

Legal Q&A: *Financial Matters and Control of Library Premises*

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Early spring brings with it not only a smattering of snow and a few shivering flowers, but also a number of questions related to financial matters as well as control of library premises. Here are some of the questions that I've received in the last few months.

Financial Matters

The select board believes that since they have fiduciary responsibility for town funds, that includes library funds. The trustees believe RSA 202-A:11, III authorizes fiduciary responsibility for library funds to the library trustees. Who's correct?

The relationship between select boards and library trustees can be difficult to understand, but perhaps the most accurate comparison is one of a protectorate. The library is dependent upon the town to grant it funding and, as a practical matter, to provide many administrative services (such as payroll), but has local autonomy over its funds and affairs. In terms of fiduciary responsibility, RSA 202-A:11, III and IV explain that trustees oversee the library funds and work with the town treasurer to ensure that those are being spent correctly. See also RSA 202-A:22 pertaining to the trustees of trust funds.

Can the select board remove funds from the bottom line of the approved library budget mid-year? Can they reduce funds from line items in the library budget?

No. The town meeting or deliberative session is the one chance for both the select board and the library trustees to make final adjustments to the budget. Once town meeting sets the library budget, it's set. The select board does not have the authority to make further adjustments to the library budget, unlike, say, the police department. The library is, as I said above, much like a protectorate in this way.

The one thing to keep in mind, of course, is that the library trustees submit a budget to the select board (or official budget committee, if any) for consideration as part of the annual town budgeting process. RSA 202-A:11, II. The select board (or official budget committee) need not accept that proposal as written. The board is entirely within its rights to reduce (or enlarge) the budget prior to presenting it to the voters.

If the library trustees disagree with the select board (or budget committee), they — like any voter — may make a motion to restore the prior funding at town meeting. While that may only increase the bottom-line budget as submitted to the NH Dept of Revenue Administration, it may also change the detailed chart of accounts, which would specify town meeting's grant of funds to the library in accordance with RSA 202-A:4. See also RSA 202-A:18 pertaining to discontinuances of libraries.

If the library trustees submit a warrant article, can the select board change the wording of the warrant article? If the warrant contains a dollar amount, can the select board change the amount?

Any voter — including a member of the select board — can propose a change to the amount of funds appropriated in a warrant article. Separate warrant articles for libraries are no exception.

Similarly, voters can propose a change to the wording of a warrant article. However, this gets complicated. By statute, select boards must review petitioned warrant articles and can make minor textual changes that do not change the intent. In other words, they can fix grammatical errors. At town meeting, a voter can move to change the wording of an article, but such changes cannot affect the "subject matter" of the article. For example, a warrant article cannot be changed to read "to not appropriate" if it originally read "to appropriate." Another example is where the change is from buying a "snowplow" to a "fire truck." The test

that DRA employs is the couch test – is a voter who read the article as originally written going to be motivated by the amendment to change his/her mind about going to town meeting. In other words, is the voter going to get off the couch. A voter may see that a library building expansion is up for vote and decide not to come, but that same voter may come if it were a town hall building expansion.

Control of Library Premises

If the town owns the library building but the trustees are authorized to maintain the library per RSA 202-A:6, then who really is in charge of the building?

This is a complicated topic. Technically, the trustees would be in charge of all library property pursuant to RSA 202-A:6. That means that the trustees are able to make the rules pertaining to, e.g., reopening the library during the pandemic, as well as being charged with actual maintenance and operation of the library building. However, there are plenty of instances where what counts as library property is not clear cut. For example, the parking lot that patrons use. Is that library property or town property? It often depends.

Similar problems arise in instances where the library is housed in part of a municipal building. If the select board decides that the 100-year-old town hall building is in such bad shape that it needs to be torn down and a new town hall building built, but the library is housed in part of that building, what say do the library trustees have? In all likelihood, the select board is going to have its way. But all parties should be mindful of RSA 202-A:18, prohibiting discontinuance of a library except in certain instances, as well as other statutes pertaining to records — both town and library (as well as town records maintained by the library).

Additional issues arise if the land or building were granted to the town for the purpose of having a library upon it. Generally, that property is going to be controlled entirely by the trustees, but the complexities can be such that legal counsel's opinion is really necessary before moving forward in any direction related to reconstruction or expansion. In most cases, however, the issues that arise are simple ones of policy – what can patrons do and not do. In those cases, the library trustees set the policies.

Can the trustee board set a policy that prohibits a person — other than law enforcement — from bringing a gun into the building? What if the person has a permit to carry from the state?

There is one major exception to trustees setting the policies and that relates to guns. Current law, RSA 159:26, states that “no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state.” That statute is pretty clear, but just to emphasize, no municipal entity may regulate possession of guns in their buildings.

As far as permitting goes, New Hampshire's default rule is that anyone is allowed to have a gun. The only permitting requirement, which is no longer enforceable due to a change in state law, is that New Hampshire did allow the regulation of concealed firearms. Now, however, anyone is allowed to carry concealed or openly. Our hope, of course, is that people will be reasonable when they choose to carry a gun and realize that they would be wise not to carry a gun into an area or situation where having a gun would cause alarm or affront as that could end very badly. □