

Legal Q&A: *Figuring out MOUs*

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Memorandums of Understanding — commonly known as MOUs — are understandings between two or more entities. They are frequently used to resolve issues that can arise between two governmental entities where there may be overlapping authority. These types of agreement are often considered only after a problem arises, but it is always a good idea to try to head off a problem before it becomes serious issue. The relationship between the library and the town is one of those areas where problems can arise. It's easy to see why, if one applies the logic of the New Hampshire Supreme Court in *Littleton v. Taylor*, 138 N.H. 419 (1994) regarding the library budget in RSA 202-A:6 and :11 to the similar wording about library property in RSA 202-A:6 and :11.

The library trustees have “the entire custody and management of the public library and of all the property of the town relating thereto,” but what does that mean as applied to your town? It's easy enough to understand that the shelves, the books, and the contents of the library are all under the control of the library trustees. There's very little debate or gray area there. But what about the structure? The actual building?

If the library is freestanding, that's one thing. But what if it is part of town hall or another municipal building? Are the trustees – who are charged with preparing an annual budget indicating “what support and maintenance of the [library will be required” — supposed to budget for repairs to the roof of the whole building in proportion to the amount of the building used by the library? Does it matter if the library is in the basement of the building as opposed to the top floor? Different towns do different things.

And what if that library is freestanding? Should the library trustees be budgeting for plowing the parking lot? Is the parking lot really library property? What if the parking lot is shared with another municipal building? What if the library has some learning opportunity, such as a pollinator garden, outside? Should that help inform under whose custody the parking lot falls? Again, different towns handle things differently.

What is important, however, is for library trustees and select boards to work together to clarify the realms of responsibility where it is not clear. A basic starting point for existing libraries can be cataloging the various features of their library where there may be disagreements. For freestanding libraries, that's probably everything outside the physical structure of the library. For internal libraries, that's probably the four walls, the ceiling, and the floor.

From that basis, figure out which entity — trustees or select board — has traditionally maintained which feature and which features are in contention. For those where tradition has been long established and there isn't disagreement, it should be fairly easy to craft an agreement — a MOU — outlining the relative responsibilities of the trustees and the select board. For those contentious issues, more negotiation may have to take place.

Once an agreement is crafted, approved and signed by both the trustees and the select board, it is up to both sides to abide by it and notify the other if something goes astray. Additionally, both the trustees and the select board should routinely review the agreement – probably once a year, just after town elections – to ensure that new trustees and new select board members know the terms of the agreement and to identify any issues that have arisen over the past year which need further clarification via an amendment to the original agreement. If all goes well, any issues can be resolved quickly and without disruption to the services provided to the municipality's residents. □

Note: Examples of MOUs may be found on the NHLTA website under Resources at www.nhlta.org/resourcesmaterials.asp.