

*KDLA February 2010 Trustee Tip of the Month*  
*Personal Liability: Are Members of a Board Personally Liable for*  
*Decisions Made As a Board Member?*

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Board Trustees are not liable if they are acting within their official capacity, as they should be covered by limited sovereign immunity. In Kentucky, limited sovereign immunity means that the entity may not be sued except in instances where the immunity has been waived by the legislature.

Limited sovereign immunity does NOT protect the trustee in the following situations and a local government may also refuse to pay a judgment or settlement in any action against a trustee under certain circumstances (KRS 65.2005). These include:

- a. The trustee acted or failed to act because of fraud, malice, or corruption;
- b. The action was outside the actual or apparent scope of his employment;
- c. The trustee willfully failed or refused to assist the defense of the cause of action, including the failure to give notice to the executive authority of the local government;
- d. The trustee compromised or settled the claim without the approval of the governing body of the local government; or
- e. The trustee obtained private counsel without the consent of the local government, in which case, the local government may also refuse to pay any legal fees incurred by the trustee.

Errors and Omissions insurance protects the library, as the library would have to pay for legal fees and the judgment if the insurance were not in place (KRS 65.2005) - assuming the board member was acting properly and within his/her official capacity.

Under the first two of these Errors and Omissions insurance would also refuse to pay (generally speaking), and may refuse to pay under C, D, and E, depending upon policy terms. Any additional insurance would likely also refuse to pay under some, if not all, of these circumstances.

If board members act reasonably, and within the realm of their legitimate duties as defined by statute and local policy (local policy should NOT conflict with statute) they should have little to worry about. However if they move outside that realm (negligence, criminal acts, etc.) they are placing themselves in jeopardy.

For further guidance see: *Yanero, 65 S.W.3d at 522, Jones v. Cross, 260 S.W.3d 343 (Ky. 2008), Ky. Rev. Stat. Ann. § 65.2002 (Michie 1995).*



## Quick Tips:

- **Limited Sovereign Immunity**

Sovereign immunity is a judicial doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. The legislature can, and often does, carve out areas where this immunity will be waived (canceled).

- **Errors and Omissions insurance, sometimes called Directors and Officers (D & O) liability insurance, insures the library and the board trustees against perceived or real errors in judgment. It will usually cover legal costs and judgments against the library.**

- Errors and Omissions insurance will not cover a claim if it arises from an action of fraud, malice, or corruption on the part of an employee or trustee.
- Errors and Omissions insurance will not cover a claim if it arises from an action committed outside of the legitimate duties as defined by statute and Board policy.

- **To avoid liability:**

1. Pay attention to financial reports, minutes, and other reports that are distributed to you for your review to ensure accuracy and completeness.
2. Know your Board policies well to ensure proper procedure is followed in conducting Library business.
3. Read your KDLA Trustee Manual to see what statutes impact your “job” as a Trustee.
4. Seek legal counsel when a question of legality arises.
5. Review your Errors and Omissions policy and know what it covers.
6. Take time to gather adequate and correct information and understand the issues before voting on any actions.

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This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

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