



The More You Know....

Laws that Affect Libraries

NJ Public Library Directors Summit

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The National Conference Center,

East Windsor, NJ

Outline

- Funding Capital Projects
- Libraries and Trustees
- Statutes that apply to all public entities
 - Open Public Meetings Act
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 - Open Public Records Act
 - Employment/Personnel/Civil Service
 - FMLA
 - New Jersey First Act
- Miscellaneous
 - Insurance
 - Library Policies
 - Friends of the Library
 - Role of the Director
- Questions

Funding Capital Projects

- Library Construction Bond Act
- Excess Funds
- Donations
- Municipal/County Bonding

NJ Library Construction Bond Act

- If approved \$125 million to be used to finance construction projects for public libraries
- Construction means the planning, erecting, altering, expanding, repairing, purchasing, acquiring, improving, developing, constructing, reconstructing, extending, rehabilitating, renovating, upgrading, demolishing, and equipping of public libraries.
- Requires a 1:1 match from the municipality or county
- Procedures for the review and approval of, and eligibility criteria for, grants shall be established by the State Librarian in consultation with the President of Thomas Edison State College

Eligible Costs vs. Ineligible Costs

- Can a Municipal Library use its 1/3 mill funding for capital projects? Maybe
- Eligible Costs – (N.J.A.C. 15:21-12.3) Reasonable and necessary costs incurred in connection with the direct **operation** of a free public library to provide library services
- Ineligible Costs (N.J.A.C. 15:21-12.6) –
 - Cannot pay rent to the Town
 - Cannot pay for debt service
 - Cannot use to pay Capital expenses - unless you can operate the library within the requirements of statute/regulations and you have a written Capital Plan

Excess Funds Statute (1)

- Requires Library to transfer to the municipality any unrestricted funds in excess of 20% of last year's audited operating expenses
- For example – If 2016 audited operating expenses were \$100,000 and the Library has yearend unrestricted surplus of \$25,000, it would be required to return \$5,000 to the Municipality

Excess Funds Statute (2)

- Funds previously restricted for capital and donations are excluded from the calculation
- Return of Excess Funds must be approved by the State Librarian
- Suggestions
- Hire your own auditor
 - Don't rely on the town auditor
- Make sure your auditor properly lists restricted assets
- Always adopt a capital plan

Excess Funds Statute (3)

- Suggestions (con't)
- Adopt a resolution whenever reserving money for capital purposes
- Maintain a separate bank account for restricted funds, i.e. capital and donations
- Download the Packet for Proposed Return of Taxpayer Funds

http://www.njstatelib.org/services_for_libraries/resources/library_law/

Municipal Bonding

Three Steps

1. Library certifies to the council the amount of money, in addition to the Library's capital reserves, necessary for the project
2. Governing body may by resolution, at its discretion and with the approval of the mayor, authorize the Library to expend such sums of money, in addition to the Library's capital reserves, as the governing body, may deem proper for such purposes, but in no event more than the amount certified by the Library.

Municipal Bonding (2)

3. Once the mayor and council have acted, Library is authorized, with the consent of the mayor or other chief executive officer of such municipality, to erect buildings and make improvements thereon, and to expend moneys therefor to the amount of such appropriation and surplus.

Capital Planning

- Hire an architect that is familiar with libraries
- Work with the architect to identify your capital needs over the next 5 years
 - Space needs
 - ADA compliance
 - Systems review – HVAC, Roof, Flooring, Shelving, Bathrooms
- Develop a budget



Libraries and Trustees

Association Libraries

- Governed by NJ Non-Profit Corporation Act (NJSA 15A:1-1 et seq.)
- May apply for tax-exempt status (IRC § 501(c)(3))
- Governed by trustees selected pursuant to bylaws
- Query – do Association Libraries have to follow Open Public Meetings Act, Local Public Contracts Law, Open Public Records Act, etc?

Municipal/County Libraries

Powers of the Board of Trustees

- Hire staff
- Set their compensation
- Purchase books and other library materials
- Adopt rules and regulations
- Do whatever is necessary to maintain the library

Autonomy

- Library Board runs the Library
 - Not the Mayor and Council
 - Not the Freeholders
- Attorney General Opinion 1959 No. 10
 - Library statute excludes any interference by the governing body with the exercise of the powers granted to trustees
- Association Libraries – municipality can condition money on library being free and open to the public at such reasonable hours as meets approval of the governing body

Role of the Mayor

- Mayor is one vote on the Board
- Mayor is not the CEO of the Library
- He/she should not dictate what the Library does
- Mayor appoints trustees
- Politics
 - Board is structured to minimize political influence
 - As the appointing authority, Mayor may seek to influence other trustees
- Want to cultivate good relations with the Mayor
 - Town Services/Capital Projects

Relationship with Municipality

- Library is not a Department of the Town
 - Director is not a Department Head, BUT
- Who handles Library Money – Town or Library?
- Shared Services
 - Payroll
 - Accounts Payable
 - Snow Removal/Landscaping
 - Administration of Health Insurance
- Charges for Shared Services?
 - Put agreement in writing

Organization – Board of Trustees

- Board consists of 7-9 trustees
 - Mayor, and Superintendent of Schools
 - 5-7 citizens appointed by the Mayor, of which 4 must reside in town
- Term of Office
 - 5 year staggered terms
 - At least one term should expire each year
 - Must start at the same time of the year, e.g. January 1
 - Vacancies are filled for the remainder of the term
 - Not a new term
- Officers – President, Treasurer, Secretary
 - Treasurer must be bonded
 - Suggest that all banking signatories be bonded

Oath of Office

- Trustees are required to take Oath
 - Must be done before a trustee can vote
 - Written Oath
 - Usually done by the Municipal Clerk
 - May be done by President of the Board
 - Must be filed with Municipal Clerk (County Clerk)

Trustee Attendance

- If a trustee is absent for 8 consecutive weeks or 4 consecutive regular meetings, without excused absence, board required to declare office vacant and notify the Mayor
- Mayor and Council, by ordinance, can reduce the time frame to 6 weeks or 3 meetings
- Board has discretion to excuse absences but must excuse for legitimate illness

Confidentiality of Library Records

N.J.S.A. 18A:73-43.1 et seq.

- Library records containing names or other personally identifying details regarding users are **CONFIDENTIAL** and cannot be disclosed unless:
 - Necessary for operation of Library
 - Disclosure is requested by User
 - Pursuant to court order or court subpoena

Statutes that apply to all public entities

- Open Public Meetings Act
- Local Public Contracts Law/Pay to Play
- Open Public Records Act
- Employment/Personnel/Civil Service
- FMLA
- New Jersey First Act

Open Public Meetings Act (1)

- Notice of Library Board meetings must give date, time, location and to the extent known the meeting agenda
- At least 48 hours in advance
- Posted in a prominent location
- Mailed, phoned or hand delivered to at least 2 newspapers
- Filed with the municipal/county clerk
- In lieu of notice for each regular meeting, board can adopt a meeting schedule at annual meeting and provide notice of that schedule as above

Open Public Meetings Act (2)

- Emergency Meetings

- When the board must meet and cannot provide 48 hour notice
- Board must adopt, by affirmative vote of 3/4 of the members attending, a resolution stating that the subject of the meeting was so urgent that a delay in meeting to provide adequate notice would likely result in substantial harm.
- Meeting is limited to action on the urgent matter
- Must provide notice of the meeting as soon as possible thereafter

Open Public Meetings Act (3)

- Quorum, i.e. majority of the board to conduct business
- Law does not apply to meetings of less than an effective majority of the board, i.e. committees
- Minutes
 - Must keep minutes of all board meetings
 - Must contain the time, date and place of meeting, the members present, the subjects considered, the actions taken, the vote of each member
 - Public session minutes must be made promptly available to the public
 - Must keep minutes of closed sessions

Open Public Meetings Act (4)

- Closed Sessions
 - Must adopt a resolution to go into closed session
 - Personnel Matters
 - Rice Notice
 - Litigation/Attorney Client Privilege
 - Contract Negotiations
 - Cannot take action in closed session
- Beware of Email Violations of the Law
- Penalties
 - Injunction undoing action of the board
 - Knowing violations – civil penalty of \$100/\$500

Local Public Contracts Law (1)

- Bid Threshold
 - \$17,500 – no Qualified Purchasing Agent (QPA)
 - \$40,000 – with QPA
- Quote Threshold (at Least 2)
 - \$2,625 – no QPA
 - \$6,000 – with QPA
 - Award to a vendor whose response is most advantageous, price and other factors considered.
- Sound Business Judgment – less than \$2,625

Local Public Contracts Law (2)

- Not subject to Bid Law - Library Materials, Specialized Library Services, Professional Services, Insurance, State Contract, Local Cooperative Contract
- Contracts are not to be divided to avoid the bid requirements
- The bid threshold is cumulative for the year – If you hire Ajax Plumbing in January to fix a problem at a cost of \$17,000 and in June you have another plumbing problem that will cost \$1,000 you will have to go out to bid or get quotes
- Contracts >\$2,625 require contractor to supply Business Registration Certificate

Local Public Contracts Law (3)

- Emergency Purchases
 - Requires that the board adopt a resolution which states that there is an actual or imminent emergency and the need for the goods and services could not have been reasonably foreseen
 - Contract is limited to the goods/services required to address the emergency
 - Board should adopt rules for determining/confirming that there is an emergency
 - Must file a report with the Division of Local Government Services

Local Public Contracts Law (4)

- Hiring Professionals
 - Governing Body must adopt a resolution awarding the contract
 - Notice of the contract award must be printed in the official newspaper
 - Contract must be on file and available for public inspection

Pay to Play

- Pay to Play applies to all contracts > \$17,500
- Contracts must be awarded in one of two ways
 - Fair and Open Process – sealed bid or sealed RFQ
 - Non-Fair and Open Process – Contractor must complete Business Entity and Political Contribution Disclosure forms and file them with the Library at least 10 days before contract award.
- In the one year preceding award of the contract and during the term of the contract, Contractor cannot make any reportable contributions to any candidate or office holder serving the constituents of the Library.

Open Public Records Act

- Designed to increase public accessibility to government
- Broadly defines a government record
 - Employee's personnel records are exempt but must disclose employee's name, title, position, salary, length of service
- Provides a compliance process via Government Records Council and Superior Court
- Provides penalties for anyone who knowingly violates the law
- Provides for attorneys fees for a successful requestor
- Appoint a Records Custodian

At Will Employment

- At Will Employment allows Employer to terminate an employee for any reason or no reason at all
- However if an Employee is in a protected class – sex, race, religious belief, gender identity, etc. – have a reason to terminate that is not pretext.

Personnel -Civil Service

- Civil Service – if your town is a civil service town, your employees are civil service
- If title is 'classified' must hire from list
- Working test period of 3 months after appointment to permanent title
 - Must provide progress reports
- If employee is dismissed before end of working test period, employee has the right to appeal

Civil Service

Civil Service employees can only be disciplined or terminated for cause

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity
10. Violation of New Jersey First Act
11. Other sufficient cause.

Personnel Manual

- Adopt a Personnel Policy/Manual
 - Sexual Harassment Policy
 - Affirmative Action Policy
 - Work Week
 - Meal Breaks
 - Vacation/Sick Leave
 - Procedure for calling in sick/request vacation
 - Bereavement Leave
 - Discipline procedures
 - Make sure there are no conflicts between manual and collective negotiations agreement

Family and Medical Leave Act (FMLA)(1)

- Public Libraries are covered employers regardless of the number of employees
- Employees must have worked at least 12 months for the employer, but not 12 consecutive months
- Employee must have worked at least 1250 hours in the 12 months prior to taking leave
- Employee may take FMLA leave for the following reasons
 - Serious Health Condition of employee or immediate family member
 - Birth/Adoption of Child -Must be taken within 1 year of birth/adoption

Family and Medical Leave Act (FMLA)(2)

- Employee may take up to 12 weeks of job-protected leave within a 12 month period
- Employee must be returned to the same or similar job
- Leave can be taken in increments
 - If taken on a part-time basis, employee must try to schedule so as to minimize disruption for the employer
- Employer must keep employee on health insurance
 - Employee will be required to pay normal contributions for health insurance

Family and Medical Leave Act (FMLA)(3)

- Process
 - Employee notifies you that he/she needs leave
 - Employer notifies employee if eligible
 - If eligible, employer may request a medical certification
 - If eligible and employer is satisfied that qualifying reason exists, then notify employee that the leave has been designated FMLA leave
- FMLA is unpaid leave however, the employer can require the employee to use paid leave
- Differences with NJ Family Leave Act (FLA)
 - FLA does not allow employee to take time off for his/her own medical condition
 - FLA allows 12 weeks of job-protected leave in a 24 month period

New Jersey First Act

- Employees hired after September 1, 2011 must reside in New Jersey
- New hires have 365 days to establish their principal residence in New Jersey.
- Employee can be removed from the job by court order

Miscellaneous

- Insurance
- Library Policies
- Friends of the Library
- Role of the Director

Insurance

- Employment Practices Liability Insurance/Directors and Officers Liability Insurance
- Worker's Compensation Insurance
- Hazard Insurance
 - Contents and Replacement Cost Coverage
- Liability Insurance
- Unemployment Insurance

Patron Behavior Policy

- Patron Behavior
 - Must spell out in detail what behavior is unacceptable
 - Must detail under what circumstances patron will be asked to leave premises/have library privileges suspended/revoked
 - Must provide for due process – patron should have the right to appeal suspension/revocation

Other Policies

- Unattended Children
- Internet Use
- Community Room Policy
- Anti-Harassment/Sexual Harassment Policy
 - Recommend annual or biennial training – contact NJ Division on Civil Rights

Friends of the Library

- Non-profit corporation
- Purpose is to assist the public library
- 501(c)(3)
 - Tax exempt
 - Donations tax deductible
- Friends do not run the Library
- Friends raise funds to augment the Library budget
- Friends not covered by Local Public Contracts Law
 - May buy items and donate them to the library


Role of the Director

- Director is Chief Executive Officer (CEO)
 - Human Resources
 - Purchasing
 - Budget
 - Buildings and Grounds
- Keep your board informed
 - Library activities
 - Possible hot topics
- Be responsive to the Board
 - Know your Board and the community

Role of the Director

- Staff communicates with the Director and the Director communicates with the Board
 - Trustees should not talk to staff about Library Operations
- Board of Trustees has hiring authority
 - This can be delegated to the Director
- Director should have a job description/goals/annual evaluations





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