

# Counting the Beans & Covering Your Rear

Hiring an auditor and an attorney for your library  
Terry L. Manuel  
Kentucky Department for Libraries & Archives

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## Disclaimer:

I am not an attorney. Nothing in this presentation is intended to be legal advice, and should not be taken as such.

If you feel you need legal advice, you should consult a licensed attorney.

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## Face It!

The world we live in today is NOT the same as the world in which our parents and grandparents grew up in.

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The library has changed with the times - the library of today is not the same as the library of our parents or grandparents time.

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## Face It!

The world we live in today is NOT the same as the world in which our parents and grandparents grew up in.

The library has changed with the times - the library of today is not the same as the library of our parents or grandparents time.

The library is BIG BUSINESS. You wouldn't expect a business in your community to NOT have an auditor or accountant, the library needs one also!

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## But.....

- How do you hire an attorney or auditor?

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- How do you hire an attorney or auditor?
- How do you know you're getting a good one?

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- What qualifications should you look for?

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- What should you expect from each?

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## Hiring an attorney



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## Hiring an attorney

The library board has a fiduciary responsibility to ensure that the library has the best legal representation possible and practical.

All library boards formed or operating under a KRS 173 statute have statutory authority to retain an attorney, and to "sue and be sued".

In order to accomplish this, the library needs to look at several factors.

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## Hiring an attorney

- Make sure your prospective attorney has actually graduated an ABA accredited law school

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- In Kentucky, that means:
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  - Northern Kentucky University (Salmon P. Chase)

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- Make sure your prospective attorney has actually graduated an ABA accredited law school
- In Kentucky, that means:
  - University of Kentucky (UK College of Law)
  - University of Louisville (Brandeis)
  - Northern Kentucky University (Salmon P. Chase)

There are no other ABA accredited law schools in Kentucky.

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## Hiring an attorney

However, there is another point:

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## Hiring an attorney

However, there is another point:

Make sure the attorney is licensed to practice law in Kentucky

The attorney may have graduated from a law school in another state – check to ensure it is ABA accredited

Check with the Kentucky Bar Association to ensure the attorney is licensed to practice law here:

<http://www.kybar.org/search/custom.asp?id=2947>

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## Hiring an attorney

Some things to remember:

Unless your library was formed under KRS 173.310, KRS 65.210 or 65.810, you should not expect the County Attorney to act as your attorney.

The library district is not a county agency, and so the County Attorney is not obligated to act in your behalf

The County Attorney is required to represent the fiscal court and other county agencies

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## Hiring an attorney

What to look for:

- Try to find an attorney experienced in representing government agencies. An ex-county or Commonwealth's attorney would be great!

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## Hiring an attorney

What to look for:

- Try to find an attorney experienced in representing government agencies. An ex-county or Commonwealth's attorney would be great!
- Try to find an attorney locally. Attorney's charge travel time, which could increase your cost, and generally a local attorney will enjoy a "home court" advantage if a case goes to trial

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- Try to find an attorney with a firm with several attorneys.

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- Try to find an attorney locally. Attorney's charge travel time, which could increase your cost, and generally a local attorney will enjoy a "home court" advantage if a case goes to trial
- Try to find an attorney with a firm with several attorneys.
- Look for an attorney with two qualities:
  - You like them
  - You trust them

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### Hiring an Attorney

You should:

- Have the attorney at least occasionally attend your board meetings – pay them to do this, if needed

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### Hiring an Attorney

You should:

- Have the attorney at least occasionally attend your board meetings – pay them to do this, if needed
- Keep the attorney fully informed of possible legal issues facing the library

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### Hiring an Attorney

You should:

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- Keep the attorney fully informed of possible legal issues facing the library
- Expect the attorney to give fair and honest legal advice – not to be a “yes” man

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## Hiring an Attorney

You should:

- Have the attorney at least occasionally attend your board meetings – pay them to do this, if needed
- Keep the attorney fully informed of possible legal issues facing the library
- Expect the attorney to give fair and honest legal advice – not to be a “yes” man
- Expect to not like everything the attorney tells you

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## Hiring an attorney

- The services of an attorney is considered a “professional service” under statute and does not require bidding
- However, the board should still exercise fiscal responsibility in the selection of an attorney

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## Hiring an attorney

GREAT! You have selected an attorney! He appears to have all the qualifications needed!

You’re done, right?

Nope!

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## Hiring an attorney

- Make sure the attorney isn't a board member
  - It is contrary to statute for a board member to receive pay for services from the library
  - It is unreasonable to expect an attorney to enter into protracted legal representation for free

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## Hiring an attorney

- Have the prospective attorney perform a conflict of interest analysis according to SCR 3.130(1.7)
- This should ensure that the a conflict of interest does not exist. A conflict of interest is defined as:

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## Hiring an attorney

- A situation where:
  - (1) the representation of one client will be directly adverse to another client; or

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## Hiring an attorney

A situation where:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

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## Hiring an attorney

If no conflicts exist, the attorney may be retained.

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## Hiring an attorney

The library should expect to pay the attorney a "retainer" fee. This fee should be from \$1 up, there is no set amount. The payment of this fee establishes a contractual relationship between the library and the attorney.

Some attorney's may not wish to accept a retainer. In lue of this, the attorney should furnish the library with a "letter of representation" (also known by other names). This will act as a contract between the library and the attorney.

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## Hiring an Auditor



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## Hiring an Auditor

- The library board has the legal responsibility to ensure that audits are performed according to the schedule established by statute.

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## Hiring an Auditor

- The library board has the legal responsibility to ensure that audits are performed according to the schedule established by statute.
- This schedule was changed with the adoption of HB1

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### Hiring an Auditor

- The library board has the legal responsibility to ensure that audits are performed according to the schedule established by statute.
- This schedule was changed with the adoption of HB1 (2013)
- There are harsh penalties for failure to meet the requirements of law

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### Hiring an Auditor

- Your audit is due the same time each year - no later than 12 months after close of Fiscal Year
- Contract for audit NOW! All SPGEs will be trying to have the audit done in this timeframe! Make sure any auditor you contract with can make this deadline!
- This is already required for submission with your annual report
- Financial thresholds have changed!

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### Hiring an Auditor

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures of less than one hundred thousand dollars (\$100,000) shall:

1. Annually prepare a financial statement; and
2. Once every four (4) years, contract for the application of an attestation engagement as determined by the DLG

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### Hiring an Auditor

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000) shall:

- 1. Annually prepare a financial statement; and
- 2. Once every four (4) years, contract for the provision of an independent audit

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### Hiring an Auditor

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than five hundred thousand dollars (\$500,000) shall:

- 1. Annually prepare a financial statement; and
- 2. Be audited annually

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### Hiring an Auditor

When due, all audits or attestation engagements must be submitted within 12 months of the close of the fiscal year.

ALL library districts (SPGEs) will need an auditor to perform the audit or Attestation Engagement!

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### Hiring an Auditor

To provide for the performance of an audit or attestation engagement as provided in subsection (1)(a) to (c) of KRS 65A.030, the governing body of a special purpose governmental entity shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to conduct the audit or attestation engagement.

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### Hiring an Auditor

You shall...

...employ an independent certified public accountant or contract with the Auditor of Public Accounts to conduct the audit or attestation engagement..

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### Hiring an Auditor

The audit shall conform to....

**Generally accepted governmental auditing or attestation standards, which means those standards for audits or attestations of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States;**

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**Generally accepted auditing or attestation standards, which means those standards for all audits or attestations promulgated by the American Institute of Certified Public Accountants; and**

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## Hiring an Auditor

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**Generally accepted auditing or attestation standards, which means those standards for all audits or attestations promulgated by the American Institute of Certified Public Accountants; and**

**Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts.**

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## Hiring an Auditor

Tips for hiring an auditor:

- Find one that has done this before
- Hire as locally as possible
- Make sure **(SURE)** they can meet your time frame
- Make sure they understand that you are a government entity and that you have special audit requirements

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### Hiring an Auditor

- An auditor provides a professional service and does not require bidding.
- However, the library has a fiduciary duty to seek out the best value
- Make sure the person has passed the Uniform CPA exam
- Make sure they are licensed by the Commonwealth
  - <https://secure.kentucky.gov/renewalservices/cpa/lookup.aspx>

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### Hiring an Auditor

- Get a Contract
- Be sure it specifies the date by which the audit must be complete
- Change auditors every three audits, at least. This is not a statutory requirement, but it is considered as good business practice

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### Hiring an Auditor

You should expect the auditor to:

- Work in a timely manner
- Request documents needed for the audit in advance of needing them
- Remain confidential, unless illegalities are discovered
- Issue a fair and honest assessment of the library's fiscal condition

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### Hiring an Auditor

You should:

- Cooperate with the auditor – *if you have something to hide, you have problems*
- Receive the audit in an open board meeting
- Make the audit available to the public
- Undertake to correct issues found in the audit
- Submit the completed audit to the DLG in a timely manner
- Consider scanning the audit and posting to your website – the DLG will have it on theirs

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### Hiring an Auditor

If you fail to submit your audit in a timely manner, you are considered noncompliant with applicable law.

If a District is noncompliant:

- Within 30 Days DLG will notify the SPGE of noncompliance
- The SPGE has 30 Days from Notification to correct the problem
- 15 days after the SPGE’s Deadline, DLG shall Initiate the Statutory Procedure—Notifying the APA, the Establishing Entity, any State Level Oversight Agency and the Finance and Administration Cabinet

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### Hiring an Auditor

Penalties for Noncompliance - KRS 65A.040

- All State Funds may be Withheld
- Publication of a Notice of Noncompliance in the Newspaper
- Possible Audit or Special Examination by the APA at the SPGE’s expense
  - Once an APA audit is started there is no action which a library can take which will cause it to cease

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### Hiring an Auditor

- 45 days after the SPGE is notified of its delinquency, if it has not been corrected, a publication shall be posted in the local circulating newspaper.
- Shall include:
  - Name of the SPGE
  - Statement that it failed to comply with Statutory Reporting Requirements
  - Names of the Board Members
  - Name and Contact Information for the SPGE's Point of Contact AND
  - Any Other Information DLG May Require

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### Hiring an Auditor

- 29% of the libraries in Kentucky failed to turn in their Audit on time in 2013 and would be subject to action of noncompliance under the new rules.
- Only 3.7% of the libraries in Kentucky have failed to file their audit in a timely basis in 2017.

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### Hiring an Attorney & Auditor

- Questions?

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Hiring an Attorney & Auditor

**Thank you!**

Terry L. Manuel  
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Kentucky Department for Libraries & Archives  
502-564-1730 or [terry.manuel@ky.gov](mailto:terry.manuel@ky.gov)

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