

Missouri Attorney General

Opinion No. 20-72

Topics: LIBRARIES.

Summary conclusion

The governing boards of county, city-county and municipal libraries are vested with the administrative authority of such libraries and are not under the direction of the officers or governing bodies of such cities or counties.

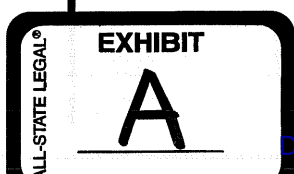
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January 7, 1972

Mr. Charles O'Halloran
State Librarian
Missouri State Library
308 East High Street
Jefferson City, Missouri 65101

Dear Mr. O'Halloran:

This opinion is in response to your request in which you ask the following:



"What is 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?"

"Sections 70.210, 182.070, 182.200 (5) and 182.480 all appear to establish libraries as bodies corporate of the State. Sections 182.050, 182.170 and 182.291, provide for the appointment of trustees. The relationship of appointing body and body appointed after the appointment is unclear.

"We are aware of the specific requirements in the law for reports, of the process for filling vacancies, and of the custody of funds belonging to the library.

"Our question relates to the powers, actual or implied, which the appointing authority may have over decisions and acts of the Board of Trustees which has been appointed.

"Further, we would be interested in knowing, should your opinion be that a Library Board of Trustees does possess a high degree of legal independence from its appointing body, your opinion on the obligation of the Library Board not only to assert that independence, but also to erect and establish those procedures and practices of operation which are appropriate to a highly independent public body."

"From time to time a County Court or a Mayor and Council may come into conflict with the Board of Trustees of a local library, a board originally appointed by the Court or the Mayor. This conflict often involves the right and authority of the County Court or the Mayor to influence or even to direct the actions of the Library Board. Thus, our question: to what extent can the County Court or Mayor, under the law,

influence, direct, or dictate the decisions of a library board?"

We view your question as relating to those sections contained in Chapter 182, RSMo 1969 with respect to county library districts , Sections 182.010 to 182.130, RSMo; city libraries under Sections 182.140 to 182.280, RSMo; city-county libraries, Sections 182.291 to 182.301, RSMo, and municipal library districts, Sections 182.480 to 182.510, RSMo. Our conclusions with respect to the first three also pertain to municipal library districts which under Section 182.480 are political subdivisions of the State of Missouri and corporate bodies and which under Section 182.490 have powers similar to those of the other libraries.

For the sake of brevity we will not quote the sections cited and will not discuss the respective city or county governing bodies' powers of appointment of such board members as the power to appoint in our view is not relative to the duties of such boards.

In general, as you have indicated in your question, 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. Similar provisions respecting removal of county library board members were at one time contained within Section 182.050 but were omitted by amendment of such section and therefore such board members may not be summarily removed. The board members do of course serve for definite terms.

It is also notable that elected county officials except as otherwise specified cannot serve on the county boards, Section 182. 050, and members of the city government are not eligible to be members of such municipal library boards under Section 182.170.

Likewise, as stated in your question, city, county and city/county 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, direct or indirect, by the officers of the governing bodies of the cities and counties.

Although the Supreme Court of Missouri in *State v. Dwyer*, 234 S.W.2d 604 (1950) held that the library considered in that case was an institution of the city, the provisions under consideration here in our view vest the full and undiminished statutory governing powers in such boards of trustees.

In answer to your second question, such boards having the power to execute the authority vested in them also have the corresponding duty to act sua sponte to accomplish the purposes for which they exist.

It should be clear that this opinion does not attempt to cover specific questions and if you have any particular questions involved each should be answered on an individual basis.

CONCLUSION

It is the opinion of this office that the governing boards of county, city-county and municipal libraries are vested with the administrative authority of such libraries and are not under the direction of the officers

or governing bodies of such cities or counties.

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

John C. Danforth
Attorney General