

COUNTY LIBRARY DISTRICT:

A library building and lot is owned by the county library district; library funds may be used to redecorate a building the library district rents.

October 10, 1951

10-10-51



Honorable Wilson D. Hill
Prosecuting Attorney of
Ray County
Richmond, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this department which reads as follows:

"The County of Ray is a third class county and we have established a County Library District and a County Library Board has been appointed.

"1. If the Library Board buys a lot and builds a library building, who would own it?

"2. Is it legal to use Library funds to renovate or redecorate a building the Library District rents?

"3. Is it legal for the Library District to rent a building which belongs to a member of the Library Board?

"4. Would it be legal to rent a building which is owned by the wife of a Library Board Member?"

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Authorization for the organization of a county library district is found in Chapter 182, Sections 182.010 to 182.130, RSMo 1949, Section 182.020, thereof, authorizes the establishment of a county library district which "shall be a body corporate."

Section 182.020, RSMo 1949, reads in part as follows:

"And if, from returns of such election, which shall be certified to the county court, the majority of all the votes cast on such propositions at such election shall be

'For establishing--county library district,'

and for the tax for a free county library, the county court shall enter of record a brief recital of such returns and that there has been established

'- -county library district,'

and thereafter such

'- -county library district,'

shall be considered and held to be established, shall be a body corporate, and known as such; * * *."

(Underscoring ours.)

Section 182.050, RSMo 1949, provides for the creation of a county library board for the purpose of carrying into effect Sections 182.010 to 182.130, RSMo 1949.

Section 182.070, RSMo 1949, delineates a part of the powers of the library district to be exercised through the board. Said section reads as follows:

"Said '_____ county library district' as such body corporate, by and through said county library board, shall have the power to sue, and be sued, to complain and defend, and to make and use a common seal, to purchase or lease grounds, to lease, occupy or to erect an appropriate building or buildings for the use of said county library and branches

thereof, and to sell and convey real estate and personal property for and on behalf of the county library and branches thereof, to receive gifts of real and personal property for the use and benefit of such county library and branch libraries thereof, the same when accepted to be held and controlled by such board, according to the terms of the deed, gift, devise or bequest of such property."

(Underscoring ours.)

It is clearly expressed in this section that a county library district, as a body corporate, may purchase a lot and build thereon a library building, this power being exercised through the library board. A public corporation must exercise its powers through agencies created for that purpose by law. Any authorized purchase of land by a new library board would be for, and on behalf of the library district, in whom title vests.

It is a well settled law in this state that a public corporation is subject generally to the rules of law governing other corporations. State ex rel. Highway Commission v. Bates, 317 Mo. 696, l. c. 701. As a general rule a corporation has only such powers as are expressly or impliedly conferred by its charter. This rule is stated in 19 C. J. S., 369, as follows:

"A corporation has no natural rights or capacity such as an individual or an ordinary partnership, and it has no powers except such as are expressly or impliedly conferred by its charter."

The following definition of charter is found in 19 C. J. S., Corporations, 376:

"When a corporation is formed by or under a special act of the legislature, its powers are generally specified in the act itself, and this act together with any other laws, general or special, which are made binding on, or applicable to, it constitutes its charter for the purpose of ascertaining its powers and duties."

The rule in regard to implied powers is found in 19 C. J. S., Corporations, Section 945, page 373, as follows:

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"In addition to the powers above mentioned in section 944 as being incidental to corporate existence, it is a well settled principle that corporations, in the absence of express restrictions, have the implied power to do all acts that may be necessary to enable them to exercise the powers expressly conferred, and accomplish the objects for which they were created. * * *"

It is further stated in the same section at page 375:

"The implied powers of a corporation are not limited to such as are absolutely or indispensably necessary to carry into effect those expressly granted, but comprise all that are necessary, in the sense of being appropriate, convenient, and suitable as tending directly to accomplish such purposes, including the right of a reasonable choice of means to be employed. The modern rule has been well stated thus: 'If that act is one which is lawful in itself and not otherwise prohibited, is done for the purpose of serving corporate ends and is reasonably tributary to the promotion of those ends, in a substantial and not in a remote and fanciful sense, it may fairly be considered within charter powers.'"

In reading the above quoted rule it is noted that the implied powers of a corporation are not limited to those which are absolutely or indispensably necessary to carry into effect the expressed powers granted, but that they need only be necessary in the sense of being appropriate, convenient, and suitable in accomplishing the purpose of the corporation.

We are, therefore, of the opinion that a county library board which rents a building for housing the county library could take necessary steps to render such building appropriate and suitable for that purpose and may use library funds to renovate or redecorate, limited only in that it be reasonably necessary to effectuate the purpose based upon the sole discretion of the board after a consideration of all facts and circumstances.

In regard to questions 3 and 4 of your request, I am enclosing an opinion to the Honorable Fred C. Bollow, Prosecuting Attorney of

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Shelby County, Missouri, dated June 30, 1948, which holds that it is against the public policy of this state for a member of a public board to contract with the board where there is, or may be a personal gain or advancement. We believe that this opinion is applicable to the questions which you have presented and would extend to include a wife of a board member for the same reason.

CONCLUSION

Therefore, it is the opinion of this department that if a library board buys a lot and erects thereon a library building both would be owned by the county library district.

We are further of the opinion that library funds may be used to renovate or redecorate a building the library district rents, if it is reasonably necessary to render said building appropriate and suitable for housing the county library.

Respectfully submitted,

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APPROVED:



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