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August 6, 2021

ATTORNEY GENERAL OPINION NO. 2021- 2

David E. Waters, City Attorney  
City of Eudora  
10851 Mastin Boulevard, Building 82  
Suite 1000  
Overland Park, Kansas 66210-1669

Re: Cities and Municipalities—Libraries—Eudora Community Library District Act; Library District Creation; Appointed Board as Provided by Joint Resolution

Synopsis: Members of the Eudora Township Public Library Board must be appointed, not elected, pursuant to a joint resolution between the City of Eudora and the Eudora Township. Cited herein: K.S.A. 2020 Supp. 12-1294, 12-1295, 12-1296, 12-1298.

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Dear Mr. Waters:

As counsel for the Eudora Community Library District (District) and City Attorney for the City of Eudora (City), you ask for our opinion regarding membership on the Eudora Township Public Library Board. Specifically, you ask whether the joint resolution between the City and the Eudora Township (Township) adopted pursuant to K.S.A. 2020 Supp. 12-1298 permits the District to hold an election for new members of the Eudora Township Public Library Board.

As discussed below, we conclude that state statute, not the joint resolution, governs the selection of members of the Board. K.S.A. 2020 Supp. 12-1298(a) prescribes that Board members be appointed, not elected.

In 2019, the Kansas Legislature passed the Eudora Community Library District Act (Act)<sup>1</sup> to allow the City to continue to be a part of a library district previously established between the City and the Township because, due to reclassification, the City was no longer a part of an existing library district. Pursuant to the Act, the City and the Township are to adopt a joint resolution that includes specific provisions.<sup>2</sup> Among those provisions must be one providing for the appointment of members to the board.<sup>3</sup> “Board” is defined as the “board of directors of the Eudora community library district appointed pursuant to the provisions of this act.”<sup>4</sup> The Legislature included a provision for the members of the current board to continue serving until such time as the joint resolution was adopted.

K.S.A. 2020 Supp. 12-1298(a) provides:

A library district created pursuant to this act shall be governed by a library district board. The board shall consist of five directors who shall be qualified electors of the library district and shall have terms of office as established by the joint resolution. Board members appointed by the Eudora township library board shall continue to serve in their offices as directors of the Eudora community library district board until their respective terms expire and until their successors are *appointed* by the city of Eudora and the Eudora township as provided in the joint resolution.<sup>5</sup>

To analyze this statute, we begin with the rules of statutory construction established by the Kansas Supreme Court:

The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.<sup>6</sup>

The language of K.S.A. 2020 Supp. 12-1298(a) is plain and unambiguous; current board members are to serve until their “successors are appointed by the City of Eudora and the Eudora township as provided in the joint resolution.” The term “appointed” is not defined in the statute, so in accordance with the fundamental rule of statutory construction quoted above, we give that word its ordinary meaning, which is “chosen for a particular job; an appointed official.”<sup>7</sup> In contrast, “elected” means “to select by vote for an office, position,

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<sup>1</sup> K.S.A. 2020 Supp. 12-1294 *et seq.*

<sup>2</sup> See K.S.A.2020 Supp. 2-1296.

<sup>3</sup> K.S.A. 2020 Supp. 12-1296(a)(1).

<sup>4</sup> K.S.A. 2020 Supp. 12-1295(b).

<sup>5</sup> Emphasis added.

<sup>6</sup> *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 918 (2013), quoting *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 564-65 (2012) (internal citations omitted).

<sup>7</sup> *Appointed*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/appointed> (last accessed July 26, 2021).

or membership.”<sup>8</sup> The statute allows the City and the Township to determine, by joint resolution, the specific details on how many board members will be appointed by the City and by the Township and the lengths of their terms, but does not allow the members to be elected.<sup>9</sup>

The joint resolution, which is in essence a contract, purports to establish a mechanism to elect successive Board members. Governmental entities cannot have contract provisions that exceed their authority.<sup>10</sup> Because K.S.A. 2020 Supp. 12-1298(a) does not authorize an election to the library board, a provision in the contract between the City and the Township for such election is unlawful and void.<sup>11</sup>

For these reasons, it is our opinion that, pursuant to K.S.A. 12-1298, members of the Eudora Public Township Library Board must be appointed, rather than elected, despite contrary language in the joint resolution adopted by the City and Township.

Sincerely,

/s/Derek Schmidt

Derek Schmidt  
Kansas Attorney General

/s/Sarah L. Shipman

Sarah L. Shipman  
Deputy Attorney General

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<sup>8</sup> *Elected*. Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/elected> (last accessed July 26, 2021).

<sup>9</sup> The Kansas Legislature differentiates between “appointed” and “elected” in other statutes. See e.g., K.S.A. 15-201 (“the mayor, by and with the advice and consent of the remaining council members, shall appoint an elector to fill the vacancy until the next election for that office”); K.S.A. 2020 Supp. 25-2023 (“Each member elected to a board of education shall hold office until a successor is elected or appointed and qualified”).

<sup>10</sup> See *Templeton v. Kansas Parole Board*, 27 Kan. App. 2d 471, 473-74 (2000).

<sup>11</sup> See Attorney General Opinion No. 2001-26 (“A valid election cannot be called and held except by authority of the law, whether that authority is conferred by constitution or by some statute enacted pursuant thereto. An election held without affirmative constitutional or statutory authority, or contrary to a material provision of the law, is a nullity, notwithstanding the fact that such election was fairly and honestly conducted.”).