

## When Under Construction, Who's in Charge: The Trustees or the Town?

By Margaret L. Byrnes, Attorney at Law,  
NH Municipal Association (NHMA)

### *What is the division of authority between library trustees and the town's or city's governing body when renovation or construction of a library building is desired?*

As you are likely aware, RSA Chapter 202-A gives significant authority to library trustees in the management of the library property and operations. For example, RSA 202-A:6 says, in part, that “The library trustees shall have the entire custody and management of the public library and of all the property of the town relating thereto. . . .” Our New Hampshire Supreme Court has even recognized the library trustees’ level of autonomy in *Littleton v. Taylor*, where an employee of the town’s library was deemed a library employee and not a town employee.

But this level of autonomy is not without its limits. When the library trustees want to do a renovation or addition on the library building, conflicts between the governing body and the library trustees can arise. Although the law is not perfectly clear in addressing all the potential issues, here are some considerations for trustees and governing bodies to remember.

First, when a major renovation or new construction of library real property is desired, a bond is often necessary to fund the project. Bonds are a form of long-term debt and are governed by RSA Chapter 33. Bonds must be approved by the vote of the legislative body; in towns, this means the voters, and in towns without budgetary town meetings or in cities, this would be the council or aldermen, with the procedure for bonds being set forth in the charter. This means, first and foremost, that library trustees do not have independent authority to approve or obtain a bond; legislative body approval is required.

Going even a little further, in towns with a town meeting, the governing body has authority over the warrant, meaning that it is the governing body’s decision whether to include (or not include) an article on the warrant, unless a properly petitioned warrant article is received pursuant to RSA 39:3. This means that the select board cannot be required to place an article containing a bond on the warrant in the absence of a citizen petition. Remember, too, that at town meeting, the voters can amend a warrant article containing a bond; this includes the power to decrease the amount of money proposed.

Importantly, once the issuance of the bond is approved by the legislative body, it is the governing body that has the authority to obtain the bond. The governing body also has the responsibility to ensure that the bond proceeds are being spent properly for the purpose for which the bond was authorized. Ultimately, therefore, the management of bond proceeds falls within the financial responsibilities of the governing body.

All of that being said, some building renovation and construction projects do not involve bond proceeds, but questions of authority can still linger. RSA 202-A:6 and A:11 give the trustees the authority to expend money appropriated for the library, including the authority to make separate requests for capital improvements, and RSA 202-A:4-c gives the trustees authority to accept and expend other revenue given to the library (if previously adopted by the legislative body).

However, RSA 202-A:6 says the library trustees have “custody and management of the public library and of all the *property of the town relating thereto*.” Those last few words are important because the real property of the town used for library purposes (e.g., the land, the buildings) is owned by the town, not by the trustees, even though management authority is given to the trustees. This is no different than conservation property belonging to the town being managed by the conservation commission.

Ultimately, the best case scenario for a municipality is for the library trustees and governing body to work together. In fact, one option for larger construction projects would be appointing a “clerk of the works” to oversee the project and to keep both the governing body of the municipality and the trustees of the library apprised and involved to the extent necessary.