

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-14

Date issued: September 9, 1993

Requested by: Allen Koppy, Morton County State's Attorney

- QUESTION PRESENTED -

Whether the governing bodies of a county and city may begin consolidating county and city library services without first obtaining approval of the electors of both the county and city under N.D.C.C. ? 40-38-11.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the governing bodies of a county and city may not begin consolidating county and city library services without first obtaining approval of the electors of both the county and city under N.D.C.C. ? 40-38-11.

- ANALYSIS -

The statutory authority for a city or county to establish and maintain public library services is found at N.D.C.C. ch. 40-38, Public Libraries. Upon the receipt of a sufficient petition or by voter approval, the governing body of a city or county "shall establish and maintain public library service . . . , either singly or in cooperation . . . with one or more cities or counties. . . ." N.D.C.C. ? 40-38-01.

"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." Letter from Attorney General Nicholas Spaeth to Bruce A. Selinger (May 1, 1992). These two sections of law will be reviewed separately.

N.D.C.C. ? 40-38-03 provides, in part, that "[t]he governing board of a municipality or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a municipality or county for the purpose of extending public library service." N.D.C.C. ? 40-38-03. This provision is applicable only to those cities and counties which do not already have appointed library boards.

N.D.C.C. ? 40-38-11 provides, in part:

**40-38-11. Joint public library services by cities and counties.**

1. Upon compliance with section 40-38-01 for the establishment of public library services, public library services may be jointly provided through a written agreement between the governing bodies of any city or county or both to establish and maintain joint library services with one or more cities or counties or both.

. . . .

3. The parties to the agreement shall appoint a single joint library board to govern public library services covered by the agreement. . . .
4. The joint library board shall have all power and duties provided in sections 40-38-04 through 40-38-09.

. . . .

9. Agreements for public library services between cities or counties or both may be provided under this section or other provisions of this chapter and may not be provided under chapter 54-40 [joint exercise of governmental powers] or other provisions of law.
10. After July 1, 1981, the establishment of joint library services pursuant to this section shall not be permitted unless approved by the electors of each individual city or county considering the question.

"The election in subsection 10 [of N.D.C.C. ? 40-38-11] authorizes the political subdivisions to enter into the joint library services agreement. Subsection 1 [of N.D.C.C. ? 40-38-11] provides for that agreement." Letter from Attorney General Nicholas J. Spaeth to Donna M. Trotter (October 16, 1991). Therefore, it is my opinion that a city or county governing board may enter into a written agreement to jointly provide library services only after holding an election pursuant to N.D.C.C. ? 40-38-11.

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There is one other provision in N.D.C.C. ch. 40-38 which allows contracting to furnish or receive library services from other counties or cities. That provision, however, enables library boards to contract regarding library services, and does not involve contracts between the governing bodies of the cities or counties involved. N.D.C.C. ? 40-38-04(5).

[T]he statutes of N.D.C.C. ch 40-38 do not authorize the city or county governing body to manage and supervise the public library service which has been established for that political subdivision. Instead, such powers and responsibilities rest with the library board.

'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.'

Letter from Attorney General Nicholas J. Spaeth to Sen. James C. Yockim (Nov. 27, 1989), quoting letter from Attorney General Nicholas J. Spaeth to Jeanne L. McLean at 3 (August 18, 1987).

In conclusion, N.D.C.C. ? 40-38-11 enables the governing bodies of a city and county to establish and maintain joint library services pursuant to a written agreement but only after an affirmative vote by each city and county involved. Therefore, it is my opinion that the governing bodies of a county and city may not begin consolidating county and city library services without first obtaining approval of the electors of both the county and city under N.D.C.C. ? 40-38-11.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It

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governs the actions of public officials until such time as the question presented is decided by the courts.

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ATTORNEY GENERAL

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