Financial Support and Administration

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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

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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
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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-
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. 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.

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. 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. Some state statutes provide for the reversion of these funds to the public treasury. 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.

The fine as a mechanism for controlling materials should be distinguished from the fine or fee for circulating popular materials or rental
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. 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. While *Gregory's Bookstore v. The Providence Public Library* 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.

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

The Library Services Act 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.

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.

References

3. Lambert v. Board of Trustees of Public Library, 151 Ky. 725, 152 S.W. 802 (1913).
7. Ibid., p. 80, sec. 39.26, note 42.
Pratt Free Library, 149 F. 2d 213, 217 (4 Cir. 1945) and R. W. Johnson v. Mayor and City of Baltimore, 158 Md. 93, 148 Atl. 209, 66 A.L.R. 1488 (1930).


11. Ibid., paragraph 93,687.


18. Ibid., p. 6.


27. Miss. sec. 6208 (1942).


32. Miles and Martin, op. cit., p. 151.


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43. 10 A.L.R. 1377.
46. Joseph Mann Library Association v. The City of Two Rivers, 272 Wis. 441, 76 N.W. 2d 388 (1956).