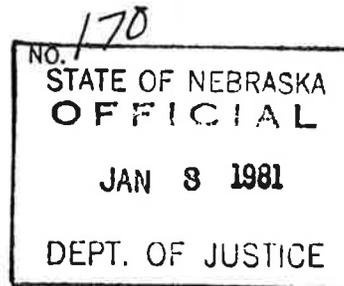


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

January 7, 1982



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Senator Chris Beutler
Nebraska State Legislature
State Capitol, Room 804
Lincoln, Nebraska 68509

Dear Senator Beutler:

This is in reply to your inquiry concerning the authority of a city attorney to collect attorney's fees on civil actions initiated on behalf of city libraries, under the provisions of Neb.Rev.Stat. §25-1801, or any other statute.

In view of the fact that there are specific statutes (Article 2 of Chapter 51) which spell out the method of establishing public libraries, and their powers, it is doubtful that a library could recover attorney's fees under the provisions of a general statute such as §25-1801. Any right to recover such fees would have to be included within the provisions of Article 2, Chapter 51 of the statutes.

With regard to the authority to recover attorney's fees in actions on behalf of library boards we call attention to some well established rules stated by our Supreme Court in Metropolitan Utilities District v. City of Omaha, 171 Neb. 609, that:

Municipal corporations are purely entities of legislative creation. They do not exist independent of some action of the legislative department of government bringing them into being. All the powers which they can possess are derived from the creator. Unlike natural persons they can exercise no power except such as has been expressly delegated to them, or such as may be inferred from some express delegated power essential to give effect to that power.

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Senator Chris Beutler
January 7, 1982
Page -2-

That:

A municipal corporation may exercise only such powers as are expressly granted, those necessarily or fairly implied in or incidental to powers expressly granted and those essential to the declared objects and purposes of a municipality.

And that:

[L]egislative charters wherein cities are empowered to perform certain acts or functions are construed with a greater degree of strictness than ordinary civil statutes, and the rule in Nebraska is that they shall be strictly construed.

It is quite apparent that libraries are also purely entities of legislative creation and as such possess only those powers which are derived from the Legislature.

In Article 2 of Chapter 51 of the Nebraska statutes the Legislature has granted to cities the power to establish public libraries, and in §51-205 has granted to the library boards the power "to make and adopt such bylaws, rules and regulations" for the government of the library. In §51-214 the Legislature has also granted libraries the power to recover in civil actions in county court "penalties imposed or accruing by any bylaw or regulation of the library boards." Nowhere in Article 2 is there any provision for the recovery of attorney's fees in civil actions brought on a library's behalf.

Since, in Article 2 of Chapter 51, the Legislature has very carefully spelled out the method of creation of public libraries and the authority they shall have, and in doing so has not authorized the recovery of attorney's fees in civil actions initiated on its behalf, it is our conclusion that such fees cannot at this time be recovered.

Very truly yours,

PAUL L. DOUGLAS
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BLP:pjs
cc: Patrick O'Donnell
Clerk of the Legislature