

## POWERS, COMPENSATION, COMPOSITION OF LIBRARY BOARDS

Library boards are established by municipalities to administer municipal libraries. Questions often arise concerning a library board's powers in relation to the municipal governing body.

This month's Comment reviews the authority municipal library boards have over such matters as the expenditure of library funds and the hiring and compensation of library employees.

It will also explain that while a governing body may be able to adopt a charter ordinance asserting greater control over a municipal library, the enactment of such a charter ordinance probably would lead to a reduction or withdrawal of state aid or expulsion from a public library system.

The establishment and operation of public libraries is governed by ch. 43, Stats. The provision most relevant to municipal library boards are found in secs. 43.52 (municipal libraries), 43.54 (municipal library board composition) and 43.58 (powers and duties of library boards).

### I. LIBRARY BOARD COMPOSITION

Library boards in cities of the 2nd or 3rd class consist of 9 members, although the common council may, by a two-thirds vote, reduce the number of members to 7. Secs. 43.54(1)(a) and (3).

Library boards in cities of the 4th class consist of 7 members. Village library boards are composed of 5 members, although two additional members may be appointed so that the board has 7 members.

Members of the library board must be residents of the municipality, except that not more than 2 members may be residents of towns adjacent to the municipality. Sec. 43.54(1)(a).

Members of the library board are appointed by the mayor or village president, with the approval of the governing body. Members are appointed for three-year staggered terms starting July 1 in the year of appointment. Sec. 43.54(1)(b).

One member of the library board must be a school district administrator or his or her representative. No more than one member of the municipal governing body may serve on the library board at any one time. Sec. 43.54(1)(c).

### II. COMPENSATION OF BOARD MEMBERS

No compensation may be paid to the members of a library board for their services, but members may be reimbursed for expenses incurred in performing duties outside the municipality if authorized by the library board.

Also, members may receive per diem, mileage and other necessary expenses incurred in performing their duties if authorized by the library board and the municipal governing body. Sec. 43.54(1)(d).

### III. LIBRARY BOARD POWERS

#### A. Control Over Library Funds

The library board has exclusive control of the expenditure of all moneys appropriated by the governing body or donated to the library fund. Sec. 43.58(1).

This power of the library board to control funds has been interpreted by the attorney general to include the authority to contract for necessary goods and services for the public library. 77 OAG 193 (1988).

Although the library board has exclusive control of the moneys appropriated for the library fund, the board does not make actual disbursements from the appropriation.

Rather, the board audits and approves vouchers for expenditures and forwards these to the municipal clerk, who follows the ordinary procedure for disbursing municipal funds under sec. 66.042. Sec. 43.58(2).

Thus, under the scheme set out in the statutes, the library board has control over the use of the money appropriated to the fund, but it does not sign the checks or maintain physical control over the actual dollars and cents appropriated to the fund.<sup>1</sup>

Library boards probably have disbursement authority, however, with respect to donated funds held in trust by the library board under sec. 43.58(7). The library board is authorized to receive, manage and dispose of gifts and donations for library purposes. Sec. 43.58(7).

When a gift or donation is made to a public library, library board members are considered special trustees of such property and “the library board may pay or transfer the gift...to the treasurer of the municipality or county in which the public library is situated, may entrust any funds therefrom to a public depository under ch. 34 or may pay or transfer such gift...to any member of the library board to be selected by the library board and thereafter to be known as financial secretary”. Sec 43.58(7).

The League has interpreted the above provisions to mean that if a library board deposits gifts it receives in a public depository, the board may write checks disbursing such funds on its own without involving the municipal clerk.<sup>2</sup>

## **B. Control Over Library Property**

The library board has exclusive control and custody of all lands, buildings and other property given or granted to, or otherwise acquired or leased by, the municipality for library purposes. Sec. 43.58(1).

The library board may, if authorized by the governing body, have exclusive control over the purchase of a site and the erection of a library building. Sec. 43.58(1).

Otherwise, the municipal governing body, in the absence of a specific grant of authority to the library board, has the sole right to purchase or acquire sites or erect buildings for library purposes. Sec. 43.54(3).

However, in the case of a gift for a library building, the library board has the exclusive right to select and contract for the purchase of a site. Sec 43.58(7)(e).<sup>3</sup>

## **C. Control Over Library Employees**

With respect to the library board’s authority in the area of library employees, sec. 43.58(4) provides in part as follows: “*The library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.*”

It is apparent from this that the library board has control over the hiring, firing and fixing of wages of library employees. Thus, we have concluded in the past that it is the library board, not the municipality, which negotiates with a union representing library employees.<sup>4</sup>

On the other hand, municipal governing bodies retain some control over the number of library employees and compensation paid to such employees by virtue of the fact that they control the purse strings.

Chances are good that a municipality’s annual appropriation constitutes a substantial portion of the library fund, and probably is the main source for the payment of library salaries.

A municipality’s ability to control the number of library employees and their salary by a reduction in funding is limited, however, by the need to fund libraries at a level not lower than the average of the previous three years as required by sec. 43.15(4)(c)5 to retain membership in a public library system and remain eligible for state funding. See sec. 43.24(3).

In addition, while it is clear that the library board has control over the hiring, firing and compensation paid to library employees, we have concluded in the past that library employees are municipal employees and therefore subject to the same terms or conditions of employment that apply to other municipal employees.<sup>5</sup>

Support for this conclusion exists in a 1939 attorney general opinion which concludes that library employees are “municipal personnel” for purposes of sec. 66.19, the municipal civil service system statute.<sup>6</sup>

Further support for this proposition can be found in the fact that the legislature amended sec. 66.19 after the attorney general’s 1939 opinion to permit municipal governing bodies to exempt any librarians and assistants from a municipal civil service system.

Relying on the above, we have opined that a library board cannot enact a rule for library employees which is inconsistent with the terms and conditions of employment established by the governing body for all municipal employees.<sup>7</sup>

For example, we have concluded that where a municipal governing body has enacted a residency requirement for municipal employees, it would apply to library employees.<sup>8</sup> Likewise, we have concluded that library employees are subject to the same rules concerning vacation schedules that apply to other municipal employees.<sup>9</sup>

These regulations relate to the terms and conditions of employment, as opposed to compensation levels, and therefore are outside the purview of the library board.

#### IV. GOVERNING BODY CONTROL OVER PUBLIC LIBRARIES

Although the governing body controls the purse strings and the terms and conditions of employment for library employees, municipal library boards have nearly autonomous powers with respect to the operation and administration of municipal libraries.

It has been the League's position over the years, however, that a municipal governing body may take greater control of public library administration by adopting a charter ordinance, pursuant to its constitutional home rule powers, altering ch. 43 and limiting the powers of the library board.<sup>10</sup>

Municipalities should be aware, however, of the risk inherent in proceeding down such a path. First, since there has never been a court decision on this issue, it is not entirely clear whether municipalities may use their home rule powers to assert control over municipal libraries.

Indeed, the attorney general has concluded, in his most recent opinion on this subject, that the operation of municipal libraries is a matter of statewide concern and thus municipalities may not exercise their constitutional home rule powers to obtain greater control over municipal libraries by altering ch. 43.<sup>11</sup>

According to Larry Nix, Bureau For Library Development, Department of Public Instruction (DPI), the Division of Library Services within DPI has, since 1989, been actively monitoring whether public libraries comply with public library system membership requirements under sec. 43.15(4)(c).

Under that section, a municipal public library may participate in a public library system only if it, among other things, is established under ch. 43. Sec. 43.15(4)(c)1.

Public library systems may expel, or reduce aids or services to a municipality which fails to meet this and other requirements listed in sec. 43.15(4)(c). Sec. 43.18(2).

Also, since September 1, 1991, the Division of Library Services has been authorized to reduce aid to a public library system if the system or any participant of the system fails to meet the requirements of sec. 43.15(4). Sec. 43.24(3).

DPI's position is that if a municipality enacts a charter ordinance taking greater control of its municipal library, the municipal library is no longer "established" under ch. 43 and it is therefore ineligible to participate in a public library system.

According to Mr. Nix, all municipal libraries participate in a public library system and thus risk a reduction of state aid or expulsion from a public library system if they adopt a charter ordinance taking greater control of the local public library.<sup>12</sup>

Accordingly, municipalities should investigate and seriously consider the ramifications of adopting a charter ordinance asserting greater control over the municipal library before proceeding to enact such legislation.

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<sup>1</sup>See *Libraries* #44.

<sup>2</sup>Id.

<sup>3</sup>For a discussion of the interplay between secs. 43.58(1), 43.54(3) and 43.58(7)(e) in the context of constructing an addition to a library see *Libraries* #40.

<sup>4</sup>See *Libraries* #43.

<sup>5</sup>See *Libraries* #40.

<sup>6</sup>28 OAG 386 (1939).

<sup>7</sup>See *Libraries* #30 and #40.

<sup>8</sup>See *Libraries* #30.

<sup>9</sup>See *Libraries* #40.

<sup>10</sup>See *Libraries* #45.

<sup>11</sup>76 OAG 203 (1987)

<sup>12</sup>See *Libraries* #46.

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