

N.D.A.G. Letter to Selinger (May 1, 1992)

May 1, 1992

Mr. Bruce A. Selinger
Slope County States Attorney
PO Box 1173
Dickinson, ND 58601

Dear Mr. Selinger:

Thank you for your March 4, 1992, letter requesting an opinion as to whether Slope County may make a donation of money to the New England Library. You also ask whether the Slope County commissioners may divide Slope County into a Bowman library district and a New England library district and use a mill levy from one district to support the Bowman Library and a mill levy from the other district to support the New England Library. You also indicate that both libraries are located outside of Slope County.

Counties have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. Murphy v. Swanson, 198 N.W. 116 (N.D. 1924). A review of North Dakota law reveals no statute which gives express authority, nor one from which authority can be necessarily implied, for a county to donate money to a public library board. Thus, it is my opinion that a county does not have the authority to donate money to a public library board.

Your second question is whether the Slope County Commissioners may divide Slope County into a Bowman library district and a New England library district and use a mill levy from one district to support the Bowman Library and a mill levy from the other district to support the New England Library. The only authority for a county to enter into an agreement for the provision of library services is pursuant to N.D.C.C. § 40-38-11 and N.D.C.C. § 40-38-03. N.D.C.C. § 40-38-11 enables a county, upon approval of a mill levy pursuant to N.D.C.C. §§ 40-38-01 and 40-38-02(1), to enter into an agreement with a city or cities for the provision of library services to the residents of the county. N.D.C.C. § 40-38-03 states that a county may "contract directly with a library board established by another governing body of a municipality . . . for the purpose of extending public library service." There is no provision in N.D.C.C. ch. 40-38 authorizing a county to divide itself into two geographical areas for the purpose of one area receiving library services from one city and the other area receiving library services from a different city. Thus, an agreement entered into between the county and a city or cities must contemplate the provision of library services to all residents of the county.

It would appear possible, pursuant to N.D.C.C. ch. 40-38 for Slope County to enter into an agreement with the cities of Bowman and New England, or their library boards, whereby one portion of a mill levy approved pursuant to N.D.C.C. § 40-38-01 would be provided to the Bowman Library Board and the other portion would be provided to the New England

Library Board. All residents of Slope County could then receive free library services at both the Bowman Library and the New England Library. See N.D.C.C. § 40-38-07.

I trust I have responded to your questions.

Sincerely,

Nicholas J. Spaeth

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