

**OPINION
70-211**

February 27, 1970 (OPINION)

Mr. Richard J. Wolfert
Director
North Dakota Library Commission

RE: Libraries - Contracts - Mill Levies

This is in reply to your request for an opinion of this office with regard to statutory provisions for public library services and financing. Your questions are stated as follows:

1. Can a public library board of a city furnish public library service by contract to another city, county or school district which has not established a public library board via N.D.C.C. 40-38-01.
2. May public library service via contract by a city, county or school district not having established a public library board via N.D.C.C. 40-38-01 be financed by the general city, county or school district tax levy, and is the special library tax levy under N.D.C.C. 40-38-02 available under these circumstances."

We feel that some background material prior to going into specific statutory provisions can be of assistance in this instance.

We note at 62 C.J.S. 1365, MUNICIPAL CORPORATIONS, section 679, the statement that: "The legislature may authorize municipal corporations to establish and maintain free public libraries, and may provide for the appointment of a library board by the municipality, and define its powers * * * ."

Chapter 40-38 of the North Dakota Century Code does constitute the current consolidation and codification of the statutes of this state where the Legislature has authorized municipal corporations to establish and maintain free public libraries and provide for their government. We do not find other sections of the Code providing for other means of establishment of, or financing of municipal library service. We do note such statutes as Section 57-15-10, subsection 5, and Section 54-40-08 of the 1969 Supplement to the North Dakota Century Code, though these statutes merely provide for and modify the means of effectuation of said Chapter 40-38 in the contexts of these other statutory provisions.

In this situation we would assume that "surplus" library services or facilities of a particular municipality could properly be disposed of by sale or contract. The fact that a city having "surplus" services or facilities could dispose of same by sale or contract would not necessarily establish that another city could acquire such services or facilities by purchase or contract. General constitutional principles of uniformity of taxation against local and special legislation and gifts of public funds would prevent one municipality using its tax-raised funds to provide such services to another

municipality without charge. Thus, the receiving municipality would necessarily have to have a means of paying for such services.

Section 40-38-01 of the North Dakota Century Code provides a procedure whereby the governing body of a municipality can be empowered to "establish and maintain public library service" by means therein described. Section 40-38-02 of the North Dakota Century Code provides for a tax levy * * * For the purpose of establishing and maintaining public library service * * * " by the governing body of a municipality " * * * authorizing the same * * *." On such basis we would conclude that where the procedures prescribed by said Section 40-38-01 have been completed, the governing body of a municipality may authorize a tax levy for the purpose of establishing and maintaining public library service. Where the procedures prescribed by said Section 40-38-01, or preceding statutes to the same general effect, have not been successfully completed, the governing body is not authorized to establish and maintain public library service or to levy a tax for same. Varying procedures have been statutorily provided for authorizing library services and the taxes therefor in the early history of the state. Thus, Section 2467 of the 1895 Revised Code provided as follows:

Section 2467. LIBRARY FUND, HOW PROVIDED. The city council of each city not exceeding in population fifty thousand inhabitants, and each village or township board of every village and township containing over five hundred inhabitants, shall have power to establish and maintain a public library and reading room, and for such purpose may annually levy and cause to be collected as other taxes are collected a tax not exceeding one mill on each dollar of the taxable property of such city, village or township, to constitute the library fund, which fund shall be kept separate and apart from the other money of the city, village or township by the treasurer thereof, and the same shall be used exclusively for such purpose; provided, that no library shall be so established without first receiving the approval of a majority of the electors of such city, village or township, voting on such question at any general election at which it may be submitted to a vote."

Said statute has been revised in various respects up to the current statute. In none of the revisions of same have we noted there has been provision for termination of the authorization for establishment of the library and levy of the tax. We would assume that there may be instances where the authorization currently in effect in a particular instance or area arose under a prior statutory provision rather than under the current one.

School districts are on a different basis with regard to library facilities. See for example subsection 14 of Section 15-25-06 and Section 15-25-07 of the North Dakota Century Code, now repealed. Note also the provisions of Section 57-15-49 of the 1969 Supplement to the North Dakota Century Code with regard to school district excess tax levies for school library fund. While generally the statutory provisions with regard to school district libraries have related primarily to the establishment of the school districts' own libraries, we would assume that the general powers of a school

district are broad enough to permit obtaining the necessary library services through various means.

In specific answer to your first question, a public library board of a city can furnish public library service by contract to another city, county or school district which has not established a public library board via Section 40-38-01 of the North Dakota Century Code, only to the extent that such services are surplus to the needs of the serving city and to the extent that appropriate payment is available for such services. It seems extremely doubtful that a North Dakota city or county which has not established public library service (including a public library board), pursuant to Section 40-38-01 or statutes precedent thereto, would have funds available to make suitable payment for such services.

In specific answer to your second question, public library service via contract by a city or county not having established a public library board via Section 40-38-01 of the North Dakota Century Code cannot be financed by the general city or county tax levy, and the special library tax levy under Section 40-38-02 is available only in instances where the procedure set forth in Section 40-38-01, or precedent statutory provisions have been followed, in which instance at least under current statutory provisions a public library board will have been established in the usual instance.

You might note in this general regard the provisions of Section 54-40-08 of the 1969 Supplement to the North Dakota Century Code with respect to cooperative efforts of municipalities, school districts and political subdivisions in furnishing library and other facilities. While same will, of course, authorize cooperative efforts, it was not designed to change the internal organization of each or any of the individual entities making up a cooperating group.

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