



ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 2, 1949

Hon. C. E. Patterson
County Attorney
Brewster County
Alpine, Texas

Opinion No. V-953.

Re: The expenditure of
county permanent im-
provement funds in
connection with a
public library.

Dear Sir:

You have requested an opinion on the following questions:

"First: Can a County donate to an Incorporated Public Free Library (non-profit), located within the county, and serving the entire county? Such donation to be used for land and buildings for said Free Library use. Such donation to be made from Permanent Improvement Funds.

"Second: Can a County use permanent improvement funds to make a payment to an Established Library as contract consideration under Article 1694, R.C.S.?"

"Third: Can a County use permanent improvement funds to buy property for County Free Library use?"

Sections 51 and 52 of Article III of the Constitution of Texas provide in part as follows:

"Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; . . .

"Sec. 52. The Legislature shall have no power to authorize any County, City, town or other political Corporation or Subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any

individual, association or corporation whatsoever, or to become a Stockholder in such Corporation, association or company; . . ."

Section 6 of Article XVI of the Constitution of Texas provides that no appropriation for private or individual purposes shall be made.

In view of the foregoing constitutional provisions, it is our opinion that a county cannot donate to an incorporated public free library any public money. This holding, however, should not be construed to imply that a county is prohibited from contracting for library privileges from some already established library.

Article 1694, Vernon's Civil Statutes, provides:

"Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the commissioners court may contract for library privileges from some already established library. Such contract shall provide that such established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein, and shall also provide that the librarian of such established library shall hold or secure a county librarian's certificate from the State Board of Library Examiners. Said court may contract to pay annually into the library fund of said established library such sum as may be agreed upon, to be paid out of the county library fund. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract."

It was held in Attorney General opinion No. 0-6094 that Article 1694 authorized the commissioners' court to contract for library privileges from some already established library upon its own initiative and without a petition of the majority of the voters of the county. We quote the following from said opinion:

"It is our belief that the words: 'upon

petition of a majority of the voters of the county', as contained in said article 1694, supra, if they have any meaning at all in this article, refer back to the preceding clause in description of the manner 'of establishing a separate county free library.'

"Therefore, it is the opinion of this department that the commissioners' court may contract for library privileges from some already established library upon their own initiative and without a petition of the majority of the voters of the county."

In view of the foregoing it is our opinion that the Commissioners' Court has authority to contract for library privileges from an already established library.

Article 1679, V.C.S., provides:

"After a county free library has been established, the commissioners court shall annually set aside from the general tax fund of the county, a sum sufficient for the maintenance of said library, but not to exceed five cents on the hundred dollars valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such free library systems provided in this title for the purpose of maintaining county free libraries and for purchasing property therefor."

It was held in Attorney General opinion No.0-3890 that the cost of maintaining and operating a county free library or any branch or subdivision thereof must be paid for out of the General Fund of the county.

If Brewster County should contract for library privileges from an already established library, it is our opinion that the county would have to use money from the General Fund of the county rather than the Permanent Improvement Fund.

SUMMARY

A county cannot donate public money to an incorporated public free library. Secs. 51 and 52, Art.III; and Sec.6, Art.XVI Constitution of Texas. The county is authorized to contract for library privileges from an already established library and pay for the same out of the General Fund of the county. Arts.1679 and 1694, V.C.S.; A.G.Opinions Nos. 0-3890, 0-6094.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

JR:aw

By


John Reeves
Assistant

APPROVED


FIRST ASSISTANT
ATTORNEY GENERAL