

**OPINION  
60-70**

March 8, 1960 (OPINION)

COUNTIES

RE: Public Libraries - Petition for Establishment

This is in reply to your letter of February 23, 1960, requesting the opinion of this office in regard to the number of signatures necessary to authorize a board of county commissioners to levy a library fund tax under the provisions of section 40-3802 of the 1957 Supplement to the North Dakota Revised Code of 1943.

Section 40-3801 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides:

"Public Library and Reading Room - Establishment - Election. The governing body of any municipality or county upon petition of not less than fifty-one percent of the voters of such municipality or county participating in the last general election shall have power to establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, 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 act amendatory thereof."

Section 40-3802 of the 1957 Supplement to the North Dakota Revised Code of 1943 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 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."

The city of Mandan is already furnishing a municipal library service and collecting a separate municipal library tax.

The question you present is whether the petition presented should contain fifty-one percent of the signatures of the voters who voted at the last general election in the entire county or whether same should contain fifty-one percent of the signatures of the voters who voted at the last general election in the county, excluding those voters who live within the limits of a municipality already levying a library tax under the provisions of chapter 40-38 of the 1957 Supplement.

We note that the two sections above quoted provide for the establishment of both municipal and county library service. Although such provisions are found in the same chapter, it appears that the establishment of a municipal library service is a separate and distinct operation from the establishment of a county library service. While the city may, on petition of its own residents, establish a municipal library service, the city is ordinarily considered to be part of the county in the instances where county projects are concerned. We believe that this is the sense in which the legislature used the term "county" in enacting chapter 40-38 of the 1957 Supplement.

It is therefore the opinion of this office that the provisions of sections 40-3801 and 40-3802, quoted above, are clear in that they require a petition signed by not less than fifty-one percent of the voters of the entire county participating in the last general election when a county library service is desired. A municipality, although it is a separate political entity for municipal purposes, is merely a part of the county for county purposes. Therefore, the required number of signatures to the petition is at least fifty-one percent of all the voters of the county who voted at the last general election, including those voters located within the corporate limits of a municipality already providing municipal library service.

LESLIE R. BURGUM  
Attorney General