

TRUSTEE TOPICS

Prepared by the
Kansas State Library and the
Kansas Library Trustee Association

LEGAL RESPONSIBILITIES OF LIBRARY BOARDS

GOAL:

The goal of the Trustee Topics is to help library trustees protect their libraries by handling library business effectively. Effective boards can prevent problems that would create legal vulnerability, economic hardship or social controversy.

The goal of this article is to help trustees understand their legal responsibilities, how to help their library director become knowledgeable about library law and how to call for effective assistance at the right time.

BACKGROUND:

Upon their appointment to a Kansas public library board, trustees become members of a working board. This board constitutes a body corporate and politic which by statute possesses all the powers of a corporation for public purposes. Public library trustees must know and accept their legal responsibility as members of the legal governing body of the library. When individuals accept the office of trustee, they also accept certain legal duties and responsibilities. Trustees need to be aware of specific and general legal requirements, strive to act within the law and seek expert assistance when appropriate.

Statutory Powers and Duties

K.S.A. 12-1225 provides the statutory powers and duties of a Kansas library board. These include:

- a. to make and adopt rules and regulations for the administration of the library;
- b. with approval of the governing body of the municipality, to purchase or lease a site or sites and to lease or erect a building or buildings for the use of the library;
- c. to acquire by purchase, gift or exchange, books, magazines, papers, printed materials, slides, pictures, films, projector equipment, phonograph records and other materials and equipment deemed necessary by the board for the maintenance and extension of modern library service;
- d. to employ a librarian and such other employees as the board deems necessary and to remove them and to fix their compensation;
- e. to establish and maintain a library or libraries within the municipality or within any other municipality with which service contract arrangements have been made;
- f. to contract with other libraries established under the provisions of this act or with the governing body of a municipality not maintaining a library or with any school board to furnish library service to their inhabitants or students;
- g. to receive, accept and administer any money appropriated or granted to it by the state or federal government for library services;
- h. to receive and accept any gift or donation to the library and administer it. If no provisions are specified, the board has the power to hold, invest or reinvest the gift and any dividends, interest, rent or income derived from the gift in a manner that will provide the best possible library service to the people of the community;

- i. to make annual reports to the state library and the governing body of the municipality each year showing receipts and disbursements from all its funds and showing statistical information;
- j. and to place money from other sources than the tax levy in the tax fund or a separate fund unless the donor or grantor directs how it shall be handled and spent.

Awareness of Other Legal Responsibilities

It is not practical for every trustee to be sophisticated in all areas of library law. The library director has a very specific responsibility to become knowledgeable about laws that affect public libraries and library personnel and to advise the board on the library's legal responsibilities.

However, it is important for trustees to be aware of some of the responsibilities inherent with serving on a corporate board of a public entity. Among these are adherence to:

- term limits – a trustee is appointed for a four-year term with an option to be reappointed for an additional four-year term;
- representative area – a trustee must reside in the taxing area of a public library;
- election of officers – K.S.A. 12-1224 states that the board shall annually elect a chair person, a secretary and a treasurer;
- duties of the officers – the chair person shall conduct all regular and special meetings and the chair's signature is the binding signature of all legal documents, including checks; the secretary maintains accurate minutes of all meetings which are open records for the public and signs all legal documents verifying that the chair's signature is legitimate; the treasurer does not necessarily need to be the library's bookkeeper but assures that accurate financial records

and reporting are maintained; other officers may be elected as needed;

- the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA);
- budget laws which in Kansas establish that the library budget is board driven making the board responsible for budget preparation, presentation, collection and expenditure;
- the cash basis law which states that no municipal body including libraries can spend more than it budgeted;
- library policy issues and its policy manual, including personnel policy, material selection policy, service policy, trustee policy, challenged material policy and emergency preparedness policy;
- and liability issues.

Liability

Library board members, as volunteers to nonprofit organizations, have certain immunities. Under Kansas law, a library trustee cannot be sued for duties legitimately performed as a board member. However, Kansas law does state that the board as a whole can sue and be sued. Therefore, the board itself can be held liable. The legal vulnerability of the public library is very real and must be respected by both trustees and staff members.

However, individual trustees are liable for issues of intentional tort such as libel or slander, assault, harassment or discrimination, or theft.

Potential Areas of Liability

There are potential areas of liability that the board should guard against:

- Acts in excess of authority. [Examples: censorship, imposing unpaid extra hours on hourly wage staff]
- Nonfeasance. [Examples: failure to get copyright clearances, failure to meet contractual obligations]
- Negligence. [Examples: unsafe buildings and grounds, failure to supervise funds]
- Acts in contradiction to the law. [Examples: authorizing payment of improper expenses, purchasing property without proper bidding, failing to follow pertinent rules for hiring]
- Conflict of interest. [Example: compensating a board member for doing work for the library]

Liability insurance coverage varies with each library. In some municipalities, all governmental entities, including library facilities, are included within the municipality in its insurance coverage. Other public libraries must pay for their own liability insurance coverage for buildings and boards. The library should work carefully with insurance companies to make sure that coverage is adequate for the library's needs.

ACTION STEPS:

The board should confirm that the library director is familiar with the current revisions of *The Kansas Public Library Handbook* online at <http://skyways.lib.ks.us/KSL/development/pubhandbook/index.html> and *The Public Library Policy Manual* online at <http://skyways.lib.ks.us/KSL/development/trustee.html>. These publications can confirm most of the library's basic legal responsibilities.

The board should actively encourage the library director to seek assistance from regional and state library consultants whenever it has a legal responsibility question.

If a problem escalates into a legally sensitive issue, the board should seek aid from an appropriate legal counsel.

If a library is pursuing a complex project such as a building program or an automation project, the director and trustees should carefully double check the library's legal and contractual obligations in implementing each stage of the project. Critically important documents should be reviewed by an attorney.

The board should confirm annually that:

- the library has effective documentation of library board business, including minutes and financial reports;
- the library's financial records have been reviewed or audited in compliance with state and local regulations;
- legally sensitive documents are kept in a secure environment;
- the library has annually reviewed and updated policy and procedure manuals;
- non-exempt library staff members are not being asked to work unpaid extra hours without receiving time and a half compensatory time;
- the library building and grounds have been reviewed for proper maintenance and public safety; and
- the trustees have not received compensation or special favors for any work done for the benefit of the library.

SOURCES:

The material in this document has been adapted from:

The Kansas Public Library Handbook, Kansas State Library, 1998, <http://skyways.lib.ks.us/KSL/development/pubhandbook/index.html>

and

The Kansas Public Library Trustees' Handbook, Kansas State Library, 1998, <http://skyways.lib.ks.us/KSL/development/trustee.html>.