

## **Legal Q&A: *Library Budgets & Payment of Employees: Who Controls Them***

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The economic fallout from COVID-19 has many municipalities worried about December's property tax collection and taking action to try to preserve municipal services in the coming year. That has caused a number of library-related questions to come to NHMA as library trustees, budget committees, and select boards have begun to formulate next year's budget. Perhaps the most popular library-related questions that NHMA has fielded relate to the power of library trustees over library budgets, and, most importantly, who determines library employee pay.

Libraries are unique among town entities in much of what they do is independent from other town entities. For example, RSA 202-A:2, II makes the board of library trustees the governing board of the library. There are few other town entities which grant the power over their operations to a board other than the select board, and many of those boards lack the breadth of power given to the library trustees in other statutes, notably, RSA 202-A:6 and RSA 202-A:11.

RSA 202-A:6 vests the library trustees with the entire custody and management of the library and of all the property of the town relating thereto, except trust funds held by the town. RSA 202-A:11, II-IV states that the trustees determine how to expend, and have the power to expend, all funds provided to the library. Taken together, these statutes make the library an almost sovereign entity within the town, controlled solely by the library trustees.

Now, as a practical matter, many boards of library trustees have agreements – formal or informal – with their respective select boards. These agreements cover an array of areas, but most commonly focus on areas of cost saving, such as the consolidation of utilities and utilization of town administrative resources. Unfortunately, such consolidation often leads to confusion about which body – library trustees or select board – have power over certain areas.

In 1994, that confusion led to a lawsuit, *Town of Littleton v. Taylor*, 138 N.H. 419 (1994). That case settled the issue of who employs library employees – it is the library trustees, not the select board – and saw the court reiterate that the statutes not only see the trustees appoint the librarian and determines the librarian's salary, but also manage and control the library.

As a practical matter, the case settles one of the more common issues: the trustees want to give a library employee a raise but the select board (or worse, the town's financial officer) says "no." Who wins? Well, if the library trustees have the funds in their budget, they can give their employees raises, regardless of the opinion of the select board. See *Taylor* at 423. They would simply use the same ability to transfer funds around their budget as is given any governing body and codified in RSA 32:10. (If such a power did not exist, it would not be possible for governing bodies to make decisions regarding the proper use of funds.)

A more difficult question stems from the budget creation process itself. Library trustees often draft a budget request and forward that to the select board or official budget committee (depending on whether an official budget committee exists). The governing body, or the budget committee if there is one, then makes a recommendation to the legislative body (i.e., town meeting) for a budget. RSA 32:5. Because the library trustees do not have the power to submit their own budget directly to the legislative body, that recommendation may be different than the recommendation that the library trustees made to the governing body. Even if that is the case, the trustees – like anyone residing in town – have the ability to address the legislative body and argue for an adjustment at town meeting via an amendment. (Note, of course, in SB2 towns, this would take place at the deliberative session, not during official ballot voting day.) In the end, it is the legislative body that sets the budget.

After the budget has been set, that is the amount of money that the library trustees have at their disposal for use throughout the year. RSA 202-A:6; RSA 202-A:11. The select board does not have the authority to use its transfer authority under RSA 32:10 to deprive the library of funds allocated to it by town meeting.

Unfortunately, there are some unknowns. For instance, RSA 202-A:4 requires municipalities to “annually raise and appropriate a sum of money sufficient to provide and maintain adequate public library service therein or to supplement funds otherwise provided.” While “adequate” is not defined, it is possible that the newest round of “adequate” funding for schools may provide some useful *dicta* for those interested in the contours of “adequate” library service, but we will have to wait for the New Hampshire Supreme Court to issue its opinion.

We do know, however, that “where a public library has been acquired by the town in whole or in part by donation or bequest,” the town has some obligation to continue funding it, regardless of the economic outlook. RSA 202-A:18; RSA 202-A:4. Those reading this column undoubtedly already know that that is a net positive: public libraries are often the only option for those who are unemployed to access free resources to help them regain employment, and, unfortunately, that may be something that is sorely needed in the year ahead. □