Establishment and Governmental Relationships

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Libraries as publicly supported institutions are without exception the creatures of some sort of legislative enactment. Of all the states, only Michigan has a constitutional provision for the establishment of public libraries. Article XI, Section 14, of the Michigan Constitution of 1908 provides: “The legislature shall provide by law for the establishment of at least one library in each township and city: and all fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries.” Interestingly, this provision is originally to be found in the Michigan Constitution of 1850. However, failure to provide in a state constitution for the establishment of libraries does not derogate from the validity of legislation to that effect, either by the state legislature or by local governmental units. In fact, omission of specific provisions from the basic document of government is to be expected, and, far from being disadvantageous, may well be a benefit, since the axiom of “inclusio unius est exclusio alterius” might well work to the disadvantage of any function not specified in the constitution. So long as the constitution does not prevent the establishment of libraries, one need not be concerned. But even Michigan’s constitutional provision is not self-executing: there must be legislation to carry it into effect. It is to the legislature then, that we must look for the procedures for establishing libraries.

As might be expected of a country as large and as heterogeneous as this, the library laws of the various states are not uniform, a fact which makes generalizations dangerous. However, there is a common pattern which can be seen in the legislation of the states. Almost without exception there are three governmental agencies which are given the power to establish libraries: the school district, the county, and

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local municipalities (cities, boroughs, townships). Since each of these governmental units serves a different purpose and is differently administered, the legislation giving them the right to establish libraries is enacted separately. Perhaps the development of libraries in the various communities of the states led to this separation of legislative authority. The fact that these three kinds of governmental units are of different character may also have contributed to this legislative division. In any event the pattern is well established.

State legislation governing libraries is always partial, in that it does not include all of the statutory regulations which affect the library as an institution. Library legislation is directed to those elements of the library which are unique in the county, school district, or municipality. Elements which the library shares with all other similar institutions and the corporate body of which it is a part are not included. All-inclusive legislation would be an unnecessary repetition of statutes of general applicability, and would demand similar legislative treatment in all other similar situations. For instance, if a state law demands a loyalty oath from all personnel of any appointing authority in the state, and “appointing authority” is defined in the law as “any person, department, board, commission, or other agency of the Commonwealth, or of any political subdivision thereof,” this law is applicable to the employees of a county library and there is no need of specific legislation to make it apply to county libraries. One can only expect to find in library legislation that material which is unique with respect to the establishment and maintenance of the library, and not rules of general applicability throughout the municipal subdivision of which it is a part.

The usual state library legislation deals with three major topics. The first is, of course, the authorization of a particular branch of the government to establish a library and the methods to be used in that process. The second is the creation of a body to exercise control over the library. The third is the financial support of the library, once it has been established. Other aspects of library management are encountered in the laws of the various states, as the problems involved reach legislative enactment. Matters of contracting with existing libraries for public service, the joining of more than one municipal unit in establishing and maintaining a combined library unit, state aid for libraries, and the like, are to be found in state legislation when the necessity for such enactments is recognized.

In providing for the establishment of libraries, the legislature must
gives power to the governmental unit which is to be responsible for the library. The most obvious is one which is self-sufficient, such as a city. Pennsylvania, for instance, provides in the Act of July 20, 1917, as amended on April 3, 1945, that “The municipal authorities of any municipality may make appropriations out of current revenue of the municipality, or out of moneys raised by the levy of special taxes to establish or maintain, or both, a free, public, nonsectarian library, for the use of the residents of such municipality.” 2 Here is a direct grant to the governing officials of a municipal unit of the power to establish a library. But the same legislature, being cognizant that public officials are seldom anxious to create another organization which requires financial support and at the same time recognizing the rights of the citizens, provided in the next section of the act that “The municipal authorities of any municipality may submit to the qualified electors of such municipality at any general or municipal election, the question of establishing, maintaining and/or aiding in maintaining a free, public, nonsectarian library, and must submit such question, if petitioned for by three per centum of the voters at the last preceding general election.” 3 Similar provisions exist in every state with respect to the establishment of libraries. In some instances, the governing body need not submit the question to the electorate, if it moves for itself, but it is almost universally provided that the citizens may petition for the right to vote on the question of establishing a library for their own use.

A statute providing for the means of creating a library must also provide for a body to administer it. In most instances a new library board or commission or board of trustees is designated as a body to perform this function. Only in the case of school district libraries or city libraries run by the board of education is the administration of a new library assigned to an existing body. Ordinarily the governing body of the municipality to be served by the library appoints the board, although exceptions are sometimes made to this rule. The members of the board must be residents of the area to be served.

Financing libraries is always a problem. Adequate financial support for libraries is usually difficult to obtain. The methods developed by the various legislatures have not, on the whole, made the process easy. Pennsylvania provides that “Special taxes for these [library] purposes may be levied on the taxable property of the municipality, or the same may be levied and collected with the general taxes.” 4 In the first instance, the governing body is forced to set out the library
tax as an identifiable tax item, thus subjecting the tax to criticism, generally to the effect that it is too high. Under the alternative arrangement, the amount allocated to the library is a part of the total budget of the municipality: the claims of the library for support must contend with those of the police, the fire department, streets and highways, and all other departments supported by general taxes. Pennsylvania, as do some other states, also provides for the setting of a library tax rate by popular vote. While this may seem favorable to the library’s finances, in fact it works out to the contrary: once the rate has been set, a library board despite generally advancing prices of services and materials will have difficulty in overcoming voter reluctance to recognize the facts. Similarly, some states have, by legislation, limited the maximum rate of taxation (and in some, have also introduced a minimum rate), which may not be altered by popular vote. A fixed maximum works against proper support, in most instances, since it is tied to assessed valuation, which does not increase nearly as rapidly as do the costs of services and materials.

In considering what any governmental unit may do toward the establishment and maintenance of libraries, the legal situation which affects the particular body involved must be kept in mind. The powers of cities even within one state may differ greatly one from another. The legislature enacts legislation which is applicable to all cities, but it may also divide cities into classes, with regard to size, and differentiate among these classes as to local powers. A city charter, either specifically enacted by the legislature or of “home rule” character, will perhaps vary in its powers from those of the class to which the particular city belongs. The possibility that the powers of a particular governmental unit may be more or less than that of similar units must be borne in mind in all thinking about municipal activities of any nature. The powers of townships differ from those of cities, and first class townships may be able to do what the third class cannot.

It must be remembered that municipal corporations exist solely as the result of legislative enactment, and can only exercise those powers which are specifically granted, or those which are incidental or related as essential and necessary to carry out the declared objects contained in the express powers. Ultimate determination of what are related powers is made by the court. Hence, two states might have identical legislation, granting powers to cities, but the powers which can actually be exercised by the cities in the two states may vary. A broad
provision, such as “general welfare” might be interpreted by the courts of one state to encompass the establishment of libraries, whereas the courts of the other state might come to the opposite conclusion. Hence no hard and fast rule can be laid down as to what powers are in any municipal government. While this is not a satisfactory result, it is the product of our form of government.

This limitation on the powers of municipal units is particularly pertinent in considering the possibilities of multi-governmental libraries. Historically, our governmental units were self-contained and limited in their powers to their own residents. Despite the increase in ease of transportation and communication, the limitations which were imposed solely by earlier circumstances have been solidified into the legislation. If the state law permits townships to establish libraries for their citizens, it is always stated in the singular: each township may do so. The creation of a multi-unit system, crossing municipal boundaries, can only be done under enabling legislation. Libraries are not the only services which require this type of legislative assistance: joint school districts, sewage disposal systems, rubbish collection, all familiar to everyone, must rely on this type of legislation for their existence. This may be unfortunate, but is the situation which confronts us. Obstacles such as this must be cleared by appropriate legislation, if they are not to hamper developments called for by changing times.

The governing body of a publicly supported library, be it board or trustees, is an arm of the municipal unit which creates it. Unless there is special legislation making it otherwise, the library board is in the same category as any other branch of the municipality. Ordinarily a school district is not a part of the political governmental structure, but has an identity of its own: hence a public library which is administered by a school board is a division of the school district, and is not responsible to the municipality in which it is located. Occasionally the municipality contributes funds to an existing library for services: the board which controls the library in such cases is to be considered as any other independent body, such as a hospital. Although such a board uses funds supplied by the municipality and serves the residents of the governmental unit, it is entirely separated from the governmental unit. The nature of the library board depends, as do so many other aspects of the administration of public libraries, on the appropriate legislation of the particular state.

In the same manner, the obligation of the board and library to
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comply with state and local legislation governing administration of the municipal unit, depends upon their status. Ordinarily, when the legislature provides that a city may establish a library and set up a board to administer it, the board must act in conformity with all general state and local legislation affecting the conduct of the business of the particular municipal unit. Every detail of the operation of the establishing municipal unit is applicable to the conduct of the affairs of the library, unless there is an exception made in the enabling library legislation, or in the local ordinance establishing the library. Since the board and the library are but parts of the whole, laws and regulations which cover the management of the municipality are applicable. Even though the services rendered by the library seem to be unique, they are no more so than those provided by the department of streets or the police department. The provisions of the laws of the state and of the ordinances of the municipality regarding budget and accounting procedures, purchasing, employment, pensions, and retirement would apply to the administration of the library, unless the library were excepted from their operation. Just as in the matter of the establishment of a library, so here there can be no flat statement as to the exact position of libraries with regard to procedures of administration. Each library must be considered in the light of the existing circumstances of municipal administration and its own degree of autonomy under state law.

Obviously, in cases where the municipality makes a contract with an existing independent library for service to its residents, the laws governing such an educational corporation would prevail. But that would not prevent the supporting municipality from requiring conformance with any or all of its administrative procedures as a *sine qua non* for support. Any such arrangements are clearly matters of negotiation and contract and may be entered into, provided that such regulations do not run counter to the legislation governing the independent institution.

The legislative status of libraries may seem to be in a state of confusion and uncertainty. Library boards may draw some consolation from the fact that they are not unique in this respect. Perhaps from the very nature of the legislative processes, faced with wide variations in needs and circumstances, nothing better can be attained. Problems will constantly occur: known statutes will be in need of interpretation and applicable statutes will have to be ferreted out. These problems are legal, and require the services of a lawyer. The library board,
when it is a part of a municipal unit, should seek the advice of the legal department of the unit to which it belongs. No board should act without assurance of the legality of the proposed steps.

References

2. Purdon's Pennsylvania Statutes Annotated, Tit. 53, sec. 3503.
3. Ibid., Tit. 53, sec. 3504.
4. Ibid., Tit. 53, sec. 3503.