



**THE ATTORNEY GENERAL
OF TEXAS**

June 23, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Mr. William D. Gooch
Director and Librarian
Texas State Library
P. O. Box 12927
Austin, Texas 78711

Opinion No. JM-921

Re: Whether the Library and
Archives Commission may grant
funds to certain regional
library systems (RQ-1298)

Dear Mr. Gooch:

You ask our opinion about the following questions:

(1) Is the Library and Archives Commission authorized to grant funds to a regional library system which has as members libraries of private, religiously-affiliated elementary and secondary schools?

(2) Is the Library and Archives Commission authorized to grant funds to a regional library system which has as members libraries of private religiously-affiliated colleges and universities?

(3) Is the Library and Archives Commission authorized to grant funds to a regional library system which has as members libraries belonging to 'for-profit' entities?

Before answering your questions, we will review the nature of "regional library systems" and the role of the State Library and Archives Commission in fostering such entities under the Library Systems Act, sections 441.122 through 441.138 of the Government Code (formerly article 5446a, V.T.C.S.).

The State Library and Archives Commission (the Commission) "shall establish and develop a state library system." Gov't Code, § 441.123. The act defines the "state library system" as

a network of library systems, interrelated by contract, for the purpose of organizing library resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state. (Emphasis added.)

Gov't Code, § 441.122(14). A "library system" is

two or more public libraries cooperating in a system approved by the commission to improve library service and to make their resources accessible to all residents of the area the libraries serve. (Emphasis added.)

Gov't Code, § 441.122(9). A "public library" is a library

that is operated by a single public agency or board, that is freely open to all persons under identical conditions, and that receives its financial support in whole or in part from public funds. (Emphasis added.)

Gov't Code § 441.122(12). The act defines several different kinds of public libraries which participate in "library systems." We summarize the characteristics of these libraries as follows:

(1) a 'community library' is a small public library serving a population of less than 25,000 that is a member of a library system interrelated to a major resource center;

(2) an 'area library' is a medium-sized public library serving a population of 25,000 or more that has been designated as an area library by the [Library and Archives Commission] and is a member of a library system interrelated to a 'major resource center';

(3) a 'major resource center' is a large public library serving a population of 200,000 or more within 4,000 or more square miles that is designated as the central library of a major resource system for referral service from area libraries in the system, for cooperative service with other

libraries in the system, and for federated operations with other libraries in the system. (Emphasis added.)

See Gov't Code § 441.122(3), (5), and (10). See also Attorney General Opinion JM-183 (1984).

The Commission may establish and develop "major resource systems," which the act defines as

network[s] of library systems attached to a major resource center, consisting of area libraries joined cooperatively to the major resource center and of community libraries joined cooperatively to area libraries or directly to the major resource centers. (Emphasis added.)

Gov't Code § 441.122(11).

Finally, a "regional library system" can be established whenever

[t]he governing bodies of two-thirds of the member libraries of a major resource system . . . elect, for the purpose of administering the receipt and dispersal of services . . . within their area, to form a regional library system that includes all libraries that are members of the major resource system. (Emphasis added.)

Gov't Code § 441.131(a). Thus, a regional library system is composed of major resource systems, which in turn are composed of the statutorily defined types of public libraries affiliated with a major resource center or large public library.

The act permits the governing body of a regional library system to establish a non-profit corporation pursuant to article 1396-1.01 et. seq., V.T.C.S., to administer the regional library system or to contract with a private business to administer the system. Gov't Code § 441.133.

The act also authorizes the Commission to establish a program of state grants, including:

(1) system operation grants, to strengthen major resource system services to member libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems;

(2) incentive grants, to encourage libraries to join together into larger units of service in order to meet criteria for major resource system membership or regional library system membership;

(3) establishment grants, to help establish libraries that will qualify for major resource system membership or regional library system membership in communities without library service; and

(4) equalization grants, to help libraries in communities with relatively limited taxable resources to meet criteria for major resource system membership or regional library system membership.

See Gov't Code, § 441.135.

Your questions present a threshold issue: whether the Library Service Act permits non-public libraries to be members of major resource systems, the constituent elements of a regional library system. Section 441.127 of the Government Code requires that a library applying for membership in a major resource system must be accredited by the Library and Archives Commission as having met the accreditation standards established by the Commission. The act defines "accreditation of libraries" to mean "the evaluation and rating of public libraries and library systems according to commission accreditation standards" and "accreditation standards" to mean "the criteria established by the commission that a library must meet to be accredited and eligible for membership in a major resource system." (Emphasis added). Gov't Code § 441.122(1), (2). According to these definitions, only a public library can be accredited, and accreditation is a statutory prerequisite for membership in a major resource system. Regional library systems in turn can be composed only of major resource systems. In other words, the statutes unambiguously restrict the membership of regional library systems to

public libraries. Thus, the legislature has not authorized the participation of non-public libraries in any of the ventures of a regional library system as members of the system. Your funds may therefore go only to regional library systems in compliance with the statute.

We note that section 441.128(d) does permit the

governing body or managing authority of a regional library system [to] enter into agreements with the governing bodies of other libraries, including other public libraries, school libraries and media centers, academic libraries, technical information and research libraries, or systems of those libraries, to provide or receive specialized resources and services. The Commission shall coordinate and encourage the dissemination of specialized resources and services and may adopt rules for the contracts and agreements authorized by this subsection. (Emphasis added.)

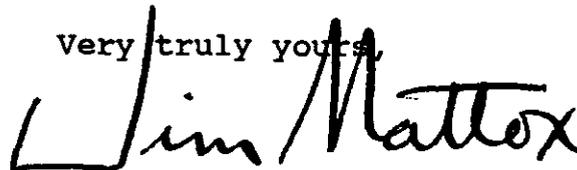
Gov't Code, § 441.128(d).

We conclude that this language represents authorization by the legislature sufficient to permit regional library systems to enter into contracts with non-public libraries for the purchase or sale of "specialized resources and services." Because such arrangements would be in the nature of contracts necessarily based on adequate consideration to the public, they would not be unconstitutional donations of public funds.

S U M M A R Y

Regional library systems established pursuant to the Library Systems Act may have as members only public libraries as defined in section 441.122(9), (12) of the Government Code. Regional library systems may contract with non-public libraries for the purchase or sale of specialized resources and services. Gov't Code, § 441.128(d).

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I M M A T T O X
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