

ELECTION EXPENSES:
MUNICIPAL CORPORATIONS:

Lawful obligations of a municipality
payable from general funds unless law
specifically provides otherwise.

August 8, 1938.

Miss Ruth O'Malley, Sec.
Missouri Library Commission
Jefferson City, Missouri



Dear Miss O'Malley:

This department is in receipt of your letter and enclosures under date of July 16, 1938. Your letter reads as follows:

"I am enclosing herewith correspondence from Mr. George Kindorf, president of the Maplewood Public Library, together with an opinion of the city attorney.

"May I have your opinion on the point of law as to whether or not The City Council of Maplewood may draw on the library fund to defray the cost of the special election of May 3rd, 1938?"

The letter from Mr. George Kindorf, President of the Maplewood Public Library, under date of July 14, 1938, reads as follows:

"It is regretted that we should have to call upon you again, and we trust that you will understand that we are taking the liberty because we value your counsel.

"On May 3rd, 1938, a special election was called in response to a referendum petition to vote upon the proposition to increase the taxes for library from two mills to five mills.

"The members of the Library Board co-operated with the City officials to the point of securing election clerks and judges to serve gratis and assisted in securing polling places, booths, flags, etc., gratis also. This is mentioned to indicate that we desired to keep the cost of this election at a minimum.

"Some five or six weeks ago the City Council appropriated \$150.00 from the Library Fund to defray the cost of the election, and a few weeks later drew a check for \$17.85 against the Library Fund to pay for printing ballots. No warrants were submitted by the Library Board authorizing the expenditure of Library Funds thus.

"Disapproval of their actions was directed to their attention by our Treasurer on June 8th and by the writer on two dates subsequent thereto.

"On July 11th, the City Attorney rendered an opinion, copy of which is attached hereto. As laymen, we fail to find in that opinion a legal reason why we should execute warrants to support the two disbursements referred to. We have never to this day been informed for what the \$150.00 was used.

"For your information, the revenue based upon the newly authorized rate will not be available until about October of this year.

"If you will be good enough to favor us with your views on this important matter, or if it is not too much trouble, secure for us an opinion from the Attorney General's office, your kindness will be highly appreciated."

The city of Maplewood, Missouri, held a special election on May 3, 1938, for the purpose of increasing "the taxes for library from two mills to five mills." We desire to point out that a library tax increasing the levy to exceed the constitutional limit is illegal. Brooks vs. Schultz, 178 Mo. 222; 77 S. W. (2d) 861. The question as to the amount of the levy is not raised and consequently we are not passing on same.

From the enclosed opinion of the city attorney, we assume that the library directors are governed by Section 13452, R. S. Mo. 1929, which provides that "they shall have the exclusive control of the expenditure of all moneys collected to the credit of the library fund," as follows:

"Said directors shall, immediately after appointment, meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance, and for the government of the library and reading room, as may be expedient, not inconsistent with this article. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the library fund, and of the construction of any library building, and of the supervision, care and custody of the grounds, rooms or buildings constructed, leased or set apart for that purpose: Provided, that all moneys received for such library shall be deposited in the treasury of said city or village to the credit of the library fund, and shall be kept separate and apart from other moneys of such city or village, and drawn upon by the proper officers of said city or village, upon the properly authenticated vouchers of the library board. Said board shall have power to purchase or lease grounds, to occupy, lease or erect an appropriate

building or buildings for the use of the said library; shall have power to appoint a suitable librarian and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of this article in establishing and maintaining a public library and reading room."

An examination of the above statute reveals no direction or authorization of the Legislature to pay expenses of the special election out of the library fund. That the Legislature has the power and disposition of public moneys in the custody of a municipality is found in the statement in McQuillin on Municipal Corporations, Volume I, (2d Edition) Paragraph 255, pages 650-651, as follows:

"From the accepted doctrine that a municipal corporation has, and can have, no vested rights in the powers conferred upon it by the state for public or governmental purposes, it follows that the legislature has plenary power to make appropriate provisions agreeably to the public welfare touching funds and revenue held by the municipality for general public purposes. The doctrine everywhere prevails, sustained by early and late cases, that public moneys in the custody of municipalities are subject to state control and disposition for governmental purposes, within the limitations of the constitution. Neither the charter nor any legislative act concerning the subject can operate as a restriction in this respect. The authority of the legislature of a state to direct a municipality to make any payment of its funds rests upon the fact that such funds are public moneys acquired under the authority of the state for public purposes. The

legislature has the same power of disposition over the public moneys in the custody of the municipality that it has over those in the state treasury."

In the case of State ex rel. vs. Jost, 265 Mo. 51; 175 S. W. 591, l.c. 594, the court said:

"These municipal corporations are subordinate to the sovereign power of the state, and whilst they do, in a sense, hold the purse strings, they so do by the consent of the state. Without the authority of the sovereign, they would not even have a purse, much less the strings of one. The power which gave them the purse can limit the use of it. The power which placed upon that purse the strings can loosen the strings."

The Legislature in this instance did not specify the fund to be drawn on for the payment of the special election. The question is presented whether under the circumstances same should be drawn from the library fund or general revenue fund of the city.

McQuillin on Municipal Corporations, (2d Edition), Vol. VI, Section 2628, page 611, in discussing what claims are valid against municipalities, states as follows:

"Valid obligations include ** election expenses, incurred in behalf of the municipal corporation, in local elections held for its benefit, or those imposed by law; ** "

There can be no question but that the election expenses were incurred on behalf of the municipal corporation, since the library is clearly for a municipal purpose.

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The court, in the case of Tampa vs. Prince, 63 Fla. 387; 58 So. 542, l.c. 543, makes the following statement:

"As the city is expressly authorized to raise by taxation funds 'necessary to maintain a public library in such city,' the maintenance of such a library is a municipal purpose not excluded by organic law; and any proper action taken by the city to effectuate the designated municipal purpose within the prescribed limits is authorized."

McQuillin on Municipal Corporations, Vol. V, (2d Edition) Section 2337, page 972, states as follows:

"All lawful obligations of a municipality are payable from its general funds unless the law specifically provides otherwise."

The Legislature not having specified that the library fund be used for the payment of election expenses incurred in determining the question of increasing the library tax, we are of the opinion that the city council of Maplewood may not draw on its library fund to defray the costs of the special election of May 3, 1938.

Respectfully submitted

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General