

N.D.A.G. Letter to McLean (Aug. 18, 1987)

August 18, 1987

Ms. Jeanne L. McLean
Bottineau County State's Attorney
P.O. Box 26
Bottineau, ND 58318

Dear Ms. McLean:

Thank you for your letter of July 17, 1987, posing four questions with respect to the establishment of a Bottineau County Public Library service. By a telephone call, we have further learned of a fifth question you have concerning this library service. Also, we have gained additional information concerning your questions.

It would appear that Bottineau County, several years ago, utilized the authority found at N.D.C.C. § 40-38-01 to cause the establishment of a public library service. To further the establishment and maintenance of such a library service, the county levied a library fund tax pursuant to N.D.C.C. § 40-38-02(1). We have also learned that the county commission appointed a board of directors for the county library pursuant to N.D.C.C. § 40-38-03. The county library board has entered into an agreement with the Bottineau Public Schools whereby the money collected from the tax levy and money contributed by the schools was pooled to fund a bookmobile service. The project was totally administered by the Bottineau Public School District.

Your first question is whether it is proper for county money to be used to help pay the salaries of public school employees who are paid at a different scale and receive different benefits as compared to other county employees. Obviously, this question concerns the arrangement between the county library board and the Bottineau Public School District as to the use of the county library levy money and the operation of the bookmobile service.

N.D.C.C. § 40-38-04(5) states that the board of directors of a county library has the authority to contract for library services and to receive library services from other counties, school districts, and cities. Clearly, the arrangement outlined in your letter between the county library board and the Bottineau Public School District is in furtherance of this authority bestowed upon the county library board. Our review of the applicable statutes has failed to reveal any prohibition against such a contract whereby county moneys may be used to pay the salaries of people who are furnishing services in furtherance of an agreement of a county library board and a public school district.

Your second question is what happens to the money being levied for the bookmobile should the county library board decide to discontinue the arrangement with the Bottineau Public School District. The first sentence of N.D.C.C. § 40-38-01 states that the action to establish and maintain a public library service is to occur "by means of a public library and

reading room or other public library service." Thus, the funds which have been collected through the library levy are designed for use in the establishment and maintenance of a public library and reading room or other public library service. The funds are not earmarked for one particular form of library service such as a bookmobile. This conclusion occurs despite the manner in which the question may have been phrased on the ballot (i.e., whether a county bookmobile service should be established). Thus, in response to your question, the levy for the public library service continues despite the termination of the bookmobile agreement. The library fund may be used for other public library services as determined by the board of directors of the county library pursuant to N.D.C.C. § 40-38-04(3).

Your third question inquires as to the manner in which the library mill levy is to be discontinued. The last sentence of N.D.C.C. § 40-38-01 provides that the library service may be discontinued within any county by any of the methods by which library services may be established (by the governing body or by approval of the voters). However, once such library service has been established, the statute states that it shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

Your fourth question concerns the amount of input and control over the operation of the county library board by the commissioners. The powers of the board of directors of the library are found at N.D.C.C. § 40-38-04. Subsection 3 of this statute authorizes the board to control, exclusively, the expenditures of all moneys collected for or contributed to the library fund. Other powers provide the board with authority to supervise library property, to adopt such rules as are needed for the management of the library, and to employ those personnel needed to administer library services.

Obviously, the Legislature has bestowed upon the county library board broad powers over the management of the library and the library fund. Nowhere in the statute is there any mention of control or supervision over the board by the governing body. By the very words of the statute, we can only conclude that the governing body does not possess ongoing control or supervision over the decisions of the county library board as to the management of the county library services. Instead, it is the county library board that has been given the statutory responsibility to administer and supervise the manner in which county library services are to be provided.

By telephone, you have posed a fifth question as to who may own the bookmobile and other library materials if the bookmobile agreement between the county library board and the school district is terminated. As part of your question, you have indicated that the agreement between the two entities does not cover this subject. According to information you have supplied to our office, the actual purchase of the bookmobile occurred without any use of county library money. Furthermore, title to the bookmobile is held by the school district. Finally, you have indicated to this office that the only involvement of library fund moneys is to pay the county's portion of the cost needed to maintain the bookmobile services directly to the public school district. The school district, in turn, receives the library fund money and pools it with other school moneys received from other schools and

uses these funds for maintenance and upkeep purposes with respect to the bookmobile.

Obviously, a decision by the county library board to discontinue its participation in the maintenance and upkeep of the bookmobile would have no effect upon ownership of the bookmobile itself as county library funds were not used for its purchase and title to the vehicle is held in the name of the public school district. The only involvement the library fund has is in the maintenance and upkeep of the bookmobile services. If property has been purchased using any portion of the funds supplied by the library fund, one would argue that the portion of the property paid for by library funds are under the control and supervision of the library board. N.D.C.C. § 40-38-04. This may prove rather impractical given the various funding sources and the inability to divide property between various entities. Thus, it would appear that the library board may find itself owner of a share of the particular properties which have been purchased using moneys supplied by the library fund.

A further agreement between the entities involved in the bookmobile and its services may be able to resolve this matter since a clear answer does not appear available. In the future, we would suggest this subject be covered as part of the agreement entered into by the entities involved in operating the bookmobile services.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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