

N.D.A.G. Letter to Yockim (Nov. 27, 1989)

November 27, 1989

Honorable James C. Yockim
State Senator
District 1
1123 Second Avenue East
Williston, ND 58801

Dear Senator Yockim:

Thank you for your November 1, 1989, letter questioning a governing body's control over a city library board established pursuant to N.D.C.C. ch. 40-38. You specifically ask whether the city governing board may refuse to levy a tax in support of the city public library service.

N.D.C.C. § 40-38-01 allows the governing body of a city or county, and the voters of a city or county, to establish and maintain a public library service. To support the public library service, N.D.C.C. § 40-38-02(1) provides that the governing body of the city or county "shall establish a library fund." That library fund includes funds raised by an annual levy of taxes. Id.

Your specific question is whether the city governing body can refuse to levy the tax authorized by N.D.C.C. § 40-38-02(1). N.D.C.C. § 40-38-02(1) leaves no discretion with the governing body in determining whether a tax is levied. The statute requires the establishment of a library fund and further states that the library fund must consist of the tax levies which are collected annually. If a tax levy did not occur, there would be no money in the library fund and the library service could not be maintained. In this case, the purpose of N.D.C.C. § 40-38-02(1) would be thwarted.

Support for this conclusion can be found in reviewing the procedure to increase the mill levy support for the public library service. N.D.C.C. § 40-38-02(4) states that upon approval of 60 percent of the qualified electors voting in an election, the governing body "shall increase the levy for public library service in the amount approved by the qualified electors." The statute allows no discretion in an increase in the mill levy for public library service upon approval of the voters. The action is mandatory. It would be absurd to conclude that a governing body must increase the mill levy supporting a public library service but it had discretion to determine whether the initial tax levy for a library service could be levied.

Additionally, I have concluded that the statutes of N.D.C.C. ch 40-38 do not authorize the city or county governing body to manage and supervise the public library service which has been established for that political subdivision. Instead, such powers and responsibilities rests with the library board.

Obviously, the Legislature has bestowed upon the county library board broad powers over the management of the library and the library fund. Nowhere in the statute is there any mention of control or supervision over the board by the governing body. By the very words of the statute, we can only conclude that the governing body does not possess ongoing control or supervision over the decisions of the county library board as to the management of the county library services. Instead, it is the county library board that has been given the statutory responsibility to administer and supervise the manner in which county library services are to be provided.

Letter from Nicholas J. Spaeth to Jeanne L. McLean at 3 (August 18, 1987).

In summary, once a public library service is established pursuant to N.D.C.C. ch. 40-38, the city or county governing body must levy the taxes authorized to be collected in establishing the library fund supporting that public library service.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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