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Section 4: Legal and Liabile

4.1 - Overview

The trustee board of an association library is formed under N.J.S.A. 15A which governs the formation and operation of all non-profit organizations in New Jersey. While the trustees of association libraries are not bound by much of the following information relating to New Jersey Law, compliance is highly recommended as a best practice.

New Jersey law governs the formation and activities of the trustees of municipal libraries (N.J.S.A. 40:54-1, et seq.) joint libraries (N.J.S.A. 40:54-29.3 to 29.25, and N.J.S.A. 40:54-1, et seq.) and the commissioners of county libraries (N.J.S.A. 40:33-1 et seq.). These boards and commissions are also required to follow general New Jersey law as the public library is a local government unit.

Full text of the laws covering each type of public library (Part 1), State Aid (Part 4), Library Employees (Part 5), Purchasing (Part 6) and more may be found at http://lss.njstatelib.org/library_law. Printable statutes and regulations covering the establishment, operation and funding grouped by type of library may be found at http://lss.njstatelib.org/director_resources. Review the laws periodically to assure that the board is exercising its powers and duties properly.

Trustees may recommend changes to the law. Suggested changes to State statute should be directed to the New Jersey Library Association or the New Jersey Library Trustee Association. Suggested changes to regulation should be directed to the State Library for consideration (See Rulemaking Petitions at http://www.njstatelib.org/services_for_libraries/resources/library_law/rule-proposals-notices-adoption/)

Library Support Services, the division of the State Library that is responsible for providing support to public library administrations, is a resource available to you as questions arise. Staff members provide confidential counseling to library trustees, directors and staff and serve as resources for the board's attorney. *Contact information may be found in Section 11.*

4.2 - Recommended Best Practice:

When dealing with legal issues, the board consults with an attorney for interpretation of the law. The lawyer should be familiar with library law as well as personnel issues. It is recommended as a best practice that the board retain its own attorney, and that a line item be retained in the budget to pay for legal services. To avoid conflict of interest, the board should retain an attorney that does not represent the municipality/county.

1. New Jersey Laws

4.3 - Open Public Meetings Act

Under the New Jersey Open Public Meetings Act (http://www.njstatelib.org/services_for_libraries/resources/library_law/page25-2/), meetings of public bodies must be open to the public. "Meeting" is defined as any gathering, whether corporeal or by means of communication equipment, which is attended by or open to all of the members of a public body held with the intent of discussing public business of the body. It does

not include such gatherings attended by less than a majority of the members.

Written notice at least 48 hours in advance is required to be posted in a public place and transmitted to at least two newspapers designated to receive the notices. Where notice of meetings has been filed annually, notice of change or exceptions would have to be made. Required procedures should be noted in the library's policies and followed automatically. There are additional provisions to the law; see the website above for the full text.

The circumstances under which it is legal and those when it is not legal to go into 'Closed Session' or 'Executive Session' are often confusing. The law only permits closing the meeting to the public to discuss certain, specific matters. These are summarized here, but you should read the law to be sure your closed session is for a legal purpose and is done in a legal manner. Review regulations governing the **Open Public Meetings Law** with your attorney.

You may have a closed session for the following reasons:

- ◆ confidential matters, as defined by Federal or State law;
- ◆ if the release of information would impair a right to receive funds from the U.S. government;
- ◆ information which is an unwarranted invasion of individual privacy, as listed in the Act;
- ◆ collective bargaining agreements, or proposed agreements;
- ◆ matters involving real estate, banking or investment, which could adversely affect the public interest if disclosed;
- ◆ tactics and techniques that protect public safety and property, which could be impaired by disclosure;
- ◆ investigations of violations or possible violations of the law;
- ◆ litigation or contract negotiation to which the library is, or may become, a party;
- ◆ matters involving client-attorney privilege;
- ◆ any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective library employee or current library employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting (Rice Letter is required);
- ◆ deliberations after a public hearing that may result in a specific civil penalty or suspension or loss of a license or permit of a responding party.

4.4 - Open Public Records Act (OPRA) and Record Retention Schedules

The intent of these laws is to provide greater access to public records. Should the agency receive a request, the agency must reply within seven business days with the requested information, without the information if it will take longer to retrieve it, or with a denial of the request.

All government bodies are legally required to keep some records in perpetuity and some records for a limited time (including electronic). In order to determine the length of retention, see *Record Retention Schedule* at http://www.njstatelib.org/services_for_libraries/resources/library_law/ (Part 7: Miscellaneous). Library patron records are excluded by law.

4.5 - Confidentiality of Library Records

Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances: the

records are necessary for proper operation of the library, disclosure is requested by the user, or disclosure is required pursuant to a subpoena issued by a court or court order (NJSA 18A:73-43.1)

4.6 - Return of Excess Funds to Municipality (N.J.S.A. 40:54-15)

Only about six libraries are currently in a position to have and return excess funds, but all municipal and joint libraries are covered by this law and must assure compliance annually. The director or auditor should annually prepare the Transfer Calculation Form to establish whether or not the library has excess funds to return to the municipality. The form and further information about the process may be found at [Packet for proposed return of taxpayer funds](#). The State Librarian must approve all applications to return funds.

4.7 - Purchasing and Disposal of Property

As local government units, all municipal, joint and county libraries must follow New Jersey law in purchasing and disposal of property. See Resources in Section 11 for further information.

4.8 - Minimum Standards for distribution of Per Capita State Aid

Per Capita State Aid regulations outline minimum standards for public libraries, as well as the processes that libraries must follow to meet those standards. These regulations are reviewed and subject to revision every seven years. For access to Per Capita State Aid regulations and minimum standards, go to http://lss.njstatelib.org/library_law/library_law_page_02

4.9 - Other State Laws and Local Laws

- Libraries are required to provide and display voter registration forms.
- Gifts and Donations made to the library may be accepted by the trustees, but the trustees may not use library funding to give gifts and donations.
- New Jersey requires that public employees be residents of New Jersey and municipalities and counties may also establish a residency requirement.
- Trustees take an oath of office and submit an annual financial disclosure.
- The library accounts must be audited annually by a CPA for association libraries or an RMA for all other types of public libraries.
- Appropriate processes of purchasing and discarding of property must be followed.

Trustees of municipal and joint libraries should review the provisions of N.J.A.C. 15:21-12 regarding permissible uses of library funding and clarification of reports and audits.

Many state and local laws not specific to public libraries will also be of interest to trustees. For instance, local zoning laws, parking restrictions, building codes, and safety restrictions need to be considered.

2. Federal Laws

Numerous federal laws affect public libraries. A selection of these laws of special interest to trustees includes the following:

4.10 - Americans with Disabilities Act (ADA)

It is not unusual for boards to have questions about the federal 1990 Americans with Disabilities Act (ADA). This major piece of civil rights legislation made it illegal to discriminate against people

with physical, mental or emotional disabilities. It requires public facilities, such as public libraries, to make reasonable modifications or accommodations to ensure equal access for these individuals.

Boards that choose not to modify the library to make it physically accessible must be able to demonstrate that people who do not have access to the building can receive substantially the same services as those who can enter the building. For more information on ADA, visit www.ada.gov.

4.11 - Employment Laws

Libraries must abide by federal and state laws that prohibit discrimination in relation to hiring, promotion and all other working conditions of employment. It is illegal to discriminate against qualified applicants on the basis of sex, race, creed, color, religion, age, country of national origin, individual life style, or physical or mental disability. Stated policies should demonstrate that the library board makes every effort not to discriminate.

Most library employees fall under minimum wage and fair labor standards laws. Boards should consult with the library attorney regarding how these and other federal laws affect the library. Note that library employees are not covered by New Jersey minimum wage law.

4.12 - Children's Internet Protection Act (CIPA)

CIPA requires libraries that receive e-rate discounts or Library Services and Technology Act (LSTA) funds for Internet connectivity, Internet access, or computer purchases to filter all computers including staff computers. Filters must block certain defined categories of IMAGES, not text.

For more information visit www.ala.org/advocacy/advleg/federallegislation/cipa.

4.13 - E-Rate (Telecommunications Act of 1996)

In 1997, the Federal Communications Commission (FCC) adopted a Universal Service Order implementing the Telecommunications Act of 1996. The order is designed to ensure that all eligible schools and libraries have affordable access to modern telecommunications and information services. Each year, as funding authorized by Congress is available, eligible schools and libraries are provided with discounts on authorized services. These discounts are often referred to as the "E-Rate." For more information on E-Rate, visit www.sl.universalservice.org. Free filing assistance may be available. To see if you qualify, contact services@jerseyconnect.net.

4.14 - Library Services and Technology Act (LSTA)

In 1996, the Library Services and Technology Act (LSTA) replaced the Library Services and Construction Act (LSCA), which had been in operation since the 1950s. LSTA, which is administered by the federal Institute of Museum and Library Services (IMLS), helps states develop electronic networks among libraries. These networks make it possible for libraries to share information resources as well as to provide library services to users with special needs.

LSTA funds are awarded annually and administered by the State Library, for purposes deemed important in and by each state. To receive funds, each state develops an LSTA Five-Year Plan, which is approved by the IMLS see (www.ims.gov). These funds are used for State Library programs, such as those offered by the Talking Book and Braille Center (TBBC); and for

statewide projects such as access to statewide databases. For more detailed information, see <http://www.njstatelib.org/about/budget-state-federal/lsta/>.

4.15 - USA Patriot Act and Intellectual Freedom

Libraries need to have established policies and procedures to cover situations where library records could be subpoenaed or investigated by law enforcement officials. All staff and board need to be apprised of appropriate legal processes before this situation arises. Prompt access to legal services to review any law enforcement requests is imperative.

Visit <http://www.ala.org/offices/oif/ifissues/usapatriotact> for a better understanding of this issue.

4.16 - Intellectual Freedom (Censorship Defined)

The concept that an individual has the right to choose what he or she wishes to read or see is called “intellectual freedom” or the “freedom to know, and the freedom to read.” As part of our freedom of expression, it is a right guaranteed by the United States Constitution. This freedom is expressed every day in the variety of materials selected for availability in libraries.

Library trustees have the obligation to see that all persons have the right to access the materials they need and want, and to build a library that meets many needs in the community. When called upon to defend these rights, trustees have recourse to the **Freedom to Read** statement adopted by the American Library Association, the Association of American Publishers, and by public and other libraries throughout the country. See the Supplementary Documents for this statement and similar ones that can be added to the policy manual of your library.

In addition, libraries should adopt policies dealing with access to the borrowing records of users, in compliance with the Confidentiality of Library Records Law (N.J.S.A. 18A:73-43.2), other pertinent state laws, and the USA Patriot Act.

The American Library Association publishes an Intellectual Freedom Manual (by Rudolf Steiner. 8th ed, ALA, 2010; ISBN 9780838935903) containing basic principles and interpretation and offering advice and assistance in dealing with complaints and handling the censor.

4.17 - Responsibility of the Trustee in Upholding Intellectual Freedom

Trustees should provide for a process by which complaints in this area can be handled in an orderly fashion. Normally, the library director would receive any complaints and deal with the initial explanation of the library's policies. If this contact is not sufficient, the sample complaint form included in the Supplementary Documents of this manual can be used to obtain details about the concern. The board of trustees is made aware of the complaint and should be prepared to address the issue when it comes to the board.

Trustees should be prepared for handling complaints by understanding the policies they have adopted. An understanding of how materials are selected and how staff utilizes reviews and other information before purchasing an item is essential. A materials selection policy is mandatory for a library. Such a policy states the general purpose of the library, its mission to offer variety and its priorities in spending materials budgets. The guidance of such a statement is useful to staff as a reminder that there are priorities that need to be satisfied.

While the usual complaint is on the controversial content of a book or other material, complaints are often made that librarians are censoring by what they choose to order and not to order (e.g.,

that controversial materials are simply not purchased). If the material selection policy is followed, this complaint will not be valid. Trustees need to check with the library director to monitor how the wide mission of the library is being met through its collection. See the **Reconsideration of Library Materials** form in the *Supplementary Documents*.

Trustees also need to understand the rationale behind their Internet access and/or filtering policies, and be able to explain and justify them to the public in case of complaint.

4.18 - Risks of a Lawsuit to Board Members

The legal power of the board is derived from the board's actions as a body. These actions are subject to public scrutiny and may be challenged in court. Board members need to be well-informed and knowledgeable about library issues and law in order to make informed decisions.

Any person accepting a position of public responsibility today accepts legal responsibilities and the possibility of liability. Suits are likely to include individual board members, even though trustees cannot be sued individually (see N.J.S.A. 2A:53A-7.); however, the board can be sued collectively. A recommended best practice is for the board to have, on retainer, an attorney knowledgeable about library law who is available to advise the board on difficult legal issues, as well as the inevitable contract and employee relations matters.

New Jersey library law is quite clear on giving powers and duties to the library board, but no law can be definitive or anticipatory. Library boards and their trustees can and have been sued. It is a risk that can be dealt with through proper insurance and careful attention to duty.

Library boards must perform in an ethically, accurate, and timely manner. They must also stay in compliance with policy and the law.

Most censorship episodes, for example, do not go to court but could. A resource in this area is the Freedom to Read Foundation (800-545-2433, ext. 4226 or visit www.ftfr.org). This group raises funds for support of those challenged and has publications and offers advice in the area. The New Jersey Library Association has an active Intellectual Freedom Committee (<http://www.njla.org/content/intellectual-freedom-subcommittee>) which offers assistance. The American Library Association also has such a committee (Office of Intellectual Freedom, <http://www.ala.org/offices/oif>) which publishes a newsletter that is a valuable source of information on censorship across the country.

A board faced with a suit will need to retain legal counsel promptly and follow the advice. (The board should never hire a lawyer who is a member of the board). Board members should be careful to avoid public discussion as individuals. Your legal counsel and designee of the board should serve as spokespersons. The library should have written policies, procedures, and a designated chain of command as to who is the library's official spokesperson in public and media communications and legal matters. All trustees and staff members should be aware of this.

The best defense, of course, is responsible performance, observing the law, following policies and staff and board training. The rule is to stay within known legal bounds and seek legal advice if you have questions about your right to take an action.

Liability insurance for the board should be a part of the liability package paid for by the library.

4.19 - Establish a Code of Ethics

The board should establish a code of ethics to prohibit conflict between public duty and private interest by specifying rules of conduct for public officers, including library trustees. The code covers confidential information, gifts, and other economic benefits or compensations. (see Supplementary Documents)