

WAYS AND MEANS COMMITTEE

Minutes of Meeting
March 20, 1961

Meeting was called to order by the Chairman, Senator Lauterbach, with all members present except Senators Hults and VanSickle, at 10:00 A.M.

The Chairman asked Senators Glades and Warren to make a subcommittee report as to their recommendation for disposing of the textbooks which will be left in the textbook department when the contract expires July 1, 1962. Also, he asked the subcommittee to ask for an opinion as to who owns the building, and to make some recommendation - based on the ownership - as to the disposal of the building.

Senators Sanborn and Harper were asked to make their subcommittee report very soon as to the remodeling of the Ways and Means Committee Room.

Senator Sanborn moved that House Bill #428 be recommended for passage. Motion seconded by Senator Glades, motion carried.

The opinion of the Attorney General was received and read regarding the ownership of the old library building on the state-house grounds. Copy attached hereto.

Meeting adjourned.

A handwritten signature in blue ink, reading "August W. Lauterbach". The signature is written in a cursive style with a large, sweeping flourish at the end.

August W. Lauterbach,
Chairman.



State of Kansas
Office of the Attorney General
Topeka, Kansas

William A. Ferguson
Attorney General

Opinion No. 61- 81

March 15, 1961

ATTORNEY GENERAL'S OPINION

Re: Old Library on State House Grounds

Request by: Senator August W. Lauterbach, Chairman
Senate Ways and Means Committee

- Questions:
- (1) Who has title to the building, the City of Topeka or the State of Kansas?
 - (2) Could the State grant to the City or a private organization the use of the building for a library or cultural purpose the costs of remodeling or maintenance to be assumed by such user?
 - (3) Could the next budget session of the Legislature make such agreement?

- Answers:
- (1) The fee title is in the State subject to the rights conferred on the Topeka Library Association by Chapter 164, Laws, 1881.
 - (2) The Legislature could grant use of the building for any public, but not private, purpose, but only after a new act of the legislature finding that the property in question has been abandoned and exercising the State's option to forfeit the Association's interest.
 - (3) No.

By deed dated February 13, 1861, the Topeka Association conveyed to the State of Kansas that tract in the City of Topeka bounded by Eighth Avenue East, Jackson Street, Tenth Avenue East and

Harrison Street, containing 20 acres more or less. This deed is recorded in Book 10, page 21, in the office of the Register of Deeds of Shawnee County.

On March 10, 1868, a group of citizens obtained a charter from the State under the name of The Topeka Library Association, said organization being referred to as a "joint stock library association". Apparently it seemed desirable to extend the usefulness of the organization, and on January 17, 1872, another charter was granted to The Topeka Library Association for a term of 99 years "unless sooner dissolved by its own action." From the records in the office of the Secretary of State it appears that this charter was never forfeited or surrendered and the articles of incorporation are still in effect.

By Chapter 164, Laws 1881, the Legislature granted to the Topeka Library Association the right to erect and maintain at its own cost a free library building upon a site not exceeding two hundred feet square near the northeast corner of "the Capitol Square in the City of Topeka". In pursuance of this grant the present building was erected by public subscription.

This grant above referred to was on condition that the library association, at its own cost, should establish and maintain in the said building a library "which shall be forever free to the citizens of the State"; also that the library association should never sell, convey or lease said building or the ground upon which it might be erected, nor permit any lien against said property.

It was further provided that the library association

"shall continue to possess and enjoy all the rights and privileges granted by this act, so long as it shall in good faith comply with the provisions, conditions and requirements thereof; but in case said library association shall at any time lapse, be dissolved, cease to exist, or shall fail, neglect or refuse for the period of six months, at any one time, to observe and carry out in good faith the provisions, conditions and requirements of this act, then and in such case said building may be forfeited to and become the property of this State, at the option of the legislature thereof."

At some time, which we have been unable to learn, the use of the

premises in question appears to have passed from the Topeka Library Association to the Topeka Free Public Library. This may have been about 1886 since by L. 1886, Ch. 72, cities were authorized to maintain a "free public library" and to levy a tax therefor; and some provisions of this law seem to be identical with those found in L. 1881, Ch. 164. Sec. 9 provides that whenever any library association organized under any law of this State and owning any real or personal property shall desire to sell, lease, donate or transfer its property to the board of directors of any free public library organized under this act, the transfer shall be made in the manner therein provided, "Which, when duly executed, shall be sufficient to pass to the board of directors of such free public library the legal and equitable title of said association in and to the real or personal property, or both, in said instrument described and set forth; subject to the conditions therein named."

Time has not permitted search of the records of the city nor of the free public library for information. Search has been made for a possible special act of the legislature covering transfer of the library building to the free public library, but no such statute has been found. In the absence of some new and broader grant, whatever rights the free public library may have acquired were identical with those of the Topeka Library Association. The result is that whether the one or the other organization is now owner of the right to the use of the library building, the rights involved are the same since the right to transfer granted to library associations by the 1886 law would overcome the restriction on transfer contained in the 1881 act.

By the terms of Sec. 5, Chap. 164, Laws of 1881, the right granted by that chapter were to continue only so long as the Library Association in good faith complied with the conditions of that act; but failure to use the property granted in the manner specified for six months authorized forfeiture of the grant and return of the property to the state at the option of the legislature. At the present time there can be no question but what the premises granted have not been used in the manner directed in the law for much more than six months. As a result the rights granted in 1881 are subject to forfeiture at the will of the legislature.

In 1953 the legislature apparently attempted to provide evidence of such forfeiture by the enactment of L. 1953, Ch. 400. Unfortunately this law is insufficient for the purpose intended inasmuch as it is entirely in anticipation of an abandonment of the property which was deemed probable in the near future but which did not then exist. For that reason we deem it necessary that a new act be passed, the legislature, making an express finding that the property in question has been abandoned and not used in good faith for library purposes and ordaining forfeiture to the state of all outstanding rights. This must be done before any attempt is made either to dismantle the old building, or to permit its use for some other public purpose.

This forfeiture is not such a matter as could be attended to at the next budget session. The constitutional amendment by virtue of which we now have budget sessions in the even-numbered years; (Const. Art. II, Sec. 25) provides that the legislature, in such sessions "shall consider only the governor's budget report, appropriation bills for the succeeding budget year, revenue bills necessary therefor, and such bills, resolutions or motions as may be necessary to provide for the expenses and conduct of the budget session." Clearly the question of forfeiture does not fall within the purview of this agenda.

WILLIAM M. FERGUSON
Attorney General

AKS:mh