

The Law of

Public Libraries



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I love a good library. Libraries have played an important part in my life and in the life of my family. As a child I remember the stack of picture books we would bring home with us from the library each week; and as a mother, Wednesday morning story time was an outing we would never miss. From book discussion groups to computers, the modern library is an essential asset of my (and every) community.



The idea of a *public* library is essentially democratic. Books should be available to everyone, without having to pay for the privilege of reading. The experience has changed the world for many of us.

But libraries are more than places to read and borrow books. They are institutions, with responsibilities to ensure adequate funding, capital facilities, and appropriate services to patrons. They are run by volunteer boards, usually called trustees, and they are bound by law to the extent that it speaks to them.

When I was first elected Secretary of State, I received a number of calls from people wanting to know how libraries work. Many of these callers were library trustees, town treasurers, auditors, and selectboard members who sincerely wanted to know where their responsibilities begin and end. That was the purpose of this booklet – to try and sort out the basic laws that apply to libraries in Vermont, to end disputes over jurisdiction, and to ensure that the library’s primary mission of making books and information available to those who seek it is fulfilled, with a minimum of conflict over administrative matters. This updated version includes new legislation that has been passed since our first edition was published in 2000.

I want to thank the staff at the Vermont Department of Libraries whose thorough review of that first edition and excellent comments ensured that this publication became a valuable resource to library trustees and town officials. I also want to thank Assistant Attorney General Bill Rice for his legal review. Special thanks go to Paul Gillies, Esq., for providing the initial draft. Paul’s engaging writing style and insight into both the practical and legal issues presented by Vermont’s public libraries makes the Law of Public Libraries full of important information and easy to read.

A handwritten signature in black ink, which reads "Deborah L. Markowitz". The signature is fluid and cursive, with a large, stylized initial "D".

Deborah L. Markowitz
Vermont Secretary of State

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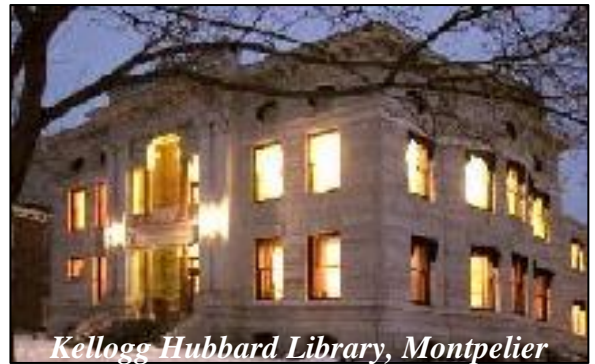
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In this booklet we provide what we believe the law requires based upon our legal judgment, years of observing Vermont's local government practices, and Vermont court decisions. This information is intended as a reference guide. This information is not intended to replace the advice of legal counsel.

A. Introduction

Libraries promise sanctuary from the world, where you can spend a quiet hour lost in time and space on your own journey into history or the imagination. The local library may be the last place you would think of encountering the law. But like any public institution, the library is governed by rules and laws that need to be known and followed. This involves more than a late book fine or a rule that you keep your voice down while in the reading room. This is the law of public libraries, as enacted by the Vermont General Assembly, the Vermont Department of Libraries, and the library itself, and it encompasses matters as diverse as governance, finances, access, and privacy. This booklet is designed to introduce you to these laws.

Law doesn't always stand up on a table and shout its name. It can take the subtlest of forms. Let's take the example of what you have been reading. You've been making weekly trips to the local public library and exploring new ideas through a variety of books. Somebody asks the librarian what you've been reading. Do you know they cannot have that information because Vermont law treats all circulation records in municipal libraries as confidential? 1 V.S.A. § 317(b)(19). This law was enacted in 1989 to protect the privacy of library patrons.



What about that incorporated public library that you may use? It looks for all the world like a municipal public library, that is, one that is a department of the town, but it is governed by different rules. State law doesn't speak to the necessary confidentiality of circulation records at an incorporated library; it doesn't mandate or prohibit their release. The decision belongs to the trustees of an incorporated library. Likely the result will be the same, that those asking for information about individual reading habits will be denied, but not because the law denies them.

This example illustrates an important point about the nature of law. The law does not apply universally to everybody. You have to read it to understand its limitations. Some of it is written to regulate the authority and duties of governmental organizations or departments, such as municipal public libraries. Some of it applies to both municipal and incorporated public libraries, but not all law that governs municipal libraries governs incorporated libraries.

Because different laws apply to municipal and incorporated libraries there are advantages and disadvantages of each form. In fact, you may be surprised to find that in some cases the municipal library trustees have more unfettered authority over running the public library than incorporated library trustees – particularly as libraries become municipal-incorporated hybrids. We will discuss this in more detail in the pages ahead.

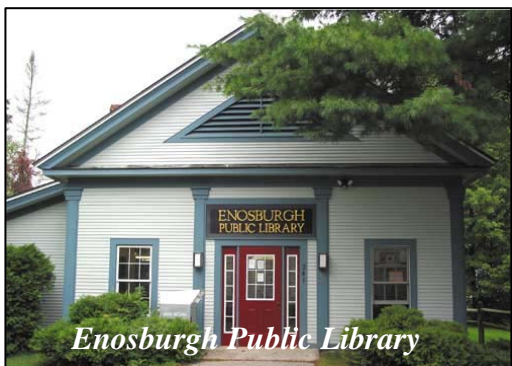
Finding the law is the first challenge. The law doesn't always come packaged in a single chapter of the statutes. Although "Public Libraries" enjoys its own Title 22 in Vermont Statutes Annotated, you need to read widely throughout the entire set of laws to find everything about library law, and it doesn't end there. The Vermont Department of Libraries has adopted rules that govern some aspects of incorporated libraries, conditioning the acceptance of state and federal funds on promises to abide by the open meeting

law, for instance. A local library board of trustees may also enact rules for the running of a library. These may be called policies or bylaws. Most patrons don't need to know any of this, at least not until something happens. Then it becomes essential for everyone to know precisely what the law says about a particular aspect of the life of a library.

This pamphlet cannot answer all the questions that may come up about libraries. It is impossible to predict every issue that might arise in your town. But it can serve as a reference for those who need to find the law in the midst of a public controversy, and perhaps it can help point the way to a resolution. It is also our hope that by understanding the legal consequences of each form our public libraries can take, you can choose to adopt a legal form that most suits the needs of your community.

B. Types of Public Libraries

Understanding the law of public libraries begins with an important question: what kind of library is this? Is it municipal or incorporated? This is not as easy as it may seem. Some libraries are open to the public and receive public funds to operate, and yet they are entirely private in nature. They are private nonprofit corporations, governed by a private board of trustees. We will refer to these private nonprofit libraries as "incorporated libraries." A publicly owned library is a city, town, or village library established by a vote of the municipality. We will refer to a publicly owned library as a "municipal library."



While there are two kinds of public libraries, they are all still public libraries, free and open to everyone in their communities. Some people may refer to an incorporated public library as a "private library," but this is a misnomer if it freely serves everyone in its community.

The first step in governance is knowing the source of your authority. Prudent trustees gather the basic documents of their library in a file. If a private trust, deed, or act of incorporation created the library, find the source of the authority and obtain a copy for review. Search through town records, with the aid of the town clerk, to find whatever votes were taken by the town affecting the library. If the library was created by an act of the voters of the town, the act is recorded in the town meeting minutes book. If the library was established by the grant of a building and land from a private donor, find a copy of the deed to ensure that there are no conditions or reversionary clauses that might force the library to close if violated. Contact the Secretary of State's Corporation Division (802-828-2386) for copies of possible articles of association and amendments. Check with the county clerk to see if any trustee appointments have been filed over time.

If the library is a private nonprofit corporation, then it should have bylaws that govern its operation. These are proprietary records which will not be on file with the Secretary of State. Instead, look for them among the corporation's own records and update them if necessary. Municipal and incorporated libraries also have policies covering the proper running of the library in all aspects.

Once you have searched each of these sources, you may be able to tell the status of your library. Most likely, the library is a curious mixture of private and public characteristics and resources. The key question is how it was originally established.

- If a vote of the town created the library, then it is a municipal public library.
- If the library was originally created by a private act of charity, it is an incorporated public library.
- An incorporated public library may have subsequently become a municipal public library, but it takes formal action of both the corporation and the town.
- A library can be a combined library – joining a municipal and incorporated library (i.e. an endowment or building remains separately managed by the corporation while the town runs the library, or some version of this).

Sorting out precisely what it is may be difficult. But even if you do not reach a final conclusion, the process of assembling documents puts you in a position to know the basic sources of authority for the library. It also allows the governing bodies to determine whether it is necessary to seek a legal change of status to legitimize practices that might have developed informally over the years.

1. Incorporated Public Libraries. The procedure for the incorporation of public libraries is governed by 22 V.S.A. § 101 and following. The first part of this chapter relates to incorporated public libraries and how they are formed.

- Filing with the Secretary of State.** When a group of individuals or a corporation has received a gift of property intended to establish a public library, they may form a library corporation by making the appropriate filing with the Secretary of State. 22 V.S.A. §102. The Secretary of State then issues a certificate declaring that the organization of the corporation is complete.

Once the trustees have recorded the Secretary of State certification with the county clerk of the county in which the library is to be located, the corporation is fully organized. If you have no information on how your corporation came into existence, it makes sense to check your corporate status with the Secretary of State's Office.

Call the Corporations Division at 802-828-2386 and talk to someone about this question. Many libraries were formed by special charter in the 19th century and may require a little research to figure out their status.

- Board of Trustees.** The trustees are the members (in effect, the shareholders) of the corporation. Under state law there must be at least five library trustees, but no more than 15. The trustees elect the officers of the corporation from their number. 22 V.S.A. §104. The incorporated library members elect new trustees when it is necessary to fill a board vacancy. 22 V.S.A. § 106.

Each time a new trustee is appointed, a certificate under seal of the corporation must be filed with the county clerk. This certificate is signed by the corporation's secretary who "certifies that _____ has been appointed a trustee of the [Chipman Memorial Library] for a [three] year term." You can find the address of the county clerk by calling the county courthouse. No formal "seal" if required in Vermont; if you don't have anything official, simply place the letters "L.S." following the secretary's signature.

If you are not up-to-date with these filings, the problem can be remedied by doing it now!

- c) **Authority.** The corporation is a “body corporate and politic.” This means that it has all the same powers of a regular corporation and, acting through its trustees, may own and sell real and personal property. It can make and keep bank accounts, accept contributions, and spend money. It can create rules and regulations and bylaws, and it can sue for detained or damaged library property (recovering both costs and attorney fees). 22 V.S.A. §§ 111, 103.

It is important to keep in mind that the corporation may also be governed by the terms of the original gift creating the library. This may be a trust, a will, or other formal written document. The library trustees of an incorporated library have control and management of the affairs of the corporation. The trustees can make bylaws for the management of the corporation and library and are responsible for the hiring and firing of the library employees. 22 V.S.A. §§ 105, 107, 108. The library trustees can lose some of the power to control and manage the library when they agree to have the town take over some of its functions, such as when library staff become town employees (so that they can be eligible for town benefits) or if the library is housed in a municipal building.

- d) **Taxation.** Assuming that the original gift prescribes that the library shall be a free public library, the library and other property of the corporation owned and used for library purposes is not subject to taxation. 22 V.S.A. § 109. Towns may treat property owned by an incorporated library, but leased to raise funds for the library, differently. Talk to your town listers about the tax consequences of decisions to lease such property before committing to the non-corporate use of that property.
- e) **Funding.** In Vermont, all but a handful if incorporated libraries receive a portion of their funding from local appropriations and state grants. Simply accepting public money will not convert an incorporated library into a municipal public library. However, the public funds may come with strings attached, such as a requirement that the town auditors be entitled to audit certain accounts, that the meetings of trustees be open to the public, or that the board of trustees be elected by the voters at Town Meeting. None of these activities alone converts an incorporated library into a municipal public library. Note that if the trustees agree to adopt any of the “new practices” described above, or others, these practices should be spelled out in the bylaws of the corporation.

2. Municipal Libraries. The incorporation of municipal public libraries is addressed in the law beginning at 22 V.S.A. § 141.

- a) **Vote of the Town.** A municipal public library comes into being when the voters at a special or annual meeting of the town vote to establish the library. A vote of the municipality is required whether the library is starting up in the first instance or whether the municipality is taking over a library that already exists in the town. This vote should specify whether the library board of trustees is to be either elected at town meeting or appointed, and the length of their terms of office. 22 V.S.A. §§ 141-143, 17 V.S.A. § 2664.
- b) **Trustees.** The board of trustees must have a least five members who should be appointed or elected for staggered terms. Trustees may be appointed in one of two ways: 1) by annual vote at town meeting, or 2) by the governing body of the municipality. The way trustees are appointed is determined by the voters at the time the library is established. Vacancies are filled by the

legislative body (the selectboard for a town or the village trustees, in the case of a village) until a new election is held. 24 V.S.A. § 961.

The voters at an annual meeting of the municipality may change the method of appointment/election.

While the law states that a library must have at least five trustees, some board believe that there should be more to help share the workload. In this case, the guideline of “no more than nine” offered by the law for incorporated public library trustees is a good one. But before you add trustees because you feel the pinch of too much work, try to assess carefully whether everyone on the board is doing a fair share of the work. Don’t ignore the usefulness of special committees to work on projects or planning. If you do add trustees, remember to revise your bylaws.

- c) **Authority.** The municipal public library is more than merely a department of the town. Unless a community has a charter or special law that provides otherwise, library trustees are given broad authority to oversee the library. Vermont law provides that once appointed, trustees “shall have full power to manage the public library, make bylaws, elect officers, establish a library policy and receive, control, and manage property which shall come into the hands of the municipality by gift, purchase, devise or bequest for the use and benefit of the library.” (Emphasis added).

This means that the trustees have the power to write orders to the treasurer on the library accounts, accept gifts on behalf of the municipal public library, as well as the authority to decide how the money is to be spent (within the context of the budget adopted at town meeting). The trustees may hire and fire staff including a director to handle the day-to-day operations of the library. 22 V.S.A. § 144.

The town auditors may audit the municipal library accounts and the open meeting law will apply to trustee meetings. In the event that trustees have not been appointed/elected, the governing body of the municipality may appoint an agent to handle the municipal library’s finances until the board has been named. 22 V.S.A. § 145.

- d) **Funding.** The municipality may appropriate money for suitable facilities and thereafter, at the annual meeting, the voters may appropriate funds for the maintenance, care, and increase of the municipal library. 22 V.S.A. § 142. The selectboard sets the municipal library budget to be presented to the town meeting for approval. If the trustees are dissatisfied with the amount set by the selectboard, they may bring a petition signed by five percent of the voters asking for additional funding, to be placed on the town meeting ballot.

Regardless of the question of authority, library trustees ought to work cooperatively with the selectboard and keep it informed of library matters. Don’t wait until your annual budget discussion to tell the selectboard about upcoming major building repairs needed, planned new services, changes in library director, or other important issues. Meet with the board at times when they aren’t as busy; they will appreciate your coming to a meeting and not asking for anything. Invite selectboard members to library events so that they can feel the same ownership your library users do.

C. Who is in Charge?

1. Generally. In a private nonprofit corporation, the board of trustees (or board of directors) is responsible for basic governance decisions. With a municipal public library, created by a vote of the electorate, the law provides that the board of trustees “shall have full power to manage the public library, make bylaws, elect officers, establish a library policy, and receive, control, and manage property...” 22 V.S.A. § 143(a). This general authority is tempered by the ordinary checks and balances founding local government – the treasurer keeps the accounts, the auditor audits the books, and the people look over your shoulders as you work, aided by the state’s open government laws.

Still the question demands an answer: who is in charge? Confusion reigns in some communities on this point. Can the selectboard fire the librarian? In lean times can the village trustees reallocate money voted at the village annual meeting for libraries to other purposes? Can the legislative body order the library trustees to extend the library hours? If the library is a municipal library the answer to each of these questions is “no.” In each case, the library trustees have the authority, “full power” as the statute says, to manage the public library, its personnel, and its finances. Surprisingly, the answer may be different if the library is an incorporated library because the town funding may come with strings attached to it. Of course if the money comes with no strings attached, the municipality has no legal authority over the incorporated public library.



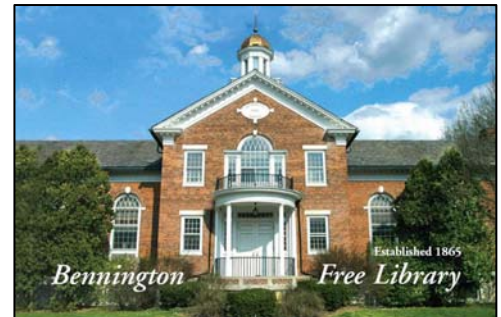
2. Personnel. With both incorporated and municipal libraries, the librarian answers to the library board. The board may (and ought to) delegate day-to-day responsibilities for the operation of the library to the librarian, but all policy decisions remain the responsibility of the board. Although the trustees retain the authority, the librarian may (and probably should) be given the authority to hire other library personnel. The trustees should manage the librarian, and let the librarian manage the library.

Selectboards and village trustees have considerable authority over town and village affairs, including the management of personnel, but their authority stops short when other officials are authorized to act by specific laws. 24 V.S.A. § 872. This is the case with municipal libraries and library trustees. Nevertheless, confusion sometimes arises because sections 1121 and 1122 of title 24 of the Vermont Statutes provide that the selectboard may adopt personnel policies for a municipality. This is particularly the case when a town's personnel policy sets out specific procedures for hiring, firing and disciplining town employees, but does not expressly treat library personnel differently from other town employees. Questions may arise over such issues as whether an appeal from a personnel action must be made to the selectboard (a common provision of town policies) or whether the library trustees have the power to hire and fire library employees outside the processes set out in the policy.

In a 2002 court case the Vermont Supreme Court considered this very issue. *Hartford Library Trustees v. Town of Hartford* 174 Vt. 598 (2002). It ruled that the selectboard and town manager may not set the librarian’s salary, determine the hours of operation for the library or direct how the library’s money is to be spent (i.e. what vendors to contract with for goods or services). The court said “Town cannot, in the name of administrative efficiency, infringe upon the Board’s “full power to manage” the library.”

The court went on to say that even though the librarian received the benefits laid out in the personnel policy that the library trustees are still in charge. “The fact that, for the sake of administrative efficiency, the library and Town have agreed to include the librarian as a town employee for purposes of providing employment benefits such as worker’s compensation and unemployment insurance does not mean that the Board has relinquished its statutory authority to manage the library and thus set the librarian’s compensation.” We recommend that to avoid conflicts, the municipal library trustees should consider adopting personnel policies for the library. In addition, the town policies should specifically exempt library employees. If regular town benefits are to apply to library employees the library policies can reference those benefit provisions and the town policy can exempt library employees from all policy provisions except those related to employee insurance benefits.

Although the law places responsibility for overseeing the librarian on the library trustees, in some towns, the town manager acts as the direct supervisor for the librarian, and the board acts in an advisory capacity to the librarian. In these towns the town manager may participate in the hiring process and may do the librarian’s annual performance evaluation, with input from the trustees. The librarian may be included in town staff meetings. Library personnel policies should reflect these practices.



In some communities, the incorporated library asks the town to make the library employees town employees so that they can participate in the town’s benefit plan. As town employees, these employees will be covered by the town’s personnel policy unless specifically exempted. Moreover, unless specifically delegated to the trustees, the library employees should be hired and fired by the governing body or the manager of the town in the same manner as other town employees.

3. Buildings. The same principle that applies to personnel applies to the library building. An incorporated library that owns its own building is responsible for all decisions about the building, including maintenance and upkeep. The town library trustees are generally responsible for the municipal library building unless it is shared with another municipal entity such as the school or town hall, in which case the board is usually responsible only for its own portion of the building.

Confusion sometimes arises when an incorporated library is housed in a town building. In such a case it is the governing body of the municipality that is responsible for all decisions about the building. This does not mean, however, that the municipality may decide what the hours of operation are for the library. It may mean that the municipality can control what other groups use the library space (because of liability issues). If the library is located in a school, then the school board is responsible for decisions about the use of the room outside of library hours. Try to meet with all necessary boards or officials about the use of the rooms in these cases, and work out all differences before there is a problem. Make sure there is adequate insurance coverage on the building and its uses, including library uses, before using the room.

If the library is housed in a private building, it is always advisable to have a lease to allocate the costs of maintaining the building. Make sure this lease clearly explains that the owner of the building has no authority to dictate library hours and services.

It is impossible to name all the varieties of building arrangements extant for Vermont libraries. Seek competent legal advice whenever a question of use or ownership arises.

Trustees should encourage use of the library facility as a community center. 22 V.S.A. § 67. In some towns the library is the only public meeting space and necessary to ensure the various groups of a town have a place to meet. Many small town libraries are beautiful community showplaces and historically significant structures, and ought to be seen and used by the members of the community.

4. Money. Money for libraries comes from a variety of sources. There may be an endowment fund. There may be various trust funds for various purposes. There may be public money in the form of appropriations from the general fund or from state or federal grants. There may be money raised by book fairs, bake sales, or other fundraising activities. How this money is treated, invested, appropriated, and expended is the subject of considerable confusion across Vermont.

Let's start with public money raised on the grand list for a municipal public library. The voters have agreed to an appropriation, and the money is dedicated to libraries. Part of the "full power" of library trustees includes the full power to spend this money. The selectboard or village trustees are not involved. The library trustees have the authority to order the town treasurer, through a voucher, to draw checks on the library's money to pay salaries and other bills.

The town treasurer may invest town money with the approval of the selectboard. 24 V.S.A. § 1571 (b). This rule does not apply to trust funds which are governed by their own terms. Usually the accounts for each trust fund remain separate, with the interest used for discrete purposes. The trustees are usually responsible for spending and investing such funds, without the need for a town treasurer's involvement beyond keeping the passbook.

Trustees of municipal libraries may wish to create a reserve fund in order to keep public funds from year-to-year without reversion to the general fund. This is possible, but only after a town vote to create such a fund. A simple vote on a properly-worded article at an annual or special town meeting is sufficient for this purpose, such as "Shall the town create a reserve fund for library purposes?"

Grants of money to the municipal library for general purposes as well as money raised by the library through book sales, raffles, concerts, and other activities, including donor contributions, should be deposited in the library account kept by the town treasurer, and drawn by voucher through an action of the trustees. State and federal funds are treated in the same manner. Note that before municipal library trustees spend this money they must first obtain voter approval. This approval may be in the form of an independent article at town meeting (granting the trustees authority to spend money raised by grants, contributions, etc.) or may be part of the library budget. 17 V.S.A. § 2664, 22 V.S.A. § 142.

For capital expansion, municipal public libraries must first seek the approval of the voters for long term financing, such as bonds. 24 V.S.A. § 1751 and following. Incorporated libraries that are supported by public funds from the municipality may also vote bonds for capital expansion. 24 V.S.A. § 1752a.

No matter what the account, the town auditor has the responsibility to audit the municipal public library's accounts and report to the voters about how the library has spent its money as part of the town report. As

a general rule, town auditors have no authority to audit the books of an incorporated library, unless there has been a special condition placed on the grant of public money by vote of the electorate.

Trustees of incorporated libraries control the finances of the library. Even if the library receives a significant municipal appropriation, unless that appropriation comes with strings attached (i.e. in return for the appropriation, the municipality requires the library to open its books for municipal audit), the trustees may spend without municipal oversight. Rules governing receipt of state and federal money may also require opening books for audit and review. At the start of the new fiscal year the town treasurer must write a check (or series of checks since many towns will divide the appropriation into two or four payments) to the trustees who may then spend the money as they see fit.

D. Meetings of the Board of Trustees

As officials of local government, municipal library trustees must follow the Vermont open meeting law in conducting their meetings. This means giving proper public notice for special meetings. See 1 V.S.A. § 312 (three public postings and direct notice to all members of the board, plus to a newspaper or radio station). Regular meetings, as long as they are regular, need no special posted notice. Executive sessions are rare opportunities for a board to meet alone, without the public present, and must be treated with great care. See 1 V.S.A. § 313. Executive session is available for a limited number of discrete purposes, and proper form is required. Outside of executive session, all meetings of a majority of the members of the board are public meetings, during which members of the public may address the board on any issue on its agenda, subject to reasonable rules to ensure order and civility. 1 V.S.A. § 312(h).

Incorporated libraries may also agree to be bound by the open meeting law. The Department of Libraries has adopted minimum standards for public libraries, and these standards include compliance with the open meeting law. Libraries that don't meet standards may be found ineligible to receive certain state and federally funded services and grants administered by the Department of Libraries.

A notebook of library board meeting minutes as well as minutes of the selectboard and other municipal boards will be appreciated by library patrons and good for the trustees to have ready as a resource during meetings.

A vote of a majority of the municipal library trustees is required to take any binding action (not, as is often believed, a majority of a quorum). 1 V.S.A. § 172. Minutes are required of every meeting, except executive sessions, and they must contain at a minimum a list of all members and the public who participated, all motions and votes, and a synopsis of the subjects discussed. 1 V.S.A. § 312(b)(2).



Municipal libraries are also governed by the Vermont Access to Public Records law. This means that all documents generated or received by the trustees is most likely a public document, unless it is expressly exempted from public review and copying by the law. 1 V.S.A. § 317(b).

At its first meeting, the municipal library board of trustees elects a chair, secretary, and treasurer from among its members. The terms are annual, and the election redone each year. Election of a vice-chair is not mandatory, but recommended, to cover the possibility of non-attendance by the chair.

In contrast, libraries created as private nonprofit corporations are not obliged by statute to follow the open meeting and public records laws. However, Vermont Department of Libraries has adopted a set of “Minimum Standards for Vermont Public Libraries,” that encourage these institutions to access and openness. This includes specifically encouraging incorporated public libraries to voluntarily comply with the open meeting laws. Under these minimum standards, the incorporated library not complying with the open meeting law is not eligible to receive certain state and federally funded services and grants.

E. Bylaws and Policies

Take a close look at what you have for bylaws and policies. Whatever they are called, they are likely to address issues relating to the running of the library and the board of trustees. In law, the term “bylaws” means binding rules, while policies are softer regulations. Bylaws take the form of mandating certain behavior; they use the word “shall” to get our attention. Policies use “should” and expect good behavior without needing to be enforced. *Herbert v. Town of Mendon, 1159 Vt. 255 (1992)*. Bylaws are adopted differently by municipal and incorporated library boards of trustees because the laws governing them are different.

State law authorizes any public library, through its trustees, to adopt bylaws relating to the management of the library. 22 V.S.A. § 107. These may cover a full range of subjects, from acquisition policies to use of the library by other groups.

For incorporated public libraries, bylaws are enacted upon written notice at a special board meeting having a minimum of two days notice to the trustees. 11B V.S.A. §§ 2.06 & 8.22. For municipal public libraries, trustees should follow the process set out in 24 V.S.A. § 1971 and following for adoption of bylaws (also called ordinances), a process that requires posting and publication of the bylaws within 14 days following adoption, a right of voters to petition for a vote of disapproval of the bylaws within 44 days of the adoption, and an effective date 60 days from the date of adoption if no petition challenging the bylaws is received.

To adopt a policy, all that’s needed is a motion and vote under an appropriate agenda item.

We don’t mean to confuse the issue. You may have “bylaws” that are “policies” and “policies” that are “bylaws.” The only real distinction is whether you intend to enforce them or not. A set of rules for the management of the board of trustees, for instance, could well remain policies, adopted by the board alone. But to charge (and enforce) late fees or book damage fees, adopt these rules as bylaws.

Note that the library trustees may avoid the cumbersome bylaw adoption process and simply adopt “policies” relating to the management of the library at a meeting of the trustees warned for that purpose. However, for municipal library policies to be enforceable law, they must be adopted as bylaws.

In practice, most boards spend little time writing bylaws and rarely revise them. Instead they work on their policies continuously. In fact, the department's standards ask them to review their policies annually and revise them as needed.

Policies are serious philosophical statements directly affecting the library's patrons and their access to services. Policies may not be "enforceable law" but they greatly impact patrons' ability to use and enjoy library services. They lend consistency to decision-making and ensure that a general philosophy of service is promulgated by all involved in providing that service. The time boards spend on policies is a measure of their proper commitment to the library.

The Department of Libraries suggests that all public libraries have written policies covering the following topics:

- statement of purpose or mission statement
- affirmation of principles of intellectual freedom
- confidentiality of library records
- collection development guidelines
- personnel
- public access computer use
- building use

In addition, the department suggests that all libraries have written long range plans of service and written procedures for patron and staff safety.

Not all law is found in statute. The common law of Vermont is established by over two centuries of cases which provide a foundation for understanding the fiduciary and proprietary duties of trustees. The duty of care and diligence requires trustees to perform their duties in good faith and in a manner they reasonably believe to be in the best interests of the library. They must keep informed in order to make reasonable decisions. The duty of loyalty requires trustees to refrain from engaging in personal activities that would injure or take advantage of the library. Finally, the duty of obedience requires trustees to perform their duties in accordance with the laws applicable to libraries and with the library's own policies and bylaws. A useful resource for trustees in carrying out their duties is "A Manual for Vermont Library Trustees," distributed by the Department of Libraries.

As previously mentioned, the Department of Libraries has created a set of "Minimum Standards for Vermont Public Libraries." These standards have been adopted as rules under Vermont's Administrative Procedure Act (3 V.S.A. Chapter 25) and as such have the force of law. Libraries that don't (or choose not to) meet these standards may be found ineligible to receive certain state and federally funded services and grants administered by the Department of Libraries.

F. Privacy of Patron Records

Note that state law adopted in 2008 makes a library patron's registration records and patron transaction records confidential. 22 V.S.A. § 172. In addition, for municipal public libraries, these records are exempt from disclosure under Vermont's public records law. 1 V.S.A. § 317(c)(19).

The new statute provides that, unless authorized by other provisions of law, the library's officers, employees, and volunteers may not disclose information provided by a patron to sign up for a library card or information about what they have viewed or borrowed. The only exceptions to this rule is if the library obtains the written permission of the particular library patron or if the disclosure is in response to a judge's order or a warrant directing disclosure, or upon request of a parent or guardian of a minor who is under the age of 16. In addition, school libraries must disclose records to parents or guardians of the students in accordance with the federal Family Education Rights and Privacy Act. Individuals whose records have been improperly disclosed have the right to sue the library in superior court. 22 V.S.A. § 173.

The law makes it clear that the officers, employees, volunteers, and agents of the library may have access to patron records to the extent it is necessary for the administration of the library. In addition libraries may still collect and publish statistical information related to the patronage, circulation activities, and use of library services, so long as it does not contain the names of patrons or any other personally identifying information.

G. Last Thoughts

The law is usually something you consult when you need it. A little effort now to collect and organize the records will avoid unnecessary delay and confusion later on. A three-ring binder with all the laws applicable to your library ought to be handy at every meeting of the trustees.

You don't need to be a lawyer to read and understand the law (although it is important to consult an attorney when matters involving possible liability or personnel are concerned). When you take the time to read it all, you will no doubt wonder why the law provides so few details about the business of running a library. But what there is ought to be known and remembered.

The law of libraries is important for trustees and patrons alike. It should never get in the way of the broad public purposes of free libraries, but the law has its place and time, just like anything else. For further information about the law of public libraries, contact:

Department of Libraries – 802-828-3261
or
Secretary of State's Office – 802-828-2363.

Vermont Secretary of State's Office
26 Terrace Street
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