

OPINION
61-78

September 27, 1961 (OPINION)

COUNTY LIBRARY

RE: Levy - Discontinuance

This is in reply to your letter of September 20, 1961, in regard to county public library service.

You state that a number of people from your county have asked you how they might go about getting rid of the traveling library and the tax to support it. You further inform us that at the present time your county is united with LaMoure and Dickey Counties in support of this library.

You further inform us that the law provides that the tax shall be levied on petition of fifty-one percent of the voters, but does not provide for repeal of the tax.

Looking to the basic statute, section 40-38-01 of the North Dakota Century Code, we find it provides as follows:

40-38-01. 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 as determined by the total number of votes cast at 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, Public Law 597, 84th Congress, 2d. Session, and Acts amendatory thereof."

We note that this provision refers to the Federal Library Services Act, an Act designed basically for the purposes of establishing on a continuing basis library service supported by local funds. We note further in examination of the remainder of section 40-38-01 of the North Dakota Century Code that no statutory procedure is given for discontinuing the tax levy and the service therein provided for. We note further the provision of section 40-38-03 of the North Dakota Century Code, as amended by the 1961 Session Laws, providing for establishment of a board of directors, and the further provision of section 40-38-04 giving such board of directors authority to control expenditure of moneys collected or contributed to the library fund.

On this basis it is our conclusion that possibly a change in the type of service provided for might be authorized by action of the local library board; however, it would further appear that discontinuance of the levy would be dependent upon further legislative action.

LESLIE R. BURGUM

Attorney General