



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS

~~JOHN BEN SHEPPERD~~
ATTORNEY GENERAL

Miss Fannie M. Wilcox
State Librarian
Texas State Library
Austin 11, Texas

Dear Miss Wilcox:

Opinion No. 0-5842

Re: Can a special tax be voted by the people of the county to be affected for the original or additional county library support?

The pertinent parts of your request for opinion are as follows:

"(1) Under the present Texas county library law, can a special tax be voted by the people, of the county to be affected, for original or additional county library support?

"(2) Could the county library law be amended to include the voting of a special tax for county library support?

"(3) Would it take a constitutional amendment to allow a special tax to be voted for county library support or additional county library support?"

In answer to your first question we advise that under the present Texas County Library Law a special tax cannot be voted by the people of the county for original or additional County Library support.

In Texas it is a well settled and elementary principle of law that counties have no powers or duties except those which are clearly set forth and defined in the Constitution and statutes, or necessarily implied therefrom.

Neither the Constitution of Texas nor the statutes of this State make any grant to the counties of the power to vote a special tax for the original or additional county library support.

Article 1679 of Vernon's Revised Civil Statutes of Texas, 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 which has elected to become a part of such free library systems provided in this title for the purpose of maintaining county free libraries and for the purchase of property therefor."

The above quoted statute sets out fully all the sources of public revenues which are available from the tax funds of the county for the benefit of the free public libraries inquired about by you.

In answer to your question No. 2, we advise you that the Legislature of Texas has the lawful power and authority to so amend the State library law as to permit the people of a county to vote a tax for county library support.

In answer to your question No. 3, we advise that no amendment to the Constitution of Texas is necessary in order for the Legislature, by enactment of a proper law, to authorize the people of a county to vote a tax for the county library support, or for additional county library support.

In connection with our answer to your question No. 2, we respectfully call your attention to the provisions of Article 8, Section 9, of the Constitution of Texas, which is as follows:

"The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. (Sec 9, Art. 8, adopted election November 6, 1906; proclamation January 7, 1907.)"

By reason of this constitutional provision, a county cannot assess and collect a tax for general administrative purposes which is in excess of twenty-five cents per hundred dollars valuation. The establishment, maintenance and support of a county library is a part of the general administrative purposes of the county. Should the Legislative Act suggested by you in your question No. 2 be enacted, and should a tax be voted, and assessed by virtue thereof, said tax could not be in addition to said twenty-five cents per hundred dollars of valuation, but would have to be included therein. And said tax for library purposes, together with the other tax or taxes levied for the general administrative purposes of the county, could not legally add up to a total in excess of said twenty-five cents per hundred dollars valuation.

A constitutional amendment would be required in order to authorize the assessment of a tax for library purposes where the said tax would be additional to the twenty-five cents per hundred dollars valuation above mentioned.

Trusting that we have answered your question fully, and assuring you that we shall be glad to advise you in regard to any other questions which may arise in connection with the administration of your office, we remain,

Yours very truly,

APPROVED FEB 18, 1944

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By s/ George P. Blackburn
George P. Blackburn
Assistant

Approved
Opinion
Committee
By BWB
Chairman