

Legal Q and A:

The Powers and Duties of Library Trustees

New Hampshire Municipal Association, *New Hampshire Town and City, May 2010*

By Kimberly A. Hallquist

The statute relating to public libraries, RSA 202-A:1, begins with a declaration of policy:

Mindful that, as the constitution declares, “knowledge and learning, generally diffused through a community” are “essential to the preservation of a free government” the legislature recognizes its duty to encourage the people of New Hampshire to extend their education during and beyond the years of formal education. To this end, it hereby declares that the public library is a valuable supplement to the formal system of free public education and as such deserve adequate financial support from government at all levels.

To that end, library trustees, as the governing board of their public library, have powers and duties to carry out this policy by properly managing the public library. The library trustees, together with the board of selectmen and budget committee, and ultimately the voters of the town, can best accomplish these goals by working together to ensure that the public library has the support it needs. Following are some of the questions that may arise when working through library related issues.

Q. Do library employees fall under the personnel policies as adopted by the board of selectmen?

A. Only if the library trustees have voted to adopt those policies for the library personnel. The powers and duties of the library trustees include the power to appoint a librarian and all other employees of the library and to determine their compensation and other terms of employment. RSA 202-A:11. This power was affirmed in *Littleton v. Taylor*, 138 N.H. 419 (1994), when the Court held that a full-time town librarian was not a full-time town employee and could therefore be legally elected selectman. The Court pointed out that library trustees have such independence from the selectmen that library employees are not town employees.

Q. If library employees are not considered town employees, can they still be included in town benefits and have their paychecks processed by the town’s administrative staff?

A. Yes. While library employees are not town employees for purposes of the terms of their employment, the library trustees and the board of selectmen may agree that having payroll and benefits handled by the town’s administrative staff makes better economic sense than having the library staff prepare separate payroll.

Q. If the library receives a donation, must the library trustees hold a public hearing in order to accept the money?

A. The first question to answer is whether the town has authorized the library trustees to accept unanticipated money. If voted by the town under RSA 202-A:4-c, the library trustees may apply for, accept and expend, without a further action by the town meeting, unanticipated money from the state, federal or other governmental unit or a private source which may become available during the fiscal year. Because this money is “unanticipated,” it is exempt from the provisions of RSA

Chapter 32, relative to limitations and expenditures of town monies, and may be expended without further action by town meeting.

If the library trustees do have the authority to accept the donation, a public hearing must be held for a donation of \$5,000 or more. Notice of the time, place and subject of the hearing shall be published in a newspaper of general circulation at least seven days before the hearing. For unanticipated monies in an amount less than \$5,000, the library trustees shall post notice of the money in the agenda, if any, and shall include notice in the minutes of the public library trustees meeting in which the money is discussed. Notice for this meeting is in accordance with the rules as set by the trustees. The acceptance of this unanticipated money shall be made in a public session of any regular library trustees meeting.

Unanticipated money shall only be used for those purposes for which a town may legally appropriate money, and acceptance of the money shall not require the expenditure of other town funds except those funds lawfully appropriated by the town.

If the library trustees have not been given this authority, they may not accept the donation without a vote of town meeting. However, the board of selectmen may accept the money if they have been given the authority under RSA 31:95-b.

Q. When a donation is made to the library for general use, are there any restrictions on how the library trustees can spend the money?

A. If a donation is made with “no strings attached,” the library trustees are free to use the money for any legal purpose for which a town could appropriate money, so long as the expenditure does not require other town funds not already appropriated. Again, this is subject to the trustees’ ability to accept unanticipated money, as discussed above.

Q. Can the library trustees accept and hold trust funds?

A. Yes, but only if the donor specifies that the trust funds are to be held in the custody and under the management of the library trustees. RSA 202-A:23. Otherwise, trust funds that are given to towns and cities for the use of a public library shall be held by the trustees of trust funds. Payment of income from such trusts shall be made by the trustees of trust funds to the library trustees as the interest is received. RSA 202-A:22.

Q. Can the library trustees allow the fund that includes fines for lost and damaged book monies to accumulate to make a large purchase in the future?

A. That depends on what the purchase is expected to be. RSA 202-A:11, III provides that all money received from fines and payments for lost and damaged books shall be used for “general repairs and upgrading, and the purchase of books, supplies and income generating equipment.” This money is held in a nonlapsing separate fund and shall be in addition to the appropriation. Thus, if the library trustees decide to save the money until they have enough to purchase a new copy machine (income generating equipment), which can cost several thousand dollars, they may do so. Allowing this fund to accumulate large sums can sometimes create tension among the board of selectmen and budget committee who question why the library trustees are not spending the money on general repairs and upgrading for the library or for the purchase of books, instead of seeking an appropriation from the town. These issues can be avoided by having open communication between the library trustees and the budgeting authorities so that future plans for the library can be better understood by all.

Q. If the library trustees know in advance that they will receive a grant, can it be accepted and expended without an appropriation of town meeting, under RSA 202-A:4-c?

A. No. If the library trustees know that they will receive a grant in the future, then it is not “unanticipated,” so it must be appropriated through the normal budget process.

Q. Can the library keep money it collects from the library’s income-generating equipment?

A. Only if the town has given its permission under RSA 202-A:11-b. Otherwise, the library trustees must turn over the monies collected to the town treasurer for deposit into the general fund. If the town does allow the library to keep the money, it may only be used for “general repairs and upgrading, and the purchase of books, supplies and income generating equipment.” As with monies from fines and lost and damaged books, these monies must also be kept in a nonlapsing fund. An important difference in this fund is that, in order to spend the money, an appropriation from the town is needed.

Q. Are there other funds that may be spent without a vote of town meeting?

A. In addition to monies received from fines and lost and damaged books, and interest from trust funds for library purposes, the town could establish capital reserve funds and expendable trust funds, naming agents to expend. When agents to expend are named, the agents may spend the money for the purpose of the fund without a further vote of town meeting.

Public libraries were established to provide citizens with expanded opportunities for learning and gaining knowledge, because such a citizenry was seen as an essential part of preserving a free government. To this end, cooperation and support between the selectmen, the budget committee and the library trustees is essential if this constitutional ideal is to be met.

Copyright © New Hampshire Municipal Association
New Hampshire Town and City, May 2010