

LIBRARIES: Allocation of state aid to tax maintained and supported libraries.

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62

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Miss Kathryn P. Mier
State Librarian
State Office Building
Jefferson City, Missouri

Dear Miss Mier:

This is in reply to your recent inquiry wherein you request an official opinion from this department on the following questions:

(1) When a tax supported library has voted a specific levy and they are not collecting the full amount of the levy, are they, in your opinion, operating and maintaining the library under the laws of the state?

(2) Is a library established under provisions in Laws of Missouri, 1943, Section 14752, in your opinion, a legally established library?

In your request, you refer to Section 14752, page 639, Laws of Missouri, 1943. This section was repealed and re-enacted by the 63rd General Assembly by Senate Bill No. 160, which was approved October 10, 1945, and became effective July 1, 1946 (Mo. R. S. A., Vol. 26, Pocket Part, Section 14752, pages 12, 13). This section reads in part as follows:

"The mayor and council, board of aldermen or board of trustees, of any city having a population of less than 25,000, however organized and irrespective of its form of government, may levy a tax of not more than one-half mill on each one dollars of the assessed valuation on all property in said city, for the establishment and maintenance of a free public library in such incorporated city. When one hundred tax-paying voters of any incorporated city shall petition the mayor and common council asking that an annual tax be levied for the establishment and maintenance of a

free public library in such incorporated city, and shall specify in their petition a rate of taxation, not to exceed two mills on the dollar annually, and in cities of over one hundred thousand inhabitants not to exceed two-fifths of one mill annually on all the taxable property in the city, such mayor and common council shall direct the proper officer to give notice in his next legal notice of the annual election, or special election, which may be called for the purpose of voting on such question, that at such election every voter may vote 'for a mill tax for a free public library,' or 'against a mill tax for a free public library,' specifying in such notice the rate of taxation mentioned in said petition; and if the majority of votes cast on such proposition shall be 'for the tax for the free public library,' the tax specified in such notice shall be levied and collected in like manner with other general taxes of such incorporated city, and shall be known as the 'library fund:' Provided, that such tax shall cease in case the legal voters of any such incorporated city shall so determine by a majority vote at any annual election held therein. * * * "

The portion of this section which we have not quoted applies to cities with a population of 600,000 or over.

Senate Bill No. 369, passed by the 63rd General Assembly and approved on July 10, 1946, makes provision for state aid to public libraries. This act is found in Mo. R. S. A., Vol. 26, Pocket Part, page 7, and Section 14736a thereof reads in part as follows:

"The General Assembly may appropriate moneys for State Aid to Public Libraries, which moneys shall be administered by the State Librarian with the assistance of the State Library Advisory Board. At

least 50 per cent of the moneys appropriated for state aid to public libraries shall be apportioned to all public libraries established and maintained under the provisions of the library laws or other laws of the state relating to libraries. The allocation of such moneys shall be based on an equal per capita rate for the population of each city, village, town, township, school district, county, or regional library district in which any such library is or may be established, in proportion to the population according to the latest Federal Census of such cities, villages, towns, townships, school districts, county or regional library districts maintaining tax supported public libraries. Provided, that no grant shall be made to any public library if the rate of tax or the appropriation for said library should be decreased below the rate in force at the time of the enactment of this bill into law and provided further after January 1, 1949 grants shall be made to any public library, according to two alternate standards: (1) to any public library in which the tax rate is one-half or more of the maximum by law; or (2) to any public library for which the tax income yields one dollar or more per capita for the previous year according to the population of the latest Federal Census. The librarian of such tax supported library together with the treasurer of such library shall certify to the State Librarian the annual tax income and rate of tax or the appropriation of said library on the date of the enactment of this bill, and of the current year, and each year thereafter, and the State Librarian shall certify to the Comptroller for his approval the amount to be paid to each library and warrants shall be issued for the amount allocated and approved. * * * "

It will be noted that this act provides that at least 50 per cent of the moneys appropriated for state aid to public

libraries shall be apportioned to all libraries established and maintained under the provisions of the library laws or other laws of the state relating to libraries.

The public libraries referred to in this section are those which are established and maintained under what are now the provisions of Article 5, Chapter 110, R. S. Mo. 1939 and amendments thereto which provide for establishing libraries in cities, villages and townships, Article 6 of said chapter which provides for the establishing of county library districts and Article 7 of said chapter which provides for the establishing of libraries in cities of over 300,000 population.

The case State ex rel. Carpenter et al. v. City of St. Louis et al., 2 S. W. (2d) 713, was before the Missouri Supreme Court en banc in 1928. In this case, the construction of the provisions of the library act as it then existed was before the Court. The origin and development of the public library law was discussed in this opinion at l.c. 716 as follows:

"In 1885 the Legislature passed what is termed the Library Act (Laws 1885, p. 192), now article 5, c. 60, R. S. 1919, and in 1895 it passed another act (Laws 1895, p. 219), now article 6 of that chapter, making some additions to the law and providing details as to the manner of its operation.

"The first section of the act of 1885 (section 7191, R. S. 1919) provides that, when 100 taxpaying voters of any incorporated city shall petition the mayor and common council for an annual tax to be levied, collected, and used for the maintenance of a free public library, then the mayor and common council shall submit the matter to a vote of the people of the city, and, if the majority of the votes cast be for the Free Public Library, then the tax shall be levied and collected in like manner with other general taxes and shall be known as the library fund.

"In 1901 Andrew Carnegie made a proposition to the board of directors of the St.

Louis Public Library that he would donate to the city \$1,000,000 on condition that \$500,000 of the money be used for a main and central library building, and \$500,000 for branches; and the further condition that the city would secure unincumbered sites for said buildings, and provided for an appropriation of \$150,000 annually for the maintenance of the library system in the city."

Libraries were established throughout the state under the Andrew Carnegie plan and various acts of the general assembly were passed for the purpose of establishing and maintaining libraries under this plan. Comparing the provisions of Section 7191, R. S. 1919, referred to in the foregoing opinion, which related to the procedure for establishing and maintaining public libraries, with the present laws relating to the same subject, it will be found that there has been very little change in the law since the court ruled in the St. Louis case. So, the principles announced in that case would be applicable here on similar questions.

In the St. Louis case, the election for the establishment and maintenance of libraries provided for a tax of two-fifths of a mill on the one dollar assessed valuation annually for a free public library fund (l.c. 716). The evidence in that case reveals that the City of St. Louis levied, collected, and allocated the library tax according to the mandate of the election for a number of years, but for the year 1927 they did not levy this library tax but made a levy for municipal purposes up to the maximum amount authorized under the laws and Constitution. The contention of the city officials of that case being that since the levy for municipal purposes was at the maximum, then the "library tax" could not be levied, collected and paid to the library fund. At l.c. 724, the court, in discussing this action, said:

"* * * In this case the city authorities are attempting to avoid a legal levy by absorbing its funds for other purposes. The question is whether the city officials, having thus deliberately violated the law, may be compelled to observe it."

In ruling on the question of whether or not it was the mandatory duty of the city authorities to treat the levy voted

for the library tax as a part of the annual levy and apportion it to the library fund, the court said at l.c. 728:

"The city authorities, no doubt, have a right to contest the constitutionality of the law by refusing to obey it, but in doing so they assume the risk which that course involves. They cannot evade the law by the mere expedient of allowing the time to pass in which they may regularly act, nor can they defeat its purpose by attempting to absorb for other purposes the funds which the law requires them to use for this purpose. They say articles 5 and 6, c. 60, the Library Acts, do not impose upon them the duty to treat any portion of levy for municipal purposes as including the library tax. The effect of that argument is that any official may nullify any law, which he is sworn to execute, by simply ignoring it. A law does not have to provide details by which it may be enforced. The courts have inherent power to enforce it, and, in case of a plain ministerial duty such as this, to command official action. The city authorities have provided means to collect the money, they will have it in control; therefore we can command them to appropriate for the purpose contemplated by the law.

"The return shows that the board of estimate and apportionment submitted and recommended to the board of aldermen, 'a bill establishing the city tax rate for municipal purposes for the year 1927, of \$1.35 on the hundred dollars' valuation, 'making no mention of or provision for any tax for the library fund,' which bill was passed and approved by the mayor. It is therefore apparent that taxes to the constitutional limit have been levied and now are in the process of collection, and the time is passed for making an appropriate levy.

"The peremptory writ is therefore ordered, commanding respondents to treat 4 cents of \$1.35 on the \$100 valuation, collected and to be collected, under the levy made, as for the support of the Free Public Library in the manner commanded in the alternative writ."

Therefore, according to this opinion, the law requires the proper authorities to levy, collect and apportion to the library fund all taxes which are authorized under the election for the establishing and maintaining of the library.

From an examination of said Senate Bill No. 369, it will be noted that no grant of the aid provided for in the bill shall be made to any public library if the rate of tax or the appropriation for such library is decreased below the rate in force at the time the act goes into effect. The act further provides that the librarian and treasurer of such library must certify to the State Librarian the annual tax income and the rate of tax or the appropriation of said library on the date of the enactment of the bill. It also requires this same procedure during each year thereafter in which such library requests state aid. Until January 1, 1949, the only condition under which a public library may be denied this aid is that when the rate of tax or the appropriation for the library is decreased below the rate in force at the time the bill goes into effect. It seems to have been the purpose of the lawmakers in the passage of this bill to give aid in addition to that which the libraries were receiving at the time the act went into effect. We do not think the fact that the public library is not receiving the full amount of taxes authorized by the election in establishing the library would deprive it of the aid under this bill, providing the aid that it is receiving at the time the law goes into effect is not reduced.

CONCLUSION

From the foregoing, it is the opinion of this department that in order for a tax supported public library to be authorized to participate in the funds appropriated for "state aid to public libraries," the proper authorities shall not decrease the levy or appropriation for the library fund below the rate or the appropriation in force at the time of the

Miss Kathryn P. Mier

-3-

enactment of Senate Bill No. 369 with an emergency clause thereto, which was approved July 10, 1946.

We are further of the opinion that even though the authorities are not levying and collecting the full amount of the levy adopted at the election creating the public library, that that would not prohibit such library from receiving the aid under said act.

We are further of the opinion that public libraries established under the provisions of Section 14752 of Senate Bill No. 369, which reenacts Section 14752, Laws of Missouri 1943, page 639, are legally established libraries, and such libraries as state aid may be granted to, providing they comply with the provisions of the law relating to aid to public libraries.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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