

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**ANAKA HUNTER,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **CITY OF SALEM, MISSOURI,** )  
 **BOARD OF TRUSTEES, Salem Public** )  
 **Library, and GLENDA WOFFORD,** )  
 **Individually, and in her official capacity** )  
 **As Director of the Salem Public Library,** )  
 )  
 **Defendants.** )

**Case No: 4:12-CV-0004-ERW**

**JURY TRIAL DEMANDED**

**DEFENDANT CITY OF SALEM, MISSOURI’S  
SUGGESTION IN SUPPORT OF ITS MOTION TO DISMISS**

COMES NOW Defendant, the City of Salem, Missouri (“City”), by and through its attorneys of record, Baird, Lightner, Millsap & Harpool, P.C., and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, states the following to the Court in support of its Motion to Dismiss.

**Introduction and Procedural History**

Plaintiff Anaka Hunter filed the above-captioned action seeking damages and declaratory relief, pursuant to 42 U.S.C. § 1983, for alleged violations of her First Amendment Rights. Doc. No. 1 ¶ 2. Plaintiff has sued City, the Board of Trustees (“Board”) of the Salem Public Library (“Library”) and the Library’s Director, Glenda Wofford. Plaintiff alleges that the Defendants maintained unconstitutional policies, practices, and customs of blocking, based upon viewpoint, access by Internet to certain religious content. Doc. No. 1 ¶ 3. Defendants deny the allegations

set forth in Plaintiff's Complaint. Further, City has moved for dismissal on the ground that Plaintiff's claims against the City fail to state a claim upon which relief may be granted as a matter of Missouri law.

### **Legal Standard**

Under Rule 12(b)(6), a defendant may move to dismiss a claim for relief for "failure to state a claim upon which relief may be granted." The purpose of such a motion "is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993); *Peck v. Hoff*, 660 F.2d 371, 374 (8th Cir. 1981) ("A motion to dismiss under Rule 12(b)(6) is the usual and proper method of testing the legal sufficiency of the complaint.").

### **Argument**

Plaintiff alleges in her Complaint that the Library is "established pursuant to . . . § 182.140," Doc. No. 1 ¶ 7, which statute provides for the establishment and maintenance of "city libraries" by Missouri municipalities. The issue relevant to City's Motion to Dismiss is whether the policies, practices, customs and usages of a city library in Missouri are, for purposes of a claim under § 1983, also the policies, practices, customs and usages of the city in which it is established. Because a city has no control over a city library after its establishment, and a city library is recognized as a separate "political subdivision" under Missouri law, the actions of the Salem Library are not those of the City of Salem, and Plaintiff's claim against City of Salem must be dismissed.

Section 182.140 provides that, after a petition to a city's mayor or governing body, residents may vote to levy an annual tax "for the establishment and maintenance of a free public

library in the city.” Section 182.140.1. Once a city establishes such a library, the mayor or other “proper official” appoints, with approval of the city council, a “library board of nine trustees.” Section 182.170. City officials may not serve on the board. *Id.*

Once appointed, a library board is empowered to “make and adopt such bylaws, rules and regulations for their own guidance, and for the government of the library, as may be expedient and not inconsistent with section 182.140 to 182.301.” Section 182.200.2. Among other things, the statute also authorizes the hiring of a librarian, and gives the board “exclusive control of the expenditure of all moneys collected to the credit of the library fund . . . .” Section 182.200.2-3.

Furthermore,

The board, as a body corporate, may sue and be sued, complain and defend, and make and use a common seal, purchase or lease grounds, purchase, lease, occupy or erect an appropriate building or buildings for the use of the public library and branches thereof, sell and convey real estate and personal property for and on behalf of the public library and branches thereof, issue bonds, secured by a deed of trust on any land which they own, for the purpose of the purchase of ground and for the erection of public buildings and for the improvements of existing buildings, receive gifts of real and personal property for the use and benefit of the public library and branch libraries thereof, the same when accepted to be held and controlled by the board of trustees, according to the terms of the deed, gift, devise or bequest of such property.

Section 182.200.5.

Absent from Chapter 182 is a provision reserving authority to a city to direct, oversee, manage or set policy for a library once the board of trustees is appointed. To the contrary, the only powers reserved are the mayor’s power to appoint additional trustees as their terms expire, and to remove trustees “for misconduct or neglect of duty.” Section 182.180. Moreover, § 70.210, which provides for Cooperation by Political Subdivisions Under Contract, expressly includes a “city library” within its definition of a “Political subdivision” of the state of Missouri. Thus, under Missouri law, a city library becomes a separate entity upon appointment of the board of trustees, and operates autonomously and without direction or oversight from a city.

Although there are no published Missouri cases on point, an opinion of the Missouri Attorney General is, at least, persuasive authority. Pursuant to § 27.040, RSMo, the Missouri Attorney General may issue, upon request by certain government officials, opinions on questions of law related to the duties of those officials. *See Mesker Bros. Indus., Inc. v. Leachman*, 529 S.W.2d 153, 158 (Mo. 1975) (“[A]n opinion of the Attorney General is not binding upon the courts or the citizenry, but it may be, and often is, persuasive.”). In 1972, the Attorney General was asked to address “the legal relationship between a Library Board of Trustees (city county, or city-county library) and the appointing authority (Mayor, County Court, or a combination of both) after the Library Board of Trustees is appointed.” Ex. A, Missouri Attorney General Opinion No. 20-72.<sup>1</sup> The Attorney General responded, in relevant part, as follows:

In general . . . such library boards are bodies corporate and the statutes vest the authority for the execution of the laws dealing with such libraries in such boards. Nowhere do we find any reservation of powers to the governing body of the cities, counties or the respective officials of such cities or counties. While it is clear that in certain sections such as for an example Section 182.180, now applicable to municipal library districts, the mayor or other proper official by and with the consent of the legislative branch of the city government may remove any trustee for misconduct or neglect of duty, the power of removal and thus the power of ultimate control is limited in such instances to cases of misconduct or neglect of duty. . . .

Likewise, . . . city, county and citycounty [sic] libraries are included within the definition of “political subdivision” as contained in Section 70.210, RSMo 1969, relating to cooperation by political subdivisions. Other cooperation provisions such as Section 182.301, relating to city and city-county library boards provide that the boards have the power to contract for cooperative service with the body having control of a city, county, school or other public library. The thrust of these statutes is that such *library boards are autonomous and not subject to control, director or indirect, by the officers of the governing bodies of the cities and counties.*

Ex. A, Missouri Attorney General Opinion No. 20-72 (emphasis added).

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<sup>1</sup> Opinion No. 20-72 is available online at <http://ago.mo.gov/opinions/1972/1-72.htm>.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of March, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which provided a copy of to the below listed counsel of record:

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