

**OPINION  
60-68**

March 18, 1960 (OPINION)

COUNTIES

RE: Public Libraries - Library Fund

This is in reply to your request for an opinion of this office in regard to the handling of tax moneys raised by LaMoure and Logan Counties for rendering library service in such counties.

You inform us that the two counties have jointly approved a plan for the rendering of such services under the Library Services Act, Pub. L. No. 597, Eighty-fourth Congress, and acts amendatory thereto. Pursuant to section 40-3802 of the 1957 Supplement to N.D.R.C of 1943, both counties have been levying one mill for a library fund. A library board of directors has been established by the two counties and they have organized by electing a president, a secretary, and a treasurer from its members.

You call our attention to a letter from the State Examiner to the county auditor, suggesting in substance that funds raised by the individual counties be turned over to the Library Agency by county warrant-checks, that the Library Agency should keep records similar to those kept by taxing units, paying claims submitted on regular vouchers supported by invoices or other documentation, and transmitting same to the County Auditor together with their annual report. The letter further suggests that aside from the making of the annual levy and transmittal of the library funds the County Auditor and Treasurer need directly keep no further records. The letter suggests that since the body concerned is the creation of the county commissioners of the counties concerned that its operations would be subject to supervision by said county commissioners and that the said county commissioners should see that discrepancies, irregularities, and oversights noted at the time of the filing of the July first report (together with the canceled warrants and approved claims) are corrected and further that all of the general requirements of governmental financing are complied with.

The point has been raised, however, in subsequent examination that the only treasurer under the applicable law must be the County Treasurer. You therefore request an opinion of this office on the proper manner of handling the financing of this project.

Section 40-3803 of the 1957 Supplement to the North Dakota Revised Code of 1943 does provide for the setting up of a board of five directors to govern the library and reading rooms established.

Section 40-3804, subsection 3 of the 1957 Supplement to the North Dakota Revised Code of 1943, does provide that the board of directors so set up shall have authority to control,

exclusively, the expenditures of all moneys collected for or contributed to the library fund. Section 40-3801 of the 1957 Supplement to the North Dakota Revised Code of 1943 does provide that the county or municipality setting up library service may do so either singly or in cooperation with the State Library Commission, or with one or more municipalities or counties, or by participation in an approved state plan for rendering public library service under The Library Services Act, Pub. L 597, Eighty-fourth Congress, Second Session, and acts amendatory thereof.

It is our understanding that the board set up in your counties is a part of an approved state plan for library services under the above cited Pub. L 597. It is further our understanding that there is an agreement between the library agencies of the two counties approved by the respective county commissioners for the cooperation of the two counties in this operation, pursuant to the above cited section 40-3801 of the 1957 Supplement to the North Dakota Revised Code of 1943.

The entire field of the establishment of such library service in this state is relatively new. There is to the best of our knowledge no precedent for such joint operations in the decisions of our Supreme Court as yet. However, the basic point concerned, i.e., cooperation between the counties, their library boards, and other political subdivisions interested, is statutorily provided for. There is direct provision made for supervision of the finances by the local library board rather than directly by the county commissioners.

Section 40-3808 of the 1957 Supplement to the North Dakota Revised Code of 1943 does provide that the treasurer of the political subdivision concerned shall keep, invest, and disburse the funds therein mentioned under the direction of the library board. On these basis, while obviously the county treasurers, and boards of county commissioners must be responsible ultimately both for the collection and expenditures of such funds, we see no reason why the details of the administration of same cannot be handled in the manner suggested in the letter from the State Examiner's office.

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