

LETTER OPINION
99-L-54

June 29, 1999

Representative Ronald Nichols
HC 1, Box 3
Palermo, ND 58769-9707

Dear Representative Nichols:

Thank you for your request for my opinion on several issues regarding the establishment of a Mountrail County library.

Your first question involves the allowable time limit by which a petition for the establishment of a county library must be completed and filed with the board of county commissioners. N.D.C.C. § 40-38-01 states: "[t]he governing body of any city or county upon petition of not less than fifty-one percent of the qualified electors of the city or county as determined by the total number of votes cast at the last general election . . . shall establish and maintain public library service" The Mountrail County state's attorney indicated the petitioners intend to use this provision in N.D.C.C. § 40-38-01 to establish a county library.

In the absence of a specific time frame in which a petition must be filed, N.D.C.C. § 1-01-50 requires a petition to be filed "not later than one year from the date such petition is first placed in circulation, or the date the first signature is affixed thereto, whichever date is the latest." Neither your request letter nor the state's attorney had any information on when the first signature was affixed to the petition. N.D.C.C. ch. 40-38 does not specify a timeframe for submitting petitions, therefore N.D.C.C. § 1-01-50 applies. Pursuant to N.D.C.C. § 1-01-50, the petition must be filed with the board of county commissioners within one year of the date the petition was first placed in circulation, or the date the first signature was placed on the petition, whichever is later.

Your second question is "[w]hen can a city opt out of county library services?" The answer to your question deals not so much with "opt[ing] out" of county library services as it does with when a city can be exempt from county taxation to support a county library. N.D.C.C. § 40-38-02(3) allows a city that is already levying a tax for a public library to be partially or totally exempted from a county library tax levy upon written application to the board of county commissioners. Thus, it is my opinion that a city may be partially or totally exempted from county library taxation if it is currently levying a tax for a public library and makes a written

application to the board of county commissioners. If county public library service is discontinued and then later reestablished in a county, as is possible in Mountrail County, the city must again apply for an exemption from county library taxation.

You ask a related question involving whether a resident of a city that has been exempted from county library taxation is eligible to sign a petition to begin county library services. In 1994, this office stated that, "unless a contrary intention plainly appears in chapter 40-38, a resident of a city that is exempt from the county library tax is a county resident for purposes of serving on a county library board." Letter from Attorney General Heidi Heitkamp to John E. Greenwood (May 12, 1994). That opinion concluded that no contrary intention was evident in chapter 40-38, and a resident of a city exempt from county library taxation was eligible to sit on the board of a county library. Id.

Nothing in chapter 40-38 changes that conclusion as it relates to signing a petition for the provision of county library services. Although N.D.C.C. § 40-38-02(3) does prohibit a resident of an exempt city from voting on the establishment or discontinuance of county library service, that same prohibition was not included in N.D.C.C. § 40-38-01 relating to the signing of a petition. Accordingly, it is my opinion that a resident of a city exempt from county library taxation is eligible to sign a petition for the establishment of county library services.

Your final question involves whether a person who has signed a petition for the establishment of county library services and later may have that person's name removed from the petition. In 1978, the Supreme Court set forth guidelines on when a person may have a signature removed from a petition. Judson PTO v. New Salem School Bd., 262 N.W.2d 502, 507 (N.D. 1978). The Supreme Court stated:

(1) where the statute or constitutional provision requires notice and a hearing regarding a petition, the petitioners are entitled to withdraw their names until the notice and hearing on the petition are completed . . . , and (2) where the statute or constitutional provision contains no provision for notice or hearing and no provision for the withdrawal of signatures from a petition, the governing body acquires jurisdiction at the time the petition is filed with the proper authority and thereafter any withdrawal of signatures from a petition filed with the appropriate authority is of no effect.

Id. (internal citations and footnotes omitted).

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In the case of the establishment of county library services, there is provision for neither notice nor a hearing on the petition, nor the withdrawal of signatures from the petition. Accordingly, it is my opinion that a person who signed a petition for the establishment of county library services may remove that person's name from the petition any time prior to the point the petition is filed with the board of county commissioners. The person need merely notify the person circulating the petition of a desire to have the signature withdrawn, and erase or otherwise remove the signature from the petition.

Sincerely,

Heidi Heitkamp
Attorney General

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