General Legislation Dealing with the Organization, Management and Financial Support of Public Libraries

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THE FIRST STEP in preparation for this paper was a rereading, after many years, of Carleton B. Joeckel's 1935 classic work on the subject.[1] The second stage, which might fittingly be called the long count, was a reading of the applicable sections of the laws of each state as they appear in *American Library Laws* and its supplements.[2] The third was an attempt to identify and secure more recently passed legislation.

The more recent legislation, with plans for coming legislation and some opinions on several phases of public library legislation, was secured by means of a questionnaire sent to the heads of all state library agencies. Returns on this questionnaire came from 90 percent of these agencies in spite of the fact that the season was Christmas and the respondents were deep in the frustrations of the continuing lack of a federal appropriation for their on-going public library development programs. As will be seen, the replies have been extremely useful, and they are acknowledged with gratitude.

The first impression is that little has changed since Joeckel completed his study, and in some ways little has. But this impression is mistaken. Actually there has been a great deal of change in the library laws at the state level, and just as important is the recognition that much legislation with direct application to public libraries does not appear in the library law itself. Still another factor is the increasing amount of administrative law applying to public libraries, which is contained in rules and regulations which have the force of law.

In the foreword to his book, Joeckel attempted to define a public li-

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brary and immediately ran into trouble. He finally arrived at, or rather adopted, a pragmatic solution which will be used in this article as well. He defined the public library as any library with the responsibility for providing free library service of a general nature, both reference and circulation, to the people of a particular community.[3] Since "community" in our time seems to apply to any population group from the smallest village to the United States as a whole, this discussion will cover both legislation and administrative law affecting all kinds of public libraries whether township, town, village, city, county or multi-county, or even an entire state. The Hawaii State Library System is a public library in the same sense that the Martha Canfield Free Memorial Library, Inc., in Arlington, Vermont, is a public library.

One of the difficulties in analyzing the patterns of public library legislation is the presence of many places where the legal basis of the library rests in a city or county charter, strictly local in application. Another is the continuing presence of public libraries which are legally chartered corporations operating under state laws governing non-profit educational and charitable organizations. Fortunately, both of these have been well covered by Joeckel.[4] In this respect there appears to be little if any change since he wrote.

The principal element in general public library legislation which has scarcely changed since 1935 is the authority to establish public libraries. All but two states, Hawaii and Wyoming, have laws authorizing the establishment of public libraries by incorporated cities and villages. Hawaii has only its state-wide unified library system, and Wyoming limits establishment to counties. Eleven states permit public library establishment by towns. These are either in New England or in the North Central states where the influence of the New England town government has spread. In most states a town is an incorporated place of intermediate size or merely a surveyor's description of thirty-six square miles of land. Eleven states, but not the same ones, authorize what are called "special library districts." These might be very small in some cases and multi-county regional library systems in others.

There are eight states which authorize the establishment of public libraries by the governing boards of school districts. This is an older pattern, little used in recent years, which Joeckel discusses and evaluates at length.[5] His evaluation remains among the most useful yet published.

The big changes in public library legislation since 1935 have come in the improvements in laws governing county libraries, and even more

dramatically in the proliferation of laws authorizing multi-county regional libraries and similar library systems. While the establishment of public library service by county government is not new, it is now authorized in forty-two states, one of them being Wyoming where, as previously stated, the county library is the only authorized public library under state law. According to the statistics furnished to Joeckel in 1934 there were only 230 county libraries in the United States, but at latest available count there were at least 1,112! Hawaii which has a state-wide system, Alaska which has no counties, and six New England states where the county is not a meaningful unit of government are now the only states which do not authorize county libraries. It is not surprising to find that county libraries can be found in all but two of the states which permit them. In New York and Kentucky, the region appears to have supplanted the county as a library district, although the law still permits the latter.

Since there are 3,074 counties in the United States and only slightly more than one-third of them have county libraries, this may not look like great progress. But here another factor enters—the regional or multi-county library in which we find the biggest change of all in library law; in fact, it is an entirely new development since 1935. Joeckel's thesis leads him to proposing regional libraries,[6] but at that time they were only dreams. But the strong, hard facts developed by Lowell Martin only a few years later[7] were to give great impetus to the regional library idea, so that now such libraries are authorized in forty states. The general pattern is to permit the governing authorities of two or more counties to establish and support a single regional or multi-county library to serve all areas for which they are responsible. At last count, there were well over 200 such libraries or library systems which serve considerably more counties than are served by single county libraries.

All of these numbers are admittedly on the low side of what really exists. In recent years, the regional library has been the institution with the most rapid growth of public library service in the United States. With most states using federal funds under Title I of the Library Services and Construction Act to encourage the formation of regional libraries, the statistics on this kind of library are out of date before they can be published. In Minnesota, for example, three counties have voted within the last year to establish public library service by joining an existing region and three others by joining an existing county library in the formation of a new four-county region. It can

be stated with certainty that there are now more multi-county libraries than the number given above. But, to complicate matters, arithmetic dictates that whenever a single county library joins others in a regional library, there is one more region and at least one less county library.

Most public libraries are governed by library boards whose appointment, size, numbers and powers are the next important section of library laws. Although a few laws provide for the election of library boards for one or more kinds of libraries, a preponderant majority of these boards are appointed by the same governing authority or authorities which created the library. Contrasted with this uniformity is the great diversity in the number of members of library boards. While by far the most popular number of members is five, the range in municipal libraries is from two to fifteen. In many states, the law for different kinds of libraries differs in the size of the library board for each kind of library. While some laws specify a number, others give a range which most generally is from five to nine, but can vary from two to twenty-five. In the multi-county libraries there may be one member from each county, or three from each county, or some provide one from each governmental unit including the cities. There are three cases where the number only needs be divisible by three, and in one case the board may consist of as many members as the contracting parties may decide. In seven instances of single unit libraries, the number is not set by law, but is determined by the governing body creating the library.

But there are cases (i.e., kinds of libraries) where there is no library board and the librarian is an official directly responsible to the governing body itself. In those cases things are clear in the library law, but there is another factor affecting the government of the library which does not appear in the body of library law but is found instead in that part of municipal law concerning city or village manager government. These laws usually provide that boards, including the library board, may be abolished or relegated to advisory status. There are exceptions, but it appears that public libraries in such municipalities do not usually have library boards in the traditional sense. The librarian is hired by and responsible to the city or village manager. This can be an influential factor in the development of the library, making its welfare more nearly dependent upon the attitude of one person than it would be in the case of a board.

One of the important features of the library law of most states is a section devoted to the powers of the library board. Only nine states do not have specific laws governing such powers, and they include

those which do not have any library board laws at all. A rough measurement of library board authority can be used to distinguish strong boards, boards with general powers, and boards with limited powers. The fact that boards are appointed by and responsible to governing bodies which also have the power to determine the library tax or appropriation is not regarded here as the difference between the three types because library boards have actual taxing authority in only two states. Such a board is the strongest of all, but close behind are those in twenty-three states where the library boards, once they have received their appropriation or tax levy, are granted complete authority over how such funds are to be spent. In only three states do library-board powers appear restricted; in the rest of the states the boards have general powers.

State library legislation is far from uniform, but when it comes to the powers of library boards a great many states seem to have copied the wording of their law from the same source. Joeckel devotes a chapter [8] to discussing library-board powers but appears not to have identified the source of this conformity. However, his entire discussion of library boards is perhaps the most definitive yet written and covers far more than can be brought into this paper. It well deserves careful study by every student of library-board structure and authority.

Almost all library boards must secure higher governmental authority to acquire property, construct buildings, or accept such as gifts. But once granted such permission, most boards have complete authority over the actual construction.

Probably the most universal legal provision regarding the management of public libraries is that the library may hire a librarian who is responsible either to the board or other governing authority which hired him, and that in consultation with such authorities the librarian shall hire other personnel and operate the library and its services. The board or other governing authority is the policymaking body, and, in most cases, the librarian operates within that policy. In a few, where the librarian is directly responsible to county commissioners, he is also a participant in policymaking by law. In the area of library management, most library laws are fortunately so flexible that it has been possible for librarians to adopt the most up-to-date library practices without having to amend the law.

In contrast to this fortunate flexibility, the provisions for the financial support of public libraries are among the most inflexible to be found. In only fourteen states is there no specified limit on the rate of taxation

permitted for public library support. Vermont permits $3 per capita, and Virginia permits an amount sufficient to fulfill the minimum standards set by the state library agency. In all the others there is a specific maximum on the permissive mill rate. In nine states the maximum is less than one mill. It is not unusual for a state to have one limit for cities and villages and a different one for counties, with the county rate usually being the lower. In only five of the thirty-six states which set a maximum tax levy is the levy higher than three mills.

For the uninitiated, a one-mill tax levy produces $1,000 for each $1 million of the assessed valuation subject to the tax. Therefore a word of caution is appropriate here before deciding that so many limits are depressingly low. The basis for determining assessed valuations is the key. A part of the traditional wisdom of politics is that a choice lies between having a low ratio of assessment with a higher mill rate, or having a full-value ratio of assessment with a lower mill rate. On the same property, a one-mill levy with the assessment at full market value would produce the same amount as a three-mill levy with the assessment at one-third market value. Although the per capita figures for library support are the basic evaluation of the climate of library support in any state, the limitations placed by law on library tax rates are the cause of greatest concern and the subject of more plans for change in the opinion of the state library agencies.

There is now another element in the financing of public libraries which was of no great importance thirty years ago: state aid for public libraries. In the mid-1930s, there were only ten states which granted any funds at all for aid to public libraries. Most of these made annual grants of $100 per library, while the largest grants were those in Maine and Rhode Island where they were $500 per library. Pennsylvania had a law providing $20,000 per county library, but only five counties were qualifying at the time Joeckel wrote.[9] The increase in the number has been, to make an understatement, spectacular. In the latest count available at the time of this writing, thirty states have programs of state grants to public libraries. Ten of these are granting more than $1 million annually. At this time, however the proportion of public library support coming from both state- and federal-aid funds is not significant in most of the states. In Illinois and New York, on the other hand, state aid approaches $1 per capita and may be as much as one-fifth or more of the total support of some libraries.

A few states which grant aid to public libraries have detailed provisions written into law regarding qualifications for receipt of aid.

Most states provide that the administering agency may adopt rules and regulations necessary for administration and set standards for qualifying. While the resulting standards and regulations are not actual legislation, they usually have the force of law. They are extremely influential, since the prospect of aid has tempted many library boards to meet standards which they might otherwise have ignored. One of the best examples which illustrates this relatively new phenomenon is the recent publication by the New York Division of Library Development.[10] The law itself is nineteen pages long, the board of regents' rules two pages long, and the commissioner's regulations fifteen pages long: the administrative law is almost as long as the law itself.

The state library agency which administers these rules and regulations is discussed in a separate article, but its scope and authority as established by law affect all public libraries below state level. As the mentor and counselor to public libraries, as the administering authority for certification of librarians and of state financial aid, and as the administering authority for federal public library programs, its legal basis and authority are a proper study for all public library administrators.

One of the newest developments in law affecting public libraries has been the widespread adoption of uniform statutes regarding interstate library compacts, based on the model prepared by the council of state governments. They differ only as they are tailored to the particular state adopting them. Libraries and library systems which share borders with another state or states will probably be involving this law in some of their future developments. Small-scale contracts for mutual advantage or exchange across state lines have been possible for a long time under the general authority for contracting granted to all municipal corporations. Interlibrary loans and service exchanges have also crossed state lines whenever the participants were willing. But in the future a wide variety of large-scale coordination, cooperation and reciprocity across state lines will develop with the adoption of the general network principle, thus giving this law an added importance to local libraries.

As of the time of writing there were twenty states which had adopted interstate compact legislation, and four report that it is in their legislative programs. With this law the New England states and New York together form a geographical block of seven states. There is another group consisting of six states in the Midwest which forms an adjoining group (Indiana, Illinois, Wisconsin, Iowa, Minnesota and North

Dakota). In the Far West, Washington, Oregon, Idaho and Wyoming make a contiguous block having the law, and Nevada has it in legislative plans. There will be another contiguous block in the Southeast if Tennessee is able to get the law passed as planned. The law is not operable unless it has been adopted on both sides of a state line, and may well become universally adopted when its desirability becomes more widely recognized and the benefits become reality.

The importance of administrative rules and regulations with the force of law is nowhere more evident than in the certification of public librarians. At the time of writing, twenty-six states had legal provisions for the certification of public librarians. Only in four are the basic provisions specified by law. In all the rest, the program is based on rules and regulations or other administratively established standards and qualifications. In nineteen states the certification of librarians employed is mandatory, and while this appears to have little effect unless there are either rewards or penalties, or both, this means that library governing authorities have still another set of administrative laws with which to deal.

In his masterly chapter, "Legal Basis of the Public Library," Joeckel [11] opens with a short philosophical discourse on the variety of library law in the United States. He stresses the fact that many of the library's legal difficulties are directly traceable to the failure to fully understand how the position of the library is affected by the different systems of law under which the states and their local units are governed. With the growth of regulations applying to libraries, this problem is compounded.

To make matters worse, in addition to specific library law and the administrative regulations, there is still another area of law which though often unnoticed because it does not mention libraries, or when it does lists them along with many other functions, still has great importance for libraries. Probably the most important is the general one giving local authority for the issuance of bonds for construction of public buildings. This varies widely among and between governmental units, even within the same state. It is not usually found in library law. It does appear in some, and one of the most interesting bits of reading in all of library law is the Alabama law governing an independent public library authority.[12] It seems to provide the means of financing the erection of public library buildings without recourse to the difficulties and hazards of a bond issue election.

Another type of general law affecting libraries that are working

toward larger units of service is the joint exercise of power statutes found in many states. It usually appears in the general statutes applying to units of government below state level. Still another is the legal definition of "municipality." While the average person might not regard the county as one, it is so regarded in some states along with cities, villages, boroughs, towns and even, in some instances, townships.

Other kinds of law affecting libraries can be found in codes covering administrative procedures, contracting powers of governmental units, fiscal procedures and the auditing thereof, general home rule provisions, public insurance, tenure and retirement of public employees in general, and sections of the criminal code applicable to the protection of public property. That last item should not be overlooked. The statutes of most states use a dollar amount to set the difference between a misdemeanor and a felony. In the states where there is a specific law protecting library property this might not matter, but with a general code it is different. With the increase in the cost of books in circulation and the widespread circulation of 16mm. films it would not be difficult for a delinquent borrower to unwittingly become subject to a severe penalty without the library or the borrower realizing it.

On a lighter note there are the laws which were passed to apply to a single library situation. They usually begin with an elaborate description of any political unit having a long list of specific characteristics. A limited population range in a specified census, a limit on or a narrow description of location, or a specified geographic size, singly or in combination, usually identify such laws on sight. While this is local legislation and intended to affect only one library, it unintentionally might alter or limit the library power in units of government which not only do not want the law but which would have opposed it strenuously had they been aware of its introduction. They can have a humorous tone.

Some classic examples refer to "any town containing five or more governmental townships and having a population of 15,000," [13] or "counties having a population of not more than twenty thousand (20,000) nor less than fifteen thousand (15,000) people, according to the federal census of 1950, and bordering the State of Louisiana and not bordering the Mississippi River, shall not . . . levy a tax in excess of one mill for library purposes." [14] The first was passed to permit Stuntz Township in Minnesota to operate bookmobile service at a time when such service was not generally recognized as an appropriate library function. The second appears to be one of those methods by

which a higher tax levy was authorized and the proponents, needing a legislator's support, received it by agreeing to exempt a single county from its provisions. This kind of situation is not as rare as some might believe. The strange provision in the Minnesota Regional Library Law, which denies counties containing cities of the first class with populations of over 300,000 the privilege of joining a region, is the result of such a maneuver. To eliminate opposition by one large county legislative delegation, that county had to be exempted. The result also denied this right to another still larger county, but that could not be avoided.

So much for what is already law. It is time for an evaluation of how well the fifty states are fulfilling what Joeckel and Winslow called the first duty of the state in relation to libraries: the provision of a sound legal foundation for the establishment and maintenance of public libraries.[15] In the questionnaire sent to the states they were asked for their opinions of their own law and what principles, if any, they thought applied to state legislation for public libraries. Since these replies are from the people charged with that responsibility, and who work in daily intimate contact with the public libraries of their states, their collective opinion has validity. One-third of the respondents felt that their laws were good; another one-third regarded the laws as fairly good, but needing improvement; and the other third regarded the laws as poor and much in need of change. The most trenchant comment was that what they had was not perfect, but it was working too well to risk trying to change it. It is to be hoped that, if such an attitude toward libraries exists, time will bring improvements.

The elements of the law most needing change, according to most replies, are improvements in public library financing. Removing or raising the tax-levy limitations was a goal in some, but more than one-half of all the states feel a need to either establish or to increase state aid to public libraries. The other major area of emphasis was the need for improvement in the law providing for the larger units whether they are called regional libraries, multi-county libraries or library systems. A major weakness of so many laws covering such establishment is their lack of adequate provision for involving the smaller public libraries already in existence in regional library participation. By staying out because they see no clear method for joining, these libraries create continuing problems in many states. Not all of them fit the stereotype of the tiny library with few books other than popular fiction and children's books, and having a librarian who retired to the job from a career of school teaching. In such places, fear of the new

or fear of having to change are the deterrents. Time for learning the facts or for a second retirement can solve such a problem.

There are other libraries where intelligent professional people and forward-looking public officials have been reluctant to join because they hold doubts about what the new system could mean to their own, already fairly good, service. These might be convinced by flexible negotiations, but this also takes time. I have written something I call H. Smith's Law on this, without apologies to Parkinson: *The time required to negotiate a multi-unit public library contract is a function of the square of the number of parties involved in the negotiations.* If doubts are strong this might have to be increased to the function of the cube of the number.

We still have to recognize that there are some recalcitrant people who wait a long, long time. The proponents of the larger unit can become reconciled, or at least nurture their patience, by remembering that when someone has to "eat crow" that same someone should be given ample time to cook it until tender. The purpose of changes in the law should be to eliminate fears, remove doubts, and reduce recalcitrance.

Other proposed changes, mentioned by several states, are passing interestate library compact laws and making the support of public libraries mandatory throughout the state. Other changes desired were the accreditation of libraries and the authorization for library boards to set up provisions for tax-sheltered annuities for library personnel.

After this review of existing laws and current proposals for changing and improving them, is it possible to identify principles which could apply to general state legislation for the organization, management and support of public libraries? The replies to the questionnaire on this were varied, as might be expected, and some were conflicting, as might not have been anticipated. When the writer was on the board of the American Association of State Libraries, there was serious discussion of trying to fund a project for the drafting of a model library law. Grant funds were requested but not secured which may have been just as well. Using testimony heard long ago, there is reason to believe that Carleton B. Joeckel helped Pearl Sneed, then secretary of the Mississippi Library Commission, to write the library law which she proposed to, and got passed by, the Mississippi legislature. When drafted, it was a good law—flexible and permissive and encouraging larger units of service. But, when passed, it had weaknesses which require continuing revision. Joeckel did not propose the limit on the tax

levy; the legislature put it in. From what we have seen in the rest of the country, this could have been predicted. It seems probable that no model would serve for all states.

But there are principles we can apply. Assembling the collective wisdom of the states, good library legislation for public libraries is broad and general, flexible, permissive rather than restrictive, specific in the authority for tax support but not with limitations, clear, concise, and stable. Present laws, as read by the writer, do not meet all these criteria in any state. But a few states do think that some library laws could serve as models for the rest. The ones mentioned most are those of Hawaii, California and Illinois.

The existing laws illustrate well the conflict of opinions. Some leaders believe the law should include a maximum of specific details, while others believe the law should hold details to a minimum and be short, simple and precise. Both kinds can be found in abundance.

At another level, however, there is a kind of principle with which none should argue. In existing law, the best example is in the new Ohio networks law which states that good library law should:

> (A) Ensure every resident . . . access to essential public library services;
> (B) Provide adequate library materials to satisfy the reference and research needs of the people of (the) state;
> (C) Assure and encourage local initiative and responsibility and support for library services;
> (D) Encourage the formation of viable area library service organizations and library systems providing a full range of library services;
> (E) Develop adequate standards for services, resources, and programs that will serve as a source of information and inspiration to persons of all ages, handicapped persons, disadvantaged persons, and will encourage continuing education beyond the years of formal education;
> (F) Encourage adequate financing of public libraries from local sources with state aid to be furnished as a supplement to other library financial resources.[16]

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3. Joeckel, *op. cit.*, p. x.

4. *Ibid.*, pp. 64-73, 77-110.

5. *Ibid.*, pp. 111-50.

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12. Ladenson, *American Library Laws, op. cit.*, pp. 111-20.

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