

## Liability Issues

*This Trustee Essential covers:*

- *Basic issues concerning trustee and municipal liability*
- *Actions you can take to limit liability*

Generally, library trustees need fear no personal loss or liability for the honest performance of their official duties and exercise of powers granted by law. Wisconsin Statutes (Section 893.80(4)) and court cases generally provide that public officials are immune from individual liability for actions performed within the scope of their office.

But personal liability is still possible for intentional or careless injuries or damages, illegal use of public funds or authority, ethics and conflict-of-interest law violations, public records law violations, and open meetings law violations. In the case of open meetings law violations, an individual board member who is found to be in violation of the law may be fined and must pay the fine personally, without reimbursement from the library or municipality.

Library boards must also avoid taking actions that violate rights guaranteed by the federal constitution or federal law. Special care must be exercised in actions that concern discrimination laws, employment laws, and First Amendment rights. Before taking any actions that may jeopardize these rights, it is strongly recommended that the board seek the advice of the municipal attorney (or county corporation counsel in the case of a county library board).

Wisconsin Statutes provide that if a claim is brought against the library board because of an act or omission of the library board, and the claim is disallowed by the library board, the claimant may bring action against the municipality or county (Section 43.58(3)). Because the municipality or county is ultimately liable for any legal missteps by the library board, municipal and county attorneys are very willing to assist the library board with any legal questions.

Under most circumstances, municipalities have a legal responsibility to provide legal counsel to officers and employees (including library officers and employees) in proceedings brought because of actions taken while carrying out the duties of the office or position. Generally, under these circumstances, the municipality must also indemnify or pay for judgments for damages as well as other costs and legal fees. (See Wisconsin Statutes Section 895.46(1) for the details, including the limitations, of this law.)

### **Protections from liability**

You can greatly lessen the possibility of liability if you, and your fellow board members, do all of the following:

- Become knowledgeable about the various laws that apply to library board actions and library operations (such as the state open meetings and public records laws, state and

local ethics laws and state and federal employment laws). See *Trustee Essential #7, #14, #15, and #16* for more information about these laws.

- Adopt written policies for operating the library and review all library policies on a regular cycle, ensuring that all policies (including the personnel policy) are reviewed at least every three years. See *Trustee Essentials #7 and #10* for more information.
- Exercise care and diligence in board consideration of new or revised policies. Review each policy in light of the “four tests of a legally defensible policy” from *Trustee Essential #10: Developing Essential Library Policies*.
- Vote against any proposed board action that you believe is illegal or improper. Vote to table an issue if you believe insufficient information has been provided on which to base an informed opinion. Make sure the minutes reflect your vote.
- Act and speak for the library only when authorized to do so by the full board.
- Avoid even the appearance of conflict of interest. (See *Trustee Essential #16: Ethics and Conflict of Interest Laws Applying to Trustees* for more information.)
- Consult with library system staff and/or the municipal or county attorney if you have concerns about the legality of any action or failure to take an action.

### **Sources of Additional Information:**

Your library system staff (see *Trustee Tool B: Library System Map and Contact Information*)

Division for Libraries, Technology and Community Learning staff (see *Trustee Tool C* for contact information)

*This Trustee Essential provides only a general outline of the law and should not be construed as legal advice in individual or specific cases where additional facts might support a different or more qualified conclusion.*

---

*Trustee Essentials: A Handbook for Wisconsin Public Library Trustees* was prepared by the DLTCCL with the assistance of the Trustee Handbook Revision Task Force. Copyright 2002 Wisconsin Department of Public Instruction. Duplication and distribution for not-for-profit purposes permitted with this copyright notice. This publication is also available at <http://dpi.wi.gov/pld/handbook.html>.