

LIBRARY BOARDS:
LIBRARY DISTRICTS:
CITY DISTRICTS:
COUNTY DISTRICTS:
CITY-COUNTY LIBRARIES:
CONSTITUTIONAL LAW:

A City-County library board is authorized to construct a library building and employ architects provided Article VI, Section 26(a), of the Missouri Constitution is not violated, which prohibits incurring indebtedness in any year/exceeding the income and revenue for that year plus unencumbered balances from previous years.

November 20, 1964

OPINION NO. 279



Honorable Thomas D. Graham
State Representative
Cole County
201-204 Monroe Building
235 East High Street
Jefferson City, Missouri

Dear Mr. Graham:

This opinion is in response to your opinion request which reads as follows:

"The voters of Jefferson City recently increased their library tax from 1 to two mills, pursuant to Chapter 182, RSMo. As I understand, the proposal provides this additional one mill is to be used for the erection of a new library facility here in Jefferson City and this additional tax is for a period of ten years.

"I have been contacted by the Jefferson City Library Board who wonder whether or not they can obligate this money before it is received. They, of course, will not receive any money at all from this additional tax until April of 1965 but, if they are to go forward with the hiring of a library consultant and the purchasing of land and planning by an architect of the proposed building, they must do so now. I, therefore, request an opinion from your office whether or not they may obligate these funds before they receive them."

We have further been informed that the Jefferson City-Cole County library has recently been established as a city-county library as authorized under Section 182.291, RSMo 1959. The substance of your inquiry therefor is, can the board in anticipation of the receipt of tax revenues, but before they are actually received, (1) purchase land for a library site, (2) employ a library consultant, and (3) employ an architect to prepare plans for a proposed building.

Section 182.200, Paragraph No. 4, directs that the library board of a city library shall have ". . . exclusive control of the expenditure of all moneys collected to the credit of the library fund, and of the construction of any library building . . ." This clearly infers that the board has power to construct a library building.

Section 182.291, Paragraph No. 3, contains the following language: ". . . Except as provided in this section the city-county board shall function as provided in sections 182.190 to 182.230." While the legislative language used is that the board shall "function", we believe that the legislative intent is somewhat broader than the strict meaning of the word "function". It appears from the language that the legislative intent was that the city-county library board should not only "function" as provided in Sections 182.190 to 182.230 for city library boards, but should also have the powers and the authority that such city boards have. Therefore, we hold, that the city-county board has power to construct a library building.

Turning now to the question of the power or authority of the board to incur indebtedness for the purchase of land for a library building site or employing an architect to make plans for a building, we consider the application of Article VI, Section 26(a), of the Constitution, which provides:

"No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

The Jefferson City-Cole County library district is a political corporation within the meaning of this provision of the Constitution. This is so because Section 182.200, Paragraph No. 5, which makes a city library board a body corporate is adopted in Section 182.291 respecting the functions of the city-county library board.

Therefore, the Jefferson City-Cole County city library board is prohibited from becoming indebted in any year in an amount exceeding its income and revenue provided for such year plus any unencumbered balances from previous years. We are not advised as to the funds available to the board in any particular year, yet we believe that the board will be able to apply the above principle with its own knowledge of the funds available to it in any particular year.

It is our opinion, however, that contracts could be entered into in any one year for a consultant or an architect, provided the services contracted for were not to be performed until the following year in which revenues were available and provided no payment was to be made for such service until the following year, and provided further that the contract did not exceed the revenue available for the year in which the services are to be performed. The courts of this state have held that executory contracts may be made if the contracts provide that the services contracted for are not to be paid until the services are actually performed. *Tate v. School District No. 11 of Gentry County*, 324 Mo. 477, 23 S. W. 2d 1013; *Saleno v. Neosho*, 127 Mo. 627, 30 S. W. 190.

CONCLUSION

The Jefferson City-Cole County library board is authorized to construct a library building and employ the services of architects in connection therewith, provided they do not violate the prohibition of Article VI, Section 26(a), of the Constitution, which prohibits the board from incurring any indebtedness in any year exceeding the income and revenue provided for such year plus any unencumbered balances from any previous years.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Very truly yours,


THOMAS F. EAGLETON
Attorney General