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Northern Kentucky's libraries target of lawsuits

Written by
Chris Mayhew

Class action lawsuits have been filed against the public library systems of both Kenton and Campbell counties, and the attorney filing the suits has promised to add Boone County's libraries to the list.

Cold Spring-based attorney Brandon Voelker filed a class action suit against the Kenton County Public Library Friday, Jan. 20, in Kenton Circuit Court seeking to invalidate previous library property tax rate increases and a refund. On the previous day, Jan. 19, Voelker filed a similar suit against the Campbell County Public Library. The suits allege the library's boards have not properly followed Kentucky law governing library districts in the past when increasing property tax rates.

Kenton County Public Library Executive Director Dave Schroeder said the suits are without any merit.

"We're following the law and have been for many years," Schroeder said.

Schroeder said he thinks it is important for people to know if the lawsuits were to prevail it would have a "huge impact" on library services to the point where it could shut down both systems.

According to a statement released by Kenton County, the library is complying with the law under the provisions of House Bill 44 enacted in 1979 by the Kentucky General Assembly to govern special taxing districts like libraries.

A total of 77 libraries across Kentucky use the tax methods outlined in HB 44, according to the statement.

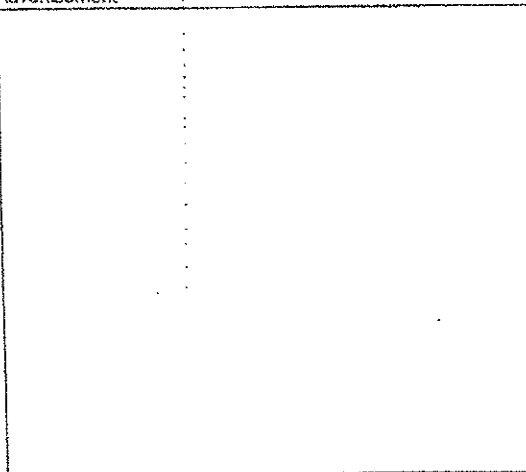
The filers of the lawsuit allege it's not HB 44, but Chapter 173 of the Kentucky Revised Statutes that govern library tax districts, Voelker said.


Voelker said the library districts overspend on things like salaries for unnecessary personnel.

"Our legislature, no one is solving the problem of these unelected taxing boards," Voelker said. "The laws were written to be followed and the state's not holding them accountable."

Voelker said he plans to file suit against

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Boone County as soon as the week of Jan. 23-27.

"I was initially asked to look into the legalities of the public library systems on behalf of the the members of the Northern Kentucky Tea Party," he said.

If both the Kenton and Campbell counties suits were entirely successful for the plaintiffs, the damages recoverable for a refund to residents will be in excess of \$30 million, Voelker said.

The Kenton County suit was filed in Kenton Circuit Court by Garth Kuhnhein, of Edgewood, who is president of the Northern Kentucky Tea Party.

Just for the year 2011, the Kenton County suit asks for \$6.125 million in damages as part of a larger refund being sought, Voelker said.

The class action lawsuit filed against the Campbell County Public Library seeking to invalidate and roll back the library's tax rate back to 1978 levels.

Voelker filed a class action lawsuit in Campbell Circuit Court Thursday, Jan. 19, against the library on behalf of Charlie Coleman of Alexandria, and Cold Spring area residents John P. Roth Jr. and Erik Hermes.

The suit alleges the library's Board of Trustees has failed follow Kentucky law pertaining to library districts by not obtaining petitions from 51 percent of the

voters from the last general election granting permission to increase the property tax rate.

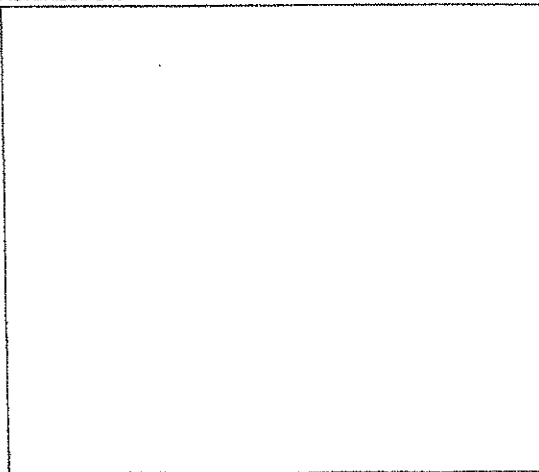
The suits is requesting a "refund of unlawfully charged and collected ad valorem taxes," and for a court injunction to prohibit future any future "unlawful tax increases." The suit seeks to invalidate all library property tax increases beyond the amount of 30 cents per \$1,000 of assessed property value authorized by a petition approved by voters in the 1978.


According to the suit, Campbell County property taxpayers are owed a refund of about \$2.218 million "for the year 2010 alone."

The suit alleges the library's tax rate of 72 cents per \$1,000 of assessed property value is illegal, and that the library should only have taxed property owners at the rate of 30 cents per \$1,000 of assessed property value.

Campbell County's library Board of

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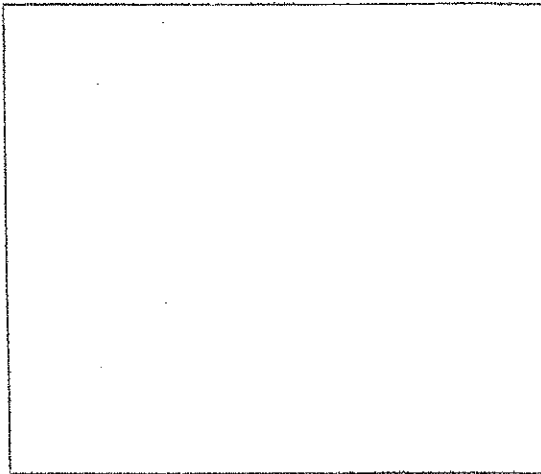
Trustees issued a statement expressing they were "deeply disappointed that this suit had been filed."


"The potential impact could mean the drastic loss of library services in this county," continued the library board's statement. "We are appalled that anyone could fail to understand the devastating ramifications of that loss on the people who depend on the Library each and every day. The Library has acted legally and in the best interest of all taxpayers who entrust us with their tax dollars."

Campbell County library director JC Morgan, ended the library's statement reiterating the library is in "full compliance with the spirit, intent and letter" of the KRS statutes governing Campbell County Public Library operations.

"Honestly, I am baffled that, knowing the facts and knowing the integrity of the Library and its Board of Trustees in providing needed services to our communities, a lawsuit has been filed that could unravel and undermine the work that helps so many," he said.

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*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 81-257

July 2, 1981

Mr. Sam W. Arnold, III
Harrison County Attorney
16 East Pike Street
Cynthiana, Kentucky 41031

Dear Mr. Arnold:

Thank you for your letter of June 9, 1981 in which you ask several questions regarding the library tax within a library district formed by petition (KRS 173.720).

Your letter first asks if the tax rate can be suspended or amended by the fiscal court and/or county library board without a petition. It is the opinion of this office that under KRS 173.790(1) a library tax rate established by the petition method may be decreased only by the petition method. As said in OAG 67-263, a library district created under KRS 173.720 (petition method) can only be dissolved by petition method (KRS 173.800) and such district can only procure a change in the library tax rate by the petition method (KRS 173.790); thus, the method of creation of a library district (whether petition or vote) governs the method of dissolution and tax rate change; such methods must be the same. It is felt that nothing said in OAG 80-570 would lead to a contrary result.

You next ask if there would be any individual liability to members of the fiscal court when they do not decide in what manner the funds are expended. Under KRS 173.720(4) all library taxes are to be turned over to the library board of the library district. The library board and its treasurer, and not the members of the fiscal court, are responsible for the expenditure of funds in accordance with KRS 173.745 and 173.755. Therefore there would be no liability for members of the fiscal court for nonexpenditure of library funds.

Your final question asks whether another district can be established prior to the dissolution by petition of the present county wide district. It is the opinion of this office that the establishment of a second library district within a county, while another library district is still in existence, would be contrary to the provisions of KRS 173.715. KRS 173.715 speaks in terms of authorization to organize all of the territory in a county into a library district and makes no provisions for there being more than one library district in the same county. As the Harrison County Library District is already in existence, another library district in Harrison County would not be authorized until the disestablishment of the Harrison County Library District in accordance with KRS 173.800.

It is hoped that this letter has adequately answered your questions. If not, please feel free to ask for further explanation.

Sincerely,
Steven L. Beshear

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Attorney General

Hohn H. Gray
Assistant Attorney General

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*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 80-570

October 20, 1980

Honorable Lloyd E. Rogers
Acting Attorney
Harrison County Library Board of Trustees
P. O. Box 444
Cynthiana, Kentucky 41031

Dear Mr. Rogers:

Thank you for your letter concerning the situation between the Harrison County Library Board and the City of Cynthiana.

The following answers are provided to your questions:

(1) Can the Harrison County Board keep all library tax money received within 30 days prior to November 22, 1980, date of termination of its contract with the City of Cynthiana Library?

No. According to the law of contracts both sides are obligated to perform their part of the bargain until such time as the contract has terminated.

By the terms of the contract any library tax money received by the treasurer of the Harrison County Library Tax Board prior to the termination of the contract should be delivered to the treasurer of the Cynthiana Library Board within 30 days. This would include any library tax money received within 30 days prior to the termination date of the contract.

On their part the City of Cynthiana is obligated to provide library service to the residents of Harrison County during the last 30-day period prior to the termination of the contract.

(2) Is the Harrison County Library Board vulnerable to a taxpayer's suit?

Yes. OAG 74-95 establishes that public library districts created under KRS 173.450 come within the term "other municipality" of § 165 of the Kentucky Constitution and that members of the Board of Trustees are considered to be municipal officers. Since the Harrison County Library District was created by petition under KRS 173.720 the Board of Trustees could be subject to a taxpayer's suit. To successfully maintain an action the taxpayer(s) would have to show standing to bring such a suit, as well as special or peculiar injury. Also, under KRS 173.745(2)(a) the district, as a corporate body, could be sued through the Board.

(3) What procedure would the people of Harrison County have to pursue to have the library tax repealed?

As set forth in OAG 67-263 a library district created under KRS 173.720 (petition method) can only be dissolved by petition method (KRS 173.800) and such a district can only procure a change in tax rate by the petition method (KRS 173.790); thus, the method of creation of a library district governs the method of dissolution and tax rate change; such methods must be the same.

KRS 173.790 provides a procedure for decreasing but not repealing a tax levy. Therefore, it may be that the people of Harrison County would have to dissolve the library district by petition in accordance with KRS 173.800. The county clerk would thereupon remove the library tax levy from the tax bills of the property owners of the district. [KRS 173.800(4)].

(4) Could the sheriff be enjoined from paying over the library tax collected to the Harrison County Library Board of Trustees until it is repealed?

*2 Yes. If the Harrison County Library District is no longer providing library services to the people of Harrison County, the sheriff could be enjoined from paying over the library tax collected pending repeal of that tax. Further, deposit with the Board under these circumstances would be unauthorized and illegal. See Padgett v. Sensing, Ky., 438 S.W.2d 501 (1969).

In order to enjoin the sheriff on this matter, those seeking enjoinder would have to show standing to bring such an action, as well as special or peculiar injury.

(5) Could the City of Cynthiana Library become a Library District under KRS 173.310 as long as the Harrison County Library District is in existence?

No. The establishment of two library districts in the same county would be contrary to the provisions of KRS 173.715. KRS 173.715 speaks in terms of authorization to organize all of the territory in a county into a library district and makes no provisions for more than one library district in the same county. As the Harrison County Library District is already in existence, a second library district in Harrison County would not be authorized. Therefore, the City of Cynthiana Library can only become a District Library upon the disestablishment of the Harrison County Library District in accordance with KRS 173.800.

(6) Under KRS 173.310(1) could we have a joint board with a member appointed from the City for one (1) year and then alternate with a member appointed from the County for one (1) year for the sole purpose of breaking tie votes?

Yes. A joint board could be appointed, but one (1) year terms of office would not be authorized.

By referencing KRS 173.310(1) it is assumed that your question envisions the creation of an independent county library following the expiration of your present service contract with the City of Cynthiana's Library.

Under KRS 173.340(2), the members of a board of trustees of a county library are appointed by the county judge/executive. The only qualification for the job is "fitness of office." [FN1] A county judge therefore could conceivably appoint a joint board with representation from both the county and the city. KRS 173.340(1) sets the membership of a county board at five (5).

KRS 173.340(2) sets forth the term of office for board members as follows: "two (2) members for two (2) years, one (1) member for three (3) years, and two (2) members for four (4) years. Thereafter trustees of the board are appointed to serve four (4) years." As can be seen no provision is made for one (1) year terms.

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(7) Are we obligated to furnish library service to the County if we keep the tax money?

Yes. It is assumed that this question envisions a continuation of the library tax, rather than the repeal of that tax as suggested by questions (3) and (4).

Implicit in the continuation of the library levy is the obligation to provide service. Under KRS 173.715, the only reason the levy of the library tax is allowed in the first place is to provide or contract for library service. As these funds cannot be used for any but library purposes [KRS 173.360(2)] it is not readily apparent what else you would do with the money.

*3 (8) Could we operate the Bookmobile out of our money with our Agreement with the Library Division?

Yes. Although this office does not know the details of the Agreement that you have with the Department of Libraries, KRS 173.310(4) permits the legislative body of any governmental unit to contract on its own initiative to receive service from the State Department of Libraries. This would include an Agreement for a Bookmobile.

It is hoped that these answers prove helpful.

Sincerely,
Steven L. Beshear
Attorney General

John H. Gray
Assistant Attorney General

[ENI] See OAG 67-458 which states that no geographical limits apply.

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*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 84-141

April 6, 1984

Mr. John B. Nichols
Boyle County Clerk
Danville, Kentucky 40422

Dear Mr. Nichols:

You have a problem concerning the Boyle County Library District. Its chief source of income is its special *ad valorem* tax. It needs more funds for expansion of its physical facilities and services. Consequently, the district board members and other friends are circulating petitions requesting the raising of the tax rate to a specific figure. The petition form sets out blanks for the personal signature of the individual registered voter, the address, and date signed.

You understand that when finished and accepted by the fiscal court, the petition will be turned over to you, as county clerk, for verification of signatures. Actually, under KRS 173.610(1), the petition of qualified and registered voters is filed directly with you as county clerk. And if the petition is legally sufficient, as described in the statute, you, as clerk, must cause the question to be prepared to be presented to the voters of the library district.

Your question is: What constitutes an acceptable signature of such petitioners?

We assume the petition is filed pursuant to KRS 173.610. See KRS 173.610(2) for an increase limit. As relates to the signatures of voters, a reasonable comparison of signatures would suffice. Thus a person named Alice K. Jones could sign as Mrs. John Jones if the handwriting appears to be by the same person. However the comparison may go, you as clerk must finally satisfy yourself that the petitioners are in fact qualified voters under § 145, Kentucky Constitution, and registered voters of the district at the precise time they sign the petition. Note that the term "qualified voters" is used consistently in KRS 173.470 and 173.610. See §§ 145 and 147, Kentucky Constitution; Coffey v. Anderson, Ky., 371 S.W.2d 624 (1963); and Howell v. Wilson, Ky., 371 S.W.2d 627 (1963). Thus you must be reasonably certain of identification of a petitioner, but as a qualified and registered voter of the district at the time they sign the petition to get it on the ballot.

As concerns the address and date, ditto marks would be acceptable where the two parties can be identified under the conditions listed above.

Sincerely,
David L. Armstrong
Attorney General

By: Charles W. Renyan

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Assistant Deputy Attorney General

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173.790 Increase or decrease in tax levy -- Procedure.

- (1) The special ad valorem tax rate for the maintenance and operation of a public library district created pursuant to KRS 173.710 to 173.800 before July 13, 1984, shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election in each county in the district. Such petition shall be filed with the fiscal court in each county in the district not later than ninety (90) days after the date of the first signature. The fiscal court shall order the court to increase or decrease the ad valorem tax, as stated in the petition.
 - (a) The petition shall read, "The following duly qualified voters of (insert name of county or counties) hereby petition the fiscal court of each county concerned to increase (or decrease) the special ad valorem tax from (insert exact amount) to (insert exact amount) on each one hundred dollars (\$100) worth of property assessed for local taxation in the district for the maintenance and operation of the (insert name) Public Library District."
 - (b) The petition shall contain the following: The name and address of each petitioner and the date upon which he signed the petition.
- (2) Any increase provided for in subsection (1) of this section shall not exceed twenty cents (\$.20) on each one hundred dollars (\$100) of the assessed valuation of all property in the district.
- (3) A petition requesting a decrease in the tax rate will not be considered of any legal effect if, at any time prior to the filing of such a petition for decrease, either:
 - (a) Contractual obligations have been assumed by pertinent contracting authorities in connection with said subject library, which contractual obligations would be adversely affected by any such decrease; or
 - (b) If, as of the time of filing of such a petition for decrease, the board of such district shall have arranged for the financing of a library in that district pursuant to a plan of financing involving a lease of that library to the board under which lease the board is not bound for more than one (1) year at a time without exercising an annual option to renew the lease and such lease remains effective and has not been terminated; or
 - (c) If less than three (3) years have passed since the certified copy of the order of the fiscal court ordering the levy of the tax was filed with the county clerk.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 100, sec. 16, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 384, sec. 299, effective June 17, 1978. -- Amended 1972 Ky. Acts ch. 223, sec. 10. -- Amended 1970 Ky. Acts ch. 241, sec. 7. -- Created 1964 Ky. Acts ch. 92, sec. 17.