

## Legal Q & A

### Librarians: Are they “at-will” employees

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*Although our trustees have been told the director and staff are not “at-will” employees, one trustee maintains that because our town considers its employees “at-will” (stated in the town’s personnel policy manual) and the library adopted the town’s personnel policies, our library employees are “at-will” employees as well. Can you help us resolve this issue?*

There is often confusion about the status of individuals who work for municipalities. Some, such as library trustees, are clearly understood to be elected officials; generally, they only depend on the voters to keep their job.

Other individuals who work for municipalities have a more complicated relationship. Some are “at-will” employees who work at the direction of the select board, are paid according to whatever employment contract exists, and, barring membership in a collective bargaining unit (union), can be fired at any time for almost any reason. Then, there are employees who are “appointed.” Appointed positions are often, although not always, statutorily described. The most important difference between appointed officials and employees is that removing the appointed official from office is complicated.

While it is often said that the power to appoint implies the power to remove, the reality is that that is more often the exception than the rule. Statutes almost always include either a term of office—the length of time for which the person is appointed—and/or a list of reasons for removal.

Librarians and library staff are appointed positions; they are not “at-will” employees; they may only be removed for cause. RSA chapter 202-A contains all the relevant information. RSA 202-A:11 charges the library trustees with “appoint[ing] a librarian who shall not be a trustee and, in consultation with the librarian, [appoint] all other employees of the library and determine their compensation and other terms of employment.” Thus, everyone who works at the library is an appointed official (even though the statute used the word “employees” for those who are not the “librarian”).

RSA 202-A:15 further explains that the “librarian” shall be appointed for a fixed term and remain until a successor is appointed and qualified. Thus, removal would be circumscribed except in the allowable instances. Those are few. Most are covered in RSA 202-A:17, although a librarian who turns out not to “have education of sufficient breadth and depth to give leadership in the use of books and related materials,” could presumably be removed. Most likely, this situation would be limited to a librarian who falsified a diploma or other educational achievement.

RSA 202-A:17 states that the only permissible reasons for removal of any appointed library official are “malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform the employee’s duties.” The language that follows, as well as elsewhere in the chapter, strongly implies that only the “librarian”—the head of the library—is appointed for a fixed term. Removal, then, must follow the written notice and hearing requirements laid out in this statute and requires substantial evidence of what the individual has done that is ‘bad.’ Mere disagreement or personal differences are not enough. The individual must actually do something ‘bad’—whether that be stealing books or monies, refusing to come to work, or some other substantial act (or inaction) which meets the above statutory criteria.

In addition, failure by the library trustees to provide written notice signed by a majority of the board between 15 and 30 days prior to the effective date of removal or failure to provide the opportunity for a public hearing within 30 days if so requested, or failure to find good cause for discharge after that hearing where each side presents its case, could all result in reinstatement of that individual to the position.

In the case of a library adopting the town policies, RSA 202-A:17 states that the policies which are adopted *must* include a hearing requirement. That limits the types of town policies which the library trustees may adopt. The town policy must provide for, essentially, the same protections outlined in the remainder of RSA 202-A:17 to be applicable. If the policy does not, presumably, the procedure in RSA 202-A:17 would control rather than the town policy. [NHLTA recommends libraries develop their own set of personnel policies. Remember that any references in the policy to the town administrator or select board should be replaced by the library director or board of trustees.]

Librarians and other individuals who work at libraries may be considered employees for federal tax purposes, but under New Hampshire state law, they have a robust set of protections to avoid arbitrary employment decisions.