S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

October 31, 2000

Opinion No. 00-169

Title to real property conveyed for use as a site for a new public library

QUESTION

What is the proper manner in which to hold the title for real property that will be conveyed for use as a site for a new public library where acquisition, construction and operational costs will be funded by both county and city?

OPINION

If a library board exists and is appointed in accordance with TENN. CODE ANN. § 10-3-103(b), the library board shall acquire title to the property in the name of the county for the use and benefit of the public library pursuant to TENN. CODE ANN. § 10-3-110. Pursuant to TENN. CODE ANN. § 5-1-113, the city and county also are authorized to enter into an agreement to jointly acquire, construct and maintain a new library on such terms as may be agreed upon by the parties, including the manner in which title to the real property will be held.

ANALYSIS

This Office responded to an earlier expedited opinion request, Op. Tenn. Atty. Gen. 00-156 (October 17, 2000), on this same subject. In that opinion, this Office opined that based upon the materials accompanying that opinion request, the title for such real property should be held in the name of the county for the use and benefit of the public library pursuant to TENN. CODE ANN. § 10-3-110. The opinion was based upon the understanding that a county library board was acquiring the real property.

On October 19, 2000, this Office received this expedited opinion request that contained more detailed information.[1] Specifically, the additional information disclosed that the Obion County Public

[1]The additional background information described history related to the library system, applicable statutory framework, current opportunity to acquire real property with donations and possible solutions. It should be noted, however, that this Office does not agree with the assertion that §§ 10-3-109 through 10-3-111 only apply to counties having a population under 3,500. TENN. CODE ANN. § 10-3-109 simply gives additional authority to counties with less than 3,500 population to "conduct recreational facilities" in conjunction with the public library and provides that any proceeds therefrom are used solely for capital improvement and operational expenses of the library and recreational

Library was a joint operation between Union City and Obion County. The Obion County Public Library Board of Trustees has entered into a Real Estate Purchase Contract ("Contract") to purchase the real property for the new library building (to be funded by anonymous donors). The Contract has been approved by the County Commission and the City Council subject to determining the proper way for the ownership of the property to appear on the deed. The additional information states that acceptable alternative proposals for titling the property include (1) tenancy in common with a 1/3 interest being owned by the City of Union City and 2/3 interest being owned by the County of Obion and (2) ownership in the Board of Trustees of the Obion County Public Library. The additional information also detailed a third possible solution to create a Tennessee not-for-profit corporation as detailed in an attached proposed charter.

Title to the existing library building that was purchased and constructed in the 1960's was held by the County of Obion with a 2/3 undivided interest and the City of Union City with a 1/3 individual interest. Also, the operational funding for the Obion County Public Library has been provided 1/3 by the City of Union City and 2/3 by Obion County. No documentation can be found that formally establishes the Library Board of Trustees. According to the information provided, however, for at least the past several years the Library Board has had seven members appointed by the Obion County Commission and three of these members have resided within the City of Union City and were considered to be "City Representatives."

Despite these additional facts, the earlier opinion, Op. Tenn. Atty Gen. 00-156 (October 17, 2000) is still accurate. If a library board appointed in accordance with TENN. CODE ANN. § 10-3-103 acquires property, TENN. CODE ANN. § 10-3-110 requires that title shall be taken in the name of the county for the use and benefit of the public library. Since your most recent request makes clear, however, that your situation involves a cooperative endeavor involving both a county and a city, additional alternatives exist.

TENN. CODE ANN. § 5-1-113 is entitled "Interlocal cooperation with municipalities" and provides:

> The county legislative body of any county and the chief legislative body of any one (1) or more municipalities lying within the boundaries of the county are authorized and empowered to enter into any such agreements, compacts or contractual relations as may be desirable or necessary for the purpose of permitting the county and the municipality or municipalities to conduct, operate or maintain, either jointly or otherwise, desirable and necessary services or functions, under such terms as may be agreed upon by the county legislative body and the chief legislative body of the municipality or the chief legislative bodies of the municipalities.

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facilities.

Accordingly, the city and county are authorized to enter into an agreement to jointly acquire, construct and maintain a new public library on such terms as may be agreed upon by the parties, including the manner in which title to the real property will be held. The city and county could agree and, perhaps have indeed already agreed, to hold the property as tenants in common as their interests may appear (1/3 by the city and 2/3 by the county).

It has been suggested that the city and county, alternatively, could agree to create a Tennessee not-for-profit corporation to hold title to the real property. The city and the county, however, are not authorized to create a Tennessee not-for-profit corporation, and cannot delegate any of their statutory functions or duties to such a corporation. *See generally* Op. Tenn. Atty. Gen. U-94-037 (March 10, 1994)(see copy attached).

It is not clear that the city and county are authorized to pursue the remaining alternative proposal to vest title in the real property in "the Board of Trustees of the Obion County Public Library," since there is no documentation officially establishing this entity. If the requestor, however, uses the term "Board of Trustees" to mean the library board members established in TENN. CODE ANN. § 10-3-103, then title should vest pursuant to the requirements of TENN. CODE ANN. § 10-3-110 as described in the earlier opinion, Op. Tenn. Atty. Gen. 00-156 (October 17, 2000).[2]

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[2]Board members should be appointed pursuant to the requirements of TENN. CODE ANN. § 10-3-103(b) for joint operation of the library by the city and county.

Requested by:

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