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 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.

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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 blue prints 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.
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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 but spent 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.” 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.”

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.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.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,13, 14 and an application of the law of trusts to library administration.15, 16, 17

Of course, there are also questions of tort liability. The recent trend of court decisions is discussed in the cases18, 19 and periodicals.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.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.

References

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