



# The Legal Basis of Library Boards

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THE BROAD PATTERN of library board government is fairly uniform throughout this country despite the fact that federal law has no application in this area. However, the general and special state library laws, city charters and municipal ordinances upon which board authority is based vary considerably. There is also great diversity in the detailed provisions of library laws affecting board organization and management in the fifty state jurisdictions.

Library boards derive their governmental power from a variety of legal instruments. These take the form of general state library laws, city charters under the home-rule principle, municipal ordinances, special acts of the legislature, state corporation statutes including laws establishing educational corporations, and the state school code.<sup>1</sup>

Insofar as municipalities are concerned, which include cities, towns, villages and townships, the largest number of library boards today owe their legal existence to what are commonly referred to as general state library laws. Historically the first general library law enacted by the New Hampshire legislature in 1849, as well as the more famous Massachusetts law of 1851, made no provisions for the governmental machinery of the library. The latter, for example, merely provides that any city or town is authorized to establish a public library under such regulations as the city council or the inhabitants of the town may prescribe.<sup>2</sup> The earliest general state library law which contained detailed provisions covering the library board was the Illinois act of 1872.<sup>3</sup> This statute was widely copied with the result that more than thirty states have this type of legal enactment on their books.

In this brief survey, it will not be possible to refer to the general library laws of each state. What can be done is to identify and describe the major common provisions as they relate to library boards.

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A typical general library law contains sections dealing with the organization, powers, and duties of the library board.

Regarding the legal organization of the board, all of the statutes, for example, designate the appointing authority. Most jurisdictions provide that the mayor shall appoint the library board with the approval of the city council. In a number of instances, the board is selected by the city council acting without the mayor. In the case of towns, townships, and villages, several state laws provide that the board shall be elected directly by the people. The general library law designates, too, the number of members to be appointed to the board. It appears that the largest number of states prefer five directors. Next in preference is a board of nine trustees. The term of office of board members is also prescribed in the general library law, the most usual being three years.

There are other common provisions relating to the organization of the board. A typical general library law provides that the board, immediately upon its establishment, shall elect its officers, which customarily include the president, secretary, and treasurer. Another fairly universal provision is that the appointing authority shall have the power to remove board members for misconduct and neglect of duty, also that vacancies shall be filled in the same manner as original appointments. A provision that is contained in most of the statutes is that no library trustee shall receive any compensation.

Interesting variations are to be found in the laws. Some states provide that the mayor, superintendent of schools, or other designated official shall be an *ex officio* member of the board. A considerable number of the laws provide that not more than one alderman shall be appointed to the board. South Dakota requires that two of the trustees must be women.<sup>4</sup> An illustration of an undesirable provision is one in the Arizona statute which prescribes that the board *must* meet on the first Tuesday of each month.<sup>5</sup> This is a matter that should rather be reserved for the bylaws. In cities of Missouri of over 300,000, not more than five of the nine directors can be members of the same political party.<sup>6</sup> Finally, in Oregon no board member is permitted to have any financial interest in any contract to which the library is a party.<sup>7</sup>

Turning now to an examination of the powers of the board, one will find provisions that are similar in most of the general state library laws. Most common are the following: The board, for example, has the power to adopt rules and regulations for the government of the

## *The Legal Basis of Library Boards*

library as well as bylaws for its own guidance. It has exclusive control over all expenditures. It has the power to acquire and purchase real estate and to construct and rent buildings. It has the power to select the librarian and all necessary personnel, prescribe their duties, and fix their compensation. It has the power to accept property by gift, devise, or trust on behalf of the library.

No municipal library board has full power to levy taxes.<sup>8</sup> This is delegated by statute to the governing authority of the municipality. The legal right to hold the actual title to real property in some jurisdictions is retained by the municipality rather than granted to the library board. This is true also of the right of eminent domain. A curious deviation appears in the Florida law, which makes the rules and regulations adopted by the library board subject to the supervision and control of the city or town council.<sup>9</sup>

Almost every general library law requires the board to make an annual report of its finances and activities to the municipal authorities. Many of the states also provide that an annual report must be filed with the official state library agency.

Next to be considered are the library boards whose legal foundation rests on a city charter. In connection with the home-rule movement, many states through constitutional amendments have granted cities, usually of a certain size, the privilege of adopting city charters. The latter is a legal instrument in the nature of an organic law which defines the power of the municipality and prescribes in considerable detail its form of government.

In a number of cities, the city charter does not contain provisions covering the legal organization of the library. This is reserved for a city ordinance; the charter merely declares that the city may operate a public library. In other cities a clause is inserted in the charter to the effect that the public library shall be organized and managed in accordance with the provisions of the general state library law. Some municipalities employ a slight variation of this legal device by providing that the library board shall have the powers enumerated in the state library law except as otherwise specified in the charter. In most city charters, however, the article governing public libraries has been redrafted. But in broad form and substance, it is essentially the same as the general state library law.

An important legal question raised by the adoption of a city charter is whether the existing general state library law continues to be in effect or whether it is in fact superseded by the charter. This was the

point at issue in the Missouri case of *Carpenter v. St. Louis*.<sup>10</sup> In that case the city of St. Louis failed to levy a tax for library purposes. A mandamus suit was instituted against officials of the city to compel the proper authorities to levy the tax. Counsel for the city argued that the state library act of 1885 was invalid because it was superseded by the home-rule charter adopted in 1914. The court, however, rejected the argument and upheld the validity of the library act on the basis that the public library is a matter of state concern over which the General Assembly may exercise control. In view of conflicting decisions in other cases, it has been proposed by Carleton B. Joeckel that "it would seem desirable to have the application of state library laws in home-rule cities tested in the courts."<sup>11</sup>

There are a small number of states, chiefly in the south, where the legal basis of the library board is grounded on a city ordinance. In these jurisdictions the state library law generally does not deal with the legal machinery of the library, but merely provides that it shall be organized under regulations prescribed by the city council. The position of the library board organized under a city ordinance is not nearly as secure as one established under a statute or city charter. It is relatively simple to repeal an existing ordinance and pass a new one. It is far more difficult to change a general state law or city charter.

In an earlier period, it was not unusual for a single library to be organized under a special act of the legislature. A number of large public libraries (New York, Brooklyn, Queens, Boston, Detroit, and Buffalo) and many smaller institutions are governed by such laws, and board authority is derived from this type of legal enactment. Often these special laws were tailored to meet specific conditions contained in a benefaction which was responsible for the establishment of the library. The practice of special legislation, however, has been discontinued, and it is used very seldom today.

At this point it is germane to call attention to the fact that many other state laws regarding municipalities impinge on and affect, either directly or indirectly, the authority of the library board. Such, for example, is a general civil service law for cities, which, in effect, deprives the library board of much of its power over personnel. Another is the case of a central purchasing law which requires that all purchases for city departments must be handled by a central purchasing agency, and thus interferes with the library board's exclusive power over purchasing. Still another illustration is a state law pre-

### *The Legal Basis of Library Boards*

scribing across-the-board limitations on the tax levies of cities, towns, and villages, which thus serve to reduce the amount of money available to the board for library purposes. A final example is a state law dealing with the budgetary and auditing procedures of municipalities, which has a bearing on the financial administration of the library board. It is clear, therefore, that to discover the actual legal authority of the library board, one must consult not merely the library act, but also examine closely an extensive and complex body of related municipal law.

Reference should also be made here to the position of the library board in cities that have adopted the city manager plan or commission form of municipal government. Although approximately 1800 cities have adopted the manager plan and over 250 cities have turned to the commission form, only a small handful of these cities have made any significant changes in the legal structure of the library board. In city manager jurisdictions, as of 1935 only six cities of over 30,000 population abolished the library board and placed governmental supervision of the library under the city manager. Similarly in commission form jurisdictions, at that time only six cities of over 30,000 population, with St. Paul as the most important example, had placed the governmental control of the library under an elected commissioner instead of a library board.<sup>12</sup> But in the case of by far the greatest number of these municipalities, library board organization has remained unchanged. In Illinois, for example, the act authorizing the commission form of government merely contains a provision that the public library shall continue to be governed by the general state library law.<sup>13</sup>

Before leaving the field of municipal public libraries, we must give some consideration to "corporation" and "association" libraries. This group of libraries, a not-inconsiderable number, is unique because the control of the institution is vested in a corporation or association which is not an integral part of the municipal government. It should be noted, however, that in many instances, the corporation or association library is joined by contract with the municipality and a portion of its income is derived from public taxation. The form of legal organization of these institutions is quite complicated, impelling Joeckel, the outstanding authority on this subject, to write: "Often the laws, charters, and accompanying documents affecting the foundation and maintenance of a particular library are like some obscure Magna Carta, whose exact provisions are almost forgotten but none

the less treasured and triumphantly brought to light in case of need." <sup>14</sup>

Broadly speaking the board of trustees of a corporation or association library can trace its legal origin either to a special act of the legislature or to a corporate charter. Corporation libraries enjoy the usual corporate powers of perpetual succession, the right to sue and be sued, and a corporate seal in addition to the enumerated powers contained in the charter. In the corporation library the board of directors is a self-perpetuating body with its members selected by co-optation. In the case of the association library, which is also usually a corporation, the corporate powers are exercised by a board elected by the members of the association.

Libraries that operate under this type of board management are free from political influence of any kind. The boards possess wide powers and are not legally answerable to any authority higher than themselves.

In certain jurisdictions, particularly Ohio, Michigan, Indiana, Pennsylvania, New York, and West Virginia, are to be found school-district public libraries whose governmental machinery is somewhat unique. To begin with, the unit of library service in this instance is the school-district which is a distinct governmental body created by the legislature. Moreover, the school-district is separate and apart from the city or other type of local government existing within its political boundaries. The legal basis of the school-district public library generally rests on the school code which is also the legal foundation of the educational system of the state. Historically the school-district public library was the first tax-supported library in the United States.

The government of the school-district public library falls into two broad categories: one which is governed by a separate library board and the other in which the governing authority is the school board. The Ohio law on this subject provides for a separate library board. In fact it expressly excludes any person "who is or has been for a year previous to his appointment a member of a board of education." <sup>15</sup> Under the Ohio system, library board members are appointed by the board of education, but except for the act of appointment, the school authorities exercise little or no control over the library board. The latter is an extremely independent agency and enjoys broad powers. In certain respects this type of library board has wider powers than its municipal prototype. In the field of fiscal administration, for example, the library has sole charge over its financial and business transactions instead of being processed through some other agency in

### *The Legal Basis of Library Boards*

the municipal hierarchy. This provision avoids delay, and the library board has full knowledge of the condition of its funds at all times.

Under the Pennsylvania statute, provision is also made for a separate library board which is composed of five members appointed by the board of education together with the superintendent of schools and the president of the school board serving as *ex officio* members. Here, however, the library board is not as independent as in the Ohio situation, for the school board retains greater control over library management.

A considerable number of school-district public libraries do not have separate library boards, but are governed directly by boards of education. Two notable examples of this method are Indianapolis and Kansas City, Missouri. In this type of library organization, it is not uncommon for the board of education to establish a library committee which considers matters relating to the administration of the public library. But this in no way can be considered as a substitute for a separate library board. Under this scheme a question has arisen as to whether the librarian reports to the superintendent of schools or whether he is directly responsible to the school board. In the larger cities it has become the practice for the librarian to report directly to the school board.

Turning now to the larger unit of library service, our attention is first directed to the county library. Some thirty-five states have general laws governing the establishment of county libraries. In a few jurisdictions, a single law covers both county and municipal libraries. In its provisions relating to board management, the county library law is quite similar to the enactments dealing with municipal libraries. In the case of county libraries, the board of trustees is generally appointed by the county commissioners or other governing body of the county. Several state laws designate the county judge or other judicial officer as the appointing authority. In Florida the county library board is appointed by the governor.<sup>16</sup> The Indiana law provides that the board of county commissioners, the county superintendent of schools, and the judge of the circuit court shall each appoint three members of the county library board.<sup>17</sup>

As far as the powers of the library board are concerned, the county law follows closely the statutes covering municipal libraries. In addition to enumerating the usual powers, many of the state laws authorize the county board to enter into contracts with existing libraries for library service.

In California and a few other states, county libraries are administered directly by the boards of county supervisors. The county library is therefore a department of the county government. In these jurisdictions, however, the county library is generally tied in with the state library commission which is given by law certain supervisory control over county libraries.

To solve the problem of unserved and inadequately served regions as well as to meet the challenge of the metropolitan areas, a number of states have taken important steps to develop larger units of library service. New York has been a pioneer in this exciting movement, and on its statute books is a law<sup>18</sup> providing for the establishment of cooperative library systems. A "cooperative library system," as defined in the statute, means a library established by one or more counties, a group of libraries serving an area including one or more counties in whole or in part, or a library of a city containing one or more counties. These library systems by law are under the management and control of a board of trustees which has all the powers of trustees of other educational institutions. The trustees are elected annually at a meeting of the trustees of the participating libraries in the cooperative library system.

Pennsylvania has recently adopted a new library Code<sup>19</sup> which provides for the organization of four Regional Library Resource Centers and up to thirty District Library Centers. Regional Library Resource Centers have the responsibility and power to acquire major research collections and under rules and regulations promulgated by a board consisting of the head librarians of all Regional Library Resource Centers and under the chairmanship of the State Librarian to make them available to the residents of the commonwealth on a state-wide basis.

District Library Centers have the power to contract with any city, borough, town, township, school-district, county, or board of trustees or managers of any local library which wishes thereby to become part of the District Library Center system of such district. No provision, however, for the government of District Library Centers appears to have been made in the law.

In 1959 New Jersey adopted a law<sup>20</sup> which permits two or more municipalities to unite in the support, maintenance, and control of a joint free public library. It is also provided that the library board of the joint library shall consist of the mayor or other chief executive officer of each participating municipality, the superintendent of schools

## *The Legal Basis of Library Boards*

or the president of the board of education of the local school-district of each municipality, and three citizens appointed by the mayor of each of the municipalities.

Massachusetts has passed a law<sup>21</sup> providing for the establishment of regional public library systems. For each regional area, an advisory council is established which consists of the chief librarian of each city or town in the regional area.

Spurred on by state aid, this movement of enlarging the unit of library service is bound to spread to other jurisdictions. This appears to be inevitable. Although it may bring some changes in library board government, the basic pattern of the board concept will remain intact because it is so deeply rooted in the historical development of the public library.

## *References*

1. Joeckel, Carleton B. *The Government of the American Public Library*. Chicago, University of Chicago Press, 1935, pp. 32-76.
2. Massachusetts, *Acts and Resolves 1851*, chap. cccv.
3. Illinois, *Public Laws 1871-72*, pp.609-611
4. *South Dakota Code of 1939*, sec. 45.3102.
5. *Arizona Revised Statutes*, sec. 9-415.
6. *Vernon's Annotated Missouri Statutes*, sec. 182.410.
7. *Oregon Revised Statutes*, sec. 357.460.
8. By law, Indiana public libraries with independent boards may set their own tax rates up to a specified maximum; see *Annotated Indiana Statutes*, sec. 41-918. In fact, such tax rates are reviewed by the County Tax Adjustment Board, as are all other local government tax rates.
9. *Florida Statutes Annotated*, sec. 167.30.
10. 318 Mo. 870.
11. Joeckel, *op. cit.*, p. 47.
12. *Ibid.*, p. 152.
13. *Illinois Revised Statutes 1961*, chap. 24, sec. 4-9-4.
14. Joeckel, *op. cit.*, p. 81.
15. *Page's Ohio Revised Code Annotated*, sec. 3375.15.
16. *Florida, op. cit.*, sec. 150.03.
17. *Annotated Indiana Statutes*, sec. 41-510.
18. *Consolidated Laws of New York*, Book 16, sec. 255.
19. *Purdon's Pennsylvania Statutes Annotated*, sec. 24:4101.
20. *New Jersey Statutes Annotated*, sec. 40:54-29.3.
21. *Annotated Laws of Massachusetts*, sec. 78:19.