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Libraries FAQ 1

What is the relationship between a municipality's governing body and the library board? Who has authority over what?

Municipal library boards have more autonomy than other boards and commissions, but municipal governing bodies and library boards both exercise some degree of control. For example, municipal governing bodies control the purse strings and determine how much to appropriate for library purposes, but the library board has exclusive control over the spending of all monies appropriated to, collected for, or donated to the library. Library boards also control purchase of a site and the erection of the library building *whenever authorized*. The statutes also grant library boards "exclusive charge, control and custody" of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes." The statutes grant the library board primary control over library employees. See Wis. Stat. 43.58. However, municipalities do retain some control over library employees. See Libraries FAQ 5. (rev. 3/24)

Libraries FAQ 3

What authority can a municipality exercise over a library's finances?

By statute, the library board has exclusive control over how money dedicated to the library is spent. However, the municipality is responsible for the actual disbursement of funds except in the case of donated funds. Municipalities also control how much municipal money to appropriate to the library.

Wisconsin Stat. § 43.58 gives the library board exclusive control of the expenditure of all monies appropriated by the governing body or donated to the library fund. The library board's power 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. Although

the library board has exclusive control of the monies 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 Wis. Stat. § 66.0607 or 66.0609, if adopted.

However, library boards could exercise disbursement authority with respect to donated funds held in trust by the library board under Wis. Stat. § 43.58(7). Under that statute, the library board is authorized to receive, manage, and dispose of gifts and donations for library purposes. 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.

When a gift or donation is made to a public library, library board members are considered special trustees of such property. The library board may transfer the gift to (1) the treasurer of the municipality or county in which the public library is situated, (2) a public depository under Chapter 34 of the Wisconsin statutes, (3) the library board's financial secretary or, (4) a charitable 501(c)(3) organization whose purpose is providing financial or material support to the public library or a community foundation. If the funds are transferred to the library's financial secretary, the financial secretary may invest the funds or delegate the authority to invest the funds as provided in Wis. Stat. § 66.0603.

Although the library board controls funds donated or dedicated to the library, the municipality maintains full authority over how much municipal money to dedicate to the library. In the past, municipalities were required to fund libraries at a level that was not lower than the average of the previous three years in order to retain membership in a public library system and remain eligible for state funding. However, this "maintenance of effort" requirement was repealed by 2011 Wis. Act 32. (rev. 3/24)

Libraries FAQ 4

Can a municipality assert greater control over the library board by enacting a charter ordinance?

No. A 1987 attorney general opinion stated that municipal libraries are a matter of statewide concern. 76 Op. Att’y Gen. 203, 203 (1987). Although no Wisconsin case law addresses the question, it is likely a court would conclude that libraries are a matter of statewide concern, and municipalities cannot modify the statutory powers of their library boards with a charter ordinance.

Even if libraries were not considered a matter of statewide concern, the League has previously opined that the enactment of a charter ordinance which asserts greater control over the library would probably lead to a reduction or withdrawal of state aid or expulsion from a public library system. (rev. 3/24)

Libraries FAQ 5

What authority does a municipality exercise over library employees?

Wisconsin statutes grant broad authority to the library board, but library employees are still considered municipal employees. As a result, the municipality may be able to exercise some control over the terms and conditions of employment.

Wisconsin Stat. § 43.58(4) provides that the library board shall supervise the administration of the library and grants the board control of the hiring, duties and compensation of library employees. Although the statute does not explicitly address the library board’s power to discipline or remove library employees, those responsibilities likely fall under the board’s supervisory authority. As a result, we have concluded in the past that it is the library board, not the municipality, that negotiates with a union representing library employees. The Wisconsin Employment Relations Commission has concluded similarly. 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.

However, the League has 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. Support for this conclusion exists in a 1939 attorney general opinion which concludes that library employees are “municipal personnel” for purposes of the municipal civil service system statute (then 66.019 but since renumbered to 66.0509). Further support for this proposition can be found in the fact that the legislature amended the statute 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 that is inconsistent with the terms and conditions of employment established by the governing body for all municipal employees. For example, in an opinion written before the legislature limited municipal residency requirements, we concluded that a municipal governing body’s enactment of a residency requirement for municipal employees would apply to library employees.

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. (rev. 3/24)

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