



State of New Jersey

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DIVISION OF LAW  
EDUCATION AND PUBLIC EMPLOYMENT SECTION  
STATE HOUSE ANNEX  
TRENTON 08625

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May 29, 1975

Mr. Fred Combs, Jr.  
Assistant Commissioner  
Department of Education  
225 West State Street  
Trenton, New Jersey 08625

Re: Dissolution of Municipal or County  
Libraries  
M75-1888

Dear Mr. Combs:

You have asked: (1) whether a municipal library may be dissolved in favor of county services or vice-versa, and if so whether a referendum is required; (2) whether, if a municipal library may not be dissolved, it may contract with the county library for administrative services and use its own tax revenues to pay its county library tax obligations; and (3) whether a municipal library may merge or consolidate with the county library, and if so whether this must be done by referendum.

N.J.S.A. 40:54-1 permits but does not require every municipality to establish a free public library. No such library shall be established unless assented to by a majority of the municipality's legal voters. N.J.S.A. 40:54-2. N.J.S.A. 40:33-1 requires the board of chosen freeholders of every county to establish a free public library ". . . for such subdivisions of the county as do not maintain and control free public libraries. . . ." However, a county library too may only be established if approved by referendum. N.J.S.A. 40:33-2.

While N.J.S.A. 40:54-I et seq. and N.J.S.A. 40:33-1 et seq. which govern municipal and county libraries generally, set forth the procedures required for their establishment, these laws provide no procedures for their discontinuance. However, as a general rule the grant of power to enact implies the power, unless otherwise provided in the grant, to repeal. Stamler v. Madison, 82 N.J.L. 596, 598-9 (E.&A. 1912); McQuillin, Municipal Corporations, §21.10, p. 206

(3rd Ed., 1969 Rev. Vol.). Further, it is apparent from the statutory scheme governing libraries as a whole in New Jersey that the Legislature did not by this procedural omission intend to preclude dissolution of library services no longer needed by the community supporting them. N.J.S.A. 40:54-29.22 to 29.25; N.J.S.A. 40:33-13.16. It is therefore concluded that a municipal or county library may be dissolved.

Since N.J.S.A. 40:54-1 et seq. and N.J.S.A. 40:33-1 et seq. contain no express provisions for such dissolution, the question remains how it should be effected. As a general rule, where a measure has been adopted by referendum it may only be repealed by the same procedure, that is, by the electorate rather than governing body. McQuillin, supra, §21.11, p. 209. See also McQuillin, supra, §21.03, p. 195 and §16.70, p. 255. You are therefore advised that should either a municipal or county library wish to dissolve, it should seek to do so by referendum. Should such a referendum be successful, you are further advised that it would be appropriate for the library to look for procedural guidance to the methods established by the Legislature for the discontinuance of joint public libraries (N.J.S.A. 40:54-29.22 to 29.25) and the creation of regional libraries (N.J.S.A. 40:33-13.16).

You have also asked whether municipal and county library services may be merged or consolidated. N.J.S.A. 40:33-1 only requires county freeholders to provide services for those municipalities which do not maintain their own libraries. Therefore, if a municipality discontinues its library in the manner already discussed, its county library will be required to provide it with library services. The county library may choose to do so by taking over the facilities and services formerly operated by the municipality. Conversely, if the electorate approves dissolution of the county library, a municipality already operating its own library may appropriately take over facilities and services formerly operated within its borders by the county. If a municipality has no library service, having previously relied upon county services, it may choose to establish its own library by referendum and could then choose to take over facilities and services formerly provided to it by the county.

In sum you are advised that: (1) a municipal or county library may be dissolved by referendum; and (2) a county library may absorb municipal facilities upon their discontinuance by the municipality, and vice-versa. In view of these conclusions it is not necessary to reach your remaining questions concerning service contracts between municipal and county libraries or the need for a referendum to merge two such facilities.

Very truly yours,

WILLIAM F. HYLAND  
Attorney General

By Jane Sommer

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Deputy Attorney General