

Legal Q&A: *Building a New Library? You May Have Some Questions*

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There are few things more exciting than building a new library, at least for those of us who love libraries. Yet the process can be fraught with complications. Not only are there a million-and-one decisions that need to be made on everything from architectural design to finishing touches, it's also probably the biggest project that the town has undertaken in a while. So it's understandable that the governing body of the town would be as interested in the project as the library trustees. Thanks to RSA 202-A:6, which gives the library trustees power over all property of the town relating to the library, this can lead to confusion and conflict.

Unfortunately, there is no easy solution to the conflicts that arise. The basic principle of municipal property law is that a town holds all real estate in the name of the town, not in the name of any of its boards, commissions or trustees (RSA 31:3). Based on that rule, it can be difficult to determine which board is the one that controls the situation. RSA 41:11-a, for example, confers on the select board the authority to manage all real property owned by the town and to regulate its use, unless delegated to other public officers, such as the library trustees pursuant to RSA 202-A:6.

Despite the language of RSA 202-A:11 that states that “[a] separate budget request shall be submitted [by the library trustees] for new construction...,” it's entirely feasible that the select board would choose to author a warrant article to raise and appropriate such sums necessary to build a new building, build it, then turn over some or all of it to the library trustees as a new library. How that works within the provisions of RSA chapter 202-A that seem to say that the library trustees would be the ones to propose a new library and oversee its construction has not yet been resolved by the courts.

However, there might be some answers hidden elsewhere in the statutes. RSA 33:3-a states that “the proceeds of any sale of bonds or notes shall be used only for the purposes for which the loan was incurred.” Meanwhile, RSA 202-A:11, III says that the library trustees are the ones who “[e]xpend all moneys raised and appropriated by the town or city for library purposes[.]” Therefore, it would seem that if bonding is necessary to build the building and there is some indication that the bond is for a new library, then it would be the trustees who would control the construction project.

In addition, RSA 202-A:4-c provides that, at town meeting, the legislative body may grant the library trustees the authority to accept and expend gifts/donations without approval of the town meeting. Utilizing that power, the library trustees could solicit donations or have a capital campaign to raise money in connection with a particular project that the library is looking to do, such as constructing a new library. It would be almost nonsensical to say that the board that raises the money and has authority to spend that money independent of other authorities in town would not be able to oversee the project itself.

There are many other instances where, while it would appear that the select board should be the one to take action, it is actually the library trustees who take the action. For example, libraries may apply for grants without the permission or knowledge of their town's select board. And, of course, anyone who has consulted the Charitable Trusts Unit of the New Hampshire Attorney General's Office about EINs knows that that Unit advises that libraries use their town's EIN when possible. In practice, that means that library trustees are acting for the town (rather than as a subdivision of the town) when an EIN is necessary, such as when applying for funds from an outside source to build a new library.

All of that aside, it's important to remember that large projects, such as new libraries, are major projects in which townspeople and town officials are interested in having input. That input can be invaluable where town land is dedicated to a new library (or an addition), and it's always a good idea for the library trustees and select board to have clear, written understandings of what is – and what is not – library property, where that property may be in contention. That may solve future headaches, such as when it comes time to repave the parking lot that serves the library. It may also help identify and resolve some of those thorny issues surrounding authority over new projects. □