

LIBRARIES: (1) City of less than five thousand, with free public
CITY: library established and maintained by mill tax levied
COUNTY: under authority of Sec. 182.160, RSMo 1949, prior to
effective date of Sec. 182.140, RSMo Cum. Supp. 1955,
on August 29, 1955, may continue operation of library after repeal
of section, but could not levy a tax until enactment of House Bill
253, 69th General Assembly. (2) City of less than five thousand,
which established and maintained free public library under provi-
sions of Sec. 182.160, RSMo 1949, prior to effective date of Sec.
182.140, RSMo Cum. Supp. 1955, on August 29, 1955, may, under pro-
visions of House Bill 253, 69th General Assembly, levy a library
tax at the rate and in the manner authorized by Sec. 182.140, RSMo
Cum. Supp. 1955. (3) Residents of city of less than five thousand,
whose public library was established under authority of Sec. 182.160,
RSMo 1949, prior to the effective date of Sec. 182.140, RSMo Cum. Supp.
1955, on August 29, 1955, and still in operation, are ineligible to
sign a petition for a proposed county library under provisions of
Sec. 182.010, RSMo Cum. Supp. 1957.

February 4, 1958

Honorable Paxton B. Price
Librarian
Missouri State Library
Jefferson City, Missouri

Dear Mr. Price:

This department is in receipt of your request for a legal
opinion, which reads as follows:

"This office would appreciate receiving a formal
opinion from your office on the following
questions:

"1. Do the current statutes authorize cities
of less than 5,000 population to currently
operate public libraries that were in exist-
ence prior to January 1, 1955 and which were
established and maintained in the manner
specifically provided in Section 182.160,
RSMo. 1949?

"2. Can a city of less than 5,000 population hav-
ing a public library established and operated prior
to January 1, 1955 in the manner specifically pro-
vided in Section 182.160 RSMo. 1949, now raise its
library tax rate from one-half mill to one mill,
and under which statutory authority?

"3. For the purposes of interpreting the provi-
sion contained in Section 182.010, RSMo. 1955
Supplement pertaining to the residence of peti-
tioners, would the residents of a city of less

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than 5,000 population which has a library established and operated prior to January 1, 1955 under the authority specifically provided in Section 182.160, RSMo. 1949, be eligible to petition for a county library district and its support, excepting as provided in Section 182.030?"

Sections 182.140 and 182.160, RSMo 1949, and Section 182.140, RSMo Cum. Supp. 1955, are referred to in your letter.

Section 182.140, RSMo 1949, reads as follows:

"When one hundred taxpaying voters of any incorporated city shall petition the mayor and common council asking that an annual tax be levied for the establishment and maintenance of a free public library in such incorporated city, and shall specify in their petition a rate of taxation, not to exceed two mills on the dollar annually, and in cities of over one hundred thousand inhabitants not to exceed two-fifths of one mill annually on all the taxable property in the city, such mayor and common council shall direct the proper officer to give notice in his next legal notice of the annual election, or special election, which may be called for the purpose of voting on such question, that at such election every voter may vote.

'For a ____ mill tax for a free public library,'

or

'Against a ____ mill tax for a free public library,'

specifying in such notice the rate of taxation mentioned in said petition; and if the majority of votes cast on such proposition shall be 'for the tax for the free public library,' the tax specified in such notice shall be levied and collected in like manner with other general taxes of such incorporated city, and shall be known as 'The Library Fund;' provided, that such tax shall cease in case the legal voters of any such incorporated city shall so determine by a majority vote at any annual election held therein."

Section 182.160, RSMo 1949, reads as follows:

"The mayor and council, board of aldermen or board of trustees, of any city having a popula-

tion of less than twenty-five thousand, however organized and irrespective of its form of government, may levy a tax of not more than one-half mill on each one dollar of the assessed valuation on all property in said city, for the establishment and maintenance of a free public library in such incorporated city."

House Bill 261 of the 68th General Assembly relates to city libraries and became effective on August 29, 1955. This bill repealed certain sections of Chapter 182, RSMo 1949, and Cumulative Supplement 1955, and enacted fourteen new sections in lieu thereof. Among the repealed sections were Sections 182.140 and 182.160, RSMo 1949. A new section was enacted in lieu of the former one, which is now Section 182.140, RSMo Cum. Supp. 1957, but no new section has been enacted in place of Section 182.160 supra.

After the repeal of Section 182.160, supra, the mayor and council of a city of less than five thousand inhabitants or of any other city of a population less than twenty-five thousand inhabitants, was no longer authorized to establish and maintain a free public library, and to levy and collect a tax for the library at the rate and in the manner provided by said section. No new libraries could be established thereafter, in accordance with the provisions of said section, nor could the tax be levied and collected for the support of the library. However, House Bill 261 or the provisions of any other law do not provide that upon the repeal of Section 182.160, supra, all libraries organized and existing by virtue of this section should cease to exist. In the absence of any such statutory prohibitions, it appears to be the legislative intent that the existence of said libraries was to continue.

Apparently, to afford a means by which cities having less than five thousand inhabitants might levy and collect a tax for the support of their libraries, the 69th General Assembly enacted House Bill 253, which became effective from and after its passage and approval on June 18, 1957. The bill consists of sections 1 and 2. Section 1 is now designated as Section 182.145, RSMo 1957. Inasmuch as the purpose for enacting the bill is stated in Section 2, we quote the bill in its entirety.

"Section 1. Any incorporated city having lawfully established a free public library prior to the effective date of Section 182.140, RSMo 1955 Supp., and having had at that time authority to levy and collect a tax for the establishment and maintenance of the library, may levy and collect a tax for the maintenance of the library, and reduce or increase the tax in the manner provided in section 182.140, RSMo 1955 Supp.

"Section 2. Because at present there is no provision in the statutes whereby incorporated cities with a population of less than five thousand, may levy and collect taxes for the establishment of libraries or for the maintenance of libraries established prior to the effective date of section 182.140, RSMo 1955 Supp., and since it is necessary to provide such taxing authority in order to prevent the closing of many city libraries, this act is necessary for the immediate preservation of the public peace, health and safety and an emergency exists within the meaning of the constitution and this act shall be in full force and effect from and after its passage and approval."

It will be recalled that Section 182.160, supra, empowered the mayor and council of any city under twenty-five thousand to establish and maintain a public library from a tax levied for that purpose, at not to exceed the rate of one-half mill on each dollar assessed valuation annually.

For reasons given above, we have stated that after the repeal of this section, the power to maintain such libraries from the tax authorized by this section ceased, although the libraries' existence did not cease.

It appears that Section 1 of House Bill 253 is also applicable to cities of less than five thousand inhabitants which had libraries prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, and at that time had power to levy and collect a library tax. Said section grants power to such cities to levy and collect a tax to maintain their library in the manner provided by Section 182.140, RSMo Cum. Supp. 1955. It is observed the word "maintain" appears in said section. This is for the apparent reason that after the repeal of Section 182.160, supra, no new libraries could be established under authority of said section and it was only necessary to levy a tax to maintain those already established by virtue of such section. All of the inquiries of the opinion request refer to cities having a population of less than five thousand, which had established and maintained public libraries in accordance with Section 182.160, supra, and whose libraries were in existence prior to January 1, 1955. We are uninformed as to what, if any, particular significance is attached to this date by the writer of the opinion request, but in the event such date was given for the reason it was believed to be the effective date of Section 182.140, RSMo Cum. Supp. 1955, then the reasoning is incorrect, since the section became effective on August 29, 1955, and not on the earlier date mentioned. For the purpose of our discussion, it will be assumed the writer of the opinion request intended to refer to the date Section 182.140, RSMo Cum. Supp. 1955, became effective.

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In answer to the first inquiry, it is our thought a city of less than five thousand inhabitants, which had established and maintained a free public library from a tax levied for that purpose by the city council, under authority of Section 182.160, RSMo 1949, and prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, on August 29, 1955; that after the repeal of Section 182.160, RSMo 1949, such city could lawfully continue the operation of its public library, but no tax could be levied until the enactment of House Bill 253.

As previously stated, House Bill 253, supra, permits cities of less than five thousand inhabitants, which had established public libraries prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, to levy and collect taxes for the maintenance of their libraries, in the manner provided therein. The section provides a library tax rate limit for cities of less than five thousand inhabitants of two mills on the dollar annually, and one mill on the dollar annually for cities having over six hundred thousand inhabitants, but in either instance, the tax rate must be authorized by a majority vote of the qualified electors at the annual or special election held for that purpose.

In answer to your second inquiry, it is our thought that a city having a population of less than five thousand inhabitants, which had established and maintained a free public library under provisions of Section 182.160, supra, prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, on August 29, 1955, may, under provisions of House Bill 253, 69th General Assembly, levy a library tax at the rate and in the manner authorized by Section 182.140, RSMo Cum Supp. 1955.

We understand the third inquiry to ask if the residents of a city of less than five thousand inhabitants, in which a library has been established under authority of Section 182.160, RSMo 1949, prior to August 29, 1955 (the effective date of Section 182.140, RSMo Cum. Supp. 1955) would be eligible to petition for a county library district under provisions of Section 182.010, RSMo Cum. Supp. 1957. Said section contains the statutory procedure for petitioning the county court to call an election to vote upon the proposition as to whether or not a county library district outside of municipalities having free public libraries, shall be established, and for the levying of an annual mill tax to support said library, and reads as follows:

"1. Whenever qualified electors equal to five per cent of the total vote cast for governor at the last election in any county, outside of the territory of all cities and towns in the county which at the time of election as hereinafter provided maintain and control free public and tax supported libraries pursuant to other provisions of this chapter except as provided in section 182.030 shall petition in writing the county court, asking that a

county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as '_____ county library district', and asking that an annual tax be levied for the purpose herein specified, and specifying in their petition a rate of taxation not less than one mill nor more than two mills on the dollar of assessed valuation; then the county court, if it finds the petition was signed by the requisite number of qualified petitioners and verified in accordance with the provisions of Section 126.040, RSMo, pertaining to initiative petitions, shall enter of record a brief recital of the petition, including a description of the proposed county library district, and of its finding; and shall order that the propositions of such petition be submitted to the voters of the proposed county library district at the next annual school election, or at a special election to be held on date stated in the petition. Under no circumstances shall the election be held less than forty-five days after the filing of the petition. The clerk of the county court shall publish the propositions of the petition in like manner, as near as may be, with the publication provided in section 120.580, RSMo. The clerk shall furnish ballots, poll books and other necessary election items to the various school boards conducting the annual school elections, as provided in section 167.020, RSMo, and all the expense of the election shall be paid out of the treasury of the county as in the case of other county elections. The order of court and the notice shall specify the name of the county and the rate of taxation mentioned in the petition, and the county clerk shall make and file in his office, return of service of such notice.

"2. Every voter within the proposed county library district, in his proper district may vote

'For establishing _____ county library district',

or

'Against establishing _____ county library district',

and may vote

'For _____ mills tax for a free county library',

or

'Against _____ mills tax for a free county library'.

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"In case the boundary limits of any city or town hereinabove mentioned are not the same as the boundary limits of the school district of the city or town, and the school district embraces territory outside the boundary limits of the city or town and within the boundary limits of the proposed county library district, then all voters, otherwise qualified and residing in the school district, but outside the limits of the city or town and within the limits of the proposed county library district, shall be eligible to vote on the proposition, and may cast a vote thereon at the designated polling place within the county. The ballots shall be certified to the county court as provided in section 167.020 RSMo.

"3. In case the proposed mill tax is sought as an increased tax for the maintenance of a library already established hereunder, over a lesser tax rate theretofore voted and adopted, then such fact shall be recited in the petition and the notice for the election, and the ballot shall submit to the voters the proposition

'For a _____ mill tax increase over the present _____ mill tax for the free county library',

or

'Against a _____ mill tax increase over the present _____ mill tax for the free county library'.

If a majority of all the votes cast on the proposition at the election shall be for the tax as submitted, the tax specified in the notice shall be levied and collected in like manner with other county library taxes as provided in section 182.020, and shall be known as and become a part of the 'county library fund' to be administered as provided in section 182.020."

This section provides that the number of qualified electors signing the petition for a county library shall be equal to five per cent of the total vote cast for governor at the last election, outside the territory of all cities and towns of the county, at the time of election for establishment of the library and levy of the mill tax for its maintenance. The obvious meaning of this portion of the section is that the petitioners must be qualified electors of the territory of the proposed library district, and that such district can include only that territory outside of all cities and towns of the county then having free public libraries in operation. Qualified electors residing in a city or town of the county

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having a free public library in operation would not be eligible to sign a petition for the county library district.

Therefore, in answer to the third inquiry of the opinion request, it is our thought that residents of a city of less than five thousand inhabitants, in which a free public library had been established under authority of Section 182.160, RSMo 1949, prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, on August 29, 1955, would not be eligible to sign a petition for a proposed county library under provisions of Section 182.010, RSMo Cum. Supp. 1957.

CONCLUSION

Therefore, it is the opinion of this department that: (1) A city of less than five thousand inhabitants, which had established a free public library and maintained it by a mill tax levied under authority of Section 182.160, RSMo 1949, prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, on August 29, 1955, may continue the operation of their public library after the repeal of Section 182.160 RSMo 1949, but no tax could be levied until the enactment of House Bill 253, of the 69th General Assembly. (2) A city of less than five thousand inhabitants which had established and maintained a free public library under provisions of Section 182.160, RSMo 1949, prior to the effective date of Section 182.140, RSMo Cum. Supp. 1955, may, under provisions of House Bill 253, 69th General Assembly, levy a library tax at the rate and in the manner authorized by Section 182.140, RSMo Cum Supp. 1955. (3) Residents of a city of less than five thousand inhabitants having a free public library established under authority of Section 182.160, RSMo 1949, prior to effective date of Section 182.140, RSMo Cum. Supp. 1955, on August 29, 1955, and still in operation, are not eligible to sign a petition for a proposed county library under provisions of Section 182.010, RSMo Cum. Supp. 1957.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton
Attorney General

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