 182.050, RSMo 1973 Supp., providing for the appointment of county library district board members--a section similar to 182.170, RSMo 1969, providing for the appointment for city board members--does not require county library district residency, nor are there any words in that section from which such a requirement may be inferred. While we find no Missouri cases which have considered the precise question, the general rule is where residence within the district or political unit is not made a condition of eligibility to holding office by express provision of law, residence within the district is not considered necessary, 63 Am.Jur.2d Public Officers and Employees §47. We believe Missouri courts would follow this general rule. Therefore, a county library district board member need not be a resident of the county library district.

It is, therefore, our view that a board member of a city library district must be a resident of the city, but that a board

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member of a county library district need not be a resident of the county library district. In the event that a city library district board member ceases to be a resident, a vacancy in office exists which may be filled as other vacancies, but until such vacancy is filled, the board member is a de facto member.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 81
8-2-72, Gant