

Chapter 10: Legal Matters

It is important for board members to understand the essentials of a number of federal, state and local laws. Please consider this chapter to be legal information, not legal advice — the application of law to an individual's specific circumstances. You should consult a lawyer if you want professional assurance that the information, and your interpretation of it, is accurate.

Library Ordinance

In Iowa, a public library is established by an ordinance adopted by the city council. It is important to be acquainted with the library ordinance because it is the “law” under which the library exists. The library ordinance is part of the city code; if you have not been provided with a copy of the ordinance, request one from your library director. In the ordinance you will find:

- the number of board members, how they are appointed and their terms of office
- the powers and duties of the library board including its authority to set the librarian's salary and control the library's expenditures
- procedure for budgeting and approving bills
- reports required from the library to the city council

Most of Iowa's public libraries are established by an ordinance very similar to the sample ordinance in the appendix of this handbook. Libraries established after Iowa's Home Rule Act (1972 Acts, chapter 1088), may have an ordinance similar to the sample ordinance or it may be substantially different.

Changing the Library's Ordinance

“A proposal to alter the composition, manner of selection or charge of a library board, or to replace it with an alternative form of administrative agency, is subject to the approval of the voters of the city.” (Iowa Code section 392.5)

For sound reasons, changing the library ordinance is not simple. Most other city ordinances are changed through a vote of the city council. However, substantial changes to the library ordinance such as changing the number of board members, how board members are appointed, or their powers and duties, require a referendum vote. This means the issue is decided by a vote of the people in a city election.

A frequently asked question about the library ordinance is “**Our ordinance states that all seven members of the board shall be residents of the city. We would like one of the board members to be a rural resident. How do we proceed?**” Such a change to the library ordinance must be submitted to the voters in a city election. The library board may request that the proposed changes be placed on the ballot. If a majority of the voters approve, the city changes the library ordinance in accord with the proposal.

Iowa Code section 392.5 protects library boards and the powers of library trustees against direct city control over libraries. This protection insulates library governance from political influence and safeguards intellectual freedom.

Financial Support for Libraries

"... each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation, for the purpose of providing financial support to the public library which provides library services within the respective jurisdictions." (Iowa Code section 256.69)

Library support by cities and counties is mandated by Iowa law. Each city and county must collect taxes to provide financial support to the public library which provides library services within the respective jurisdiction. This includes incorporated cities which do not have a public library. These cities contract with a public library in a neighboring city to provide service to their residents.

For residents living in unincorporated areas, library service is included in the rural services fund under the 1983 Acts, chapter 123 on "County Finances, Funds and Levies." Included with libraries in this fund are road clearing, weed eradication and sanitary disposal. The maximum levy for rural services is \$3.95 per thousand dollars of assessed value in the unincorporated area.

Open Meetings

"This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness." (Iowa Code section 21.1)

Library board meetings are subject to the Iowa Open Meetings Law. Iowa law assumes that meetings are open. Iowans do not have to make a case to attend a governmental meeting such as a library board meeting. Board members should be familiar with the law and each member should have a copy of the *Iowa Open Meetings/Open Records Handbook*, available from the Iowa Freedom of Information Council website sponsored by the Drake University School of Journalism and Mass Communication, http://www.drake.edu/journalism/foi/open_mtgs_recs.html

Follow the Open Meetings Law to the letter when board business is routine to be prepared when controversial issues surface.

What is the definition of a meeting?

A meeting is defined as "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body [library board] where there is deliberation or action upon any matter within the scope of the [library board's] policy-making duties."

How much notice should be given for the meeting?

At least 24 hours before a meeting, boards are required to post a notice and agenda in a prominent place accessible to the public or in the building in which the meeting is to be held. The notice must include the time, date and place of the meeting and a tentative agenda. The notice does not have to be published in the newspaper. If a news/media agency requests a copy of the notice and agenda, the library board must supply it.

What needs to be on the agenda?

Even an informal meeting of library trustees would be subject to the open meetings law if there is a majority of the trustees at the gathering and library business is discussed.

The agenda should include all business to be discussed at the meeting in enough detail to give members of the public a good idea of what topics will be discussed. If an item comes up at the meeting that has not been included on the agenda, action should be deferred to a later meeting. However, the law does allow for items that may come up on an emergency basis.

What should be included in the minutes?

Minutes of all library board meetings must be kept and include the date, place, the members present, any action taken at the meeting and enough information to allow the public to determine how each member voted. Minutes are subject to the Open Records Law and must be made available to the public if requested.

When may a meeting be closed?

To have a closed session the government body must first meet in open session. This means notice and the agenda, which reasonably apprises the public of what is about to occur, must be posted 24 hours in advance. The government body may go into closed session only with two-thirds majority vote of the entire board or a unanimous vote of all the trustees present. In addition, the specific reason to go into closed session under Iowa Code section 21.5 must be announced in open session. If a closed session is conducted (note: there is no requirement to have a closed session) detailed minutes of the closed session must be kept and the closed session must be audio recorded. No final action may be taken during the closed session.

There are very few reasons listed allowing a closed session and each reason has very specific requirements. The following examples illustrate the need to read and become familiar with the law before going into closed session. Iowa Code section 21.5(1)(i) allows trustees to evaluate the professional competency of an employee or potential employee, but two criteria must be met: the person you are evaluating must request a closed session, and the closed session must be "necessary to prevent needless and irreparable injury to that individual's reputation." Without both requirements a closed session is not allowed by law.

Another example is when the government body is discussing the purchase of real estate. A closed session may be held only if the "premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property." This particular section is unique because after the transaction is complete the government body must make available the audio recording and minutes from the closed session.

Get legal advice

The specific requirements of the Open Meetings Law can be confusing. If you are uncertain, seek legal advice before proceeding. Under the Open Meetings Law there are exceptions to the liability of the law if you "reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body." You may also contact the Citizens' Aide/Ombudsman Office at 888-426-6283 or review the Iowa Attorney General Sunshine Advisories located at http://www.iowa.gov/government/ag/sunshine_advisories/index.html.

Access to Information and the Internet

Public libraries have an important role in our democracy as the place where people can get a variety of information in many formats and on all sides of an issue. Controversy over resources offered in the public library is not new. The *Library Bill of Rights* was written by Des Moines Library Director Forrest Spaulding in 1937 in response to book burning in Germany during the Nazi regime, and is still relevant today. (See *Library Bill of Rights* in the Appendix).

The *Library Bill of Rights* states that library resources should be provided for all people of the community, regardless of their "origin, age, background, or views." And the First Amendment to the U. S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Can some library resources be considered "obscene"? Individuals' definitions of obscenity differ, but Iowa law defines it in Iowa Code chapter 728. Note that libraries, along with other educational institutions, have an exemption to this law in section 728.7. Why? Libraries have an exemption because they need legal protection if they own art, books or other materials which could be considered obscene under the Iowa law.

The *Library Bill of Rights* and the First Amendment apply to the provision of information in the library including the Internet. In 2003 the U.S Supreme Court ruled that the Children's Internet Protection Act (CIPA) was constitutional only if the Internet filters required by CIPA could be readily disabled upon the request of adult library users.

What does all of this mean for you as a library trustee? First, ask your library director to keep you informed on the status of legislation concerning access to the Internet in libraries. Or check for updates from the American Library Association's Office for Intellectual Freedom, <http://www.ala.org/alaorg/oif/>. Talk as a board about the issue, and if you haven't already, develop a policy on Internet use. If the board does decide to offer filtered access to the Internet, make sure that unfiltered access is also available in the library.

Open Records and Confidentiality

"Every person shall have the right to examine and copy public records ... [however] the following records shall be kept confidential unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information ... The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists

between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.” (Iowa Code sections 22.2 and 22.7(13))

Library boards should take every precaution to guard the confidentiality of library customers. This includes ensuring that:

- a confidentiality policy for the library is adopted by the board
- circulation cards for library materials, which the public see, do not indicate the name of the customer checking out the material
- circulation records in an automated system are not kept after statistics are recorded and the material is returned, and any fines or fees attached to the record are paid
- overdue notices are sent only in sealed envelopes or via e-mail and never on postcards where others could see what the customer has checked out
- phone reminders of overdue items and reserves left on answering machines maintain confidentiality

Included in a policy on confidentiality should be statements on the confidentiality of library circulation records and a statement as to when the custodian of the records may open the records. The identity of which customer requested which materials or information may be revealed only:

- if the library is presented with a court order. (The court order must indicate that this information is needed for the investigation of a particular person or an organization and may only be issued after a judge has determined if the connection between the case and the record makes it “cogent and compelling” that the information is released.)
- if the lawful custodian of the records, defined by an Iowa Attorney General’s opinion to be the library director, releases the information. (To safeguard customers’ confidentiality, the library board should state in the policy that the record shall be opened by the lawful custodian only upon receipt of a court order as indicated above.)

Library customer information (such as names and addresses) that is not attached to a circulation record may also be kept confidential if the library board reasonably believes that releasing the information would discourage people from applying for library cards. The board should adopt a policy on release of this type of information. See Iowa Code section 22.7(18).

Questions on Confidentiality and Open Records

Q. Can parents see their children’s library records to determine whether they have overdue materials?

A. This is a complex question and the library board may want to consult with the city attorney for legal advice. According to a 1993 letter from the Legal Consultant at the Iowa Department of Education, persons who contract with a minor do so at their own risk for the minor lacks the legal capacity to contract. Parents, under Iowa Code 613.16, are liable for the acts of their children. At the same time, Iowa Code subsection 22.7 (13) protects the confidentiality of all library patrons regardless of age. Thus, parents are liable for the acts of their children and yet children are included in the right to have their library records kept confidential. Obviously, libraries are in a difficult position as a result of these two Iowa Code sections.

As noted previously, Iowa Code section 22.7 does allow for discretion on the part of the custodian of the records, who is the library director. In other words, the Iowa Code gives the custodian of the records, the library director, the authority to decide whether or

not to release library records. If records are requested by a criminal or juvenile justice agency, the library director may release the records **only** upon receiving a court order.

The board should adopt a confidentiality policy which designates the library director as the custodian of the records and which states when the library director may release the records. Some libraries in Iowa will not release the records of a child to a parent under any circumstance. Others will release them in certain situations. To protect intellectual freedom, library boards should err on the side of confidentiality. Releasing the records of a library patron, regardless of age, should be the exception rather than the rule. For example, if a three year old has checked out a number of Dr. Seuss books and the parent wants to know the titles to be sure all items have been returned, many library boards would find it reasonable to release the titles. However, the older the child is, the more difficult the decision becomes. If it is a 14 year old child who has checked out books on child abuse and adult alcoholism, most library boards would, without question, protect this child's confidentiality.

A parent who wishes to know what a child has checked out has at least two other options besides asking the library director for the child's library records. A parent could simply ask the child what is checked out or require the child to check out materials under the parent's card.

Q. If requested for a purpose such as a library fund raiser, may the library provide lists of library card holders?

A. Yes, as long as the list does not link the customer with the material or information requested, it is an open record and is open to inspection by the general public. However, as noted earlier, this information may also be kept confidential if the library board reasonably believes that releasing the information would discourage people from applying for library cards.

Gender Balance of Library Board of Trustees

Library boards are subject to the same requirements as other boards as required in the Iowa Code 69.16A: Gender balance.

1. All appointive boards, commissions, committees, and councils of the state established by the Code, if not otherwise provided by law, shall be gender balanced. No person shall be appointed or reappointed to any board, commission, committee, or council established by the Code if that appointment or reappointment would cause the number of members of the board, commission, committee, or council of one gender to be greater than one-half the membership of the board, commission, committee, or council plus one if the board, commission, committee, or council is composed of an odd number of members. If the board, commission, committee, or council is composed of an even number of members, not more than one-half of the membership shall be of one gender. If there are multiple appointing authorities for a board, commission, committee, or council, they shall consult each other to avoid a violation of this section.

2. All appointive boards, commissions, committees, and councils of a political subdivision of the state that are established by the Code, if not otherwise provided by law, shall be gender balanced as provided by subsection 1 unless the political subdivision has made a good faith effort to appoint a qualified person to fill a vacancy on a board, commission, committee, or

council in compliance with subsection 1 for a period of three months but has been unable to make a compliant appointment. In complying with the requirements of this subsection, political subdivisions shall utilize a fair and unbiased method of selecting the best qualified applicants. This subsection shall not prohibit an individual whose term expires prior to January 1, 2012, from being reappointed even though the reappointment continues an inequity in gender balance.

Notice that the code allows an exemption if a "good faith effort" has been made for three months to fill a position properly. In order to defend any non-compliant appointments, it is recommended that cities document their failed efforts to recruit a qualified candidate of the desired gender. Furthermore, cities and counties are instructed to "utilize a fair and unbiased method of selecting the best qualified applicants." This means that being appointed to a library board no longer depends upon "who you know" or a particular citizen's relationship with the mayor. Instead, a standard protocol, application, or process should be used to determine qualifications. Such a process need not be complicated; in fact, the more transparent and simple it is, the better for recruitment. Utilize local clubs and organizations to get out the word about the skill set you require; parent-teacher associations, labor unions, community colleges, veterans' posts, churches, neighborhood groups, professional networks and social clubs are all comprised of volunteers active within their communities. Advertise.

In most Iowa cities, public library trustees are appointed by the mayors and approved by the city councils. Therefore, it is the legal responsibility of the mayor and the city council (and county boards of supervisors, if they appoint rural board members) to ensure that library boards are gender balanced. The library director and trustees can suggest names of potentially good candidates for the board, but the mayor and city council (and in some cities, the county board of supervisors) make the actual appointments.

Useful Resources

- Recruiting Gender Balanced Boards and Commissions: A Guide for Cities and Counties (www.statelibraryofiowa.org/ld/t-z/Trustees/trusthandbook14/legal-matters/recruitgenbal) - This document aims to provide guidance and advice to county and city boards and commissions in Iowa in achieving gender balance.
- The Iowa State Association of Counties has a page on their website with some useful information on Gender balance (www.iowacounties.org/gender-balanced-boards-information/).
- Sample trustee application form. You can use this form as a template when you need an application form for new trustees. The form is available in MS Word format (www.statelibraryofiowa.org/ld/t-z/Trustees/trusthandbook14/legal-matters/trusteeapp.doc) so you can customize it with your own information. The form is also available in the Adobe PDF format (www.statelibraryofiowa.org/ld/t-z/Trustees/trusthandbook14/legal-matters/trusteeapp.pdf) in case you don't have MS Word or compatible software.

USA PATRIOT Act

The USA PATRIOT Act was introduced shortly after September 11, 2001. It stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." It was signed into law on October 26, 2001 and broadly expanded the authority of the Federal Bureau of Investigation to gain access to all types of records, including library records, stored electronic data and electronic communications. It amended more than 15 different statutes, including the Electronic Communications Privacy Act of 1986 (ECPA), the Computer Fraud and Abuse Act (CFAA), the Foreign Intelligence Surveillance Act (FISA), and the Family Education Rights and Privacy Act (FERPA).

The USA PATRIOT Act reauthorization legislation was signed into law by President Bush on March 9, 2006, and differs somewhat from the original legislation. A sunset of December 31, 2009, was established for Section 215 of the USA PATRIOT Act. The USA PATRIOT Act was renewed in 2011.

The following points about the USA PATRIOT Act were presented by the American Library Association (ALA), Office for Intellectual Freedom at the 2008 Public Library Association Conference:

- ❑ The Act authorizes the Foreign Intelligence Surveillance Court to issue an order to the FBI, permitting its agents to gain access to “any tangible thing (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities.” The definition includes library circulation records, Internet sign-up sheets, computer hard drives, databases and other media in the library.
- ❑ Only the FBI may use the PATRIOT Act as the basis for obtaining information.
- ❑ Gag Order: Warrants issued under the Section 215 Business Records provision prohibit the recipient from disclosing the existence of the warrant, or the fact that records were turned over to the FBI. There are two exceptions: the order can be disclosed to any person to whom disclosure is necessary to comply with the orders; the order can be disclosed to an attorney in order to obtain legal advice or assistance with the production of the items sought by the order.
- ❑ National Security Letters (NSL) are written commands to produce certain types of records. They are issued on the authority of the FBI, without judicial approval or judicial oversight. NSLs are used to obtain particular types of records: electronic communications and transactions; financial records, credit card records, records of large cash transactions and consumer credit records. They are subject to gag orders as described above.
- ❑ To ensure privacy and confidentiality for library users, the ALA, Office for Intellectual Freedom suggests that libraries avoid creating unnecessary records; avoid retaining records that are not needed for efficient operation of the library; limit the degree to which personally identifiable information is monitored, collected, disclosed and distributed; avoid library practices and procedures that place personally identifiable information on public view.
- ❑ Library Policies: Should communicate the library’s commitment to protect users’ personally identifiable information; inform library users how their personally identifiable information is used, stored and protected by the library; explain under what circumstances personally identifiable information might be disclosed to third parties and law enforcement.

Since the interpretation of the USA PATRIOT Act is evolving, for the most up-to-date information, go to <http://www.ala.org/>

Fair Labor Standards Act (FLSA)

The federal Fair Labor Standards Act (FLSA) establishes standards for basic wages, overtime pay, record keeping, and child labor.

Basic wages

Each library employee must be paid not less than the minimum wage. **Library employees must be paid for hours worked and may not volunteer time without pay.** For information on Iowa's minimum wage, contact the Iowa Department of Workforce Development at 515-281-5387 or 800-562-4692 (toll free) or visit the agency's website at <http://www.iowaworkforce.org/>. As of this writing Iowa's minimum wage is \$7.25.

Overtime pay

Within the public library are employees who are **exempt** and those who are **non-exempt** from the FLSA regulations; one of the deciding criteria is whether the employee has independent decision-making authority. The director of a public library is usually an **exempt** employee if he or she directs a staff of at least two. Those employees who do not have independent decision-making authority, even if they have a library science degree, are **non-exempt** from the FLSA. To determine whether a position is exempt or non-exempt, call the Wage and Hour Division of the U.S. Department of Labor's Iowa office at 515-284-4625 or visit the department's website at <http://www.dol.gov>.

Non-exempt employees must be paid overtime at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek. A workweek is defined as seven consecutive 24 hour periods, fixed and regularly occurring; each workweek stands alone. Time off may be granted within the workweek if the employee has reached 40 hours before the end of the week. In other words, an employee may work 10 hours each day, four days straight within the workweek without being paid overtime. However, if the employee works 45 hours during one workweek and 35 hours during the next, five hours of overtime must be paid.

For libraries in the public sector, compensatory time may be given in lieu of overtime, but must be given at the rate of "time and a half" to **non-exempt** employees.

Recordkeeping

The FLSA requires that employers keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is the kind generally maintained by employers; the records do not have to be kept in any particular form and time clocks need not be used. For more information, contact the Wage and Hour Division of the U.S. Department of Labor's Iowa office at 515-284-4625 or visit the department's website at <http://www.dol.gov>.

Paying library staff while they attend training.

According to an FAQ on the Iowa Workforce Development website, "If any such gathering is required by an employer, or if an employer leads its employees to believe they will receive adverse treatment for not attending, the employer must pay its employees for the time spent in attendance." See

<http://www.iowaworkforce.org/labor/wagefaqs.pdf>

5) Child labor standards. Fourteen is the minimum age for library work; youths 14 and 15 years old may work at the library outside of school hours under the following conditions:

- no more than 3 hours per school day and 18 hours in the school week
- no more than 8 hours on a non-school day or 40 hours in a non-school week
- work may not begin before 7:00 a.m. or continue after 7:00 p.m. except from June 1 through Labor Day when permissible evening hours are extended to 9:00 p.m.

A library may hire youths 16 years of age and older to work unlimited hours within the guidelines of the FLSA.

Iowa Gift Law

“Except as otherwise provided in this section, a public official, public employee, or candidate, or that person’s immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor.” (Iowa Code Section 68B.22)

The library’s director and trustees are subject to the Iowa Gift Law. You cannot accept a gift for personal use that has a value of over \$3.00 from anyone who wants to do business with the library. For example, you cannot personally accept a gift from a book salesperson who could sell books to your library. However, if the benefit is available generally, it is not considered a gift. For example, if Baker & Taylor provides books discounts to library staff members in all libraries, it is not considered a gift to an individual employee and does not fall under the Iowa Gift Law.

Compatibility of Office

Not all possible combinations of public office have been tested in the courts or by the Iowa Attorney General’s office; however, the following offices, specifically applying to libraries, are considered incompatible, meaning that one person should not hold both offices at the same time.

- council member and library board member
- mayor and library board member

A person may seek an office position currently incompatible with the office now held if the person gives up the current office upon taking over the new office.

The 1912 Iowa Supreme Court decision, “State v. Anderson” (136 N.W. 128) addresses compatibility of office. In that decision, the justices stated:

“...the consensus of judicial opinion seems to be that the question must be determined largely from a consideration of the duties of each (office), having, in so doing, a due regard for the public interest. It is generally said that... the test of incompatibility is whether there is an inconsistency in the functions of the two, as where one is subordinate to the other ‘and subject in some degree to its revisory power’, or where the duties of the two offices’ are inherently inconsistent and repugnant.”

And further that *“it is held that incompatibility in office exists ‘where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for an incumbent to retain both.’”*

During your time on the board you may also come across situations that raise questions about conflict of interest. One example is a board member who wants to work as a substitute at the library and be paid. Although it might be legal (see Iowa Code, section 362.5), it is not recommended. Even if the board member abstains from voting on his or her pay, this practice still puts the library director in the position of supervising someone who is actually his or her employer. This could be a very difficult position for the library director if the board member's performance as a substitute is unsatisfactory.

Another example of potential conflict of interest is a board member whose relative is a library staff member. The employee may go around the director to take concerns to the board member when the issue should be resolved by the library director and the employee. Allowing this type of situation to continue undermines the authority of the library director and may result in the library director resigning.

If you, as a board, are sincerely concerned about a potential conflict of interest, consider discussing it with the city manager, city attorney, mayor and/or city council. To allow a potential conflict of interest to go unresolved could damage the library's credibility in the community for years to come. If you are unable to decide whether or not there is a conflict of interest, unresolved questions can be formally addressed to the Iowa Attorney General's Office by an elected official.

Theft of Library Materials and Equipment

Iowa Code section 702.22 defines library materials and equipment and Iowa Code 714.5 relates to the theft of library materials. Books overdue for two months, and equipment overdue for one month, can be prosecuted as theft under this law. Before taking any legal steps, the library must have made a reasonable attempt to notify the customer that the material is overdue and that legal remedies may be taken. One notice to the customer must be by certified mail.

The library may request help from law enforcement in getting the library's property back. The library can require a deposit on library equipment before it is checked out, and in the case of late returns, can penalize the customer up to 25% of the value of the equipment. The law requires that the library post a notice about Iowa Code section 714.5 and about any fees that may be imposed by the library.

Board Liability

Are library trustees subject to personal liability? According to the Iowa Code, section 670.2,

“A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, ‘compensation’ does not include payments to reimburse a person for expenses.”

The legal power of the library board comes when the board acts as a body. To guard against potential liability, **avoid** the following:

- ❑ Acting in excess of authority, i.e. inappropriate expenditures or exceeding budget spending levels
- ❑ Failing to act when action should have been taken, i.e., failure to meet contractual obligations
- ❑ Negligence, i.e., unsafe buildings and grounds, failure to supervise funds
- ❑ Intentional misconduct, i.e., libel, improper discharging of an employee, theft
- ❑ Acting in violation of the law, i.e., authorizing payment of improper expenses, failing to follow proper rules for hiring

Americans with Disabilities Act (ADA)

Libraries are subject to the ADA including assuring that persons with disabilities can use the services of the library. A library being built or remodeled must be constructed without obstructions to a person with a disability. Questions about specific building requirements should be addressed to the State Fire Marshall's office in the Iowa Department of Public Safety at 515-725-6170. The Fire Marshall's website is <http://www.dps.state.ia.us/fm/index.shtml>.

There is detailed information about the Americans with Disabilities Act on the United States Department of Justice website at <http://www.usdoj.gov/crt/ada/adahom1.htm>

Occupational Safety and Health Act (OSHA)

OSHA is located in the U.S. Department of Labor, and its mission is to protect the health of Americans in the workplace. Information on OSHA can be obtained on the federal level at <http://www.osha.gov/>. If there is a question about staff safety or health in the library, contact the Iowa Division of Labor Services at 515-281-7629. The agency's website is <http://www.iowaworkforce.org/labor/iosh/consultation/index.htm>

Architect Requirement for Designing a Public Library

In Iowa, a registered architect is required to perform the design of a public library. A library is considered a building for "governmental use." See Iowa Code Chapter 544A Registered Architects, and title 193B of the Iowa Administrative Code. Refer to Iowa Code Section 544A.16 for definitions and to Section 544A.18 for exceptions. Questions about registered architects may be addressed to the Iowa Professional Licensing Bureau, 515-281-7362 or visit the agency's website at <http://www.state.ia.us/government/com/prof/architect/home.html>

Construction Bidding Procedures Act

The Construction Bidding Procedures Act, enacted by the Iowa Legislature in 2006 for all contracts entered into by public owners on or after January 1, 2007, represents the most comprehensive rewrite of Iowa's competitive bidding laws. The legislation can be found in Iowa Code Chapter 26. The act applies to "government entities" defined to include cities / libraries. Iowa Code section 26.2 defines "public improvement" as "a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity..." The formal competitive bidding procedure is applicable to public improvements with an estimated cost exceeding \$100,000. There are several distinct steps in the competitive bidding process. Some of the required steps may occur behind the scenes, while other steps must be taken in public after public notice and after the public has been given the opportunity to address the governing body concerning the proposed public improvement. Any library planning construction of a library building or other "public improvement" should review this legislation.

Library Meeting Rooms

The library board is charged with responsibility for the library, including meeting rooms. The major decision to be made in this area is whether to allow meeting rooms to be used for library programs only or to open them up to community groups. A federal court ruling in 1989 (*Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32) defined library meeting rooms used by the public as public forums in which constitutionally guaranteed free speech is allowed. This means that if a library meeting room is open to one public group it must be open to all public groups. The library board may make rules on the times that the meeting room can be used, how much may be charged for the room use and the manner or use of the facility, but not which group can use it if it is open to public groups.

Another law applying to library meeting rooms is Iowa Code Section 43.93. Under this law, library meeting rooms must allow a precinct caucus to be held in the library. In part, the section states that “...upon the application of the county chairperson, the person having control of a building supported by taxation under the laws of this state shall make available the space necessary to conduct the caucus without charge during presidential election years and at a charge not greater than that made of its use by other groups during other years...”

Combined School and Public Libraries

Although there are a few combined libraries in Iowa, nearly every community planning for a new library building at least briefly considers the feasibility of a combined school and public library facility. Such libraries are typically housed in a single facility and, ideally, they should provide both the curriculum support functions of the school library and the service functions of the public library for the community.

To assist Iowa communities in making informed decisions on whether to combine school and public library services, Iowa Library Services published *Is a Combined School / Public Library Right for Your Community?* (2006). It provides decision-makers with a means of assessing the feasibility of establishing a combined library and, if the decision is made to proceed, with a Planning Guide that addresses the many areas of library operations that need to be considered if the combined library is to be successful. The publication is on Iowa Library Services' website.

28E Agreements

There are situations in which a public library would like to enter into a *formal* agreement with another library or governmental agency to provide or share a service. In these situations, creating what is called a “28E Agreement” may be beneficial. Chapter 28E of the Iowa Code is titled “Joint Exercise of Governmental Powers” and allows for agencies to cooperate in a number of ways.

If your community considers a combined school and public library, be aware that:

- There are significant obstacles inherent in combining libraries, as evidenced by the fact that only a handful of such libraries exist in Iowa and the surrounding states.
- While operating joint libraries is often seen as a way for cities and school districts to save money, per capita expenditures have actually increased in the last five Iowa communities where school and public libraries combined.
- Based upon data collected by Iowa Library Services, combined libraries are much less likely to meet public library accreditation standards to qualify for Direct State

One example in Iowa is the public libraries in Dubuque County which created an “agency” through a 28E agreement. “The agency is a public entity consisting of the Public Libraries of the City of Dubuque, Iowa, City of Dyersville, Iowa, City of Cascade, Iowa, and Dubuque County,

Iowa, and as recognized by Chapter 28E of the Code of Iowa and is organized for the purpose of providing library services.” Through the agreement, the libraries have agreed on the rate charged for providing library services to cities without libraries.

Other examples may include sharing personnel, facilities or equipment between one public library and another or other governmental agency. Iowa Code 28E outlines the parameters of such an agreement.

Library Districts

Legislation passed by the Iowa Legislature and signed by the Governor in 2001 (2002 Iowa Acts, Chapter 158, sections 25-36) make it possible to establish library districts. According to Iowa Code Chapter 336, library districts may be composed of one or more counties, one or more cities, or any combination of cities and counties. To form a library district, five percent of the eligible voters who voted for president of the United States or governor, as the case may be, within the district at the last general election would petition the board of supervisors of the county or the city council, for the establishment of the library district. The board of supervisors of each county and the city council of each city containing area within the proposed district would submit the proposition to the registered voters. A library district would be established if a majority of the electors voting on the proposition residing in the proposed library district favored its establishment. The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the library district unless a majority of its electors voting on the question favor its inclusion.

Prior to this legislation, the Iowa Code allowed for the establishment of only two types of public libraries—city libraries or county libraries. This legislation does not require cities, counties and wider geographic areas to establish a particular structure; rather, it allows them to choose among a number of library governance models to fit their needs.

Nolte v. Brown Memorial Library, Dumont

In *Nolte v. Brown Memorial Library*, No. 00-1045, slip op. (Iowa App. March 27, 2002), the Iowa Court of Appeals invalidated a real estate contract that the Dumont library board had entered into because the Dumont city council did not approve the contract. The basis of the court's ruling was that Iowa Code section 392.3 provides that contracts entered into by city agencies must be approved by the city council unless the ordinance establishing the agency states otherwise. In Dumont, the city had adopted an ordinance that required the city council to make or authorize all contracts and that specifically required contracts to be "in writing and approved by the council, or expressly authorized by ordinance or resolution adopted by the Council" for the contract to be binding on the city. See Dumont City Ordinance section 17.02(4) (1993). Dumont had adopted a library ordinance that is the same as most library ordinances in Iowa. The Court of Appeals reviewed Dumont's library ordinance and determined that nothing in the library ordinance constituted "express language stating that (1) the library board's contracts are not subject to review and approval by the council, or that (2) the board is authorized to enter into contracts." *Nolte*, slip op. at 5.

Although to date the decision remains unpublished, it raises questions about whether local library boards in fact have as much independence from their city councils as previously thought. However, because the decision was based heavily on the language of Dumont's ordinance section 17.02(4), the ultimate impact of the decision may be limited if other cities' ordinances regarding council approval of contracts is different than the language of Dumont's ordinance. Some people have argued that the impact of the decision is limited to real estate contracts.

Have your library director consult with your city attorney about whether it is wise for the library to change the way it conducts business in light of this decision. Neither Iowa Library Services nor the Iowa Attorney General's office can give you legal advice about this issue.