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MEMORANDUM

To: Deirdre Brennan, RAILS Director
From: Julie Tappendorf, Ancel Glink
Subject: Relationship between a Municipality and a Municipal Library
Date: August 2, 2022

You asked us to look at and provide RAILS with a memorandum summarizing some of the legal issues surrounding the relationship between a municipality and a municipal library. One of the issues you raised is the legal status of a municipal library and the powers of the library board. Another is the relationship between library employees and the municipality. The final issue relates to the tax levy and other financial relationship. We have addressed many of these issues in the memorandum.

A Municipal Library is an Independent Unit of Local Government

It is important to understand that a municipal library organized and operating under the Local Library Act is not a department of the municipality like a municipality's police, fire or public works departments. It is also not a commission or board of the municipality like a zoning board of appeals or plan commission. Instead, a municipal library is an independent unit of local government authorized, created, and governed by state statute. 75 ILCS 5/1-1 *et seq.* As an Illinois municipal library, the operations of the municipal library are governed by the Local Library Act and not the Illinois Municipal Code which governs the municipality's operations. The legal status of a municipal library is similar to that of park and school districts which are also independent units of local government created by separate statutory authorizations.

With respect to City libraries, the Illinois Local Library Act provides for the appointment of a legislative body (Board of Trustees) to govern the City library that is separate from the City Council. The fact that members of the library board of trustees are appointed by the Mayor with the advice and consent of the City Council does not take away the independent nature of the library or its board of trustees, which are both created and established by the Local Library Act.

Powers and Authority of Library Board of Trustees

The Act provides the library board with broad authority to "carry out the spirit and intent of the Act" including, but not limited to the following:

- (i) the power to adopt its own rules,
- (ii) exclusive control over expenditures and the construction of library buildings,

- (iii) the power to purchase, take title to, lease and sell real or personal property,
- (iv) the right to remodel or reconstruct buildings for its use,
- (v) the authority to appoint and fix the compensation of a qualified librarian,
- (vi) the right to contract with any public or private corporation,
- (vii) the power to extend the privileges and use of the library to persons residing outside the city, and
- (viii) the power of eminent domain.

Financial Roles

Under the Local Library Act, the library board has independent legal authority to control its budget and its procurement activities. The only limitations imposed by the Local Library Act that would restrict a library board's otherwise exclusive control over how it spends its own money are those relating to funds raised through *bonding and borrowing*, where the municipality has certain statutory controls. See *Lunde v. Rockford Public Library Bd* 153 Ill.App.3d 803 (1987).

Municipal libraries are generally funded through a separate ad valorem tax that is levied by the municipal corporate authorities on the library's behalf. The library board is required to annually prepare and submit to the municipal corporate authorities a "statement of financial requirements of the library for the ensuing fiscal year" and "the amount of money which, in the judgment of the board of library trustees, will be necessary to levy for library purposes."

Under sections 3-4 and 3-5 of the Local Library Act, the municipality is under a mandatory duty to levy a tax up to 0.15% (or the referendum-approved rate) for the establishment and maintenance of the library in the amount determined by the library board. See *Rockford v. Gill*, 75 Ill.2d 334 (1979). Pursuant to section 4-10 of the Local Library Act, the library must send a copy of its budget and the necessary tax levy to the municipality. The Act, however, does not grant the municipality the power to reject the library's budget or tax levy request. Instead, the municipality's role in levying a tax to fund the library's budget is simply a ministerial duty imposed by statute. Although a municipality has a role in the library's annual tax levy, that does not mean that the library's tax levy is the municipality's levy. Quite the contrary. The municipality merely adopts the library's tax levy on the library's behalf. The tax levy is the library's, and the funds received from the levy are the library's funds.

The Act limits the library tax rate to 0.15% but it can be increased to 0.60% with voter referendum approval. Home rule municipalities are also permitted to levy a rate higher than 0.15% without a referendum. Both the Illinois Supreme Court and the Illinois Attorney General have determined that a home rule municipality can extend its home rule powers to a municipal library to permit levy of an ad valorem tax for library purposes in excess of the 0.15% limit imposed by the Act. See *Rockford v. Gill*, 75 Ill.2d 334 (1979); see also Ill. Att'y Gen. Op. 93-012 (upholding City of Quincy's exercise of its home rule powers to increase the real property tax rate for library purposes from 0.15% to 0.39%).

The tax revenue collected for library purposes is to be paid over to the library board for its exclusive use. According to the Attorney General, Section 3-5 of the Act (which requires that the

proceeds of ad valorem taxes be turned over to the Library Board) prohibits a home rule municipality from receiving and temporarily holding in its treasury proceeds which belong to the library. See Ill. Att’y Gen. Op. 93-021 (city “is required to pay over the proceeds of a tax levied for library purposes directly to the library’s board of directors”)

Municipal Library Employees Are Not Municipal Employees

Pursuant to the Local Library Act, the library board of trustees has the statutory authority to retain a Director to serve as the administrative head of the library and to retain counsel and professional consultants as needed. The Director, in turn, has the statutory authority “to hire such other employees as may be necessary.” Those employees are employees of the library, not the municipality. As such, the compensation of these employees, the oversight and supervision over these employees, and the discipline or termination, if appropriate, of these employees is solely within the jurisdiction of the library.

There are legal risks to both the municipality and the library when the lines between municipal employees and library employees become blurred. One example of a situation that could create liability is where the municipality provides payroll services to the library without a formal intergovernmental agreement in place. If the municipality were to make a mistake in a calculation, the municipality would have no indemnification or hold harmless agreement from the library to protect the municipality from a third-party lawsuit. Similarly, if the municipality provided human resources consultation that led to a lawsuit by a library employee, the municipality might be named as a defendant and potentially be liable for damages. Moreover, providing so much control to the municipality over library employees is simply not consistent with state law where the library director hires and supervises the library employees, not the municipality.

The issue of the relationship of municipal library employees with the municipality was discussed in the Illinois Appellate Court case *Village of Winfield v. Illinois State Labor Relations Bd.*, 176 Ill.2d 54 (1997). There, the Appellate Court concluded that “the Village is not a joint employer of the library employees. Rather, the library, through the library board of trustees, possesses exclusive authority over the terms and conditions of the library employees’ employment.” Municipal libraries should take care, however, to ensure that they retain control over their own employees and to avoid blurring the lines between library employees and municipal employees to avoid a court ruling differently than the *Winfield* court based on the factual circumstances. The *Winfield* court suggests that there could be factual circumstances where there is so much entanglement between the municipality and the municipal library that the library employees might be considered municipal employees, such as a city library where the city’s personnel office advertises for, screens, and interviews library employees, and funds library services through city finances (and not the library’s levy funds). Best practices for a municipal library would be to retain control over its own employees to avoid that situation. One way to accomplish this is to negotiate an intergovernmental agreement with the local corporate authorities to express the intent of the Library Board.