

May 2013 Trustee Tip of the Month Library Attorney

Various issues may occur in which the library will need to seek legal advice or need the services of an attorney. A business the size of a public library may have one or more attorneys to call upon when needed. In order to have an actual contractual relationship with an attorney, the library must have paid them *something*; it could be as little as \$1.00. This establishes the attorney-client relationship.

By having an established relationship with an attorney, the director and board will know immediately to whom to turn if a legal emergency should arise. Another advantage of having an attorney on retainer is that your attorney of choice would be ready to represent the library in any legal action and could not be hired by your opponent regarding the issue.

Although KDLA can't make any specific recommendations on whom to hire, we have some suggestions to consider. Some libraries have turned to the County Attorney when help is needed regarding a legal issue. In some cases, the County Attorney may be able to provide information on an easy question or refer you to an attorney who has expertise in a specific area of law. In choosing an attorney, the library should not rely on the County Attorney who is required by law to represent the county in any legal matter and, for this reason, it is recommended that, unless the library is part of county government, the library retain an attorney who will represent the interests of the library in any matter. If the library was ever in legal opposition to the County, the county attorney would have no option other than to be recused from representing the library.

The attorney should also not be a board member, as statute provides that the library cannot have a board member who does business with the library, and this would include the provision of legal services. Serving as an attorney for the library while being a board member would be in conflict with this statute.

Library boards generally seek to have business relationships with someone doing business in the same county. Many counties have limited choices and it may be practical to widen the search for an attorney in order to make the best choice to give the library the best representation in case of litigation.

If the library board finds a suitable local attorney with whom you'd like to work, that attorney may be helpful in dealing with the local legal matters. In many counties, it may be possible to find a local attorney who has experience working for local taxing districts and would thus understand some of the specialized issues facing libraries. Additionally, a local attorney will know when it is appropriate to consult with more specialized attorneys on particular issues such as personnel, real estate, or taxing authority.

The library should maintain adequate insurance coverage to defend itself in case of a lawsuit. If a library is sued and is covered by Directors and Officers Insurance, the insurance company may have its own attorneys working on the case. However, the library will still need to have its own attorney. It is possible that your insurance company could recommend, or even require, that the library hire a certain attorney. You may wish to check with your insurance company to determine their requirements in this area.

It would be difficult to sue the board trustees, director, or staff as individuals as long as they were acting in a responsible manner within the bounds of their authority. The board and director wouldn't be liable as individuals but, as the governing body, they would still be the focus of litigation filed against the institution. There exists only extremely limited circumstances in which the board or employees could be individually liable, and most of these involve unethical or illegal conduct on the part of the individual.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney. Terry L. Manuel, Branch Manager, Program Development, Kentucky Department for Libraries & Archives. For more information, contact: Terry.Manuel@ky.gov or 502-564-8300 ext. 269.