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Legal Aspects of Library Administration

JOHN BOYNTON KAISER, Issue Editor

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Foreword

EARL WARREN

It is with great pleasure that I introduce this discussion of "Legal Aspects of Library Administration" as a tribute to the Honorable Arthur T. Vanderbilt, who had agreed to write the Foreword just prior to his death on June 16, 1957. The selection of the late Chief Justice of the Supreme Court of New Jersey for this task was singularly appropriate, because not only had he relied heavily on library resources for assistance in his work as practitioner, teacher, dean, inspired advocate of judicial reform, and distinguished jurist, but he also had devoted much time and attention to the strengthening of libraries. With his interest in and talent for the application of the principles of administration to the law, he must have welcomed the opportunity to introduce to library administrators this handbook for the application of legal knowledge to their own problems.

No more sincere tribute can be paid to Chief Justice Vanderbilt by a librarian with whom he was associated than these lines by Julius J. Marke, author of Chapter V of this issue of Library Trends, from the dedication of his A Catalogue of the Law Collection at New York University, With Selected Annotations: "At all times he has been a sympathetic and inspiring counsellor, guiding me with an experienced hand through the many vicissitudes of this project. Without him this catalogue would never have come into being."

It may be generally assumed by the public at large, and in fact by an administrator himself, whether in library or other service, that he must and does know the law as it applies to his particular field; if not, he could not administer competently and effectively. But, as several of the contributors suggest in chapters of this symposium, the "library laws," whether they be statutes, municipal ordinances, or institutional by-laws, furnish only the barest, most specific minima of legal guidelines—the sine qua non for the particular operation. The broad field of general law, be it common or statutory or both, appli-

Mr. Warren is Chief Justice of the United States.
cable to this in common with hundreds of types of other governmental activity as well as private enterprise may escape the administrator in his preoccupation with the foreground of day-to-day details—hence the necessity for seeking competent professional advice concerning the legal implications of library operations and, therefore, the value of this handbook as a reminder of that necessity.

The issue editor is to be congratulated upon planning and executing this extremely worth-while symposium on these important problems which, as a whole, have not heretofore been explored in detail. The contributors selected by him, including M. O. Price, the "dean of law librarians," are all competent law library administrators. What they and the issue editor in his Chapter III have to say here will be helpful to us all—lawyers, laymen, and librarians alike—and will make a substantial contribution to the effectiveness of libraries in their chosen and accepted role as one of the chief disseminators of knowledge to the American people and to the free world. This role may well be a decisive one in the years to come. I feel sure that had he lived to review it the work would have pleased Chief Justice Vanderbilt, and that would be high praise.

As one who has long served in several areas of public administration, I am especially happy to introduce this first major discussion of the legal aspects of this single area in public administration through the medium of a publication of the University of Illinois Library School at Urbana, where I had the privilege of sharing in the dedication of the University's new Law School Building in the spring of 1956. To those who have contributed so ably to this issue of Library Trends, I pay my respects and express my appreciation.
Introduction

JOHN BOYNTON KAISER

This issue of Library Trends is designed to constitute an introductory handbook for laymen on legal aspects of library administration in the United States of America. It aims to be of practical use to library administrators, to prospective librarians, and to library trustees who are not lawyers, primarily as a guide to warn them of situations and areas of administration they will probably encounter to which the law or specific laws may or do apply. While devoted, basically, to public libraries, that is to libraries wholly or partially tax-supported, a conscious effort also has been made throughout to make these discussions of value to the administrators of privately endowed libraries and libraries in institutions supported from endowments and private funds rather than public funds. In addition, a final chapter by Harvard’s law librarian is devoted to pointing out the major differences between privately and publicly supported libraries in the legal aspects of their administration. If the stated aims of this volume are realized, it should be of value beyond the geographic borders of the United States. In fact, it is hoped that it will be of some, though varying, use to library administrators wherever the national system of law stems from the Anglo-Saxon.

As this is a practical and current manual no historical survey of the term or concept “law” and its many connotations and applications is included. The following articles are concerned with the civil and the criminal law in the United States as found in constitutions, statutes, charters, ordinances, and court decisions. Narrowing the area of interest still further, the discussions are limited to those legal sources and controls which bear directly or indirectly on specific administrative areas of library management. These are, primarily, the establishment and governmental relationships of public libraries, legal aspects of library internal administration and its organization, legal aspects of personnel administration,—and they are many and varied,—legal

Mr. Kaiser is Director, Public Library, Newark, New Jersey.
problems connected with the acquisition, classification, and use of library materials and resources (purchasing, contracts, conditional bequests, etc., of technical processing, for example, some donors have sought to control the classification, the location, and even the use of material donated) the many legal problems surrounding the construction and maintenance of libraries, the legal bases of financial support and the budgeting and control of the handling of public and private funds.

Many and varied are the specific questions which arise. The whole area of public relations including the public use of materials and publicity concerning them bristles with legal questions involving such varied matters as public liability in case of accidents in the building, the forcible exclusion of undesirables, the compulsory submission of outgoing briefcases to official inspection, the photocopying of copyrighted materials, and the limiting of access to certain materials. Little has heretofore found its way into print on the legal problems related to most of these areas or aspects of library management.

The authors of the individual contributions to this symposium have been given only a few general editorial instructions, none demanding uniformity in either approach or treatment of individual areas discussed. The issue editor selected the over-all title and the nine aspects of library administration to be separately treated. He supplied also a purely tentative topical outline of each chapter from which the individual contributor could select only as many or as few topics for discussion as seemed to him convenient and appropriate. The result is a symposium whose separate parts are, expectedly, diverse in length, approach, proportion, and literary style. With contributors from the far corners of the land, of differing backgrounds and outlook, this is both natural, and an asset. Similarly, the small amount of repetition in places where each author goes back to fundamental sources of authority, merely adds appropriate emphasis to the fact of common origins.

It is quite possible and desirable that each of these brief chapters may stimulate the further production of substantial monographs on several of the legal aspects of library administration here discussed.

In conclusion again, this treatise aims to call attention to areas of library administration to which law may and probably does apply, mainly to alert those concerned to the necessity of knowing the law and seeking necessary legal advice. It is not a legal textbook of what
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the law is though that may be made clear in a number of instances. The discussions are for laymen, not lawyers, but may lead the former to the latter with profit to both.

The contributors, for the most part, are law library administrators of experience and legal background. They speak with authority. In addition to the named authors, J. M. Jacobstein and Charlotte Sherr, both of the Columbia University Law Library staff, have assisted in the preparation of the chapter on “Acquisition and Technical Processing,” with further assistance from E. H. Breuer, State Law Librarian, and Paul R. Young, Division of Standards and Purchase, both of New York.

That the Chief Justice of the Supreme Court of the land has consented to introduce this discussion of the legal aspects of library administration to the profession is to the writer not only a substantiation of its importance but a tribute to the place librarianship occupies in the field of public administration.
Establishment and Governmental Relationships

CARROLL C. MORELAND

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

The author is Biddle Law Librarian, The University of Pennsylvania.
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
give 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 denominated 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 govern-
ing 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
Establishment and Governmental Relationships

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 incident 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,
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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.
Legislators have less faith in the judgment and business acumen of librarians than they have in that of members of a newer profession, the city managers. While the city manager is answerable to the council and generally is regarded as its business manager, his statutory powers may include the power to make appointments and to exercise general supervision over the administrative affairs of the municipality. The librarian, who stands traditionally in the position of business manager for the library board, usually is clothed with no such statutory grant of powers.

In specifying the lines of control and internal management of American libraries, most statutes give full powers to a board of library trustees. Some library laws do not mention the librarian at all; others take passing notice of him by including, among the powers of the trustees, the power to select “other necessary officers and employees” or to appoint “a suitable librarian and assistants.” Even in the statutes which describe the power of appointment in terms more compatible with the dignity of the profession, there is a noticeable absence of reference to the powers and duties of the librarian himself. This has been deliberate. To have given him statutory powers and duties would have placed him, in some respects, beyond the control of the board.

Some think that those who drafted the early library laws expected the library board actually to exercise all of the generally enumerated powers and to perform the generally enumerated duties: to select and purchase books and supplies, to hire and dismiss all of the library’s employees, to supervise maintenance. Such an expectation would not have been unfounded in experience: these are the things library boards often did while librarianship was developing as a profession and still must do in the tiny village with the half-day-Monday-Wednesday-and-Friday-library, or, occasionally, in the larger community.

Mrs. Gallagher is Professor of Law and Law Librarian, University of Washington.
when the time comes to dispose of an incompetent librarian. It is
doubtful, however, that even among early legislators any but the
most uninformed and cautious was thinking in terms of actual trustee
management. Then, and now, management and control by the board
meant policy regulation and control of management, the seeing that
things were done, not the doing of them.

The division of administrative and policy-making duties between
librarian and board has universal acceptance. The question of its
legality seldom arises. Disputes growing out of the practice have
been personality and administrative conflicts, not disputes over the
law. Busy-body Board vs. Hamstrung Librarian, or Enlightened Board
vs. Incompetent Librarian: if these were suits at law rather than
political or administrative contests, the librarian, good or bad, would
always lose. As against the board, he has neither legally defined
powers nor legally defined duties. (Civil Service regulations may
modify this general rule, as they may affect many of the situations
discussed in this chapter. The next article treats this more in detail.
Such regulations must be checked for application to specific circum-
stances.)

His role in management, while it has become traditional, is one
based on sufferance. In his relation to the board he is, with a few
exceptions, a legal non-entity. He has such duties as the board, his
conscience, and his fear of public opinion impose on him, and no
more. He has no statutory powers, and the powers he does exercise
he exercises by delegation from the board.

Where statutes are silent, specific definitions of legal powers and
duties sometimes are supplied by court decision. This is not true in
the field of internal management of public libraries, for the simple
reason that conflicts over such powers and duties feature as par-
ticipants the librarian and the board and are resolved, not by court
action, but by negotiation or a parting of company. The librarian
whose management policies are wiser than those of the board and
who has the confidence of the municipal government sometimes can
force the replacement of his tormenters before they exercise (within
the limits of local personnel regulations) their absolute right to dis-
miss him, but it is difficult for a legal non-entity to uphold his non-
existent powers in court.

The library profession, and most trustees, accept without question
the management maxim advising the board to exercise jurisdiction
over policies and the librarian to assume full administrative control
within the library. Management statistics and logic support the proposition, but directly stated legal justification is more difficult to find. If legal justification is needed, it must be based on the general rules regulating analogous management functions of private, municipal, and quasi-municipal corporations. Application of the analogy is confused by the fact that in some jurisdictions the functions of the public library may be classified as proprietary functions, for the private advantage of local inhabitants, in some they may be classed as governmental functions (relating to the general welfare and of interest to the state as well as to the local government) and in some the question has not been decided. The classification of function is important because of the general rule that a municipality acting in its proprietary, as distinguished from its governmental capacity, is held to the same measure of liability under contract or tort law as a private individual or corporation acting under like conditions. Until the matter has been resolved in the particular jurisdiction it is recommended that those concerned with library management proceed with the caution required of the management of a private corporation.

Control of a private corporation usually is vested in a board of directors, whose functions parallel those of the board of library trustees. The relation of the directors to the general manager employed by them is much like the relation of the librarian to the trustees. Like the librarian, the manager is hired to get done the things the board wants done (with the purpose of monetary rather than public-service return), and the directors delegate to him such duties and powers as will allow him to carry on an efficient enterprise.

The authority to delegate management functions is implied from the necessities of efficient administration, but there are certain limits. These limits vary with the source of power or function delegated. A leading authority on the law of private corporations has classified the various kinds of corporate powers, thus aiding the definition of proper management activities and providing a starting point for determining, in disputes between board and librarian, who has the power to administer the library, and in relation to third parties, who has the power to enter into agreements concerning administrative details. He says that:

the corporation is bound where the officer or agent exercises any one of the following powers:

1. Powers expressly conferred by a statute, the charter or valid bylaws. These are called express powers.

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2. Powers conferred on particular officers or agents by resolution or other express act of the board of directors, where the powers are subject to delegation by the board. These powers are also classed as express powers.

3. Powers incidental to the express powers.

4. Apparent powers, as hereafter defined.

5. Inherent powers which, however, are in reality one form of apparent powers, i.e., powers apparent from the very nature of the office. Nor is it important whether we call the agent's authority apparent or implied.

He acknowledges two other classifications noted by the late F. R. Mechem in his work on Agency:

6. Powers conferred by custom or usage.

7. Powers arising in cases of emergency.

Powers expressly conferred by library laws or charter normally belong exclusively to the library board; none of them belongs to the librarian. Those affecting internal administration, with which we are concerned here, most commonly appear in the statutes as powers of supervision over the library's property, employment and control of staff, control of finances, control of purchases of library materials, supplies, equipment, and the power to adopt such bylaws, rules and regulations as the board may deem necessary for the orderly government of the library. Lest something develop not covered by these functions, those who draft the laws may provide expressly for one which would fall into W. M. Fletcher's third classification, powers incidental to the express powers: the power to do all other acts necessary for the library's efficient management. The board's statutory express powers can be summarized as the power to run the library. This cannot be taken from the board except by amendment of the statute or charter; part of it can be delegated to committees of the board, or to the librarian, but such delegation is a temporary thing, not implying an abdication of power.

Such express functions of the first classification as the librarian can claim generally arise, not from the statutes, but from the board's bylaws. The extent of his functions varies, of course, with the extent of the board's faith in him (or, in some cases of overdue amendments, with the extent of its faith in his predecessor) but it is usual to make the librarian executive director of the board's policies and supervisor of the staff. Such broad terms are in the best tradition of the well-constructed bylaw. To enumerate specific things the librarian
shall do might tend to restrict him to those things only.\textsuperscript{11} For example, a bylaw provision giving the librarian the function of selecting and purchasing books for the library would, by general rules of construction, negate his power to select and purchase maps or phonograph records. The defect might be remedied by board resolution, conferring upon him the second class of express power, but this procedure would be subject to the technical objection that simple resolution cannot be substituted for a specified and more exacting method of bylaw amendment. In the absence of either direct amendment or empowering resolution, it might be argued that the power to purchase maps and phonograph records is incidental to the power to purchase books, or that the purchase might be justified as one of the librarian's customary powers. There is even authority for the proposition that a bylaw can be amended by custom or repealed by non-use, or waived.\textsuperscript{12} As a practical matter, there is the comforting thought that deviation from strict construction of the bylaws may be unimportant so long as the one for whose protection they are designed (here, the board members, and possibly members of the public) does not complain that his rights have been violated. As an even more practical matter, the amendment of bylaws to substitute general for enumerated powers, although a nuisance (as every meeting attendant knows) is not an insurmountable problem. In the example case this would be the method employed by a board which wanted to remove all possibility of controversy.

Even aside from rules governing amendments of bylaws, there is a plain principle of efficiency requiring functions of like nature to arise from a common source, and not partly from first-thought bylaws reinforced by afterthought resolutions. The board's bylaws should define, in general terms, the powers of the librarian; resolutions should be used only to define methods by which he shall exercise those powers.

There is an important restriction which applies to both classes of express powers, those conferred by the board bylaw and those conferred by resolution or other express act of the board: they can arise only "where the powers are subject to delegation by the board."\textsuperscript{8} Delegation of powers consumes much of the attention of judges who define, and treatise-writers who explain, the law of private and municipal corporations. The statement is sometimes made that powers which involve the exercise of discretion cannot be delegated; this statement is too broad, and is meant to apply to legislative and judicial
powers, not to administrative powers. Even if the statute or charter by failing to provide for committees or executive librarians gives the library board no express power to delegate its functions to others, authority so to delegate is implied from necessity and usage; for, like the directors of private corporations, the library trustees cannot attend to all of the details of library management, and no one expects it of them. 

The extent of delegation permitted is limited, however. First, the board cannot rid itself of the duty to supervise and control the library by delegating all of its functions to the librarian. The librarian who “runs” the board, who does all of its thinking and makes all of its decisions is not clothed thereby with supervisory power. His actions are at the board’s sufferance, and it can, and probably should, resume direct control at any moment. The board’s promise to its librarian that it will go along with any suggestions he makes about library affairs is a promise the board has no right to make, and one by which it will not be bound if, in an unguarded moment, it does make it.

Second, the board cannot delegate discretionary powers which are vested by statute exclusively in itself. For instance, control over finances and the power to deal with real property, powers commonly given by statute exclusively to the board, cannot be delegated to the librarian. This does not mean that the board must itself perform all of the ministerial duties connected with these powers, that it must keep the library accounts and sign the vouchers and attend to all of the details preliminary to conveyances and leases. It means merely that it must assume responsibility in the final analysis for what is done.

Delegation of authority to the librarian need not be made by formal resolution of the board. The “other act” mentioned in Fletcher’s second classification of express powers may be informal agreement between the board and the librarian that he shall perform certain duties outside the scope of his every-day functions.

The board, by ratification, also may affirm the legality of action which would be otherwise outside the scope of the librarian’s, or an individual board member’s, or a board committee’s authority. This has nothing to do with delegation of powers, and may apply to some act which is within the non-delegable powers of the board. Thus, while the board may have reserved to itself the power to decide upon extraordinary purchases (say, single items costing more than a specified sum) and the librarian buys a piece of equipment which falls
within the extraordinary class, the board may legalize his contract by ratification, either by formal resolution or simply by failure to disaffirm liability for the purchase price. While the board cannot delegate to the librarian or to a committee or to an individual board member the power to lease property for a library building, yet if the power is exercised illegally by one of them, the board may legalize that act by afterwards adopting it and re-executing the lease in legal form.

The third classification of powers, those incidental to the express powers, is based on the assumption that the power to do a particular act should carry with it the power to do all things naturally and ordinarily necessary to accomplish the main purpose. If the librarian has the express power of staff supervision by board resolution or bylaw, he must have the incidental power to departmentalize staff functions, to assign duties, to transfer department heads. The librarian's incidental powers, like his express and apparent powers, may be limited by board action. Those which would be normally incidental to power conferred by resolution or informal agreement can be limited by the same method; for example the board's resolution delegating to the librarian the authority to decorate the library with Christmas trees during the Christmas season, would normally carry the incidental authority to purchase tree ornaments, but that power might be eliminated by an economy-fathered provision, or separate resolution, directing use of popcorn strings, or last-year's or borrowed ornaments. Technical interpretation would require an amendment of the board's bylaws to eliminate powers incidental to bylaw-conferred express powers, but practical considerations make it expedient for the librarian to accept, as limitation of his incidental powers, the informal expression of the board.

The next classifications, apparent powers, inherent powers, and powers conferred by custom or usage, for most purposes may be treated as one. Evidence which tends to show one usually is evidence tending to show the others. Apparent powers are those which the corporate body, by its action or its failure to act, leads others to think it has conferred upon its agent. Inherent powers are those which are incidental to the office. Powers conferred by custom or usage need no further definition. In determining legal responsibility for the library's internal administration, inherent powers are of little significance, because the librarian has none and the board, while it may have some, does not need to rely upon them for its authority.
Apparent powers and powers conferred by custom or usage have no significance in disputes between the board and the librarian, because the board’s power over the librarian is not apparent or customary but express, and the board can cut off the librarian’s apparent or customary powers whenever it sees fit. These types of power do have some significance in determining the extent to which third persons may rely on agreements made with the librarian.

A librarian who has no express authority from the board to contract for radio publicity under certain conditions may acquire apparent authority to make such arrangements, and, in some cases the board may be held to the agreement. The most important of these conditions is that the transaction occur in a jurisdiction holding that a public library is a proprietary as distinguished from a governmental agency, or at least that the transaction in question was made to further a proprietary function. It already has been noted that this may be difficult to determine. The law is chary of the people’s money, and the weight of authority is that he who deals with an agency charged with a governmental, as against a proprietary function, is bound to ascertain the exact extent of the agent’s power. This would negate the existence of apparent authority, and municipalities have been held not liable on unauthorized contracts even when the subject matter of the contract had been delivered and completely consumed.

If, on the other hand, the contract has been made in a proprietary capacity, the board’s measure of liability is the same as that of a private corporation, and it may be bound by acts of the librarian it has clothed with apparent authority. To be so bound, the board must know, or at least not be guilty of negligence in not knowing, that the librarian is or has been representing himself as having authority to make the agreement. Ordinarily this means that he must have made such representations before he made those bringing about the transaction in controversy, because a course of conduct often must be proved in order to charge the board with knowledge that he was exceeding his express or implied authority; but actual knowledge of the representations leading up to the agreement in question would have the same effect.

The librarian’s air of authority, and the board’s knowledge of it, are not the only facts which must be proved if the radio station is to hold the board to the agreement. The protection of the apparent authority rule is extended only to the innocent third person dealing
in good faith and relying to his injury on the unauthorized represent-
ations. This coupled with the requirement of actual or constructive
knowledge of a librarian’s actions embraces all of the elements of
estoppel, a doctrine which is really a part of the apparent authority
rule. The salesman who was treated to all the staged evidences of
the librarian’s authority to purchase radio time, but who knew that
the librarian actually lacked it, meets neither the good faith nor the
reliance tests, nor would his principal.

The fact of injury, the last element the vendor must prove in order
to bind the board, has not been interpreted uniformly in all juris-
dictions. There seems to be little doubt that the radio station would
have been lured into what the law calls an injurious change of position
if the board sought to disavow the contract at the conclusion of the
series of broadcasts. If the attempted disavowal were to occur before
the broadcasts had begun, before the library had received any benefit
under the contract, proof of injury sufficient to support estoppel be-
comes less certain. Injury should be apparent, certainly, at the point
at which substitute scheduling of an equally attractive program had
become impossible. The weight of authority considers the showing
of a loss of expected profit sufficient (the other elements having been
proved), and it even has been held that the mere deprivation of the
benefit of a contract is injurious, without proof that any profit would
have resulted from it.¹⁸

The extent to which corporate boards have been bound by acts
within the apparent authority of their agents is enough to justify some
jitteriness on the part of library trustees. Things are not as bad as
the cases make them seem, however. The board which finds itself
unwillingly bound because it has slept through some of the librarian’s
maneuvers, is not bound forever thereafter by its own negligence.
While it cannot restrict the librarian’s apparently-established authority
by secret resolution or agreement, and there is a question whether it
can do so by specific provision in the bylaws,¹⁹ it certainly can do so
by well publicized resolution. The more drastic solution, in all juris-
dictions, is to fire the librarian.

The last classification of powers, powers arising in cases of emerg-
ency, is based on common sense. Cases involving their exercise in
libraries have not reached the appellate courts, but it seems reasonable
to assume that the librarian who calls the nearest plumber when a
broken pipe is flooding the Treasure Room should have the support
of the board, even without express or implied power to arrange for plumbing service, and even in the face of the board's contract with another.

A discussion of who is the legal boss of the library emphasizes, more than actual practice shows, that the librarian's power is extremely limited. There are restrictions, too, on the board. Their power to control the library is made quite definite by statute, and legal controversy is more apt to arise over how they exercise their powers than over what powers they exercise. Rules of parliamentary procedure, sometimes erroneously called parliamentary law, establish guides for orderly conduct of their meetings, but some distinction should be made between the rules that are aimed only at orderly conduct and those which actually delineate the difference between legal and illegal action.

Basic to the board's power is the proposition that it must act as a board at a legal meeting, or its action has no legal effect. The statutes placing power of management in a specified number of trustees contemplate management directed by the judgment, counsel, and influence of all, and the substitution of the management of individual board members acting individually is illegal even when all approve the action taken. One of the best explanations for this rule appears in *Ames v. Goldfield Merger Mines Co.*:

"It is fundamental that officers of boards can only act as such constituted boards when assembled as such, and by deliberate and concerted action dispose of the issue under consideration, and that they cannot act in an individual capacity outside of a formal meeting, and a majority of the individual expressions be the action of the board. The law believes that the greatest wisdom results from conference and exchange of individual views, and it is for that reason that the law requires the united wisdom of a majority of the several members of the board in determining the business of a corporation."

This united wisdom cannot be achieved by proxy. Thus, if less than a quorum of the trustees assemble, they can take no action even though absent members telephone their assent during the meeting, and afterwards sign the minutes. The only safe solution is ratification of the intended action at a legal meeting, with a quorum present.

What constitutes a quorum may be specified in the statute or in the board's bylaws. Unless there is specific provision to the contrary, a majority of the board's members constitutes a quorum; and a majority of the quorum may decide any question coming before the
meeting. Statutory language calling for unanimous consent of the board or a two-thirds vote of the board to accomplish certain purposes has been interpreted generally to mean unanimous vote, or two-thirds vote, of the quorum present at a legal meeting.22

The requirement that all members be given notice of the meeting is, like the quorum requirement, no mere rule of order, but a basic legal requirement, and it is based on the same reasoning. Boards which by statute or bylaw meet regularly, the time and place being fixed, must concern themselves with this requirement only with regard to special meetings. There is some authority for the proposition that a quorum of trustees meeting specially and acting by a majority of the whole board (not by the usual majority of the quorum) can act validly notwithstanding the fact that notice of the meeting was not given to absent members. The proponents of this theory argue that notice is immaterial since the absent members, even had they been present and voted against the action, could not have changed the result. However, the better view, and the majority view, is that notice must be given to all board members unless the absence or inaccessibility of one or more makes it impossible. Just as “the law believes that the greatest wisdom results from conference and exchange of individual views,” so it believes that the lone dissenter, had he been given the opportunity to present his views, might have been able to persuade the others and thereby change the result.

What constitutes sufficient notice is ruled by reason and custom rather than technicality. If a trustee actually is present at the meeting by virtue of accident, the fact that he was not given notice is immaterial. If the notice is sent to him in a way which should assure a reasonable expectancy of his receiving it, and if it contains information about the time and place of the meeting, and gives him sufficient time to arrange to be present (this will depend on the customary habits of the board members) the fact that he fails to read it may be immaterial. Personal notice, by telephone or direct contact, is always sufficient provided it is given a reasonable time before the meeting and the information is complete23 and provided the bylaws do not require some other method.24

Just as the board may ratify acts of the librarian performed without the scope of his authority, so it may ratify actions by part of its members at an illegal meeting. Ratification is merely the doing over, in a proper way, that which has been attempted in an improper way. The ratification must be made by the board, acting as a board at a
meeting satisfying the quorum and notice requirements, and the ratifying vote must be at least equal to the vote required for the original act. Thus, if two-thirds of the board members at a meeting which was illegal because a lone dissenter was not given notice, approved an action requiring approval of two-thirds, a majority of the board cannot thereafter ratify that action at a meeting otherwise legal. The ratification vote also must be a two-thirds vote.

Other formalities may, by statute or bylaw, be made basic to the board’s power to act, but in the absence of such statutory provision, the board may make decisions and even enter into binding contracts by common consent, without formal resolutions or entry on the minutes. Minutes are evidence of board action and whether particular action is recorded properly, or at all, does not, in the absence of specific provision, affect the validity of that action. The board that fails to keep an accurate record of its proceedings is inefficient, and subject to public censure. It may become a board whose actions are unpredictable and unreliable because its history of precedent and guide for future policy is incomplete. But it cannot deny responsibility for decisions duly made, merely because they are not recorded in the minutes.

References

9. Ibid., sec. 443, pp. 332-333.

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17. Ibid., sec. 29.26, pp. 258-262, n. 17-29.
Personnel Administration

JOHN BOYNTON KAISER

The field of personnel administration in libraries has its full share of problems and, possibly, more of its problems have legal aspects than has any other phase of library administration discussed in this symposium. If we accept the dictum, as this author believes we must, that "Personnel is the Key to Administration," we are thereby saying that the legal problems involved in personnel administration are the very core and heart of our subject. Only people have differences and only people get into legal difficulties. Things may get out of repair or act differently from what was expected, but things never made or broke a promise, filed a claim, or instituted legal proceedings. Justice or injustice in working conditions and the nature and quality of behavior are, in the broadest interpretation, concepts within the area of interpersonal relationships. They relate only to people.

Librarians, as citizens and tax-payers, are, of course, subject to the same civil and criminal laws as are people in all other walks of life. This chapter discussing legal aspects of personnel administration in libraries is necessarily viewing the librarian specifically in his work-relationships, as a public or private official or employee.

In relation to public, that is tax-supported libraries, the basic controls over both legal responsibility and administrative authority, as in the general field of public administration, stem from state legislation. Such legislation may be either general in scope relating, for example, to all public employee pensions, or distinctly specific, covering only the pensioning of librarians in cities of the first class. This subject of basic state law is primarily covered in C. C. Moreland's chapter but is necessarily referred to more than once in all other contributions to this symposium. It is essential to refer to it here as basic laws are likely to indicate where the primary legal responsibility lies in regard to personnel selection and administration.
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in public libraries, even though the bylaws of the library board will be more specific, especially regarding the delegation of authority to a library administrator, as the immediately foregoing essay by Mrs. Gallagher has so clearly pointed out.

Extracts from the state library laws of New Jersey and the Bylaws of the Newark Public Library Board provide a good illustration of how personnel responsibility may be set up in both types of legal sources. "The board . . . may rent rooms . . . construct buildings . . . purchase books . . . hire librarians, and other necessary personnel, and fix their compensation . . . and generally do all things necessary and proper for the establishment and maintenance of the free public library in the municipality. . . ." 1

The Board of Trustees of the Newark Free Public Library has incorporated into its amended By-laws verbatim the entire text above, as Section 1.a of its Article III. (Note that the library was placed under Civil Service by referendum in 1910.) 2 Additional sections of the By-laws relating to personnel administration read as follows:

SECTION 2. a. Subject to the Civil Service Laws and Regulations of the State applicable, and Sec. 40:54-12 of the Revised Statutes, the Board shall appoint all library officers and employees, determine their number, fix their salaries or wages and retain them during its pleasure.

b. Salary and wage increases shall be made at the discretion of the Board in accordance with regulations set forth in the Position Classification and Pay Plan of the Library and such Civil Service Laws and Rules as may be applicable.

SECTION 3. If charges are preferred against any officer or employee of the Board or Library, he or she shall have the right to an investigation and a hearing before the Board.

ARTICLE IV. SECTION 1. a. The Director shall be the executive and administrative officer of the Board of Trustees and of the Library, and under these By-Laws and the Board's declared policies and rules shall have general charge of the Library and of all persons employed therein by the Board. He shall recommend the appointment and determine the duties of all employees, shall recommend to the Board for adoption a Position Classification and Pay Plan and shall administer the plan when adopted. He shall be held responsible to the Board for the proper management of the Library, for the preservation and care of its property, and for the discipline and efficiency of its staff and service.

b. The Board specifically delegates to the Director as its executive officer interim authority to appoint all part-time, or temporary em-
ployees and all employees in the non-competitive classified service, which appointments shall be reported to the Board monthly for its approval.

The Director shall certify to the correctness of all bills before their approval by the Board, except in the case of expenditures directly ordered by the Board or one of its Committees.

SECTION 2. a. In the absence (other than temporary) of the Director, the Trustees shall designate the Assistant Director or a head of a department “Acting Director,” who shall, for the interim, have the powers, duties and responsibilities assigned the Director in these By-laws.

b. In the temporary absence of the Director the Assistant Director shall attend to the details of the management of the Library, subject to such instructions as the Director may have issued to cover the interim.

At various other places in the By-laws where specific duties of board officers and the director are prescribed there are additional provisions which have a bearing on personnel administration, such as:

ARTICLE I. SECTION 3: b. The Director of the Newark Public Library shall serve as assistant secretary of the Board, ex-officio.

Under this assignment the library director carries out all the routine responsibilities of the secretary, subject to his approval. The secretary, under New Jersey law, must be one of the appointed, unsalaried board members. These responsibilities will be noted later.

SECTION 7: b. The Treasurer shall be the disbursing officer of the Board, shall have charge of its funds and shall keep the accounts of the Board. He shall pay all bills properly approved by the majority of the Board or ordered paid by the Board at any open regular or special meeting, except the monthly or semi-monthly payroll which shall be paid upon the approval of the President of the Board and the Director. In the absence of the President, the vice-president or a Trustee designated by the Board shall exercise this function of payroll approval.

A subsequent action of the board states: “In the case of the inability of the Treasurer to perform this function due to absence or illness, any member of the Board designated in writing by the President shall temporarily so serve.”

SECTION 9: No individual officer or member of the Board has authority to issue orders for or in the name of the Board unless especially empowered so to do by a majority of the Board so voting at
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a regular or duly called special meeting of the Board where a quorum is present.

SECTION 10: a. There shall be the following standing committees of three members each, (not counting the President, ex-officio) appointed by the President at the annual meeting to serve for one year and until their successors shall be appointed.
1. ....................................
2. Personnel and Salaries.
3. ......................................
4. ......................................
5. Medical Library and Medical Personnel Problems.

b. These committees shall have advisory powers only, not administrative, except on matters referred to them by vote of the Board “with power to act.”

c. Special committees may be appointed at any time by the President or authorized and appointed by the Board. They shall be advisory only unless clothed by the Board “with power.”

The board secretary’s responsibilities specified in the By-laws, the routine aspects of which devolve upon the director as assistant secretary, are:

ARTICLE I. SECTION 7: c. Gifts of money, securities or real property made to the Library or Board for Library purposes shall be acknowledged by the Secretary, reported to the Board, and managed by the Treasurer as directed by the Board.

SECTION 8. a. The Secretary of the Board shall keep full and correct reports of all proceedings.
b. He shall give notice in writing of all regular meetings of the Board at least four days in advance of such meetings and notice of all special meetings at least 24 hours before the time of such meetings. He shall give notice to all committee members of the meetings of regular, standing or special committees when so requested by the Committee’s Chairman.

Even in the case of the somewhat elaborate By-law provisions cited, there is still a slight legal uncertainty as to some points. For example, how would the situation be resolved if the board appointed someone whom the library director would not recommend; or if the board refused to confirm the appointment of a temporary employee after having placed full authority to make such appointments in the hands of the administrator. It is possible that in such a contingency the library board would, by proper vote, suspend the By-laws and
act directly under the appointing authority granted it in the state law itself, subject to civil service provisions.

In some cases city charters (which have been approved by a state legislature as well as the electorate of the municipality) have specific provisions regarding the powers and duties of the chief librarian, in which case a board cannot overrule his decisions within his area of specified jurisdiction. It is well to keep in mind, however, that library boards are more often, as the preceding author has noted, legally constituted administrative agencies in themselves and not merely policy-determining agencies, as is too often assumed by librarians.

This is not the place to discuss administrative law in detail, but one may allude to it in a discussion of the legal basis of personnel administration to point out, in J. M. Pfiffner’s phrase, (“over-simplified” he calls it, “that the guiding motif of administrative law, the constant, all pervading concern, is the amount of discretion which the law permits officers and agencies to exercise.”) Pfiffner’s volume on public administration has an entire section devoted to “Personnel” and another devoted to “Administrative Law.” It may be recalled at this point that administrative law both sets the legal basis for administrative action and at the same time comprehends the basic rules, regulations, and decisions that come out of such administrative action.

Non-library legislation directly affecting personnel in libraries would be, primarily, laws relating to public employees generally. Legislative provisions of this sort may relate to such things as: setting up Civil Service Commissions at different levels of government (federal, state, county, municipal) and authorizing such commissions to adopt rules and regulations having the force of law, retirement and pensions for all public employees, strike control, granting of bonuses uniformly, workmen’s compensation, federal withholding tax procedure, social security, loyalty oaths, veteran’s preference, local residence preference, employment of minors, political activity of public employees, discrimination in employment because of race, religion, color or ancestry. Actually legislation not specifically aimed at libraries or library personnel provides legal controls for far more questions relating to them than does so-called library legislation itself.

Even in municipalities general state laws are also likely to control such questions as whether or not only “certified” librarians may legally be employed; and the nature, extent of coverage, and administration of pension systems. However, especially in strong home-rule states, these same questions may be entirely controlled by provisions in municipal charters and ordinances authorized by them.
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Thus here are several areas of possible legal doubt which library boards and administrators must resolve definitely before taking action which might otherwise jeopardize the rights or security of many employees. For example, in certain California cities, provisions in their home-rule charters govern the question of civil service and pensions as well as certain other personnel matters. Again, in New Jersey a city may have a charter which does not even mention the library board or library, yet, by virtue of general state laws or charter provisions based on them, the city council has control of the total appropriation to be allotted to the library of which well over half, possibly eighty per cent, will go for salaries and wages of the library staff. Incidentally, all of such staff must be appointed in accordance with state civil service provisions for, years ago, the New Jersey Supreme Court held that when a city adopted civil service by referendum the public library was definitely included.5

In any discussion of civil service as applied to library personnel it may be noted that New Jersey furnishes, in one very definite respect, an atypical situation. Civil service in all local public jurisdictions in the state, though adopted by local referenda, is still operated by a state commission, not by a local commission or agency. However, the legal authority of the Civil Service Commission over public personnel matters is different in the area of state employment from what it is in the municipal field; in the latter, being distinctly more limited. This again points up the continuing necessity for reminding the reader that when determining a course of action in his particular jurisdiction he must ascertain accurately the exact legal situation facing him.

When legal advisors differ the library administrator may actually be in sort of a legal no man’s land. There are many areas of unresolved conflict of laws where there are definite differences of legal opinion which the courts have never been called upon to settle. To illustrate from the personnel field, a state might have both a local residence preference law regarding the appointment of candidates for positions as well as a veteran’s preference law, and the courts might not have had occasion to pass upon the question of which takes precedence. Also the question of what is meant legally by the phrase “continuous employment” in pension legislation (sometimes the determining factor in an individual’s pensionability) has been decided differently in different court cases. Involved are such questions as: was there an involuntary hiatus in tenure; during such break did the person concerned accept other employment; what bearing has a requested leave of absence on continuous employment if the official
state of employment has not actually been terminated by formal action?

Other doubtful situations frequently arise. Loyalty oaths may be the subject of both state and municipal legislation; in more than one state practice varies from city to city, even between different departments in the same city. State laws concerning compulsory minimum wages in industry and the minimum age for full-time employment may or may not apply in the public service and so to a public library's employment policy. Compulsory local or state pension systems sometimes apply to all part-time, student help, whether employed on a permanent or a temporary basis; in others, not. Again despite civil service rules and regulations calling for uniform requirements concerning the work week, the weekly hours to be worked on a regular schedule, vacations, and so on, actual work schedules in force in the public library and in the City Hall may vary from thirty-nine hours per week in the one case to thirty in the other in the same municipality.

There are many other legal aspects to the problems of personnel administration in libraries and in discussing them it is still not with the idea of providing here in any sense a legal textbook of the subject but merely to alert administrators and laymen trustees. Little attention is therefore paid in this particular chapter to the solution of problems obviously and definitely solved by statutory provisions. For example, reference has already been made to the fact that certification of librarians is based wholly on specific legislation and it has not seemed necessary to reproduce sample laws already easily available in many places. It is believed more important and appropriate to this discussion to point out that there would be a definite and possibly unanticipated legal problem if a library board should fail to heed the requirements of a certification law and would employ a non-certified person in a professional position contrary to law. Some certification laws provide adequate penalties for non-conformance by the withholding of state financial aid, or even any appropriation from public funds. A special problem arises in situations where the specific law does not specify any enforceable penalty. Any one aggrieved by such case (or any taxpayer) would do well to consult an attorney and see whether, even without any penalty stated in the certification law, he could not bring an action against the board for nonfeasance in office.6

The types of expenses acceptable as legitimate official traveling
expenses frequently pose difficulty. The legal situation regarding the payment of travel expenses of librarians and trustees to conventions or on trips of inquiry or inspection of other library systems, definitely differs in different jurisdictions and has even changed in the same jurisdiction. According to Ohio’s state librarian, Ohio law since 1947 has permitted it whereas, formerly, in the absence of a specific legal authorization, a legal opinion from the attorney general had declared against it.\(^7\) In California a law compels county librarians to travel with expenses fully paid to their annual conventions called by the state librarian.\(^8\) In the state of Washington in 1917, a mayor who refused to sign a warrant for the repayment to the librarian of expenses incurred on specific authorization of the library board was ultimately ordered to sign by the Superior Court. The Court held that whether or not a certain expense was legitimate for a library to incur was a matter exclusively within the discretion of the library board to determine. In this particular instance the action dragged on thirteen months in the courts but the award of reimbursement contained six per cent interest additional to the original sum, for the delay.\(^9\)

The circumstances under which the library may be responsible for the dues of its staff in clubs and associations such as chambers of commerce, labor unions, professional library organizations, and civil service associations, is not clear. All librarians know of the necessity for personal membership in many societies as a means of subscription to important technical publications available only to association members. They also recognize the desirability of membership in many local organizations purely in the interests of better public relations for the library. Practice is varied. The real question is what is the law, if any, in a given jurisdiction, for existing legal opinions are known to differ, and are sometimes wrong.

When a community adopts civil service by referendum it is not always clear whether all employees are blanketed into the positions permanently or only temporarily. If permanently, as far as their immediate status is concerned, the question arises as to their eligibility for promotion to all higher ranks in their own series of classes of positions.

Can an employee give up his legal rights by filing a disclaimer or disavowal? The Public Laws of New Jersey\(^{10}\) specifically authorize veterans to waive a portion of a pension received under any State Pension Act. The reason for this is that by so doing veterans may obtain a larger federal pension. Nevertheless, a librarian should check
carefully before hiring an older candidate for a position with the understanding that he will never claim the right to a pension. Having served until all the legal requirements for pension eligibility are fulfilled, he may still be entitled to the pension despite the prior agreement.

In connection with laws against discrimination on the basis of race, creed, color, national origin or ancestry, the legal question must be raised in connection with application blanks for positions in libraries as to whether or not one may ask any questions that will reveal in their answers data on the race, creed, color, national origin, or ancestry of an applicant. While in New Jersey the answer is "no," the answer may be quite different in New Mexico from what it is in New Jersey or New York or Alabama, Texas or Maine. Further, a library in a state not having a state anti-discrimination law, would have to observe the federal law in this respect if it received federal aid. In other words, the laws against discrimination in employment which have developed largely since the original Fair Employment Practices Act are quite specific and, as indicated, differ in various jurisdictions or may not exist at all.

As can easily be seen the questions are many and varied. A few others of interest are briefly noted: May a library board institute a plan of money awards for valuable suggestions from employees? In the federal service the practice is based on specific legislation authorizing it. In some states there is permissive legislation in spite of constitutional prohibitions on giving away any public money.

Is nepotism illegal? In some states, as Florida it is. Incidentally, for a recent, thorough discussion of this touchy subject as viewed in American industry see the article by Perrin Stryker, "Would You Hire Your Son?" in Fortune, and as it applies in libraries in the article by R. M. Lightfoot.

When an appointing authority terminates the appointment of an employee at the end of his probationary period without giving specific reasons, may there be an appeal to the courts? Here the laws differ greatly.

Other areas of library personnel administration having important legal aspects are hospitalization and medical and surgical plans (either compulsory or optional), plural office holding, e.g., may a school teacher or school librarian working full time in the school system be employed additional part time by a public library in the same community; accepting fees from the state or another municipality for
consultant services while drawing a full-time public employment salary (some civil service laws or general state laws forbid this); refusal to take a legally required loyalty oath a second time, such as at the time of reappointment, or promotion.

In regard to the number, if not the legality, of fringe benefits, even one who has preached and practiced a degree of democracy in administration might be disposed to remark that the fringe(s)—and not too gradually—seem to be getting longer and longer. If the mixed metaphor were not prohibited, it could even be suggested that the fringe, in some cases, seems to wag the surrey! Fringe benefits are more and more coming to be written into law and may be legally questionable where they are not.

Human nature being what it is, librarianship at all levels is not immune from its share of problems in the areas of both criminal law and legal medicine. Members of the human family, wherever placed and whether of high or low estate, occasionally slip ethically or morally, and have their emotional crises and mental breakdowns. Complicated, difficult, delicate, and tragic situations may arise, the legal aspects of which must be faced. In American library history both librarians and library trustees who have broken the law have been known ultimately to have paid the penalty and to have occupied "positions" in state institutions where board is furnished free and certain labor is required not in the original job specification.

A number of the larger libraries have found it necessary to have in their personnel organizations a position known as "library investigator" or "supervisor of security of persons and property." The class specification or job description for this position in the Newark Public Library reads as follows:

**Definition:** Under supervision to detect and investigate infractions of law, municipal ordinances and library regulations affecting library property, operations and personnel; to supervise, plan and direct the library’s program for security of persons and property; and to do related work as required.

**Examples of Work:** Trains and supervises staff members engaged in retrieval of overdue library books and in other phases of the library's security activities; protects library property and enforces laws and municipal ordinances and library regulations by detecting and investigating cases of theft, mutilation, fraudulent registration, withholding of library property, disorderly conduct, indecency, intoxication, malicious mischief, alteration of records, and any infractions that involve library property, personnel, or the use of library facilities; arrests
offenders when necessary, and appears on behalf of the library in any
court which may be necessary; maintains records; conducts special
investigations as assigned, such as of book stores selling library prop-
erty; and cooperates with police and school board, social and welfare
agency and other officials on cases of truancy, theft, and related
offenses.

Qualifications: Graduation from an accredited college or university,
and at least five years of experience in work requiring extensive con-
tact with the public as a police officer or investigator; or equivalent
combination of education and experience.

A good knowledge of municipal ordinances and library regulations,
of police and court procedure, of the rules of evidence, and of the
relevant aspects of common and statute law; possession of the qualifi-
cations for a special policeman's certificate and badge for New
Jersey; possession of a driver's license for New Jersey.

Ability to size up situations and people accurately and to adopt
quickly an effective course of action.

Good health, better than average physical strength, and freedom
from disabling defects; good memory; resourcefulness; courtesy.

The strictly and technically "legal aspects" of this work are fairly
obvious, and not too troublesome administratively. The most difficult
question, administratively, is to decide when to invoke legal machinery
and when not to. This problem has its psychological aspects, and
political, diplomatic, and public relations implications as well.

Library boards of trustees frequently have in their membership one
or more prominent local attorneys who from time to time generously
render real legal service to their boards in the informal discussion of
board meetings, and to library employees privately. It is, however, the
belief of this writer that such board members should not be imposed
upon for free legal services nor should they be employed in their
professional capacities by the boards they serve because they would
necessarily have a voice in voting upon their own compensation which
would not look well no matter how objectively it might be done.

Ordinarily it may be said the city attorney, or corporation counsel,
is the library board's official, legal advisor in municipalities, the county
attorney for county libraries and the attorney-general for state li-
brarians, except where the state library is in the state education
department, when the attorney for that department would usually
be consulted. He, in turn, could go to the attorney-general. Even in
this matter of who is the librarian's or the library board's official legal
advisor both law and practice differ and opinions may conflict. It is
wise, and necessary, to follow the opinion of one's official legal advisor

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though that may not always prevent litigation nor assure victory if a suit is brought.

Though many more remain, just one more legal issue in the personnel field will be presented. Are the public library employees in a city where the library is established and run under the aegis of state laws legally city employees? Actually, the answer varies in different jurisdictions. In one state, on this question, the corporation counsels of the two largest cities originally informally rendered directly opposing opinions. Obviously much hinges not only in the exact legal answer to this question, but on what is implied where a Supreme Court has held that the employees of the public library are “in the paid service of the City” and, in the same decision, also “conceded” that the library was properly operated under the general library laws of the state which authorize setting up library boards whose status is at least quasi or semi-autonomous. 

Before discussing the published sources for authoritative answers to questions heretofore raised in this chapter, another main topic needs brief discussion although it will be the subject of a separate contribution at the end of this volume, namely: what are the major differences between the legal aspects of problems of publicly-supported libraries and libraries privately supported as separate institutions, or libraries in privately supported, larger institutions such as colleges or universities or businesses?

Obviously, in the privately supported institution the basic set-up of the library's administration, including its personnel administration, will not stem from statutory laws but mainly from privately determined rules and regulations. The authority of the library administrator can be either greater or less than that of his colleague in the tax-supported institutions. Recruiting, selection, appointment, position classification, salary plans, promotion plans and opportunities, retirement pension and annuity provisions, all these may have different procedures and controls. The control of the whole area of labor relations is different. The governing board, if any, the library administrator and library staff member will need legal advice perhaps just as often in the field of private employment as public, but this advice will be based on many different laws which only a qualified legal advisor would know how to apply and interpret.

BIBLIOGRAPHICAL NOTE

There is no separate bibliography in print covering exclusively the legal aspects of library personnel administration. In fact, there are no substantial dis-
cussions in print to list! This is a list of publications, some annotated, illustrative of the many types of useful sources in this field. Also included at the end is a brief list of basic, general works which should be known to anyone concerned with the legal aspects of library administration.

**General References**


Current legislation and court decisions are discussed on pp. 8-11.


 Begins a new series of an older, discontinued title. The index reveals sections on bibliography, law, legislation, and personnel.


An informative discussion of legal status and responsibilities of the special librarians in England.


Issued monthly by the National Civil Service League, July, 1951, to July, 1954, and thereafter bi-monthly to July, 1957, now discontinuing; has been the best source for current information on decisions in the field of public personnel administration.


This article pays far more attention to the legal aspects involved than do most discussions of library personnel problems.


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An unusually well integrated collection of chapters by different authors, with two chapters on personnel, one by G. L. Belsley, then director of the Civil Service Assembly, "The Librarian as a Public Servant"; and the other "Personnel: The Key to Administration," by J. B. Kaiser.


One of nine contributions under the general title "Current Trends in Personnel Administration" but one emphasizing legal aspects more than is usually done.


The author has long been an attorney and executive officer of the National Civil Service League. Announced as the "first complete commentary on Civil Service Law—Federal, State and Local published in this country." It contains notes and citations of the more important civil service cases in all federal and state courts.


A comprehensive treatise, completely revised and rewritten by W. E. Shipley. Incidentally reveals that the "Library Fees" of veterans attending either profit or non-profit educational institutions may be paid from government funds allocated veterans.


Volume 9 is concerned with Personnel Administration, and Volume 12 presents a recapitulation of all recommendations. However, in Volume 11, devoted to General Administration, both the legal and governmental aspects of personnel matters receive most of the attention.


McCrAith, C. E., Jr.: New Jersey Municipal Employees. Privately printed, 1940.

Chapters devoted to separate subjects such as terms of office, hours, and pensions. Contains a twelve page Table of Cases and an Index. Somewhat outdated but illustratively valuable.

Data on shift differentials, overtime, sick leave, paid holidays, vacations and longevity pay, all apparently legally permissible in the cities reporting. R. C. Garnier, comp.


A fourth edition, Harpers, 1956, was rewritten by O. G. Stahl and has three new chapters as well as many new sections in other chapters.


*The Municipal Yearbook*. Chicago, International City Managers Association, 1934–.

The *Yearbook* has regularly two sections that should be scanned for current news of legal developments in the field of library personnel information, namely the "Municipal Personnel" section (the latest compiled and edited by the Director of the Public Personnel Association) and the "Public Libraries" section of the general division reporting "Municipal Activities" of the past years. This is usually written by an officer of the American Library Association especially identified with and competent to discuss such matters.


Extensive analysis of state laws and other legislation.


This, with its 1949 Supplement, has been characterized as the most complete legal analysis of legal city-employee relations up to the time of publication.


This annual volume of the National Institute of Municipal Law Officers, now regularly entitled "NIMLO Municipal Law Review" contains the reports of one or more committees concerned with legal problems and court decisions in the area of personnel, both officers and employees.

Decisions discussed and developments summarized in recent volumes have covered such subjects as loyalty oaths, prevailing compensation, sick leave, strikes, pensions, and others. An unusual aspect of pension determination was discussed in the volume covering 1953 experience namely: In figuring a pension at "the average of the last five years pay before retirement" may bonuses received in any of those years be included?

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A distinctly thorough study with extensive footnotes, chapter bibliographies, and index.

Legal aspects of school administration.

Ridgway, Helen A.: How to be a Good Library Board Member. (Mimeographed) Chicago, University of Chicago Home-Study Department, 1955.
The syllabus for the University of Chicago Home-Study Department course on “How to be a Good Library Board Member.” The course is sponsored jointly by the American Library Association Trustees Section of the Public Libraries Division and the University of Chicago Graduate Library School and Home-Study Department. The syllabus contains important chapters on “The Board and the Law” and “The Board and the Staff,” to which has been added a special list of readings.

A monthly publication running regularly to twenty pages or more presenting a numbered, classified, and annotated list of current publications under alphabetically listed subjects from “automation” to “work measurement,” and having “law” or “law, administrative” as one of its regular headings. Currently entitled “Personnel Literature.”


Designed primarily as a supplement to a textbook. Has two selections on “How do private and public administration differ.” Part III, pp. 189-286, covers personnel. The index is good.

The legal foundation of personnel authority in public libraries is briefly discussed on page 51, section 1.

Contains chapters on “The Trustees and the Staff,” “The Trustees and the Law.”


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JOHN BOYNTON KAISER


A vast work already to Volume 97 in 1957. Volume 67, pp. 91-485 discusses the questions of public officers, citing many cases.


Municipal Law Court Decisions. Vol. 1 -. 1942–.

Monthly survey published by the National Institute of Municipal Law Officers containing digests of all reported decisions involving municipalities. Includes civil service questions. Arrangement alphabetically by subject. (Annual Index).


Issued monthly by the National Institute of Municipal Law Officers, Washington 6, D.C. Each issue covers federal legislation, city briefs and opinions, unreported court decisions, legal news, and current problems. Classified arrangement with table of contents to each issue. (Annual Index).


Issued by the Section of Municipal Law of the American Bar Association at the University of Pennsylvania Law School, Philadelphia. Contains news and comments on local government law. A four-page circular issued monthly except July and August. (No Index).


References


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5. Trustees . . ., *op. cit.*


15. Trustees . . ., *op. cit.*
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MILES O. PRICE

Public libraries—federal, state, county, city—are the creations and creatures of statute: directly and specifically, as the Library of Congress, state libraries, and some county and city libraries; directly by authority of general acts, as most county and city libraries; and indirectly, under the enabling acts setting up agencies within which libraries operate as necessary though unnamed functions.

Being such, they are governed by various statutes, including organic and appropriation acts and administrative regulations made under statutory authority, and they must function within their terms. This applies to the technical processes—acquisitions, binding, cataloging—which require the direct expenditure of tax-raised funds. The librarian is thus continually confronted by that bogey, ultra vires, which means that he may not make expenditures for a purpose or in an amount or at a time or in a manner not authorized by his specific complex of statutes and administrative regulations. It may also mean that he may not dispose of obsolete or superseded publications for credit, or sell or exchange duplicates, as is freely done in privately supported libraries. Control is maintained by a budget or auditing officer; for example, the United States General Accounting Office, which checks federal expenditures for compliance.

The first thing with which the public librarian must familiarize himself in order to stay out of trouble is the group of statutes, administrative regulations and budget or other decisions controlling his actions and expenditures. As has been stated before, these differ so much from federal department to department (and even from bureau to bureau within a department), and from state to state and city to city, that accurate generalizations are impossible. Many situations are not specifically covered by written statute or rule, but only by the tacit legislative recognition that an administrator must have reasonable inherent power to get things done. This latter is sometimes confirmed

The author is Law Librarian and Professor of Law, Columbia University.
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by statute, as in the California Education Code § 22228, which in defining library trustees’ powers, under which the librarian operates, adds: “. . . do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter.” 1 Especially in the federal government libraries, where the library is seldom named in the enabling statute or appropriation act, the legislative history—as shown in the budget hearings—may furnish some guidance.

For the sake of clarity each type of public library—federal, state, county, and city—will be considered separately, in that order. In many organic acts setting up government agencies the library has been specifically mentioned. In more recent revisions of old acts and in acts setting up new agencies, it seldom is, and then but briefly. For example the law covering the Patent Office states that it “shall maintain a library.” 2 In practice, the library, when not specifically authorized, is set up by administrative decision if needed. The Library of Congress, sui generis, has its own enabling act. 3

The Act of March 15, 1898, provided that law books, books of reference and periodicals for use in any executive department or other government establishment at the seat of the government should not be purchased unless authorized and payment specifically provided for in the law granting the appropriation. 4 Therefore, government libraries had their own “budget line” in the appropriation acts of their agencies. This act, however, was repealed 5 August 2, 1946, so that now such books and periodicals may be purchased within express limitations (as in the Independent Offices Appropriation Acts) which may be otherwise provided, and the cost thereof charged against appropriations for the necessary expenses of the particular government establishment involved. 6 This results, in effect, in two different appropriation situations: (1) those in which the agency still has its budget line, as in the Department of Agriculture and some independent offices; and (2) the great majority of agencies, in which the amounts expendable for library additions and personnel are part of the lump sum appropriation for the agency, and are administratively determined within the agency. So far as the present writer was able to determine, the latter method works well and the allocations are strictly adhered to. This is discussed for 1943–45 by L. M. Bright 7 in his master’s paper which states that ninety per cent of the budgets studied were “consolidated,” and in only ten per cent was there separate mention of the library. Fifty per cent of the budget hearings did not mention the library. One-third of the libraries were allotted

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a definite sum, two-thirds not. Each act studied contained restrictions as to one or more of the following: types of publications purchasable, amounts for given types or specific titles. The method of purchase, under Revised Statutes § 3709, was ordinarily specified. Bright’s conclusion is that Congress does little to affect directly the money spent for government libraries. This is a matter primarily handled by the budget officers of the various agencies when making lump-sum requests.

What constitutes a “government” agency within the meaning of the various acts authorizing the purchase of library material has been the subject of inquiry. It has been held that while the Federal Reserve System, Comptroller of the Currency, and Federal Deposit Insurance Corporation are such agencies, the Food and Agriculture Organization, the Rural Electrification Cooperatives, National Farm Loan Associations, and Production Credit Associations, and the Pan-American Union are not.

The routine of government purchasing is described in detail in the U.S. Treasury Department’s Bureau of Federal Supply publication, Service of Supply, Outline of a Training Course. A further guide to government library purchasing is contained in Huberta A. Prince’s The Washington Book Mart, a Descriptive Guide to the Libraries and Procurement Offices of the Federal Government. The most detailed and authoritative discussion of the permissible procedures relating to book and periodical purchasing is that embodied in a Comptroller General’s Decision, relative to an inquiry of the Administrator of Veterans’ Affairs on February 28, 1947. It sets forth six different procedures for as many categories of materials, relating to such things as prices, bids, dealers, and out of print or out of stock items. Although specifically addressed only to one agency, the procedures and rulings seem of general applicability and the decision might be regarded as a text on broad principles. Unfortunately, it has not been published in the printed Decisions and is available only in manuscript.

The 1875 law, as amended, which in effect provides that, except in an emergency, advertising for competitive bids is mandatory, is the basis for the bidding requirements of the above law and for the regulations issued under it by the General Services Administration. The Act also sets forth an exception to the bidding requirement, permitting an agency to purchase supplies or services up to $500 “over the counter,” without bids. Agency practice under this exception varies. In some, by administrative rule, the amount is reduced to $25,
in others, where the item wanted is on the bidding schedule and costs a nominal sum, it may be requested, subject to a later confirming order; if not on the schedule and it is in a local bookstore, it may be ordered by telephone. An evasive device is the breaking down of large orders into units of $500 or less to avoid asking for bids. Much depends upon the individual procurement officer. The librarian will carefully learn the practice of his own agency.

During World War II, a most-favored-customer policy in favor of the government was adopted in library book purchases, to the effect that no price should be charged to a government library, higher than to any other buyer. A typical application in peacetime is the practice by states of charging a lower in-state price for state publications than that for out of state buyers. The recent New Hampshire Revised Statutes is an example. The G.S.A. New York procurement office, however, told the writer that for practical purposes this policy has been superseded by the Federal Supply Schedules, except where specifically provided for by statute. In the Treasury Department appropriation acts, 1950–56, inclusive, such a provision was included, relating to the purchase of typewriters, and it was interpreted by Comptroller’s Decisions B-89575, B-90189, and B-93147. The Comptroller General states that in the New Hampshire-type situation he has no jurisdiction.14

Another problem applicable principally to the purchase of official state publications and to periodicals, is the advance payment exacted. G.S.A. told the writer that this is permitted in the government only on subscriptions, and that the requirement otherwise is, perforce, waived in favor of the government. The Comptroller General, however, held in effect by his decision 15 of January 17, 1956, that, although books purchased cheaper on a subscription basis than on an individual basis are not within the term “periodicals” as used in the exception to advance payment prohibition in 31 U.S.C. §530, they were within the term “publication” as used in that provision allowing the Veterans Administration to subscribe to publications. By the same decision, it was held that purchase through “book clubs” at a discount, is permissible. By a decision of November 28, 1956, B-129390,16 it was held that pamphlet “advance sheets,” although not “periodicals” in the usual sense, were eligible for advance payment, since mailable as second class matter.

One provision relating to the most-favored-customer question 17 sets maximum prices for the United States Code Annotated and the
Federal Digest. A May 16, 1950 decision\footnote{18} of the Comptroller General also relates to the price which may be paid for certain law books for court libraries.

Generally, the bidding rule governs book buying; there is less red tape and the bidding schedule discounts are apt to be better. As a result of bids, the G.S.A. issues “Federal Supply Schedules,” each naming the items awarded to successful bidders. Class 33 covers books generally; Class 35 periodicals and law books. Regulations are published in title 41 of the Code of Federal Regulations. The government librarian does not “order” books. He requisitions them through his agency procurement officer, who does the ordering, after checking the state of the library’s allotment. This requisition-order routine is often substantially followed in state procedure, also. No contractor is under obligation to accept orders of under $25. In practice, such orders are filled but the vouchers may be allowed to accumulate to a reasonable amount before submission by the dealer for payment. Disputes with contractors over orders may be judicially reviewed\footnote{19} but no library book purchase cases have yet arisen. The General Accounting Office determines whether doubtful items are authorized for purchase under organic or appropriation acts. For example, phonograph records are not books within the acts.\footnote{20}

Difficulties arise with periodicals, particularly law reviews published during the school year (hence with an unusual subscription period), because the contractor does not understand their idiosyncrasies, and missing number troubles are frequent. The procurement office in some agencies claims missing numbers, not the library.

There have also been problems in connection with gifts and exchanges, because there must be authorization to dispose of government material in this manner.\footnote{21} Sales for cash are not useful to the library, as money realized must be “covered in” to the Treasury.\footnote{22} A device to escape this is to have the purchaser set up in his office a credit to the government library offering materials, from which requests for books from that library will be honored. Unexpended balances revert to the Treasury at the end of the fiscal year, but this seldom happens, as money about to revert is diverted to other units of the agency. Similarly, the library may benefit by unexpended balances of other units. This is an administrative matter under lump sum appropriation procedure. In some agencies, reversion, by administrative rule, is on a quarterly basis, and funds carried from one quarter to another must be “justified.” Funds for mortgaged material

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which is never received are lost to the Treasury. This creates serious
difficulty where foreign “antiquariat” material is ordered, much of
which is sold before the government order reaches the dealer.

The so-called Buy-American Act of March 3, 1933, as amended,
applies to books and periodicals. It is now clear that the act requires
the purchase of articles, materials, or supplies manufactured in the
United States, regardless of the source of the constituent materials,
if they are available in sufficient and reasonable commercial quantities
and of satisfactory quality, unless the head of the department de-
determines their purchase to be inconsistent with the public interest or
their cost to be unreasonable. Books, periodicals, magazines, newspa-
papers, etc., must be regarded as subject to the restrictions of the
act.23

As to purchasing, the Library of Congress is not subject to the
G.S.A. schedules so, ordinarily, new books are bought from the
publishers, except that in case of urgent needs they are bought from
local book stores.

Binding presents no special legal problems. By law it must be
done in the Government Printing Office, by order from the agency, on
requisition from the library. Allotment of funds from the lump sum
appropriation is, as with book purchases, an internal matter.

As for cataloging, with the exception of the Library of Congress
which has a special budget line for “salaries and expenses” for the
maintenance of its catalog, the catalog is maintained from the agency
lump sum appropriation. The staff members are classed and compen-
sated according to Civil Service job descriptions, as are other staff
members.

State libraries of some kind have been created or authorized by
statute in every state. These include state libraries proper, state law
libraries (where distinct from the state library), medical libraries,
court libraries, county public and law libraries, city public libraries,
and school libraries, among others.

The writer has examined the library provisions and other pertinent
sections of the compiled statutes of every state and territory, and
selected session laws, and the statements below are distilled from that
examination. Generalization is possible, however, only to a limited
extent, as provisions vary greatly from state to state, and the librarian
concerned should carefully examine the statutes and rulings of his
own state. No pertinent judicial precedents were found.

In general, libraries of state agencies are subject to purchasing and
civil service rules applicable to other units of the state, with the frequent exception of institutions of higher learning. This is true, for example, in New York, which has a Division of Standards and Purchase. This corresponds somewhat to the federal G.S.A., even including the $500 limit exemption from competitive bidding. All purchasing, and this includes books, in New York State is through this division. However, in the case of books, the division interprets this to permit direct placement of orders by agencies. In any case, the bidding requirements in New York do not include supplements, continuations, law reports, or odd volumes of sets. The *Official Compilation of Codes, Rules and Regulations* covers books, periodicals, subscriptions, etc., for office libraries. Books for schools and colleges or for school and general libraries are coded (14-04) as educational supplies.

Few states go into such detail, but all have applicable rules. The writer discussed the practical aspects of book purchasing by tax-supported libraries with a large publishing house, and was told that very few states now require bidding, and that almost always the procedure of purchase is the same as for private purchasers. The prudent librarian, however, will ascertain the rules applicable to him.

Libraries of state institutions of higher education are subject to the purchase and civil service rules of their institution generally, which typically approximate those of privately supported institutions. In some states, university, court, and state libraries are specifically exempted by statute (as in New Hampshire) from book purchase restrictions applicable to other state institutions. Where there is a state civil service, state schools and colleges may be exempted from its application.

Typical statutes authorizing or establishing state libraries commonly set up standards for them, often including acquisitions, preparation and cataloging policy. Virginia defines "books" to include all audio-visual material, a precedent to remember. Acquisitions may include deposit by others. The Virginia State Library is directed to buy any book, pamphlet, manuscript, or other library material relating to the history of Virginia, not in the state library. Authority to receive gifts is frequent and important. In Montana, this must "not entail any degree of federal control." The correlative power to exchange and otherwise dispose of surplus material is usual. The New York State Library is permitted to set up a duplicate department. Copies
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of official state publications are often allocated to the state library (and state university library) for exchange purposes.

Provisions for physical preparation and cataloging are frequent. An unusual and detailed study, with recommendations, of the technical processes division of the New York State Library was made by the Temporary State Commission on Coordination of State Activities, in its Second Interim Report. It describes and criticizes some of the statutory restrictions upon library operations in a state government.

State law libraries are usually divisions of the state library and not separately mentioned in statutes, but in some states they are set up and maintained under separate statutes. Comments on state libraries proper, above, apply, except as noted below. Some law libraries as in Ohio receive fees from fines and penalties or from filing fees of legal documents as at the Los Angeles County Law Library.

State court libraries offer the widest variation and no attempt at generalization will be made. Sometimes the rules as to purchase and personnel are those applicable to other tax-supported libraries but exemptions (because of the "confidential nature" of the operation are found) usually as a subterfuge to permit the appointment of political hacks.

State medical libraries are provided for by specific statutory provisions in Iowa and New York.

Statutes particularly applicable to the technical services in school libraries are not common. Typical are the following: Minnesota prescribes the purchase from booklists. Wisconsin does this also, and prescribes the method of purchase and binding. A Montana provision turns school library board funds over to the county library if the school library becomes a branch thereof.

With a few exceptions, county libraries are established under general enabling acts. In South Carolina there is a separate Code section for each county library. These acts prescribe the powers and duties of the board of trustees or other supervisory authority, the tax provisions, etc. In general, technical services are subject to the same principles as already prescribed in this paper, but there are occasional more definite references. The authority to receive gifts is common. Apportionment of expenses is sometimes provided for. In Washington the State Board of Education supervises purchases. In New York, purchase procedure is prescribed. Civil service rules are frequently applicable to county library personnel.
The public library is peculiarly the creature of the state legislature. That this is true is confirmed by statute, and the courts. Whether or not the public library is exclusively a state matter, as distinct from municipal, is unsettled. This is important in connection with the powers of the trustees over library funds for purchases, technical services, and to receive and administer gifts. Both statute and decision give the power to define library trustees’ duties. A common statutory provision is that the library funds be kept separate from those of the municipality and separately administered. On the other hand, in California the legal title to library property vests in the municipality, unless the deed of gift is contra.

The matter of gifts is important to the public library—whether it may or must accept them, their subsequent treatment, and so forth. Most state statutes empower public library trustees to receive and administer gifts, a typical provision being: “Any person desiring to make donations of money, personal property or real estate for the benefit of such library shall have the right to vest the title to the money or real estate so donated in the board of directors thereof, to be held and controlled by such board, when accepted, according to the terms of the deed, gift, devise or bequest of such property; and as to such property the board shall be held and considered to be special trustees.”

A gift for a free public library is a gift for a general or public use. The “right” in the statute above is qualified by “when accepted,” and refers to the general rule that the government may receive gifts only by statutory authorization. The right of the library to refuse gifts, especially conditional, is probably undoubted, but the librarian would do well in specific instances to consult counsel. On the other hand, once the gift is accepted, its terms must be carefully observed, and may be enforced against the municipality by the library board in an action of mandamus. Deposit of newspapers, and agreements for their care, are authorized in California.

This brings up the serious question of ultra vires in accepting gifts—whether compliance with their terms entails unauthorized actions or expenditures for equipment or salaries, or discriminatory practices. These concern special quarters or equipment for the gift; cataloging expense; reclassification of existing collections to harmonize with the gift, or a gift of money simply for reclassification because the donor does not like the present scheme. All these questions have been posed to libraries. A Mississippi provision somewhat in point states that “the
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county shall bear no expense in connection with any donation."63

Another troublesome condition is to withhold the gift from public use for a specified period. Restrictions as to use by a class have been proposed. The power to subpoena gifts in connection with loyalty or other investigations is a serious question which has not been tested in the courts, but the power generally to subpoena public records, whether or not in a library, is frequently exercised. In an allied matter, in a bequest for the purchase of books, it was held that the money could be invested and only the interest used and that it was not required that the whole fund be expended immediately.64

Would the condition of gift, prohibiting circulation outside the library, operate to rescind the gift? As to the discretion of the library to do or not to do a thing, it has been held that the library may decline to accept certain responsibilities, but having accepted them, it is bound to carry them out as prescribed by law or condition of gift.65

Acquisitions by purchase are covered in the residual power of the trustees “to do and perform any and all other acts and things necessary or proper to carry out” their functions (a power usually tacitly understood, but sometimes provided by statute, as in California).66 Usually, the general statute confers the power,67 often subject to limitations as to indebtedness.68, 69 As to the latter, it was recently suggested by a trustee of one of the borough libraries of Greater New York that the circulation of books be limited both as to the number to a borrower at one time, and the period of the loan, so that fewer copies of a title would be needed.

No statute or case directory relating to acquisitions procedure (bidding and the like) was found, except for the expenditure of state aid funds.70 Booklists are required in book selection under certain conditions in some states,71, 72 and Wisconsin 73 expressly limits the scope of purchasing.

Almost all statutes and regulations governing bids on public contracts specify that the award shall be made to the “lowest bidder,” the “lowest responsible bidder,” the “lowest and best bidder,” or the “best or responsible bidder.” The most common phraseology is the “lowest responsible bidder.” Just what constitutes the lowest responsible bidder is a question of fact, in the reasonable discretion of the awarding board, acting in good faith. Being an exercise of discretion it is not subject to review by a court.

“Responsible” means more than financial ability, but includes judg-
ment, skill, ability, capacity, and integrity as well. A lowest, but unsuccessful, bidder cannot compel the awarding of the contract to him by writ of mandamus, nor enjoin performance of the contract by the successful bidder, nor recover damages for the refusal of the government to give him a contract. Further discussion of these points may be found in the Library Journal of April 1, 1958. 74

Many troublesome acquisitions problems have arisen, among them the authority to make advance payments covering material to be received beyond the current appropriations period. Discarding of items purchased with tax money is another, and it is frequently prohibited because not expressly provided for. Trade-ins of earlier editions for credit on current ones are often impossible, except by subterfuge. Discounts come up in unexpected ways. Does the Robinson-Patman Act prohibit quantity discounts to large public libraries? Is the discount offered by a dealer to a library a private or a public matter? Some dealers assert their right to knowledge of competitors’ discounts in non-bidding situations.

The matter of disposing of library materials acquired by purchase or gift is a difficult one. While the library laws of most states provide, directly or indirectly, for the acquisition by purchase or gift of library materials, only rarely, either in the general statutes relating to property or the library statutes, is there provision for disposal of them. It is quite common in statutes relating to state libraries proper to provide for exchange of publications, and this is sometimes done for state university libraries as well, but not for public libraries. Only one case directly in point was found 75 which held that law books distributed to a library could not be sold or diverted to any other purpose.

The South Carolina Code of 1952 provides separately for each county and city library. For example, the Aiken County Library is empowered to “dispose of such books as may be deemed obsolete and worn out.” 76 There are few such explicit statutes, however, and about the nearest thing to a general permission is in those few enactments, such as in New Jersey, 77 which empower the library trustees to “generally do all things necessary and proper for the establishment and maintenance of the free public library of the municipality.” This would seem to be sufficient to grant the same freedom of action to the public library as to a privately supported one, but, first two rules of construction must be surmounted.

The first is that a statute conferring powers on the sovereign must
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be strictly construed, and that little can be assumed. Second, if the function involved in the sale or other disposition of municipal property is "governmental" rather than "proprietary or ministerial," express statutory permission is required for the disposition of property, either real or personal unless it can be shown that the material is no longer of utility to the municipality. Just what the distinction between these functions is, is a problem of considerable difficulty, and no definition will be attempted here. Matters of public health, education and welfare, however, are "governmental," which would seem to cover public libraries, though in an early case involving the Chicago Public Library, it was held that delivery of books from the central library to a branch was "ministerial." 78 Where property is held in trust, the courts usually construe it as involving a "governmental" function, and library trustees do hold property in trust.

In Utah,79 the general rule is "A city sometimes has on hand personal and real property not devoted to the use of the public. . . . All such property . . . not devoted to the public use, may be sold under the general authority to sell or lease, as the public welfare may demand." Courts will usually not interfere, in the absence of a strong showing of fraud.80 Bids may be required, as in Ohio and Arizona.81,82 Few state statutes specifically cover the disposal of property. The Utah Code 83 states that the municipality " . . . may purchase, receive, hold, sell, lease, convey and dispose of property, real and personal, for the benefit of the city . . . and may do all other things in relation thereto as natural persons. . . ." City charters often contain similar provisions.

Some librarians consulted by the writer were forbidden to trade in superseded editions for credit toward later ones. The writer has had no difficulty in such cases in securing credit by defacing the old title page with the statement that credit has been received and that the books are not to be sold or exchanged. The question has also been raised as to the legality of selling duplicates to the public library staff. There are no cases, but if, under the applicable statutes and rulings, duplicates may be sold at all, it would seem that there must be adequate publicity, and that the staff should not be favored, but that the public served should have at least an equal chance to buy. In applying the above and similar statutes, the prudent librarian will obtain rulings covering his own situation, as there is great variation.

Cooperative purchasing of library materials, either through joint efforts by several participating libraries or through "book clubs" is
not directly covered by any statute seen by the writer. It must be decided, therefore, under the terms of more general acts or by administrative rulings.

Under a general act covering library materials, the Veterans’ Administration participates in book clubs. Similarly, tax-supported libraries have been permitted to take advantage of club magazine subscription rates through dealers, and to buy multiple copies of books at a discount, for exchange purposes. The matter as applied to state libraries is discussed by Arie Poldervaart in the Law Library Journal.

The same issue contains a Report of a Special Committee to Study Cooperative Purchasing of Law Books. Another aspect of this problem has arisen in the operation of cooperative deposit or storage libraries. Participating tax-supported libraries may not give books to these libraries, without statutory permission, but may only deposit them on long-term loan.

Cooperative cataloging would seem to depend upon whether the expenditure of funds was held to be for the purchase of cards—things—or for the salaries and other expenses of producing the cards; in other words, whether a product was being bought, or services were hired. Under general principles, the former is more likely to be approved than the latter. Setting up a cooperative organization to perform a service might well be held to be ultra vires, particularly if it operated across state lines, or even across political subdivisions within a single state. Another recurring question is whether a public library may send its binding work outside the state to be done. In a New Jersey case it was held that the lowest responsible bidder must be awarded the bid, notwithstanding it was not a resident of the state.

May a public library sue or be sued? Generally, a government entity is excluded, except under specific statutory procedure, which includes the consent of the agency in question. Some statutes specifically authorize suit, and in the tort liability of libraries it has been held that the conveyance of books from one library building to another by means of an automobile along the public highway by employees of the library renders the city liable for negligence of the driver.

An issue irksome to both public and privately supported libraries is that of photocopying by libraries for patrons, of materials protected by common law or statutory copyright. There is an extensive bibliography on the subject. In this writer’s opinion, by far the most useful treatment, by an experienced copyright lawyer rather than by wishful-
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thinking scientists or professional association committees, is in two articles by L. C. Smith in the Law Library Journal. The second article is principally devoted to suggestions for needed legislation. Smith has been a member of the staff of the U.S. Copyright Office since 1923, and senior attorney of the office since 1941.

Although this paper is concerned solely with the possible legal liability of the copying library, the ethical question involved also concerns libraries. It arises because, as a practical matter, publishers have not sued libraries for such copying even though there may be technical infringement giving a cause of action. Though they have warned them:

The increasing prevalence of photographic and other reproduction of copyrighted material by libraries has been rather forcibly brought to our attention in recent years. Our investigation of the matter convinced us that this practice is not only a technical violation of copyright but in some instances—and certainly in the aggregate—may constitute a substantial impairment of our interests.

Perhaps our gravest concern is that we do not, by acquiescence in infringements of this kind, jeopardize our copyright and our right to continue protection against more substantial infringement by others.

These considerations led us to adopt a policy opposed to such reproduction of any part of our publications without our consent in each instance. We have had occasion to assert our rights in this respect, though fortunately a demand has sufficed so far without any need of legal proceedings.

Our decision on this matter was reached with great reluctance. We make every effort to co-operate with the libraries. . . . But the threat to our interests is so serious that we feel that no other course is open to us.

So far it has not been worth it, financially, to bring an action except, perhaps to enjoin persistent refusals to heed requests to desist. No reported cases have been found. To paraphrase an old legal maxim, *de minima non curant* publishers. As a consequence, the libraries may find themselves in the uncomfortable position of persistently and knowingly violating the legal rights of others, just because they can safely do it. The ethical question is one which the so-called “gentlemen’s agreement” discussed below has attempted to solve in some degree.

Publishers and copyright owners generally have a two-fold interest in photocopying. First, although they are usually little concerned with financial loss due to the reproduction of single copies of their literary
properties for the use of scholars or for court use by lawyers, they are becoming fearful that, by failing to stop this practice, they may permit copiers to establish by continued permissive custom a sort of prescriptive right to such practices. They are troubled, secondly, by the multiple-copy users who incorporate them in collateral "readings" or "cases and materials" without express permission, for class use by students. With this latter aspect this paper is not concerned, as libraries do not knowingly participate.

The basic questions at issue are: whether in fact photocopying of copyrighted material constitutes infringement of the copyright, and if it does, whether libraries are relieved from legal liability by the conventional disclaimer agreements with the photocopy buyer.

The photocopying practice of libraries, and their procedure in facing the legal problems, are essentially as follows. A patron of the library, the reader, orders from it, and is supplied by it with, a photocopy of an item in its collection, which item is protected by either common law or statutory copyright. In order to protect itself, ethically and legally, the library causes the reader when ordering to sign a statement or disclaimer to the effect that the copy is desired only for the scholarly use of the patron, and that he undertakes to protect the library by assuming all liability for copyright infringement due to the original copying or the patron’s subsequent use of it. Customarily, not more than two copies will be supplied of a given item to a reader. As will be explained later in discussing disclaimers, the writer believes that the above constitutes two or more separate and distinct transactions: the copying by the library and transfer to the reader; and the reader’s subsequent use of the copy. It is important to keep this in mind.

Whether or not there is a technical infringement depends, first, upon whether the copied material is protected by either common law or statutory copyright. If an unpublished item is involved—a letter or manuscript thesis, for example—the common law copyright owner’s right is against publication at all, at any time, or in any degree, because publication, except the “limited publication” discussed below, operates as a dedication to the public and destroys the common law protection forever. The doctrine of “fair use,” applicable to statutory copyright, does not apply. Whether the reader has the right to copy for his own use, and whether the library in permitting him to do so incurs any liability, will be discussed later.

Libraries occasionally expand or modify existing subject classifica-
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tions for their own purposes. Where, as with the Library of Congress classification, there is no copyright, no legal question arises, though common courtesy would seem to require apprising the original compiler of the action taken and getting his blessing. Where, however, as with the Dewey Decimal classification, the original work is copyrighted, the question of infringement arises.

It would seem too obvious to require discussion that an expansion based squarely upon the Dewey class numbers, mnemonics, country divisions, etc., would technically infringe if published. The question, then is whether there is publication. If the expanded classification is printed or multiplied in another manner, and distributed widely to interested users, there is undoubtedly publication and infringement, and the prior written consent of the copyright owner is required. Here is a case where the circulation of even a single copy outside the compiling library, say to an engineering library not interested in the entire Dewey Classification, might deprive the publisher of a sale—and that is the clearest of all stigmata of infringement.

A more difficult question arises if the expansion is a private, type-written one, for use only in the library which makes it. If the classification were reproduced in a limited number and kept on the desks of the catalogers, there would probably be no publication, or at most only permissible limited publication. But as soon as the classification is applied to books, call numbers placed on the spines, and the books shelved and circulated, a serious question of publication is presented. There are no cases in point, but on general legal principles as well as courtesy, a library before applying such an expansion should receive the consent of the copyright owner. Presumably it would already own a Dewey; if not, and the expansion were made from a borrowed copy, there would be a clearer case of improper use.

What constitutes “publication” is vital in common law copyright, and is unsettled. Making copies freely available to the public is certainly publication. Deposit of a document in a public office where it is available for inspection has been so regarded, but there is authority contra. In order to mitigate the harshness of this rule, the doctrine of “limited publication” has been evolved, under which common law rights are not forfeited. Limited publication has been defined as one “which communicates the contents of a manuscript to a definitely selected group for a limited purpose, and without the right of diffusion, reproduction, distribution or sale.” This doctrine is severely limited, however, by the requirement that communication
must be restricted "both as to the persons and the purpose." If either is not so restricted, then there is general publication, and forfeiture results. Where communication is to a selected number on condition, express or implied, that no rights are released, that has been held to constitute limited publication.

Do the readers who use a large public or university library constitute a restricted group within this definition? It seems doubtful and a negative inference might be gathered from White v. Kimmel in the lower court: "No copy was ever placed in a public library, a reading room or on the shelf of a book store or club, where it was made accessible to anyone who wished to look at it." Although dictum and reversed on other grounds, nevertheless this seems some indication of what the court might do if faced with the problem. In another case involving statutory copyright, it was said that "... it is safe to say that the appearance of a pamphlet, after its delivery to plaintiff by the publisher, in a public hotel, subject to be seen and read by any person about so public a place, certainly was a 'rendering it accessible to public scrutiny,' and was likewise a 'communicating it to the public by distribution of copies.'"

The question here is whether the group is a "definitely selected" one. If it is, there is only limited publication, since the use is restricted, and there is then no dedication to the public. It is the writer's opinion that a group of 5,000,000 people eligible to use a public library (as in Chicago), or of 26,000 university library readers (as in New York University) is by no reasonable definition a "selected one" in these circumstances. If it is not, then the free availability of an unpublished document for reading in such a library would constitute general publication, regardless of the purpose for which read, and common law rights would be forfeited. Even more so, photocopying by the library for such groups, for use outside the library, would seem to be general publication.

In university libraries, this is a particularly vexatious problem with manuscript master's essays. Commonly, these do not circulate, but may be freely used within the library building, in the absence of specific restrictions imposed by the author. According to C. H. Melinat, as cited by R. R. Shaw, only five per cent of university and research libraries studied by him consult the author before circulation. Under the tests above, this simple consultation would seem to forfeit common law rights; copying by the library goes even further, and permits inspection beyond the confines of the library building. It might be
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said that, since circulation has already destroyed these rights, there can be no legal liability on the library for copying, but that is, ethically, an uncomfortable doctrine. As to theses, it has been said that: "The literary property in theses and writings as performed by students in colleges and universities is of concern, for the institution may require the placing of a copy in the library with the result, unknown to the school or author, being a general publication. . . . The privilege of 'fair use' has no place in common law copyright for in this field the author has exclusive control. . . ."107 Beginning in 1958, the Columbia University School of Law requires authors of manuscript LL.M. theses to state in advance whether or not photocopying is permitted, this permission or lack thereof to be stamped on the library copy.

Some authors of masters' essays have indignantly denied the right of the university to divulge even the existence of such essays, the reason being that they expected to use them as the basis of further research toward a doctoral dissertation, and feared that if their topics and research were publicized, others would publish first and defeat their own efforts.

The present writer believes that circulation of unpublished material to relatively large groups of eligibles, even for limited purposes, constitutes general publication within the test set up by the courts, and that the added publicity by copying for sale to a reader is general publication. There are no cases, but since libraries are so astute to protect themselves by requiring the reader to sign a disclaimer, it would seem that they are equally bound to hand the common law copyright owner a statement setting forth the possible legal consequences of permitting the public to examine, or the library to copy, the material deposited. Few people are even aware of the existence of common law copyright; the library, which is, should be astute to protect rights under it.

The statutory copyright owner's right to prohibit copying is subject to the doctrine of "fair use," under which copying for private study or criticism or review is permissible. How much copying may be done, however, is in hopeless confusion. Justice Story's rule in Folsom v. Marsh is as definite as any: "The entirety of the copyright is the property of the author, and it is no defense that another person has appropriated a part, and not the whole of any property. Neither does it necessarily depend upon the quantity taken, whether it is an infringement of the copyright or not. It is often affected by other con-
siderations, the value of the materials taken, and the importance of it to the sale of the original work." 108

Application of this rule, however, has been uncertain. "The issue of fair use . . . is the most troublesome in the whole law of copyright. . . ." 109 For practical purposes, the "gentlemen's agreement," discussed on page 449, constitutes some guide, as the following excerpts show:

While the right of quotation without permission is not provided in law, the courts have recognized the right to a "fair use" of book quotations, the length of a "fair" quotation being dependent upon the type of work quoted from and the "fairness" to the author's interest. Extensive quotation is obviously inimical to the author's interest. . . . The statutes make no specific provision for the right of a research worker to make copies by hand or by typescript for his research notes, but a student has always been free to "copy" by hand; and mechanical reproductions from copyrighted materials are presumably intended to take the place of hand transcriptions, and to be governed by the same principles governing hand transcriptions.

Whether or not photocopying by a library for a patron is a technical infringement is a matter of law, to be determined on the facts in each instance. Common prudence would indicate caution on the part of the library. Complete safety requires express prior and written permission for each copying of protected material. This is hardly feasible as it takes too long and often the address of the copyright owner is unobtainable.

Other countries are more definite, in their statutory doctrine of fair dealing. The British Copyright Act of 1956 110 under the heading "Special exceptions as respects libraries and archives," sets forth definite principles which have been summarized in 1957 Statutory Instrument. 111 The provisions are essentially restricted to articles in periodicals, or to where the librarian does not know and cannot ascertain by reasonable inquiry the name and address of the copyright owner. This is of interest now in this country, since our nation has subscribed to the Universal Copyright Declaration of September 6, 1952, under which copyright protection in the United States is conferred upon the nationals of the other signatories. Formerly, most foreign publications were in the public domain.

Library and other professional and scientific organizations have long sought ways out of the copying dilemma, but so far their irresistible forces have run head on into the immovable object of copy-
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right law. At present, a joint committee of several library associations (with, so far, the conspicuous absence of the American Association of Law Libraries, which might be expected to contribute some legal knowledge) is considering a statement of policy,\(^\text{112}\) with the ultimate hope of having much of it incorporated by amendment, in the copyright title of the United States Code, which has superseded the old Copyright Act, and so give legal status to what is at present only an act of grace.

The "gentlemen's agreement" mentioned earlier is the agreement of May, 1935, between the Joint Committee on Materials for Research of the American Council of Learned Societies, the Social Science Research Council, and the National Association of Book Publishers. The agreement is so important in its permissions given and withheld that it should be read in detail. It appeared in full in the Journal of Documentary Reproduction\(^\text{113}\) and is summarized in the Law Library Journal\(^\text{114}\). In effect, it gives some status to fair use, though on an informal basis, and prescribes certain minimum conditions to be observed by libraries.

While libraries are glad to have as much as the agreement gave them, they are dissatisfied with it, would like to broaden it, and put it on a legal basis, either by contract, or, preferably, by statute. The agreement is not a contract. Furthermore, its present status is highly tentative and problematical. The agreement, which was negotiated originally by the National Association of Book Publishers and certain professional association committees, and reaffirmed in 1939 by the successor, Book Publishers' Bureau, Inc., has, as far as records show, not been ratified by the present American Book Publishers' Council, which was formed in 1946. In order for the Council to take any position on the agreement, action by its board of directors would be essential\(^\text{115}\). Also, it should be pointed out, the importance of the agreement has been reduced by the fact that many publishers are not members of the publishers' organization, and librarians do not know which ones are.

For whatever they are worth, disclaimers are incorporated by many libraries into their photocopy order forms. In the opinion of the writer, they are ineffective as between the copyright owner and the library, though they may give the library a cause of action against the patron-signer, for any damages recovered by the owner against the library.

The policies of libraries vary greatly. One government library in
Washington which has long operated an exceedingly busy photostat department, disregards copyright in executing orders. At the other extreme is the Library of Congress whose policy has been stated in a letter: "The Library has its own Photoduplication Service. This division has on file releases obtained from certain publishers allowing the Service to make single copies for scholarly use only of articles by them which are out of print. Otherwise, the Service refuses to copy a copyrighted item." The New York State Education Department Photostat Service, as shown by its order blank, is even stricter to the point of virtually excluding copying of copyrighted material: "Material copyrighted during the past 56 years cannot be duplicated for republication without written authority of the copyright owner or conclusive evidence that the copyright has expired. Full responsibility for any infringement of copyright is assumed by the applicant."

Another strict policy has been recently adopted by the National Library of Medicine which will not honor requests from individuals as such. They must be channeled through other libraries. Photocopies sent to such libraries may be retained by the borrowing library. Whether this will appease the copyright owner remains to be seen.

Most libraries, however, are more liberal. Below is a typical disclaimer, drawn by legal counsel: "I represent that this order for a photocopy of each of the materials listed above is in lieu of a loan or manual transcription and that I require the copy solely for my private use for research purposes, I understand that I cannot legally sell or further reproduce the copy supplied without the express permission of the copyright proprietor if publication is covered by copyright. I assume the responsibility for copyright infringement arising out of this order or the use of materials requested and I will hold the [copying institution] harmless from any misuse of such material."

Note that the disclaimer does, or attempts, four things: (1) states that it is in lieu of a loan or manual transcription by the patron, to which some add that they are not selling the copy but charging for a service; (2) the reader certifies that it is solely for his private use for scholarly research; (3) that he will make no unauthorized use of it; and (4) that he assumes responsibility for copyright infringement and will hold the library harmless in any infringement action.

The first three provisions have one eye on the "gentlemen's agreement," and should be read in connection therewith but bearing in mind that the agreement is not a contract, that what constitutes compliance by the library with it is subject to judicial interpretation, that
many publishers are not parties to it, and that it may not now be in force.

It has been assumed, without legal authority, that a reader is free to make copies for his own use, but that is by no means certain. The fact that the "gentlemen's agreement" seems to acquiesce is not decisive; it dates back twenty-two years to a time when the numerous portable photocopiers which the present day reader takes into the stacks and with which he makes wholesale copies, were not available.

As a matter of interest, a case, which is not very good authority in this connection, held that copying in shorthand violates copyright.116 If the reader, in such circumstances, infringes, what of the library which permits it? There are no cases, but on general legal principles it would seem that if there were infringement, the library which knowingly permitted it would be in pari delictu with the reader. Even if the individual reader has the right to make copies for himself, it by no means follows that a library is free to do so for him, for hire.

Even though, as is usually the case, the library loses money on its photoduplication service, it is still conducting a commercial operation, and the legal situation is different than with the patron. Profit is not a factor, and substantial damages may be awarded in an infringement action without a showing of actual monetary damages.117 The library takes a risk when it unilaterally decides that the conditions are such as to permit it to copy for another and for a price.

Neither is the good faith of the library a factor, except, perhaps, in mitigation of damages. "It is not essential to the existence of infringement that there be intention to infringe or that the exhibition be for profit."118 "... For infringement lies in the act of infringing and not in the intention with which such act is done ... at most, [intent may] bear upon the question of the issuance and scope of injunctive relief."119 This would seem to render ineffective the pious statements, frequently found in disclaimers, that the library is not selling the copy but merely performing a service.

Nearly all librarians consulted by the writer believed that the patron's signed undertaking to hold the library harmless in infringement proceedings was effective, that there was some magic in it. Why? Since when under the law may A, by agreement with B, to which C is not a party and of the very existence of which he is almost always ignorant, deprive C of a valuable personal property right when no public interest is involved? Such agreements are believed by the
writer to be effective, if at all, only as between A and B, to the extent that if C recovers from A for infringement, A may then have his action for the amount thereof against B.

Perhaps the chronology of the transaction—A’s copying and sale to B, B’s use or misuse of the copy thereafter—may make this clearer.

1. The library has copied a document protected by copyright, and sold the copy to a reader, on order. The library’s act is complete at this point. There has been a copying on a commercial basis, including a transfer of possession to the reader. The reader did not make the copy; the library did, for compensation, though perhaps at a loss.

2. The right of action, if any, of the copyright owner at this stage, for the copying and sale, is against the library, not the buyer, who at law, is so far a “stranger” to the owner. The owner may have an infringement action against the library, regardless of what the purchaser later does with the copy.

3. The buyer makes some use of the copy. His agreement with the library may cover this, but can have no effect upon the right, or lack of it, of the library to make the copy in the first place. On the other hand, if the reader subsequently misuses the copy so as to constitute a new and separate act of infringement, the owner has his action against him, too, but quite independently of the original copying.

4. The copyright owner recovers in an infringement action against the library for the original copying and sale. He does not have to sue the buyer. At this point, if anywhere, the disclaimer takes effect, but not as concerns the copyright owner—who sues the guilty and solvent library, not the impecunious and judgment-proof patron. What, if anything, the library may do under this disclaimer is, in the opinion of the writer, to try to recover his losses from the patron, who by virtue of the agreement may be something of a surety for the library.

Here are some suggested safeguards for copying libraries. Since publishers ordinarily do not sue libraries for copyright infringement, the library as a practical matter is usually reasonably secure against law suits. It, nevertheless, should act in good faith and not knowingly photocopy in a manner to injure the owner. The “gentlemen’s agreement” lays down workable terms.

The policy of the Library of Congress, in building up a file of advance permissions from publishers, would seem to have much to commend it, particularly with respect to publishers not members of
the American Book Publishers Council, and so not parties to the "gentlemen's agreement." It is to be hoped that the joint committee studying the question will secure the cooperation of publishers, to the end that the copyright title of the United States Code may be amended by provisions somewhat paralleling the British fair dealing statute. In the meantime, a profitable activity might be the cooperative collection of mass permissions and establishment of a central repository and information agency for them.

The library can explore the possibility of taking out liability insurance. Although one insurance broker consulted doubted the feasibility or ethics of this, comparing it to insurance covering the contemplated commission of a crime, an official of a large insurance company told the writer it could be done and that there was no more ethical problem involved than that faced by professional men—physicians, lawyers, or engineers—in insuring against the consequences of torts committed by them in the course of their practice. Copyright infringement is not a crime.

A persuasive, expert opinion by G. H. Ort, executive vice president of the Insurance Brokers' Association of New York, Incorporated, says in part:

First, I take it, the frequency of your occasion to reproduce copyrighted material is such that you desire not to obtain permission of the copyright owner, and second, that each instance is a commercial transaction.

I believe that it would be possible to have these special characteristics appraised by an underwriter for purposes of acceptance of the risk and quotation. It would also be my opinion that a reasonable market might be found, unless the circumstances are quite different from what I envisioned them to be. Would it be correct, for example, that your purposes are not commercial, and that your charges for the service of reproducing the material which may be copyright material, are primarily for the purpose of covering the actual expense in time and mailing costs, and photostatic material used? If so, it would seem that the owner of the copyright material might be much more interested in what use was going to be put to it by the one who obtained the material from you, and whether that person obtained copyright permission.

These comments, you will recognize, which apply mostly to the library photostater are quite different.

It can be stated that at the present moment at least one large university library has been offered and is considering a policy covering
damage suits for copyright infringement by photocopying protected materials.

There is now a statute of limitations on infringement actions through an act of September 7, 1957 which provides a three year period.\textsuperscript{121} Previously, there was no federal statute covering such actions, and such suits depended upon the provisions of state statutes.

The duplication of musical phonograph records has little pertinence to this paper but in this closing section is noted briefly for the record. They are not copyrightable, though the musical compositions reproduced on them may be.\textsuperscript{122} This subject is treated at some length in the \textit{Columbia Law Review}.\textsuperscript{123, 124} There is a serious question as to whether the recording of a musical composition and the subsequent sale of records constitutes such a publication as to forfeit common law rights in the music. Logically, it should, and three lower federal court cases and one state case have so stated.\textsuperscript{125-128} One case in the Federal Court of Appeals for the Second Circuit\textsuperscript{129} has held \textit{contra}, due apparently to a misconstruction of the New York law.\textsuperscript{130, 131} Phonograph records are not covered by federal statute but by common law; thus the law of the state in which the action arises governs. Where a record has been extensively exploited, however, some courts have applied the rules of unfair competition to protect the record companies.\textsuperscript{122, 133} Until there is an authoritative holding on the question by the Supreme Court of the United States, phonograph companies as a deliberate policy have often failed to copyright recorded musical compositions before selling records, so as to avoid possible surrender of common law rights, or compulsory licensing under section 1(e) of the Copyright Law.

Many libraries maintain and circulate collections of phonograph records, including those the music of which has been copyrighted. Does the library risk copyright infringement thereby? No more so than by the circulation of a copyrighted printed book, or of an uncopyrighted document. If the borrower makes unauthorized use (as for broadcasting or for public entertainment), he may incur liability.\textsuperscript{134} By federal statute or administrative rulings thereunder, or both, it is expressly provided that certain documents should not be photocopied. Among these are naturalization and citizenship certificates, copying any part of which is penalized by fine and imprisonment;\textsuperscript{135} and passports, the reproduction of which is illegal.\textsuperscript{136} The Passport Division of the Department of State will, under proper conditions, furnish certified copies of passports but refuses to recognize copies...
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made by others. Although army discharges may be copied, adjusted compensation certificates are obligations of the United States, copying of which is a violation of the law. It is forbidden under most circumstances to copy obligations or other securities of the United States. The Treasury Department issues a circular setting forth pertinent provisions of the law. Photocopying of United States stamps is unlawful except for avowedly philatelic purposes. It is also unlawful to copy amateur radio operators' licenses although the station license (on the reverse side) may be copied.

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Construction and Maintenance

JULIUS J. MARKE

The purpose of this article is to alert librarians to their rights and obligations in the planning, construction, and maintenance of library buildings. Obviously, it is impossible in a limited number of pages to comment on the statutory situation and case law in all the states and the federal jurisdiction. The approach here is general. The need for legal advice in all these matters cannot be stressed sufficiently. Whenever possible, do not sign anything, even a letter, do not agree to anything orally without advice of counsel.

The distinction between public libraries and private libraries is important in considering the law applicable to building construction and maintenance. Building and construction contracts are governed by the general rules pertaining to the formation of contracts. The construction of a public library building, however, is considered in the nature of a public work and as such is subject to legislative regulation. Failure to comply with the requirements of a statute can be fatal.

Before deciding on the final location of a proposed library building, it should be determined whether zoning regulations or ordinances prohibit such use of real property in the area. It is possible that the zone is restricted to residential use only. Zoning regulations sometimes limit the height of a building. Variances to zoning regulations can sometimes be obtained on application to proper local authorities. Adjoining owners of real property in the area may have easements of light and air which also can affect the architectural design of the building. The possibility of such easements should be carefully investigated as should the subsurface rights of utility companies, and the presence of water pipes, sewers, and electric wires. Fire and building regulations often prescribe the location of doors and windows, which may affect the size and location of basement stacks.

Land may be taken or condemned for a public use or function

The author is Law Librarian, New York University Law School.

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by federal, state, and local governments. The courts have generally held that a public library is a public use for which the power of eminent domain may be exercised.\(^2\) The owner of land so acquired must be fairly compensated which usually means he is entitled to its fair market value.\(^3\) Acquiring land by purchase involves many legal problems which at all times should be resolved by a lawyer. Especially important is determination of ownership of land and clearance of title.

The creation of the architect-employer relationship is most important in the planning and construction phases of a building project. This relationship must be clearly defined and also understood by the parties in order to avoid difficulties thereafter. What is the role of the architect? As brought out in the case of *McGill v. Carlos*,\(^4\) it consists of two parts: "Primarily, an architect is a person who plans, sketches and presents the complete details for the erection, enlargement, or alteration of a building or other structure for the use of the contractor or builder when expert knowledge and skill are required in such preparation. The practice of architecture may also include the supervision of construction under such plans and specifications."\(^5\)

The architect’s duties under the contract must be spelled out in detail. The employer should determine whether to limit the architect to drawing up the plans and specifications only or to add on the supervision of construction as well. For guidance in this situation it is recommended that the Standard Contract forms of the American Institute of Architects be consulted. They are designed to be fair to both sides and are written so as to be understood by the layman. The A.I.A. has prepared them for agreements between owner and architect, owner and contractor, owner-architect agreement on percentage basis, and owner-architect agreement on fee-plus-cost system. These forms have been published in W. S. Parker and Faneuil Adams’ *The A.I.A. Standard Contract Forms and the Law*.\(^6\) This book is a companion volume for the Handbook of Architectural Practice published by the A.I.A.

Article I of the owner-architect contract is helpful in suggesting types of architectural services: “The Architect’s professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings, for architectural, structural, plumbing, heating, electrical, and other mechanical work; assistance in the drafting of forms
of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the Work.” The architect is answerable civilly and even criminally for failure to exercise reasonable professional skill, ability, and judgment. In Bott v. Moser, an architect failed to comply with the zoning law and was held liable in damages civilly. In State v. Ireland, the architect was indicted for manslaughter when his defective planning caused a building to collapse and resulted in the death of an occupant.

In negotiating the contract with the architect, it should be understood that the architect does not guarantee his plan is perfect or satisfactory. He is liable only for failure to use reasonable skill and care. At the most he is guaranteeing that his plans will suit the purpose of the project. The contract can stipulate, however, that the architect’s plans will be satisfactory for the purpose involved. This clause adds to the responsibility of the architect in complying with the terms of the contract.

Generally, the architect’s fee is based on the estimated or actual cost of the completed structure. Actually, the parties can agree on any terms, such as a fixed sum or a prize. The contract may call for payments at certain times or upon completion of the work. Special conditions may be inserted, provided the architect agrees. A clause often inserted involves a guarantee that the building can be constructed from the architect’s plans for no more than a specified amount. The rule of law in this situation has been aptly stated by one court: “It seems to be well settled that, where plans are required for a building not to cost more than a certain sum, or are accepted on condition that it can be erected for a given amount, there can be no recovery by the architect, unless the building can be erected for the sum named, or unless the increased cost is due to special circumstances, or to a change of plans by direction of the owner.” Another clause generally used is that the architect’s work will be satisfactory.

Provision for a possible abandonment of the project by the employer should also be made clear and a method of compensation arranged, note the comment of an Arkansas court: “Where the architect prepared plans and specifications for building pursuant to an unconditional order or direction of the owner, he is entitled to recover for his services whether or not the plans are used if they substantially comply with the employer’s instructions. So his right to compensation will not be defeated by the fact that the building for which the plans
are prepared was never constructed or by the fact that the time is not such as to render it expedient to build.” When the contract stipulates payment upon completion of portions of the work, and the project is abandoned by the owner, the architect will be paid the proportionate amount due for the work completed as the contract is considered to be severable.

Often an architect will submit plans and discuss the project with a client, without a written contract. Under these circumstances, he is entitled to receive the reasonable value of his services. When the parties enter into a “cost plus” contract, the problem arises as to what may be included in the costs. Can the architect charge for his general expenses, such as salaries, telephone service, office supplies? The answer is no. He may charge, however, for materials furnished, and the time he spent supervising the work under contract.

The contract between the owner and the contractor fixes the obligations and rights of both parties. Unless stipulated to the contrary, the contractor is responsible for the completion of the building in accordance with the contract and plans and specifications, and nothing more. The contractor’s responsibility is only to erect the structure skillfully and to use proper materials. He cannot be held accountable for any ensuing defect in the structure resulting from bad planning or insufficient specifications. It is possible for the parties to stipulate that the contractor warrants the completed structure to be free from defects, another way of protecting the owner. Of course, if the contractor is negligent or does not comply with the specifications, the courts will hold him liable to the owner for accidents ensuing from the weakened structure. This is so even after the owner has taken possession of the building.

By statute all the states and the federal government have prescribed certain conditions for the construction of public buildings. These apply not only to state buildings but also to buildings erected on behalf of its municipalities or other local governmental units. A county library or a municipal library can thus be subject to rules established by the state legislature. In New York State, for example, the construction of public buildings is controlled by the Public Buildings Law, the Public Works Law, and the State Finance Law. The state also issues a “State Architect’s Standard Construction Specifications” which contains the standard documents used in state building construction as well as the standard construction specifications. It
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outlines the qualifications of bidders, and gives information with respect to the contract, drawings, supervision, etc.

It is of interest to note the procedure followed in New York City, which is probably characteristic, with some modification, of many municipalities and local government units throughout the country. The selection of an architect or engineer is negotiated by the commissioner of public works. In the case of an architect, this selection is limited to the individuals or firms whose names appear on the Mayor's Panel that is published yearly.

After agreement is reached on the terms by the commissioner and the architect or engineer, a form of contract containing a standard agreement and specific requirements is prepared. Approval as to form is then requested of the Law Department. After securing such approval, three copies are transmitted to the Board of Estimate. The matter is then referred to the Bureau of the Budget, the reporting agency for the Board of Estimate. After due process of investigation by the latter, and if approved, a resolution is adopted approving the contract and the required funds appropriated for payment of fees. Only upon completion of these various requirements is the commissioner then authorized to issue an Advice of Award and the execution of contract.

In the case of a contract for the services of a construction contractor, the final approval, action by the Board of Estimate and award of contract is essentially the same as that pertaining to the services of an architect or engineer. The selection of the contractor is made after a process of competitive bidding.

Under the terms and conditions of the city charter, projects under an estimated cost of $2,500 may be awarded without public letting on an Open Market Order basis. In such cases the department follows the policy of notifying more than three contractors with established experience in the particular field of work that the contract covers. Sealed bids are received by the department at a specified date and time and award made to the lowest financially responsible bidder provided the experience requirements have been satisfied.

For projects over an estimated cost of $2,500, the city charter provides that where any one trade, if required in the contract, is over an estimated cost of $25,000, such contract must be separated into individual contracts, viz: general construction, plumbing, heating, and electrical.

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Public advertising is made for a minimum of ten days in the City Record. Notice is given through this publication of the location where plans and specifications may be procured, with notice of any fee for these documents, place, date, and time that the sealed bids shall be received. Bids are opened in the presence of the public wishing to attend the meeting. The final award is made to the lowest financially responsible bidder provided the experience requirements have been satisfied.

The rights of a private contractor negotiating with a public agency are governed by the law of contracts. To effectuate a contract, the following elements must be present:

1. An offer: This is made in the form of a bid by the contractor interested in obtaining the construction contract. The bid is in response to an invitation publicly advertised by the proper public authorities which also sets forth plans and specifications for the public building.

2. An acceptance: The contractor’s bid or offer is accepted by the proper public authorities awarding the contract upon the terms of the bid. Once the contractor is advised that his bid has been accepted and entered on record, a contract exists even though no formal written contract has been executed between the parties. From this point on, the contractor can recover for the reasonable value of materials he may furnish or work performed pertaining to the construction.\(^{18}\)

3. Additional statutory requirements before the contract can be negotiated: (a) funds must be appropriated for the building and so certified; (b) the plans, specifications, and estimates made by an architect must have been approved by the proper public authorities; (c) special situations have to be considered such as certification of compliance with law, e.g., whether non-resident contractors are involved, or other special provisions; and (d) contracts involving sums above a stipulated amount must be let out for competitive bidding. Competitive bidding requires a public invitation to bid upon announced plans and specifications as well as estimates.

Failure to comply with these statutory requirements will affect the validity of the contract, in that it will be held to be void and unenforceable.\(^{19}\)

In private library building construction the building and construction contracts are governed by the general rules applicable to the law of contracts. There must be an offer, acceptance of the offer, and
consideration for the promises made. Local ordinances and applicable regulations pertaining to building and construction are construed as part of the contract unless expressly indicated to the contrary in the contract. By the same token, when a building contract refers to the plans and specifications, the courts have construed the terms thereof in light of these plans and specifications. Of course, when a contract actually stipulates that the plans and specifications are a part of the contract, there is no problem.

When the owner takes possession and occupies the building constructed by the contractor, this act by itself does not constitute an acceptance of the work or a waiver of the defects in the structure. The law assumes that the building will be erected in a reasonably good and workmanlike manner and when completed be reasonably fit for the intended purpose. The owner can always obtain damages “for failure to comply fully with the terms of a contract to build a structure upon that owner’s land.”

As a rule, one cannot expect payment under a contract to perform work until he has fully performed under the contract. In building contracts, however, substantial compliance is sufficient. The courts have held that when a contractor has attempted to comply with the terms of the contract in good faith and honesty, but for some reason or other minor defects occur in the work, he is entitled to payment in accordance with the terms of the contract but subject to a deduction of the cost necessary to complete the work.

The parties may agree that the contractor will not be paid until the completed work is satisfactory to the owner. The courts have upheld such clauses, when the owner honestly is dissatisfied with the work. Of course, this could be a difficult situation and the courts have added that if the work would be satisfactory to a reasonable man, the contractor would be allowed to recover payment.

A good way to protect the owner, who is usually inexpert in building matters, is to provide in the contract that a designated architect, engineer, or expert in the field should determine the sufficiency of the work done by the contract. This is customary in contracts for public works. The courts have upheld the validity of this clause and have refused recovery of payment to the contractor until a certificate of satisfactory performance is granted by this expert.

Artisans, engaged by the contractor, and suppliers of material used in the construction work must be paid. By statute many states and the federal government require the contractor to furnish a bond to
insure such payment. Generally, the policy in all states is to require such a bond on a public works project even without statutory requirement. It is best always to arrange for such a bond when a private building is being constructed, to prevent the imposition of a mechanic's lien on the building by unpaid materialmen and workers.

In many states, too, artisans and materialmen working under the contract, are given a statutory lien on moneys due the principle contractor by the public body, for the value or agreed price of such money or material. Another method is to provide in the contract that the public body may withhold from the contractor money due under the contract until he pays outstanding debts to these people.

As in all other types of contracts, the parties can expressly indicate the amount to be paid the contractor. When a specific sum is not agreed upon, the owner is liable in quasi contract for the reasonable value of the services performed. When services are rendered, and accepted, which are not specified in the contract, the owner is liable for the reasonable value thereof.

In negotiating a contract with a builder, the librarian should note that he is bound by the terms of the contract. What he fails to stipulate therein, will be subject to certain definite rules of law. This problem usually arises when it is necessary for the contractor to do extra work or supply additional materials not called for in the contract.

A building and construction contract can stipulate that any alteration of the plans or specifications involving extra work would not be allowed unless expressly authorized in writing by the owner or his representative. Unless the owner thereafter waives, modifies, or abrogates his rights under this clause, failure to obtain an authorization in writing for extra work will deny recovery for such work. It is important to note that such authorization can be accomplished by the librarian merely marking "O.K." or "Approved" on a letter asking approval for extra work. The effect of this clause can also be waived by the owner permitting a method of dealing whereby he ignores the stipulation. This happens when he learns of the extra work and doesn't object and therefore implies acceptance of it, or he orally agrees from time to time, to changes throughout the work which are then performed.

Although the contract may give the owner the right to make changes in the plans and specifications, if the changes are material, the contractor will be allowed recovery for extra work involved therein. As stated in Salt Lake City v. Smith, "Material quantities of
work required by such alteration, that are substantially variant in character and cost from that contemplated by the parties when they made their agreement, constitute new and different work, not governed by the agreement, for which the contractors may recover its reasonable value.” 

In *Westcott v. State*, greater length of steel piles was requested by state engineers than originally contracted for. The contractor was permitted recovery for the increased cost of the work resulting therefrom. “Provisions in contracts made by municipalities and others, calling for a definite quality and quantity of construction, and permitting changes by way of reduction and increase, have received judicial interpretation, so that their meaning is now well understood.”

There are other points of interest to librarians that are worth mentioning. To the question, is the owner of a building being constructed liable for the negligent acts of his independent contractor or architect? The answer is generally “no.” In *People v. Gaydica* the court said “An owner, subletting the entire work to independent contractors is not liable for the negligence of any of the latter, but is answerable only for his personal affirmative negligence while actually participating in the work; and this rule applies also to a contractor subcontracting his work. It is a well-recognized fact that building operations can be conducted safely and that they are not inherently dangerous.”

There are many indefinite terms used in contracts and legal papers. Among them are “about,” “more or less,” and “approximate.” A good guide to these and their meaning is given in *Muir Bros. Co. v. Sawyer Const. Co.*, where the plaintiff told the defendant that the extra work would cost “approximately $900 to $1,000.” The bill turned out to be for $1,759.38. Denying plaintiff’s claim, the court said: “Expressions such as ‘about,’ ‘more or less,’ and ‘approximately’ in qualifying quantity, price, and the like, are often used in contracts and they have generally been held to mean a reasonable approximation to quantity or price specified.”

Finally, a word about what affects the validity of a contract. Fraud, mistake of facts, and collusion among the bidders permits the aggrieved party to obtain rescission of the contract.

**References**


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29. Maney v. Oklahoma City, 150 Okla. 77, 300 Pac. 642 (1931).
30. 66 A.L.R. 649.
33. Drainage District No. 1 of Lincoln County, Neb. v. Rude, 21 F. 2d 257, 261 (1927).
36. Ibid., p. 162.
Within the framework of governmental responsibility to provide for education in its broadest sense, state laws make provision for the authorization and maintenance of free public libraries.

The legal structures of the state library organizations are similar in pattern, in that they provide, under a general law for free public libraries, and then, one or more groups of provisions to cover types of libraries, such as the county free libraries, unincorporated towns' libraries; or the classification of libraries by cities of various sizes; or enabling legislation to make public existing other free (association) libraries; and, under some form of home rule, to enable a municipality to provide for a separate library corporation. The statutes provide for the appointment of a library board or directors or trustees, vest the control of the library in the board, and define the powers and duties of the governing body. The statutes also usually contain specific provisions to the effect that the library board may accept grants, gifts, devises, and donations of both real and personal property; require the preparation of an annual report; the maintenance of specified records; and a section enabling the library to enter into contractual arrangements to provide library service. In some of the state statutes, the preparation of a budget is specified, and most statutes provide for the deposit of library funds with a city treasurer or in a government depositary. The library fund is thus constituted a part of the public monies and entitled to the protection accorded to public funds, including the repayment of funds deposited in insolvent banks from a state sinking fund.¹

The similarity of the powers and duties granted to the governing boards of libraries, should not foreclose the careful examination of the statutes granting the power. Most statutes provide for the grant of power in such abstract terms that the concrete limits of the power

¹ Mr. Fiordalisi is Professor of Law and Law Librarian, Rutgers School of Law.
are not easy to find. Even the more autonomous forms of public library administration, the trustees or directors of corporate free public libraries, are in important respects, subject to governmental control and considered as governmental subdivisions.\(^2\)\(^3\) When, however, the trustees are acting within the object and spirit of the governmental function, despite the fact that the board is incorporated as a body politic, it will be bound by general statutes which would otherwise govern the type of government unit.\(^4\)

It is clear that the maintenance of a free public library is for a public purpose,\(^5\)\(^6\) and that a municipality may appropriate funds for the support of a public library.\(^7\)\(^8\) A statute vesting the taxing powers in an appointed library board would probably be invalid because the taxing power may not be extended to any body not directly representing the people.\(^9\)

The state, in the exercise of the taxing power, usually places limitations on the revenue sources which may be allocated to support library functions. In general, the basis of support is found in the general property tax levied upon the assessed valuation of the real and personal property in the jurisdiction. The determination, levying, and collection of taxes, authorized by the state statutes, are controlled by agencies of the government other than the library board. Not only is there great diversity in state statutes, with respect to fixing standards for determining the taxable value of property, but the taxable value is variously described as the "true cash value," "fair cash value," "fair market value," "fair value," "true value," "actual value," or some similar term. Some statutes prescribe a different basis for determining the taxable value of realty from that of personalty. "For example, the Montana property tax statute requires that realty be assessed at 30% of its 'true and full value,' but prescribe that tangible personalty shall be assessed at percentages ranging from 7% to 40%, according to the kind of property being assessed."\(^10\)

Although most of the states require that property be assessed at its full value the assessors habitually value property at a fraction of true value. "The percentage or 'assessment ratio' may vary all the way from 2% to 100% of full value, depending upon the nature of the property and local practice." Even in the few states having statutory provisions that property be valued at a specific fraction of its true value, the assessors commonly value property at lower percentages than those specified in the statutes.\(^11\) Where library support is well
over the minimum rate set forth in the statute, the value-assessment-rate problem is of little significance.

The mill tax still forms the primary basis for the support of the public library function. The rate is set forth in the state law, i.e., Arkansas provides for a maximum of one-half mill, most states provide a maximum of one to three mills. A few states such as Minnesota and Tennessee set forth a maximum of five mills or over. Where the basis for library support is either depressed to the minimum rate or, as is more frequently the situation, the statutory rate acts as a ceiling on the revenue and support, the fact that the public revenue constitutes 87% to 91% of the total library income,\textsuperscript{12,13} effectively precludes any prospect for increasing library revenues, unless the rate is increased or the value-assessment-rate problem is re-examined. Such re-examination may lead to such changes as in New Jersey where the Supreme Court, in dealing with a property owner's action in lieu of mandamus to compel assessment of all realty in the township at full and fair value and to compel equalization of all assessments in the county at such value, as required by the statute, ordered the assessment of township land at full and fair value. This order was modified so that it would not apply to the ensuing two years, in order to afford the opportunity to both the state and the township time to carry out the project.\textsuperscript{14,15} Several states, Wisconsin, West Virginia, and Virginia, have severed the tie from a fixed maximum or, as in New Jersey, provide for a minimum mill tax and permit additional appropriations as deemed necessary.

Over twenty states, in order to make more effective library service available, make provision for state grants in aid.\textsuperscript{16} These were small money grants of $50 to $100 per library.\textsuperscript{17} The amounts are set out in many of the state statutes, as for example Connecticut indicates a maximum of $500, and Delaware has limits of $300 to $1,000. The recorded trend and the proposed plans would seem to indicate that the state grants-in-aid will become a very substantial factor in the base for library support. Charles Armstrong points out that, in the five-year period from 1939 to 1944–45, state library aid increased from .5 to 1.5% and that in 1948 they had increased to 2.25% of total library income.\textsuperscript{18,19}

New York put its new program into operation in 1950. It called for a first year state appropriation of $1,000,000 to county library systems. A maximum of $3,653,000 could be distributed on a county or multi-
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county basis. The sum is approximately 35% of the total provided by local taxation for public libraries in New York State in 1949, the year before the new law went into effect.20 The Massachusetts House of Representatives Document No. 2763 in 1956 recommended a grants-in-aid program with an estimated forecast of $1,500,000 in its first year of operation—increasing to $2,650,000 in its fourth year of operation. The maximum grants for which libraries might qualify under the proposed formula would range from $1,500 in towns of less than 5,000 to $241,500 for the Boston Public Library.21

The enabling legislation for state grants-in-aid is set forth in the state statutes and the distribution controlled by state agencies. New sources of revenue are constantly needed by both state and municipal authorities. Cigarette taxes, sales taxes, payroll taxes, automobile-use taxes, state income taxes, and in some cases, escheat of property, have increased the total revenues of the governmental units. It is, however, unlikely that any particular tax would be dedicated to the public library function. The major sources of revenue are well established, and some minor sources of revenue have become part of the established pattern of library support.

The state statutes enable the public library to enter into contractual arrangements with school boards and other units for contract services. Most of these provisions enable the public library to serve two or more communities and utilize the tax levies, or parts of them, for the support of a single library. Fines and fees provide substantial sums but seldom more than 6 to 7% of the total public library budget. For example, the revenue from fines in 1938–39 for the Los Angeles City Library is reported at $99,343; for Chicago, in 1938, $63,889, but they do not exceed 7% of the total expenditures of those libraries.22 In E. A. Wight’s Public Library Finance and Accounting, it is noted that sixty-three of the ninety-three reporting libraries collected fines and fees; for twenty-one of the sixty-three the yield constituted more than 5% of the revenue, but in no case did it amount to over 10% of the total library revenue. Of the number reporting, nine returned the fines, fees, memberships, etc., to the municipal treasury.23 Some state statutes provide for the reversion of these funds to the public treasury.24 Other states make provision for crediting the funds back to the library, to be used by the institution in addition to the proceeds of the tax levy.25

The fine as a mechanism for controlling materials should be distinguished from the fine or fee for circulating popular materials or rental

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collections. The fine is usually within the grant of operating power. The fee for circulating materials, or a subterfuge fine, raises a question that must be explored carefully. Provision is made for the maintenance of a rental collection in the statutes of Florida, Mississippi, and Washington.26-28 Most state statutes do not contain a specific authorization. On the contrary, they usually provide that the library shall remain free, and the access, thereto, shall remain free to the public.29 While Gregory's Bookstore v. The Providence Public Library30 lends some support to the inclusion of the right to maintain a rental collection in the general operating powers, the authority prohibiting the maintenance of a rental collection is strong enough to warrant a careful exploration of the problem by any library.31,32

Under extremely unusual circumstances, a library may see fit to utilize the immunity provisions in lottery laws33,34 or the authorization in "bingo" legislation,35 but the moral position of the library in the community effectively precludes this source of revenue from being considered.

The Library Services Act36 has as its declared policy the promotion of public library services to rural areas. Payments by the federal government to states will not be made unless a state plan is submitted. The federal government may appropriate, for the fiscal year ending June 30, 1957, and for each of the four succeeding fiscal years, the sum of $7,500,000 (the actual appropriation for the fiscal year 1957-58 was $5,000,000) for payments to the individual states which have submitted plans and have had the same approved by the commissioner of education. The amount authorized by the Library Services Act for each state is equal to $40,000 plus an additional amount calculated on the ratio the rural population of the state bears to the national rural population.

The Library Services Act also prescribes the method for determining the amount which the state must raise to match the federal figure. The state's matching fund is determined by its per capita income as compared with national per capita income. However, the state may include in its matching fund, monies expended for library extension purposes, expenditures of local libraries in communities of 10,000 population or less and money spent for rural library extension by libraries in larger municipalities, if these expenditures and activities are under the guidance of the state library agency.37-40

Other activities of public libraries which might become sources for public library income, such as industrial or business information
centers, can be characterized as special services and not the "usual" or "general" free public library services. This is legally possible in those states whose statutes insert into the concept of free public services, the limitations of "general" or "usual" thereby excluding special services from the "free" class.

Other incidental sources of revenue, none significant in terms of the whole library operation, such as the sale of surplus items, the sale of publications, waste, duplicates and discards, are related to the primary functions and well within the scope of the grant of operating power of the governing body. As long as the provisions of the state law, generally applicable to state institutions, are complied with, these should present no problems of legal consequence. In a similar fashion, the ability to loan funds and retain the investment income, which may be expressly authorized by a state statute, is normally one of the functions of a trustee in control of gifts, donations, and bequests.

Investment income from public funds will never amount to a substantial portion of the total funds available, and would, of course, be tax exempt. The income derived from property, or the income from gifts, donations, and bequests, is also exempt from taxation. If, however, the source of income is unrelated to the primary function, section 511 of the 1954 Internal Revenue Code may impose a tax on the unrelated business income. This tax is specifically made applicable to colleges or universities which are agencies or instrumentalities of any government or any political sub-division thereof.

A constitutional question might arise if substantial income were derived by the public library from unrelated business in its status as a municipal board or quasi-municipal body. If, however, the income is derived in the independent trust capacity, whether charitable or otherwise, the tax might very well be imposed under section 511(b)(2). In any event, the problem would arise in connection with the unrelated business income. In the Town of Fairhaven, Mass. v. United States, the exclusion of dividends (under § 116 of the 1939 I.R.C.) was denied to a water company, despite the fact that the town library owned all of the water company's stock. The rationale of the decision was that the town, as a municipal corporation, was not the legal or equitable owner of the library, because the library was given in trust to the inhabitants of the town and not to the town as a municipal corporation. This despite the fact that dividends paid to the library relieved the municipality of its general obligation to furnish an adequate library from public revenues.
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Apart from the federal tax questions, it is clear that a municipal corporation may accept and administer a trust for public library purposes. When it does so, the trustees act in a dual capacity, and the gift or donation may, if the gift or donation so specifies, be controlled by the individual trustees and not the municipality; the board, acting in a trust capacity, fulfilling the public purpose, may not disregard the rules relevant to public charities, where they are dealing with conditional donations. It is also clear that bequests for public libraries create a charitable trust. The courts, in construing these instruments, favor the creation of the library, rather than a reversion, even though time has lapsed, or acceptance has not been communicated, and under the "Cy-Pres" doctrine convert funds from other charitable purposes, impossible to execute, to library purposes.

The enrichment by a trustee, in dealing with the assets of his trust, is condemned by precedent too numerous to mention. The trustee stands in a fiduciary relationship. If he acts beyond his authority, he may become personally liable for losses. If he is timorous, material damage may be done to his charge.

The verbalized concern over conflict of interest, to the point of prohibiting conflicting interests by statute, as well as the many safeguards in the statutes, are helpful in the clearly prohibited areas, but not of too much help in the gray areas. In any event, the legal status and the problems of the trustees of a public library are confusing. Lay trustees and librarians should avoid unnecessary legal hazards. Counsel, either on the library board or of the public body, should be consulted whenever a situation requiring the application of law to reach a solution arises.

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BETTY VIRGINIA LEBUS

A library board faces a number of interesting but frustrating problems as it develops the public service program of the library to serve the needs of the community and as it engages in public relations programs directed toward improved library service. This paper will explore some of the legal bases for the operation of public service and public relations programs. A study of the statutes and cases shows that, in general, legislatures have granted wide authority to the library board to conduct the affairs of the library, but have not undertaken to define powers specifically. Rarely have courts been called upon to interpret the powers of the library board. Thus a library board finds itself in a position where it must act and hope that should its actions be challenged subsequently the courts would agree with the board’s interpretation of its powers and duties.

As the library board plans the public service program of the library it must determine who can use the library and what regulations are needed to make the materials of the library available to all on an equal basis. If auditorium or other meeting space is available the board must plan for its use also. Library boards have been vested with certain powers to perform these acts.

Many state legislatures have followed the early pattern of the Illinois Library Law of 1872 which gave the board of directors power:

1. to “make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library and reading room as may be expedient,”

2. to “exclude from the use of said library and reading-room any and all persons who shall willfully violate such rules,”

3. to exercise exclusive control “of the supervision, care and custody of the grounds, rooms or buildings” set apart for the library.

This act also declared that “Every library and reading-room, established under this act, shall be forever free to the use of the inhabitants...”

The author is Law Librarian, Indiana University.

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of the city where located, always subject to such reasonable rules and regulations as the library board may adopt, in order to render the use of said library and reading-room of the greatest benefit to the greatest number. . . .” In addition the board was given specific power to “extend the privileges and use of such library and reading-room to persons residing outside of such city in this state, upon such terms and conditions as said board may from time to time by its regulations prescribe.”

Although this language has not been interpreted by the Illinois courts with respect to the day-to-day operation of the library, it seems reasonably clear that a library board operating under such language has sufficient power to regulate the use of the collection and of the library building itself by deciding who may borrow library materials, requiring borrowers to register, fixing the library hours, making restrictions and conditions on loans, setting fine schedules, limiting access to certain portions of the collection, inspecting briefcases, exercising general disciplinary powers to keep order, etc.

In reality, as the library board undertakes the formulation of general policy on any of these matters it encounters difficulties immediately. For example, “Who may use the library?” seems a fairly simple question at first, but on closer examination many conflicts between theory and practice are revealed. Generally, library boards and personnel are persons dedicated to the premise that library service ought to be available to anyone who desires it and undoubtedly in many cases service is given without regard to the status of the patron. Certainly this is true of reference service even though it may not be true of circulation of library materials. In practice, however, the board is restricted by such provisions as found in the Illinois statute that the library “shall be forever free to the use of the inhabitants of the city where located.”

The use of the term “inhabitant” has been common in many states though the political unit involved may vary and other statutes use a different classification. The Delaware statute, for example, refers to “the district” or “any person outside the district who owns real estate assessable . . . .” and the new Library Services Act requires that library service be made available free of charge to all residents of a community, district, county, or region. Do these terms refer to one who actually resides, votes, owns property, works or is a student within the political unit and what is the effect of such language on
the practice of racial segregation? The cases give little assistance in the interpretation of these words.

What issues face a library board as it undertakes to "extend the privileges and use of such library and reading-room to persons residing outside of such city in this state, upon such terms and conditions as said board may from time to time by its regulations prescribe"? Under this language it seems clear the board would have power to extend library service and it may charge a fee for such service. Under some other statutes the board may be required to make such a charge. However, when considering the extension of library service to others than the "inhabitants" boards must be aware that they may encounter opposition from local taxpayers and also should bear in mind that such extension may stifle efforts to secure organized library service in the unserved areas.

There are still other facets of this same "who can use" question. Today, the increased use of interlibrary loans as a method of supplementing local book collections, and the demand for such things as multiple copies of current fiction, films, records, and projection equipment which can be financed only if the library can charge a fee for the use of these items present familiar problems. Yet both of these might raise the "forever free to the inhabitants" issue as pointed out in the previous chapter on financial support.

Interlibrary loans have been recognized specifically in some recent statutes. The Colorado statute expressly permits "exchanges of books and other materials with any other library, either permanently or temporarily," and the Oregon statute permits exchanges of books to other libraries in Oregon. Although many libraries charge rental fees for some books, films, records, equipment, etc., the Indiana Library Law of 1947 which provides that "residents . . . shall have the use of the facilities of such library without charge . . . except that the library board may fix, establish and collect fees and rental charges," is the only specific statutory authority found for the collection of such rental fees.

The enforcement of the library's rules and regulations involves another area where the board is given general power to act but is given little practical guidance in meeting specific fact situations as they arise. Legislatures have frequently made sanctions available to the library board for the enforcement of its rules and regulations. Statutes commonly make malicious cutting, tearing, defacing, breaking, or injuring books a misdemeanor. In some states willfully de-
taining books beyond the loan period is a misdemeanor.9 Other statutes give the county or municipality power to pass ordinances dealing with these problems.10 As a purely practical matter, however, these sanctions are not used except in the case of the perpetual delinquent or where rare or valuable material is involved because court costs are too high and the potential loss of good will is too great.

Most states have given the library board specific power to exclude persons who willfully violate the rules from the library. This provision gives the board a general sanction for the enforcement of its regulations and may be invoked to control noise, loitering, etc. It may be that this power would permit forcible eviction, but reliance on more subtle measures and the local police authorities might be preferred.

When the library board undertakes to formulate a policy for the use of its auditorium or other meeting rooms by various groups within the community, it is presented with some serious questions involving community good-will. Statutes such as the Illinois act grant the library board specific power to exercise exclusive control “of the supervision, care and custody of the grounds, rooms, or buildings” set apart for the library. This language is simple to read but difficult to administer when the question of use of library rooms by outside groups is raised. The Minnesota attorney general, in construing similar language found in the Minnesota statutes, has said: “Exclusive control of the rooms and building contemplates a determination by the board as to what use shall be made of such rooms. Its action must be reasonable, not arbitrary. If in conformity with such standards, the board may say who may use the room and when it may be used and who may not use the room.”11 The Library Bill of Rights adopted by the American Library Association in 1948, states: “As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members.”

Although the language of the statute and of the opinion seem quite clear on first reading, and the statement of policy is excellent, none are of much assistance to the board in the resolution of the practical problems still left in their hands. Certainly as a point of departure, the use made by outside groups cannot be such as would interfere with the primary purposes of the building. But beyond this point, there is little to guide the library board. What are “socially useful
and cultural activities"? Should religious groups, purely social groups, political parties, etc., be permitted to use the rooms? Occasionally? For regular meetings? The Minnesota attorney general refers to a reasonable not arbitrary standard, but suggests no criteria. "Non-controversial" might be used as a standard, but what is "non-controversial" and wouldn't such a judgment involve censorship of what the community should hear or do? Should a charge be made and if so, how much? Should it not, at least, cover the out-of-pocket expenses involved to the library?

Up to this point the problems relating to the provision of library service, as well as the necessary restrictions on use of library materials and meeting rooms were discussed. The second part of this paper will treat the query: "What are the legal bases for the active public relations programs which have become so much a part of library activity today?" At least in the library world the concept of the public library as an "institution of education for democratic living" has developed. The recognition of the library's role in the community, the stimulation of library use by members of the community and the development of active support for the library program have become important objectives of professional associations and recognized functions of library boards and personnel. Library boards and library administrators have found themselves in the position of competing with parks, the recreational programs of the community and, in some instances, with the schools for support. In carrying out the public relations programs, librarians have issued quantities of publicity in all forms, have appeared at public meetings, on television and on radio, and have prepared book displays at fairs, in store windows, as well as in the library itself. Board members and librarians have participated actively in support of legislation proposed by professional associations. All of these activities have been carried on zealously when a change in the tax levy is contemplated or a bond issue is proposed.

It is interesting that in the maze of writing on these subjects, the library and the legal literature fail to provide any discussion of the over-all legal bases for such activities, nor do they provide any consideration of the possible restrictions on the political activities of library personnel. Certainly it must be recognized that library board members and library personnel have the same right, in fact duty, as any citizen to partake in these activities. Members of professional organizations have a greater duty in this respect.

This still leaves a series of difficult questions. Can tax funds, or
space, time, supplies or equipment purchased by tax funds be utilized to conduct a public relations program? Can tax funds be used to employ a public relations director as a member of the library staff? Can such funds be used to lobby for legislation? Can they be used to stimulate support for a bond issue or an increase in the tax rate? No exact answer has been found to any of these queries. It is doubly important, therefore, that library boards be aware that they may face these issues squarely. It may be that legislation is necessary to clarify the board's powers in these areas, or it may be that the courts would find these powers to be included within the general powers of the board.

It is well recognized that political units, such as libraries, have only those powers expressly granted to them or necessarily implied or incident to the express powers granted. An examination of the library laws of many states failed to reveal any express grant of authority to conduct a public relations program. The remaining question is then whether this power can be implied from those powers which are granted to the library board.

The heart of this question is whether the use of tax funds for a public relations program runs counter to the concept inherent in American democracy that public funds may be used only for public purposes since to do otherwise would be to take property without due process of law. This term "public purpose" has been construed by the courts in some cases involving advertising expenditures by governmental bodies. Although there is some conflict of authority on this point, in the cases where the expenditure has been upheld, the advertising was usually the chamber of commerce variety and in some instances the statute granted power to spend funds to stimulate industrial development. It must also be pointed out that where upheld these expenditures were made by elected officials whereas library board members are usually appointed. In one New Jersey case the court held that a "municipality may lawfully publicize, at public expense, what its governing body conceives to be sound reasons, relating to the essential local welfare, for the rejection by the people of the State of proposed amendments to the Constitution." In discussing this case, the Harvard Law Review pointed out that this case was the first in which the court made the leap from sanctioning advertisements of a chamber of commerce type to approving advertising expense in a campaign to influence the electorate.

In determining to what extent a public relations program can be
treated as falling within the general powers of the library board, it is important, first, to examine the nature of such a program. Commonly, public relations programs are directed at three goals: (1) To inform the community of the library resources available and to stimulate use by members of the community; (2) To gain support for proposed legislation; and (3) To gain support for tax levies or bond issues. It can be agreed that library boards have an obligation to make the materials of the library available for use. In some sense all of these activities may be regarded as part of this process and therefore, such expenditures fall within the scope of the board’s power. Also it has been stated that “one obligation resting upon every public institution in a democracy is that of standing ready at all times to render an account of itself to the people and to show cause why they should continue to support it.” This reasoning may support a public relations program. However, one does encounter an ethical if not legal question in using tax funds to raise taxes. L. M. Nourse, in describing the energetic campaign conducted to raise funds for the St. Louis Public Library, recognized this question when he stated it was considered inadvisable to use public tax funds for this purpose but that fortunately special funds from gifts were available.

In studying the propriety of undertaking a public relations program, library boards should bear in mind that time paid for by tax funds as well as the more direct expenditure of the tax dollar is involved. Since they are unsalaried, it may be in this area that the board member can make his greatest contribution to the library’s program and to the cause of library service for all without encountering the question of misuse of tax funds. Library personnel face a vague distinction between the proper and improper use of staff time.

In summary, many questions relating to the legal issues involved in the administration of the public service and public relations programs by library boards have been raised in this paper. Few answers have been found; some solutions have been suggested. Specifically it can be said only that the language of the statutes granting powers to library boards to conduct the affairs of the library is general. As library service has developed, library boards have been confronted with problems and have resolved them within those general powers as the necessities of the situation demanded. Although more specific direction might be desirable in some cases, the limitations coincident with the more specific language would present additional difficulties.
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References

The obvious reason for inclusion of a miscellany chapter in any collection of writings is to offer there a number of topics not treated elsewhere. The writer finds no rule governing the magnitude of the topics that may be classed as "miscellany" and has, therefore, used only the test of whether a topic considered for miscellany has been included elsewhere in this issue. The legal problems involved in the regional library movement meets this inclusion test as do two perennial problems of library administration—those concerned with the library practice of checking brief cases and books of out-going patrons, and those concerned with library responsibility for safe maintenance of the library premises.

For many years librarians have dreamed of providing library service on a regional basis. Now these dreams are materializing in the form of permissive legislation for library units that make library service to regions possible. In some parts of the country, these permissive laws have been acted upon and various patterns of regional library service are in operation. No attempt will be made to describe these patterns in this brief chapter. The two references cited discuss both the patterns now possible under existing state legislation and the larger units for library service to regions that are still to be realized. For the most part, the reader must be left to these works for information on the forms library regionalism may assume. This miscellany chapter is concerned solely with possible legal problems that may arise through the establishment of new units of government or the combination of already existing ones in the quest for extended library service.

The units of government which are seen as presenting legal problems are the library district and certain forms of multi-government combinations for offering library service. For the present, the multi-government units are limited to a combination of counties, parts of counties and municipalities, but if the present trend to library region-

Miss Coonan is Law Librarian and Assistant Professor of Law, University of Maryland School of Law.

alism continues the proposed multi-state units may become a reality.

Let us consider first the library district. For discussion purposes it is composed of the ingredients the library planners envision—several counties, parts of counties, a number of small towns, and a large municipality. All these are located in a single state. Such a district will be, under law, a distinct governmental unit, separate from the county and municipal government units whose residents it provides with library service. It will in no way be coordinated with or responsible to them.

This unit of government, set up for the sole purpose of giving library service, may provide this service by making use of existing libraries within its sphere. Some of these may become branches or stations of the new district library and one of them may be its headquarters of operation. The personnel in these old, or any new library branches, must obviously become employees of the new government. Overnight, those who once were employees of X county and Y municipality will change their government employer. The buildings which housed these employees in carrying on their library operations should probably also be subject to control of the new district.

Considering the buildings first, are there any possible legal complications to their conveyance to the new district? In the case of a municipal library, it may well be that the site for it was secured by gift to the municipality. The terms of this gift will determine whether this site is property which the city can convey to another unit of government, even though the donor's purpose in giving it was that the people living in his area might have library service. Courts are zealous in preventing any interference with a donor's intentions for use and disposal of his gift, and heirs are equally zealous in claiming their right to reversion of property when terms of their ancestor concerning it are not complied with. It may require the decision of a court to convey a municipal library building to the district government and courts in various states differ as to their powers to mitigate hardships and even miscarriage of the donor's intent when certain legal phrases are used in conveyances of land.

Now turning to the employees, let us consider some of the legal problems their change of employer may create. In this modern day, a large proportion of municipal and county government employees are civil service employees under the system of the government which employs them. They are frequently members of a retirement system which, particularly in case of the municipalities, may be a
highly beneficial one and one which has not been integrated with the federal social security system. When employees under such systems are transferred to a library district what happens to their vested rights in the retirement system of the government unit by which they were formerly employed? Can they be divested of these involuntarily? How will it be made possible for those who have completed disability requirements under retirement systems to retain them? What will happen in regard to their years of service under their former governmental employer? Are those library employees who come within the definition of extra-hazardous employment still protected under the provisions of the State Workmen's Compensation Law if the new library district is not enumerated among the government units affected?

The liability of this new form of governmental unit may differ from the liabilities of other forms of government. Eugene McQuillin in his work on municipal corporations comments on the distinction between tort liability of municipalities and these district type governments, stating that the general rule is that they are not liable for torts unless made so by statute. There are decisions, however, which extend the district government's immunity even to the situations in which a statute does exist. A Minnesota school district was given immunity from negligent operation of the district school bus even though the bus carried liability insurance as authorized by statute.

In view of the automotive activities of a regional organization, such views and decisions may be of special interest and pertinence.

The multi-county unit for library service is established by vote of the residents of the combined counties. This vote creates no union of the county governments. They continue to go their separate ways except in so far as library service is concerned. The unit is governed by a single library board with representatives from all counties concerned or by separate county boards. In this discussion the multi-county unit is envisioned as being a combination of counties all within one state. This avoids many complicated problems of inter-state complexity.

Since these counties are joined only for purposes of library service and their government units remain distinct and intact, who is the employer of the once county employee? Presumably, the multiple county library board or boards. There are a number of counties which have civil service laws and in such counties library employees would be covered by them. When counties are joined for this library service project, are their library employees detached from county civil service
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systems, and if so, what are the civil service law procedures for such detachment? Is the county library agency in which the multi-county employees were formerly employed terminated? If so, in what manner? And what are the remedies, if any are desired, for the former county library employee?

Concerning the buildings used in this multi-county operation, does their ownership remain with the individual county? If they do remain the property of each county, what about the tort liability for accidents taking place on these county premises? Who may the injured party sue and who will pay his damages, if such be allowed? Will it be the county government which owns the library building or the multi-county unit for whose benefit the building is operated?

What are the powers of the government units that are within the area of this multi-county library region over the library organization? If the library organization wishes to construct a building within the jurisdiction of a municipality inside its borders, must this building conform to the building, plumbing, and zoning laws of the municipality? What of other laws of the municipality, such as a Fair Employment Practice Act? Must the library unit comply with its provisions?

Up to this point, the multi-state library unit has been avoided and the library district has been confined within a single state but library planners anticipate multi-state library units and library districts that will cross state borders. The legal complications inherent in such organizations seem numerous. Who is the employer in such a giant Unit? If it is the Unit, how will its laws be determined? What insurance law will apply when insurance companies deal with it? There are no federal laws as to insurance contracts. The state insurance laws control and these are widely different. Some states forbid contractual limitations on the time within which suit can be brought to less than two years. In other states insurance laws have no such protective limitation. In the multi-state Unit how will it be decided which of several state insurance laws will prevail? Who has the power to arrive at such an inter-state matter?

What happens when two state workmen’s compensation laws are applicable to a situation? This could easily happen in the multi-state unit. An employee of the unit could be taken into service for the unit at its headquarters in Georgia and could be working at a Tennessee library, that was part of the unit. If injured while at that library, there are court rulings that hold he could claim and recover benefits under
the workmen's compensation laws of both states, Georgia where he entered into employment and Tennessee where he was working when injured. This some courts say is no more incongruous than collecting under two insurance policies. A like minded court could cause heavy damages to a multi-state agency. As workmen's compensation laws list the driving of all sorts of cars, trucks, etc. as extra-hazardous employment and include all those who are helpers in the project as entitled to coverage, the administrators in multi-state units are likely to have a lengthy list of employees who are eligible for double workmen's compensation.

While we were given a choice of only two state laws above, we can find a wider choice of state laws which may apply in the case of tort law. Suppose for a moment that a library district is composed of parts of Maryland, Virginia, and the District of Columbia. The driver of a pickup truck of the unit starts out from its Maryland headquarters with bad brakes at the time of his departure. As he drives through the District of Columbia en route to the Library of Congress for some books, his brakes fail and a pedestrian is injured. The pedestrian is taken to his home in Alexandria, Virginia, where he dies. Under conflict of laws and rules applicable in tort cases, the court might apply the law of Maryland as the place where the cause of the accident occurred (bad brakes); the law of the District of Columbia where the accident occurred; or the law of Virginia where the cause took effect (death). Maryland and Virginia have different rules as to tort liability and the District of Columbia is governed by Congress and would possibly be under the federal rule which has abolished government immunity from tort liability by statute.

Having rattled the skeleton of that legal bug-a-boo, conflict of laws, it is a pleasure to turn to the living frame of the library attendant who performs the duty of checking the brief case or armload of books of the exiting library patron. Regretfully, it must be concluded that he too can create legal problems.

This writer has not been able to find a case involving the book checking activities of a public library. However, a leading case involving the checker in an A & P store may have bearing on the library checking practice. The A & P store in question was a self-service establishment. A lady with a shopping bag attempted to pass its checking counter without submitting her shopping bag for inspection. The checker insisted that she halt. The momentary enforced detention required for the checking process resulted in her recovery
in court in an action for false imprisonment, despite the store’s plea that checking procedures are necessary and justifiable in conduct of a self-service business. The court refused to consider business necessity a justification for amending legal rules protecting individuals from wrongful detention, although its opinion indicated the store’s checking process was unobjectionable so long as the customer submitted to it voluntarily. (It is noteworthy that some courts have held contra to this case, permitting the storekeeper to detain a suspected thief for a brief interval in order to investigate. In Collyer v. S. H. Kress & Co. the court so held. This California case, like most cases read, deals with shoplifting and the store’s checking procedures were not involved.)

Is there anything in the nature of the library that would give its checker privileges the grocery checker was denied? The library is a public institution. Its collection belongs to the public. Its activity is one of lending books, not selling them.

A statement by a well known modern writer and teacher of the law of torts may produce the justification for the library checker. It will, in any event, be a point of departure for other problems that may develop through the book checker. The statement appears in a discussion on “Defenses to Intentional Interference with Persons or Property” as follows: “‘Privilege’ is the term used to indicate that conduct which, under ordinary circumstances, would subject the actor [person] to liability, does not result in liability in the particular case.”

The author explains that the reason for granting the “privilege” to do what others cannot do may be that the public interest requires it and he goes on to warn that “privilege” is limited to conduct to which the other party “consents.” Examples given include a patient who consents to have a baby tooth root pulled and whose dentist pulls a sound tooth. The dentist is held liable.

With the A & P Company statements and this tort authority as a background, let us raise some questions as to the checker: (1) May the checker insist on the “privilege” of checking the patron’s books if the patron refuses to surrender them for checking? (2) If the checker halts the patron against his will because he suspects theft of some of the books he is carrying, is the checker committing a false imprisonment? (3) If the patron does surrender the books, to what sort of action concerning them has he consented by act of turning them over?

The decision in the A & P Company case could provide an answer to (1) and (2) if the library were a private store selling its books

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rather than a public institution lending books belonging to the public. Since it is the latter, will these distinguishing characteristics of the public library persuade the courts to waive the legal rules concerning detention of individuals, which rules they have refused to waive in the case of a business establishment? Will they consider that the public interest requires that the public library have the “privilege” to detain the unwilling patron in the course of its checking procedures?

As to (3), suppose the sign on the checker's desk reads, as it does in some public libraries, “To prevent error, please, show ALL books,” and a patron, reading this sign, turns over the books he is borrowing together with a valuable book of his own which he is carrying to a book dealer. The checker accidentally drops it and it is damaged. Is there any liability incurred? Was the patron's consent limited to checking, and not for the damaging of his volume? Is this a case of the dentist and the wrong tooth, or will the court apply the so-called “assumption of risk” doctrine and say the patron should not have surrendered his valuable book despite the sign?

Let us suppose a lady patron loaded with her marketing and ready to board a bus in front of the library, drops in to borrow some books. While at the charge-out desk she takes advantage of a free hand and extracts a five dollar bill from her purse. This she sticks in one of the volumes she is borrowing so that it will be handy when she wants to board the bus. Forgetting this action, she turns the book and its contents over to the checker who yields to temptation and extracts the bill. Is the library liable for the stolen money? Courts are divided as to whether “consent” can be given for a criminal act. They also question whether an employer can be held liable for the act of an employee when it is a crime, since it is difficult to class committing a crime as “within the scope of the employee’s employment” and this is one of the tests of an employer’s liability.

Another problem of interest is that of liability for the condition of the library premises. The question of whether a county or municipal government has immunity from liability for its torts is the point at issue here. It may also be raised as to the library’s liability for the checker’s torts.

It is generally held that county and municipal governments have immunity from liability for their torts. This rule, however, varies throughout the jurisdictions. The theory behind the rule is a combination of “the king can do no wrong” and the feeling that government’s
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money is a “trust” for the people and should not be dissipated to individuals. In modern times, there has been a noticeable trend away from government immunity and some states have statutes waiving it as to government vehicles, buildings, etc. Where such statutes exist government torts are dealt with in precisely the same way as civil wrongs of corporations and persons.

In the case of torts of municipalities it is common to determine liability according to the activity in which the municipal government is engaged. Cities are considered to be dual persons, part municipal corporation and part government. When a city is performing a function any corporation could perform, such as garbage collection, it is held liable for wrongs connected with this activity. When it is performing a function only government can perform, such as conducting schools, it is given immunity in its performance of this function. Where such distinctions are made, libraries would benefit from them except when the library is not performing its function as a library. Obviously, there can be disagreement as to when the library is, or is not, functioning as a library.

1. What is the status of the occupants of the library quarters leased to a learned society or a state agency, and that of the persons who come to the library premises to do business with them? Is the library performing a library function as to these persons, or is it a landlord as to them and they a tenant and tenant’s visitors as to the library? If it is the latter relationship, has the library lost its government immunity and may it be held liable for a landlord’s duty to keep his premises safe for his tenants and their visitors?

2. Has the library more responsibility to persons who come to its auditorium to attend a public function there than to its patrons? A Massachusetts court has made a distinction between an injury caused by negligence of city employees who were shoveling snow off the roof of the City Hall and an injury occurring when the city failed to light a stairway in the City Hall when a public entertainment was being held in one of its rooms. The court said the snow removal was a governmental function and the city was not liable for injury resulting from it and permitting a public entertainment in one of the city hall rooms was a corporate function and the city was liable for injury resulting from it.10

3. If this public function decision would apply to the injuries sustained by those who attend functions in the library auditorium, what about the member of the local chapter of the Special Library
Association who comes to the library to attend a chapter meeting? It is held in the staff lounge. In what capacity is the S.L.A. member present in the library? This will be a factor in determining the library’s responsibility to her. Is the library in the capacity of a library in respect to her, and what is she in respect to the library?

The learned teacher of tort law, quoted earlier in this chapter, would say a person who is privileged to enter on land by virtue of its owner’s consent is a “licensee” and the owner is under no obligation to make the premises safe for his reception. He would explain the owner’s only duty is to avoid injuring the licensee in carrying on his (the owner’s) activities and to warn him of dangerous conditions on the premises if he knows of them.11 Remembering these words, is there a distinction in library responsibility if the S.L.A. member is injured because the library stairs are not well lighted? If she is run into by a janitor with a book truck? If she is not warned that the elevator is in unsafe condition when this condition is well known to the library?

4. What is the library responsibility for maintenance of its premises to the tramp, or vagrant, who comes to the library in search of shelter? If it can be established that he is in the library for this purpose (perhaps by his having stowed away for the night), is he a trespasser as to the library? And if so, what is the library’s duty toward him? In terms of tort law, the only duty owed a trespasser is the duty not to wantonly harm him and not to be guilty of such gross negligence toward him as to constitute wanton harm. What will constitute such gross negligence and wanton harm on the part of the library?

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ADDITIONAL REFERENCES

Libraries of Non-Tax Supported Institutions

EARL C. BORGESON

The preceding chapters have dealt with various activities of a library that may propel the library administrator into situations requiring an understanding of the laws of the community in which the library functions. Though these chapters have been concerned primarily with the tax supported library, the public library, they have indicated the obvious differences in the problems and solutions when the particular situation involved a non-tax supported library, a private library.

It would be impossible to review the law of municipal corporations, charities, taxation, agency, contracts, torts, and trusts in order to point out the legal problems that might confront the administrator of a non-tax supported library. Let it suffice to say that, in general, the tax supported library enjoys certain immunities as a governmental agency while on the other hand it functions under rigid regulations that come with public responsibility. The non-tax supported library, on the other hand, neither enjoys the same immunities nor does it have to conform to all of the procedures of the state agency charged with a public responsibility; instead, it must conform to the rules of its own governing body.

One ought to make a general observation at this point. The law can be complex to the layman, but if he will recall his first lesson in American government the law may be easier to understand. Under the American system of government there are executive, legislative, and judicial sources of law. Furthermore, in our federal system there are national, state, and local jurisdictions, in each of which the three departments of government function. This is still not the sum total of the possible sources of law for there are also intergovernmental agencies and rules of conduct that are superimposed upon, or rather between, these three levels of government. Any one source of law or any combination of sources might constitute the legal framework upon which the solution to a particular library problem might be found.

The author is Librarian, Harvard Law School Library.
Every librarian should be as familiar with the local laws that apply to the administration of his library as he is with the policy decisions that affect the internal operation of the library. Often they are inseparable. The librarian must, of course, look to the legal counsel available to him for the exact application of the law to the specific problem that he faces. The attorney will not replace the librarian in attacking the problem. As the architect converts the vision of the librarian into blueprints and then into a magnificent building, so the lawyer develops a course of action that will return a library with legal problems to a status of an effectively managed community service. But, it is the librarian who must assume the initiative and retain the direction of library action using the attorney as his chief adviser.

Though this chapter was intended to discuss the legal aspects of administration of the non-tax supported library as they differ from those of the tax supported libraries, the basis of support is not a realistic ground of distinction. What we are really seeking is an answer to questions of this nature: When is a collection of books a library? How is a library created under the law? What is the nature of the library under the law? Whom is the library to serve? How is it to be managed? How is it supported? When is a library a public library rather than a private library?

Let us begin with a man who has a library in his home. This library has no corporate existence, it does not serve the public, it is not supported by funds other than the owner's. His legal problems arising from the administration of this library are practically nil. The collection of books has no status in the law as a library nor does the owner as a librarian. This does not mean that there are no legal problems connected with this collection of books. The owner may have to consider the law applicable to foreign exchange and import duties in acquiring materials; he may be concerned with income tax deductions relative to the purchase of materials necessary for the pursuit of his professional activities; he may consider the law of inheritance taxes and trusts in planning the disposition of his books. But, in all cases, he and his collection of books are in contact with the law as an individual, not as an institution called a library and its representative, the librarian. This is a non-tax supported library, a personal library.

Next, we can examine the status of a number of people, who join together for a variety of reasons to maintain a library for some purpose of service for a particular audience, using public or private funds. This, then, is the entity known as a library.
Why have these people joined together? They may form the library as a result of a community need, in response to legislation, or in response to the benevolence of a donor.

How might they organize the library? The type of organization to be created may be that prescribed by a special legislative enactment creating a particular library, or determined by the general laws of the state relating to partnerships or corporations.

For what purpose is the library organized? This is of importance because the form of organization may be dictated by the desire of the group to maintain: (1) a private library to be operated for profit, (2) a private library to operate as a non-profit or charitable organization, or (3) a public library.

Who will benefit from the existence of the library? The audience to be served is, of course, a vital consideration in discussing the purposes of the library.

How will the library be supported? The financial structure of this corporate entity must be designed having in mind both the initial investment required and the source of continuing support. The use of public funds, private funds, or both is indeed a most influential factor in determining the legal status of the library and its programs.

Thus, we might well conclude that a library may be: (1) a public library—a governmental agency—serving all members of the community or even a segment of the general public, spending tax money or other public funds; (2) a public library, a private entity known as a charitable institution serving the general public or a segment of the general public, supported entirely by private funds; (3) a public library (as in 2 above) that received some public funds be they tax or other monies; (4) private libraries, serving a select group of the community and supported by private funds; (5) a private library serving a select group and doing so for private gain; or (6) a personal library that is without a separate legal existence, serves no public and receives support from private sources.

There is one case, *Kerr v. Enoch Pratt Free Library of Baltimore City* of major import to the foregoing analysis of the differences between the public and the private libraries. It moves directly to the point that there is a good deal more to consider than the financial support of a library in determining its legal status in the community. There are a number of library administrative problems that may be affected by this decision, but it is being referred to here for the above stated purpose only.
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The plaintiff was seeking money damages, injunctive relief against the refusal to admit her to a training course conducted by the defendant library, and a declaratory judgment establishing her right to be considered for the course without discrimination because of her race and color. The complaint was dismissed on the grounds that "the Training Course is only a feature of the internal management of the Library, and is not conducted either as a general library instruction course or for purposes of general education," and therefore, there was no state action in violation of the Fourteenth Amendment to the Constitution of the United States.

The court began its reasoning by stating:

In the instant case . . . the test . . . is whether the Board of Trustees of the Library are acting in a public capacity as representatives of the State or merely as a private corporation, in the management of the Library. The question thus presented must be determined upon consideration of the public acts of the State of Maryland and the authorized municipal ordinance of Baltimore City, in the light of the evidence bearing upon the subject of the relations between the Library Corporation and Baltimore City. These are unique in the history of the origin and subsequent development of the Enoch Pratt Free Library. No parallel case has been cited by counsel and none is known to the court. And therefore there is evidently no judicial decision to serve as a precedent for the determination of the problem in the instant case. Therefore it is necessary to review the history of the Library in some detail.

The court found that:

(1) The management and operation of the Library is wholly committed to the Board of Trustees; (2) the title to all the property of the Library, including its equipment of books and furniture, is vested in the City for the use of the Library; (3) the City is legally obligated to pay $100,000 a year to the Library in accordance with the Pratt and Carnegie gifts, but is not legally obliged to make any further appropriations for the Library; (4) nevertheless the City has for years past made additional voluntary appropriations to a very large amount, and (5) the City has no legal authority to supervise or in any way control the management of the Library by the Trustees with respect to appointments to staff positions or in the amount of annual expenditures, except by reducing partially or entirely the amount of its voluntary appropriations for the benefit of the Library.

Counsel for the plaintiff argued that the dominant factor to be considered was the city's economic control of the situation. The court
said, however, “The question here to be decided is not whether in the broad aspect of the relations between the City and the Library the latter is performing a public service by expenditure of public money, but is the more limited question whether in the management of the Library the Trustees are acting in a private capacity or are representatives of the State to such an extent that their action amounts to state action, and particularly with respect to appointments to technical staff positions in the Library System.” 8 The court held the action was that of a private corporation, not state action, and therefore there was no violation of the Fourteenth Amendment.

The court goes on to say “The legal test between a private and public corporation is whether the corporation is subject to control by public authority, state or municipal. To make the corporation a public one, its managers, whether trustees or directors, must be not only appointed by public authority but subject to its control.”

The judgment was reversed on appeal. The history of the library was again reviewed, but with these conclusions:

“First. The purpose which inspired the founder to make the gift and led the state to accept it, was to establish an institution to promote and diffuse knowledge and education amongst all the people.

“Second. The donor could have formed a private corporation under the general permissive statutes of Maryland with power both to own the property and to manage the business of the Library independent of the state. He chose instead to seek the aid of the state to found a public institution to be owned and supported by the city but to be operated by a self perpetuating board of trustees to safeguard it from political manipulation; ... 

“Third. During the sixty years that have passed since the Library was established, the city’s interests have been greatly extended and increased, as the donor doubtless foresaw would be the case, until the existence and maintenance of the central library and its twenty-six branches as now conducted are completely dependent upon the city’s voluntary appropriations. ... 

We are told that all of these weighty facts go for naught and that the Library is entirely bereft of governmental status because the executive control is vested in a self perpetuating board first named by Enoch Pratt.” 10

The court then reasons that it is a proper function of the state to maintain a library acting through a corporate instrumentality or even through two such bodies, and that such bodies can not act in violation of the constitutional prohibitions against race discrimination.
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The court adds:

Even if we should lay aside the approval and authority given by the state to the Library at its very beginning we should find in the present relationship between them so great a degree of control over the activities and existence of the Library on the part of the state that it would be unrealistic to speak of it as a corporation entirely devoid of governmental character. It would be conceded that if the state legislature should now set up and maintain a public library and should entrust its operation to a self perpetuating board of trustees and authorize it to exclude Negroes from its benefits, the act would be unconstitutional. How then can the well known policy of the Library, so long continued and now formally expressed in the resolution of the Board, be justified as solely the act of a private organization when the state, through the municipality, continues to supply it with the means of existence.\textsuperscript{11}

In a subsequent case involving a similar question, but with a school as party, the Kerr case is cited and the extent of governmental control graphically presented.\textsuperscript{12}

Once the status of the library under the law is known, questions of its rights and liabilities in the community can be discussed. The Kerr case demonstrates not only the manner in which the private library is distinguished from the public library, but it also suggests a number of questions about library personnel programs,\textsuperscript{13, 14} and an application of the law of trusts to library administration.\textsuperscript{15, 16, 17}

Of course, there are also questions of tort liability. The recent trend of court decisions is discussed in the cases\textsuperscript{18, 19} and periodicals.\textsuperscript{20, 21} There is one case suggesting that interlibrary cooperation may not be without its legal problems when the public library and private library attempt to contract for the support of a program.\textsuperscript{22}

However, before any of these matters are reached, the legal status of the library must be determined, and in that process the nature of the differences between the public and private libraries will be spelled out. They may not always be clear; the differences are subject to change with the circumstances and the times. Those differences that do exist, however, may often be vital to the issue of the liability of a library for its actions.

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4. Ibid.
5. Ibid., p. 517.
6. Ibid., p. 519.
7. Ibid., p. 522.
8. Ibid.
9. Ibid., p. 523.
11. Ibid., p. 219.
EPILOGUE

Perhaps we may appropriately conclude this symposium by recalling two maxims. One is of general application but specifically apropos here; the other legal in origin but equally applicable to the subject under discussion. First, the old saw: “A little learning is a dangerous thing,” quite likely a recognized truism long before Alexander Pope so well enlarged upon it in his verse:

“A little learning is a dangerous thing;
Drink deep, or taste not the Pierian spring;
There shallow draughts intoxicate the brain,
And drinking largely sobers us again.”

Second, the ancient legal maxim, Ignorantia legis neminem excusat. Let library administrators take heed and avoid this pitfall of which John Selden, the learned legal antiquary of the seventeenth century, knowingly gave warning:

“tis an excuse everyman will plead.”
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W

Y
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The numbers of LIBRARY TRENDS issued prior to the present one dealt successively with college and university libraries, special libraries, school libraries, public libraries, libraries of the United States government, cataloging and classification, scientific management in libraries, the availability of library research materials, personnel administration, services to readers, library associations in the United States and British Commonwealth, acquisitions, national libraries, special materials and services, conservation of library materials, state and provincial libraries in the United States and Canada, American books abroad, mechanization in libraries, rare book libraries and collections, circulation services, research in librarianship, and cooperation.