

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

THE CITY OF OMAHA,
NEBRASKA, A Municipal
Corporation, and CITY
OF OMAHA LIBRARY FACILITIES
CORPORATION, a Non-profit
Corporation,

Plaintiffs,

vs.

WILLIAM E. PETERS, Tax
Commissioner of the State
of Nebraska,

Defendant.

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FINAL ORDER AND JUDGMENT

This matter came on for trial on the 15th day of December, 1975, upon the amended petition filed herein and defendant's answer thereto; present in court were the plaintiffs, by their attorney, Kent N. Whinnery, Assistant City Attorney of the City of Omaha, and the defendant, by his attorney, Ralph H. Gillan, Assistant Attorney General; evidence was adduced, consisting of a stipulation of facts and various documentary exhibits, and the matter was submitted to the court on the pleadings, the evidence, and the briefs of the parties.

On consideration whereof the court finds generally for the defendant and against the plaintiffs; the court finds that City of Omaha Library Facilities Corporation is a separate and distinct entity from the City of Omaha, Nebraska, and is entitled to only such of the tax exemptions of the City of Omaha as it is specifically given by statute; that sec. 21-1903, R.R.S. 1943, gives such a corporation exemption from property taxes, if the property is held in trust for a tax exempt body, but no exemption from sales or use tax is conferred by that section, or any other statutory provision.

The court further finds that said corporation is not an agency of the City of Omaha, nor the alter ego of said city, but that it was formed for a distinct purpose which could not be performed by the City of Omaha, itself, in that the City of Omaha could not issue bonds for the construction of a library without a vote of the electors; that the courts will "pierce the corporate veil" and apply the alter ego theory only to impose liability

on either the parent or subsidiary corporation, and to prevent fraud and injustice, and not to confer benefits upon the parent or subsidiary.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that plaintiff, City of Omaha Library Facilities Corporation, is not, in the construction and erection of a city library, the alter ego of plaintiff City of Omaha, Nebraska, and is not entitled to the exemption from sales and use taxes conferred upon cities by sec. 77-2704(1)(m), R.S.Supp., 1974. The costs of this action are taxed to the plaintiff.

Dated this _____ day of March, 1976.

BY THE COURT:

District Judge

Motion for retrial 3-15-76
Granted motion 4-14-76
Closed