

Chapter 3: Legal Responsibilities

In this chapter you will learn:

- ✓ Legal and Ethical Responsibilities of trustees
- ✓ Freedom of Information Act
- ✓ Confidentiality of Library Records
- ✓ Other laws affecting libraries

Trustees and the Law

All public library trustees must recognize and accept their legal position as governing agents of the library. A trustee of a public library is a public officer who has fiduciary responsibility to the citizens and taxpayers of their community. A fiduciary is a person who holds something in trust for another. The public library is a municipal asset which board members hold in trust for the public. If library trustees violate their trust or fiduciary duty, they may be subject to legal consequences. Trustees of governing boards have a legal responsibility to ensure adherence to legal and ethical standards. Trustees need to be aware of the relevant legal requirements, strive to act within the laws, and seek expert assistance as appropriate. This section of the handbook is not intended to give legal advice but rather give general direction on a governing boards' responsibility.

The section Working Together in Chapter 2 of this handbook describes the differing roles of trustees and directors regarding the legal responsibilities for care of the library. Trustees may rely heavily on their director's expertise and knowledge of local, state, and federal laws which affect the library. However, trustees cannot abrogate their responsibility to assure that all policies and practices conform to all local, state, and federal legal requirements.

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Municipal Charters and Ordinances

Many Connecticut municipalities are governed by special legislation, charter or ordinances, components of which may or may not relate directly to the library. It is critical for trustees to know if their municipality has such a charter or has plans to implement one, and if so, how its provisions affect their library. While trustees have traditionally looked to the Connecticut General Statutes to delineate the rights and responsibilities of trustees to exert "custody and management" over public libraries, a local charter or ordinances may take precedence over these statutes. All trustees should be familiar with the statutes, charter, ordinance and by-laws affecting their library.

If your community is planning a charter change, make sure that at least one trustee becomes familiar with the charter change process, and is informed every step of the way about the proposed changes.

Ethics

Library boards may wish to adopt their own codes of ethics. In general, trustees should not use their position for personal gain for themselves, relatives and friends. Board members also should:

- Represent the interests of all people served by the library and not favor special interest.
- Do nothing to violate the trust of those who elected or appointed them to the board.
- Never use their service on the board for personal advantage.
- Never vote on matters for which they have personal financial interest.
- Keep confidential information confidential.
- Not hold board meetings without the director.
- Observe policies of the board and library.
- Not accept complaints from the public or staff on library matters. These complaints are the director's responsibility.
- Attend board meetings regularly.

A helpful guide to state ethics laws for municipalities may be found at:

<http://tinyurl.com/CTethics>

The American Library Association Code of Ethics may be found at:

<http://www.ala.org/ala/issuesadvocacy/proethics/codeofethics/codeethics.cfm>

Liability

“Connecticut statutory and common law provides municipal officials with significant protection from civil liability. But the law does not provide total immunity. Thus, under certain circumstances municipal officials can be sued individually. Also, under certain circumstances, the law requires municipalities to indemnify municipal officials who are sued because of actions they took in their official capacity.” (OLR Report 2009-R-0444)

In general those who serve on a municipal board or commission, are immune from civil liability resulting from any act, error, or omission made in the exercise of their policy or decision-making responsibilities if they were acting in good faith. For a good explanation of the limits of municipal liability, see the Office of Legislative Research Report: Civil Liability of a Municipal Official at:

<http://www.cga.ct.gov/2009/rpt/2009-R-0444.htm>

Acting in good faith and with due diligence requires a board member to:

- Attend board meetings regularly, coming prepared, having read all material to be discussed in advance of the meeting.
- Ask questions and not vote for any motion action until they have sufficient information to base an opinion.
- Ensure that minutes are recorded, reviewed for accuracy and made available to the public as required under Freedom of Information Act.
- Review fiscal records and controls at regular intervals.
- Implement and regularly review appropriate policies.
- Maintain active committees.
- Avoid conflict of interest. A generally accepted rule of thumb is that a trustee or his/her family may not receive any gain (tangible or intangible) in dealing with the library.

If you have any questions or concerns about the library's liability, consult your local municipal or board counsel.

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Connecticut Statutes Affecting Libraries

The complete Connecticut General Statutes may be found at:

<http://www.cga.ct.gov/asp/menu/Statutes.asp>

Statutes specifically related to libraries may be found at:

<http://www.ctstatelibrary.org/dld/files/programs-and-services/managing-ct-libraries/connecticut-laws-affectin> (This listing includes statutes regarding Freedom of Information, Voter Registration, Confidentiality of Library Records, municipal elections and the Connecticut Education Network as well as statutes specifically concerning public libraries.)

Freedom of Information Act

As public agencies, public libraries must comply with the Freedom of Information (FOI) Act. Generally FOI also applies to association libraries due to their governmental funding and the fact that they perform a governmental function (serve as the town's public library). Any questions on the requirements of FOI should be addressed to the Commission. Contact information is on page 8 of this manual.

HIGHLIGHTS OF THE FREEDOM OF INFORMATION ACT (Be Sure To Consult Statutes)

PUBLIC AGENCIES

You have the right to obtain records and attend meetings of all public agencies – with certain limited exceptions.

This applies to

- State and local government agencies, departments, institutions, boards, commissions and authorities and their committees.*
- Executive, administrative or legislative offices, and the judicial branch and the Division of Criminal Justice with respect to their administrative functions.*
- Certain other entities based on the following criteria: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government.*

PUBLIC MEETINGS

I. Meetings, including hearings and other proceedings, must be open to the public – except in limited situations.

A public meeting is any hearing or other proceeding of a public agency, or gathering of, or communication by or to a quorum of a multi-member agency, to discuss or act on any matter over which it has authority.

The following are not public meetings: meetings of certain personnel search committees; collective bargaining strategy and negotiating sessions; caucuses; chance or social gatherings not intended to relate to official business; administrative or staff meetings of a single-member agency (e.g., mayor); and communications limited to notice of agency meetings or their agendas.

No registration or other requirements may be imposed on a member of the public seeking attendance at a public meeting.

The public, as well as the news media, may photograph, record or broadcast meetings, subject to prior reasonable rules regarding non-interference with the conduct of the meeting.

II. Only three kinds of meetings are recognized under the Freedom of Information Act: Regular, Special and Emergency.

A state agency must file each year a schedule of its regular meetings with the Secretary of the State. A town or city agency must file each year a schedule of its regular meetings with the clerk of the town or city. A multi-town district or agency must file each year a schedule of its regular meetings with the clerk of each municipal member of the district or agency. A special meeting may be called up to 24 hours (excluding weekends, holidays, and days on which the office of the Secretary of the State or municipal clerk, as the case may be, is closed) before the time set for the meeting. A special meeting is called by filing a notice stating the time, place and business to be transacted.

A state agency files this notice with the Secretary of the State; a local agency files this notice with the municipal clerk; a multi-town district or agency files this notice with the clerk of each municipal member of the district or agency.

An emergency meeting may be held without complying with the preceding notice requirements. However, the agency must file its minutes, including the reason for the emergency, within 72 hours (excluding weekends and holidays) of the meeting with the Secretary of the State if a state agency; or with the municipal clerk if a local agency; or with the clerk of each municipal member if a multi-town district or agency.

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III. You are entitled to receive a copy of the notice and agenda of a meeting.

An agency is required to send a notice of its meetings, where practicable at least 1 week prior to the meeting date, to any person who has made a written request. The agency may establish a reasonable charge for this service.

Each agency must make available its agenda for each regular meeting at least 24 hours before the meeting to which it refers. New business not on the agenda may be considered and acted on only on a 2/3 vote of the members of the agency.

IV. Agency minutes and record of votes must be available to the public.

The minutes of each agency meeting must be made available to the public within 7 days of the session to which they refer in the agency's office if it has one; or, if none, in the office of the Secretary of the State for state agencies or in the municipal clerk's office for local agencies. In the case of special meetings, the 7 day period excludes weekends and holidays. The minutes must contain the record of each member's vote on any issue before the agency.

The votes of each member on any issue must be put in writing and made available to the public within 48 hours, excluding weekends and holidays, of the meeting at which the votes were taken.

The minutes of a meeting at which an executive session occurs must indicate all persons who were in attendance at the closed session, except for job applicants who were interviewed.

EXECUTIVE SESSIONS

I. An agency may close certain portions of its meetings by a vote of 2/3 of the members present and voting. This vote must be conducted at a public session. Meetings to discuss the following matters may be closed: specific employees (unless the employee concerned requests that the discussions be open to the public); strategy and negotiations regarding pending claims and litigation; security matters; real estate acquisition (if openness might increase price); or any matter that would result in the disclosure of a public record exempted from the disclosure requirements for public records.

Any business or discussion in a closed session must be limited to the above areas.

The agency may invite persons to present testimony or opinion in the executive session, but their attendance must be limited to only the time necessary for that testimony or opinion.

PUBLIC RECORDS

I. Most records or files of state and local agencies, including minutes of all their meetings, are available to the public for inspection or copying.

This includes

-Information or data which is typed, handwritten, tape recorded, printed, photographed or computer-stored.

-Most inter-agency and intra-agency memoranda or letters.

II. Records specifically exempted from disclosure by federal law or state statute are not available to the public. In addition, the following records may not be available to the public: some preliminary drafts or notes; personnel or medical files; certain law enforcement records, including arrest records of juveniles and some witness and victim identification information; records relating to pending claims and litigation; trade secrets and certain commercial or financial information; test questions used to administer licensing, employment or academic examinations; real estate appraisals and construction contracts until all of the property has been acquired; personal financial data required by a licensing agency; records relating to collective bargaining; tax returns and communications privileged by the attorney-client relationship; names and addresses of public school students; information obtained by illegal means; certain investigation records of reported misconduct in state government or names of state employees who report such misconduct to the state Attorney General or Auditors; certain adoption records; election, primary, referenda and town meeting petition pages, until certified; certain health authority complaints and records; certain educational records; certain records, when there are reasonable grounds to believe disclosure may result in a safety risk; and certain records, if disclosure would compromise the security or integrity of an information technology system. Also, records of personnel search committees need not be disclosed if they would identify executive level employment candidates without their consent.

III. You may inspect public records during regular office hours, but copies, print-outs or transcripts should be requested in writing.

The fee for a copy of a public record from a state agency must not exceed 25¢ per page. The fee for a copy of a public record from a non-state agency must not exceed 50¢ per page. The fee for a computer disk, tape, printout or for a transcript, or a copy thereof, must not exceed the actual cost to the agency involved. The agency may also require the prepayment of these fees if their estimated cost is \$10.00 or more. No sales tax may be imposed for copies of the public records requested under this Act.

The agency is required to waive any fee for copies if the person requesting the copies is poor and cannot afford it; or if the agency determines that the request benefits the public welfare. There is an additional charge for a certified copy of a public record.

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You are entitled to prompt access to inspect or copy public records. If an agency fails to respond to a request within four business days, such failure can be treated as a denial of the request.

If you have any questions regarding the Freedom of Information Act, contact:
Freedom of Information Commission of the State of Connecticut

18-20 Trinity Street

Hartford, CT 06106

(860) 566-5682

TOLL-FREE (CT ONLY): (866) 374-3617

FAX: (860) 566-6474

FOI@ct.gov

<http://www.ct.gov/foi>

Confidentiality of Library Records

An important exception to the Freedom of Information requirements as specified in C.G.S. section 1-210 is the requirement for confidentiality of library records. C.G.S. Sec. 11-25 requires that records maintained by libraries that can be used to identify any library user, or link any user to a library transaction, regardless of form, shall be kept confidential. Such records may only be released with permission of the user or pursuant to a court order. Specifically the statute states:

Reports by libraries. Confidentiality of records. (a) *The libraries established under the provisions of this chapter, and any free public library receiving a state appropriation, shall annually make a report to the State Library Board. (b) (1) Notwithstanding section 1-210, records maintained by libraries that can be used to identify any library user, or link any user to a library transaction, regardless of format, shall be kept confidential, except that the records may be disclosed to officers, employees and agents of the library, as necessary for operation of the library. (2) Information*

contained in such records shall not be released to any third party, except (A) pursuant to a court order, or (B) with the written permission of the library user whose personal information is contained in the records. (3) For purposes of this subsection, "library" includes any library regularly open to the public, whether public or private, maintained by any industrial, commercial or other group or association, or by any governmental agency, but does not include libraries maintained by schools and institutions of higher education. (4) No provision of this subsection shall be construed to prevent a library from publishing or making available to the public statistical reports regarding library registration and use of library materials, if such reports do not contain personally identifying information.

Libraries should have a policy that reiterates this right to confidentiality as well as a procedure that staff should follow when confronted by a request for a patron record. All library staff must be adequately trained regarding this procedure. Sample policies may be found at:

<http://www.ctstatelibrary.org/dld/pages/sample-policies-connectic>

Other Laws Affecting Public Libraries

A guide to laws affecting libraries is available at:

<http://www.ctstatelibrary.org/dld/files/programs-and-services/managing-ct-libraries/connecticut-laws-affectin> Included in this listing are laws related to state aid, Connecticard, voter registration, establishing public libraries, taxing, merger of libraries, contracts for library service, and theft of library materials.

State statutes are often revised or repealed, so always check the latest version available at: <http://www.cga.ct.gov/asp/menu/Statutes.asp>

For assistance, contact the State Library Legislative Reference desk at: 860.757.6590 or CSL.Lawref@ct.gov.