



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1998

The Honorable Charles R. Roach
Hardin County District Attorney
P.O. Box 1409
Kountze, Texas 77625

Letter Opinion No. 98-104

Re: Whether a commissioners court is required to vest management of the county law library in a committee of the local bar association (RQ-1125)

Dear Mr. Roach:

You ask two questions about the county law library in Hardin County. Sections 323.021 through 323.025 of the Local Government Code authorize a county to establish and maintain a law library to be funded by a fee taxed, collected, and paid as a cost in each civil case filed in a county or district court.¹ The fees are to be deposited in the county law library fund, to "be used only for the purpose of establishing the law library after the entry of the order creating it or for the purpose of purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library."² Another provision allows use of the county library fund for library staff.³ The fund is to be administered by or under the direction of the commissioners court.

Your first question concerns the management of the library by a committee chosen by the county bar association. Section 323.024 of the Local Government Code provides that the "commissioners court may vest management of the library in a committee selected by the county bar association," and that "[a]ctions of the committee are subject to approval by the commissioners court." Subsection 323.021(b) provides that "[t]he commissioners court may, with the advice of the committee created under Section 323.024, use funds collected under this subchapter to acquire a location for the library, though priority in the use of funds shall be given to the acquisition of books, periodicals, other library materials, and staff for the library."

The Hardin County Bar Association has petitioned the Hardin County Commissioner's Court to recognize a committee selected by the bar association to manage the library, but the court has refused to do so. You ask, when section 323.024 is read in conjunction with section 323.021(b), whether the creation of a management committee selected by the local bar association is mandatory, if only to advise the court.

¹Local Gov't Code § 323.023.

²*Id.* § 323.023(b).

³*Id.* § 323.021(b).

Section 323.024 states that the “commissioners court may vest management of the library” in a committee of the county bar association. (Emphasis added.) “May” is generally given a permissive construction.⁴ Accordingly, the commissioners court has authority to decide whether or not to vest management of the library in a committee chosen by the bar association, and if the court decides to do so, the actions of the committee are subject to approval by the commissioner court.

The language of subsection 323.021(b) quoted above was adopted in 1979 as section 7 of former article 1702h, 1925 V.T.C.S. (1962) and amended in 1987 in the nonsubstantive recodification of statutes relating to local government.⁵ The meaning of this provision is clearly expressed in the 1979 enactment,⁶ which provides as follows:

The Commissioners Court shall provide suitable space for housing the law library and may, with the advice of the committee referred to in Section 5 of this Act,⁷ use funds collected under this Act for the acquisition of such space. Priority in the use of such funds shall be given to providing books, periodicals, other library materials, and staff for the law library.⁸

If the commissioners court wishes to use funds collected under the act to acquire space for the library,⁹ it may do so, with the advice of the local bar association committee. Its use of the funds for books, periodicals, other library materials, and staff for the law library is not subject to the advice of the committee. We conclude that the creation of a management committee chosen by the local bar association is not mandatory, unless the commissioners court wishes to use the county law library fund to acquire space for the library.¹⁰

⁴*Womack v. Berry*, 291 S.W.2d 677, 683 (Tex. 1956).

⁵Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 1, 1987 Tex. Gen. Laws 707, 1129-30 (adopting Local Gov’t Code).

⁶If a conflict exists between a former statute and a nonsubstantive revision of the statutory law, the former statute will control. *Johnson v. City of Fort Worth*, 774 S.W.2d 653, 654-55 (Tex. 1989); *see also City of LaPorte v. Barfield*, 898 S.W.2d 288, 294 (Tex. 1995).

⁷Now Local Gov’t Code § 323.024(b).

⁸Act of April 27, 1979, 66th Leg., R.S., ch. 121, § 7, 1979 Tex. Gen. Laws 234.

⁹Attorney General Opinion H-1062 (1977) concluded that the county law library fund, established by former article 1702h, 1925 V.T.C.S., (1962) could not be used to renovate a building for the county law library and that the space and shelving for the library was to be provided by the commissioners court. This opinion, issued prior to the 1979 amendment that allows the commissioners court to use funds collected under the act to acquire space, has been modified to the extent it is inconsistent with that statute.

¹⁰You inform us that the Hardin County Law Library is located on the second floor of the main courthouse building; thus, it appears that you are not concerned about acquiring space for it.

You next ask whether the commissioners court may use the law library fund to pay the salary, in whole or part, of a deputy sheriff who occasionally escorts inmates to the law library and remains with them while they use the library.

The county law library fund may be used only for library purposes.¹¹ Library purposes enumerated in the statute include establishing the law library, acquiring library materials and staff for the library, maintaining the library, and acquiring furniture, shelving, or equipment. A deputy sheriff is not a member of the library staff, and paying the salary of a deputy sheriff is not a library purpose, even though the deputy occasionally escorts a county jail inmate to the law library and supervises the inmate while he or she is doing research.

The deputy sheriff is carrying out a duty of the sheriff's office, not a library purpose, when he or she escorts a county jail inmate to the law library and supervises that person while there. The sheriff of each county is "the keeper of the county jail" and "shall safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court."¹² "The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jail."¹³ A sheriff's deputy may perform the acts and duties of his or her principal, but the sheriff is responsible for a deputy's official acts.¹⁴ In escorting inmates to the library, the deputy is carrying out the sheriff's duty to "safely keep" the prisoners and meet their needs.¹⁵ Since the deputy is not implementing a library purpose when he escorts a prisoner to the library, his salary may not be paid in whole or part from the county law library fund.

¹¹Attorney General Opinions MW-349 (1981); MW-9 (1979).

¹²Local Gov't Code § 351.041(a).

¹³*Id.* § 351.041(b).

¹⁴*Id.* § 85.003.

¹⁵*McDonald v. Steward*, 132 F.3d 225, 230 (5th Cir. 1998) (prisoner's constitutional right of access to courts through adequate law libraries or assistance from legally trained personnel).

S U M M A R Y

Section 323.024 of the Local Government Code authorizes the commissioners court to vest management of the county law library in a committee selected by the county bar association, but does not require the commissioners court to do so. The county law library fund established by section 323.023 of the Local Government Code, may be used only for library purposes. The fund may not be used to pay the salary, in whole or in part, of a deputy sheriff who escorts a prisoner from the jail to the county law library.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee