

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-29

Date issued: December 17, 1998

Requested by: Allen Kopyy, Morton County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a county library board and a city library board may merge their collections into one facility while maintaining separate library boards and without an affirmative vote of the county and city residents.

II.

Whether a joint public library board for a city and a county created under N.D.C.C. § 40-38-11 may impose a mill levy on property within the city limits that is different from the mill levy imposed on property outside the city limits.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a county library board and a city library board may not merge their collections into one facility while maintaining separate library boards and without an affirmative vote of county and city residents.

II.

It is my further opinion that joint public library service provided by a city and a county under N.D.C.C. § 40-38-11 results in a single taxing district which may not impose a mill levy on property within the city limits that is different from the mill levy imposed on property outside the city limits.

- ANALYSES -

I.

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City or county libraries may be established and operated under N.D.C.C. ch. 40-38. Cities and counties may make agreements for providing public library services under N.D.C.C. ch. 40-38 but may not do so through a joint powers agreement or other provisions of law. N.D.C.C. § 40-38-11(9). See also N.D.C.C. § 54-40.3-02(2). Therefore, we may only look to N.D.C.C. ch. 40-38 for authority permitting a county library board and a city library board to merge their collections into one facility while maintaining separate library boards without an affirmative vote of the county and city residents.

With approval of the electors, the governing body of a city or county:

shall 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, or with one or more cities or counties, or by participation in an approved state plan for rendering library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. . . . Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

N.D.C.C. § 40-38-01.<sup>1</sup> While N.D.C.C. § 40-38-01 states that a city or county library may cooperate with one or more cities or counties when providing public library service, other statutes specifically

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<sup>1</sup> The Library Services and Construction Act referenced in N.D.C.C. § 40-38-01 was repealed by the 1997 Omnibus Consolidated Appropriations Act, September 30, 1996, P.L. 104-208, Div. A, Title I, § 101(e)[Title VII, § 708(a)], 110 Stat. 3009-312 (1996). Federal funding may still be available through the Library Services and Technology Act, 20 U.S.C. § 9101 *et seq.* However, even if the Library Services and Technology Act is interpreted to be an amendment or continuation of the Library Services and Construction Act, which is highly questionable, a North Dakota statute may not incorporate future changes of federal laws because that would be an unconstitutional delegation of state legislative power to the federal congress. McCabe v. Workers Compensation Bureau, 567 N.W.2d 201, 204 (N.D. 1997). It may be appropriate to seek an amendment of N.D.C.C. § 40-38-01 in the approaching legislative session.

address furnishing or receiving public library services by cities and counties. (See N.D.C.C. §§ 40-38-03 (instead of appointing a library board, a governing body may contract directly with a library board established by another governing body) and 40-38-04(5) (a library board may contract to furnish library service and to receive library service from other counties, school districts, and cities and the state library).

However, joint library services by cities and counties are addressed by N.D.C.C. § 40-38-11. Under this section, provision of joint library services first must be approved by a vote of the electors of each individual city or county seeking to provide joint library services after July 1, 1981. N.D.C.C. § 40-38-11(10); see also Letter from Attorney General Nicholas J. Spaeth to Donna M. Trotter (Oct. 16, 1991). It is not immediately clear whether the cooperation between one or more cities or counties contemplated by N.D.C.C. § 40-38-01 and the ability to contract to furnish or receive library service under N.D.C.C. § 40-38-04(5) allows a county library board and a city library board to merge their collections into one facility without providing for joint library services by holding an election under N.D.C.C. § 40-38-11 and creating a single joint library board.

The North Dakota Supreme Court has summarized the rule of statutory construction as follows:

[O]ur duty is to ascertain the intent of the Legislature. The Legislature's intent must be sought initially from the language of the statute. If a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the Legislative intent is presumed clear from the face of the statute. However, if the language of a statute is ambiguous or of doubtful meaning, the court may resort to extrinsic aids to interpret the statute.

Milbank Mut. Ins. Co. v. Dairyland Ins. Co., 373 N.W.2d 888, 891-92 (N.D. 1985) (citations omitted). In this instance, there is an ambiguity because it may be questioned whether cooperatively providing library services under N.D.C.C. § 40-38-01 or contracting to furnish or receive library services under N.D.C.C. § 40-38-04(5) includes the authority to merge collections into one facility or whether such a merger can be accomplished only pursuant to N.D.C.C. § 40-38-11, which requires an affirmative vote of the residents of both the city and the county, and a single joint library board to govern the provision of joint library services. Although the statutes, read separately, do not appear to be ambiguous, "statutes

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that are clear and unambiguous when read separately may contain a latent ambiguity when read together and applied to a particular set of facts." Kroh v. American Family Ins., 487 N.W.2d 306, 308 (N.D. 1992).

"If the language of a statute is ambiguous or of doubtful meaning, extrinsic aids may be used to interpret the statute." Kim-Go v. J.P. Furlong Enterprises., Inc., 460 N.W.2d 694, 696 (N.D. 1990). Extrinsic aids which may be considered in determining the legislative intent of an ambiguous statute include, among other matters, the object sought to be attained; the circumstances under which the statute was enacted; the legislative history; the common law or former statutory provisions, including laws upon the same or similar subjects; the consequences of a particular construction; the administrative construction of the statute; and the preamble. N.D.C.C. § 1-02-39. See also 1995 N.D. Att'y Gen. L-165 (Letter to Goff, July 21).

N.D.C.C. ch. 40-38 was amended extensively in 1981. 1981 N.D. Sess. Laws ch. 418. House Bill 1551, as introduced, would have removed the requirement that each participating city or county approve the establishment of joint library services. At the hearing before the House State and Federal Government Committee, it was requested that the Legislature "put into [the] bill . . . the provision that we keep the mergers by the vote of the people concerned." Hearing on H. 1551 before the House State and Federal Government Committee, 47th N.D. Leg. (February 9, 1981) (Statement of Thelma Klingensmith). A committee member asked the bill sponsor why the election was taken out, and Representative Unhjem responded:

The reasoning we used for deleting those lines is it requires whatever city or county, going into a joint library situation, that they establish by a vote of the people the support for library services. So the vote of the people is required under 40-38-01 for the mill levy to be levied. It was our feeling, a decision to merge library services should be made jointly by the library board and by the county commission boards. He further stated there are three joint libraries operating - rather than have the vote taken by those three counties, the county commission would be empowered to enter into cooperative arrangements. He didn't know of any city library taking over a county library operation - it would require the approval of the county commissioners.

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Id. (statement of Rep. Unhjem) (emphasis supplied). Rep. Unhjem was also asked whether restoring a separate election for joint library services would detract from the bill. Rep. Unhjem said:

I believe you would because I don't know any language you could put into the bill that would make [N.D.C.C. § 40-38-11] strictly apply. He felt we needed a uniform method of consolidation of library services that would be ongoing to the future. We would actually have to go back and completely re-establish an agreement between the county commissioners. Stated he didn't want to [see] this bill go down because of this and is willing to compromise.

Id. (emphasis supplied). The final statement at the hearing was provided by Jim Fox, planning consultant for the State Library. Mr. Fox stated:

We are trying to get the libraries to work together and share resources. Especially low income areas. Joint libraries have a high fixed cost and [he] agreed with Mrs. Klingensmith that felt that if we put the vote to the people regarding these library boards, they are going to think twice and not go to the joint library services.

Id. (statement of Jim Fox). The committee amended into the bill language that is now found at N.D.C.C. § 40-38-11(10), requiring a separate election for establishment of joint library services.

This history implies that the legislative intent when amending and reenacting N.D.C.C. § 40-38-11 was not just to require an election before library boards could merge or impose a combined mill levy, but that the election requirements of 40-38-11 were also meant to apply to merging library services by providing a joint library. This further implies the Legislature intended to require an election before a county and a city may merge their collections into one library building. Merging two libraries into one, therefore, must mean something different than what is meant by permitting cooperation between the libraries of one or more cities or counties in N.D.C.C. § 40-38-01 or contracting to furnish or receive library services under N.D.C.C. § 40-38-04(5). See In re K.B., 551 N.W.2d 554, 556 (N.D. 1996) ("When statutes relate to the same subject matter, we make every attempt to harmonize and give meaningful effect to each statute without rendering one or the other useless.") If a county and a city could merge their collections into one library building under provisions other than N.D.C.C. § 40-38-11, then N.D.C.C. § 40-38-11 becomes useless and superfluous. The cooperation referred to

in N.D.C.C. § 40-38-01 is a general statement concerning the purposes of the chapter, and N.D.C.C. § 40-38-04(5) is a specific section which would include the authority to share collections or make materials available to patrons of another library system through an inter-library loan program.

A merger under N.D.C.C. § 40-38-11 brings with it a single joint library board, a single joint library fund, and requires the affirmative vote of the affected city and county residents. It is my opinion that a city library board and a county library board may not merge their collections into one facility while maintaining separate library boards and separate library tax levies without also having an affirmative vote of the county and city residents pursuant to the requirements of N.D.C.C. § 40-38-11.

## II.

City and county governing bodies may merge their library services, and merge their collections into a single library building under the provisions of N.D.C.C. § 40-38-11. If this happens, there must be a single library fund with each participating city and county collecting and providing its pro rata share of funds for the services. N.D.C.C. § 40-38-11(5). Pro rata means proportionately, or according to a certain rate, percentage, or proportion. Blacks Law Dictionary, 1220 (6th ed. 1990). The tax permitted for funding a library is a mill levy on property. N.D.C.C. §§ 40-38-11(5), 40-38-02(1). Each city or county participating in a joint public library service, therefore, must supply its proportionate share of property taxes to fund the joint library board.

Further, the North Dakota Constitution requires that "[t]axes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax." N.D. Const. Art. X, § 5 (emphasis supplied). This requirement for uniform taxation within a single taxing jurisdiction is substantially the same as the standard of equality under the 14th Amendment to the United States Constitution. Northwestern Imp. Co. v. Morton County, 47 N.W.2d 543, 547 (N.D. 1951). This means that taxes should be imposed equally upon all persons within a given taxing district. Id. at 548.

Therefore, it is my opinion that a joint library board must impose a uniform mill levy on all residents within its territorial jurisdiction pursuant to N.D.C.C. § 40-38-02, and that each city and county must collect this uniform mill levy to provide its

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proportionate share of funds to the joint library board under  
N.D.C.C. § 40-38-11(5).

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs  
the actions of public officials until such time as the questions  
presented are decided by the courts.

Heidi Heitkamp  
ATTORNEY GENERAL

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