

**OPINION
66-126**

July 27, 1966 (OPINION)

Mr. Conrad J. Ziegler

State's Attorney

Pierce County

RE: Libraries - County Service - Petition

This is in reply to your letter requesting an interpretation of section 40-38-02 of the North Dakota Century Code, as amended by chapter 353 of the 1965 Session Laws.

This statute now provides:

"LIBRARY FUND - LEVY - COLLECTION - KEPT SEPARATE. - For the purpose of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund by annually levying and causing to be collected as other taxes are collected, a municipal or county tax not to exceed four mills on the net taxable assessed valuation of property in such municipality and not to exceed two mills on the net taxable assessed valuation of property in such county. The treasurer of the municipality or county shall keep such fund separate and apart from the other money of the county or municipality, and it shall be used exclusively for the establishment and maintenance of public library service. Whenever a tax for county library service is levied, any municipality already levying a tax for public library service under the provisions of this section, shall upon written application to the county board of such county be exempted from such county tax levy to the extent that the municipality making such application levies taxes for a library fund during the year for which such tax levy is made. If such municipality has been totally exempted from participation in any prospective county library program, the phrase 'not less than fifty-one percent of the voters of such municipality or county as determined by the total number of votes cast at the last general election' as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in such county less the total number of votes cast at the last general election in such municipality."

Your city has had public library service of many years. The county does not have a county wide library service. The city presently levies 2.87 mills for its library service. A group of interested citizens is presently planning to circulate petitions on a county wide basis so as to procure at least fifty-one percent of the voters' consent for establishment of county wide library service.

Your specific questions are indicated to be as follows:

1. Whether the total number of votes cast at the last general

election in the city would be deducted from the fifty-one percent requirement total.

2. Whether people in the city proper would be eligible to sign the petition for establishment of the county wide service inasmuch as it would appear by said section 40-38-02 that the city total number of votes cast at the last general election would be exempted.

You further inform us that the city has made no written application to the board of county commissioners for exemption from any library levy for the reason that there never has been a county levy as such.

Under current circumstances, insofar as the city has apparently not as yet chosen to take advantage of the new provisions of this statute, it would appear that your questions are properly answered by a previous opinion of this office, thermofax copy of which is hereto attached, i.e., your first question must be answered in the negative and your second question would be answered in the affirmative.

If your city takes advantage of these new provisions of law, and makes written application for the exemption, the opposite result would obtain, i.e., your first question would be answered in the affirmative and your second question would be answered in the negative.

Insofar as the new statutory language refers to a municipality that "has been" totally exempted and to any "prospective" county library program, we believe it obvious that the legislature did intend that the application for such exemption could be made prior to commencement of a county library program. Also, insofar as the context of the new language also provides for determination of sufficiency of petition for county library service on these same bases, we believe the legislature definitely contemplated that application for exemption by a municipality could be made and acted on by the board of county commissioners prior to original submission of petition for county library service.

HELGI JOHANNESON

Attorney General