

PREPARING FOR THE
INEVITABLE
READYING THE LIBRARY TO FACE LEGAL
CHALLENGE

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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 with a licensed attorney.

Facing a Legal Challenge:

What are the odds that, sooner or later, your library district will either face a legal challenge or will need to mount one?

Facing a Legal Challenge:

100%

The reality today is that any governmental or business entity will eventually face a legal challenge

Facing a Legal Challenge:

When faced with a legal challenge – either having action taken against you or bringing action against another – there are some things you can do to help ensure the best possible outcome for the library.

The failure of the library to have its house in order can be detrimental to the position of the library – and there is no way to know which things may be most important at any given time.

Facing a Legal Challenge:

There is one thing which you must remember
over everything else.....

Facing a Legal Challenge:

- ▣ IF YOU WAIT UNTIL THE LEGAL PAPERS ARE SERVED TO TAKE THESE ACTIONS....

- ▣ YOU HAVE WAITED TOO LONG!!!

Facing a Legal Challenge:

Areas for consideration:

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- ▣ There are several areas – with some overlap – which will aid you greatly...IF you get your housekeeping done in advance!

Facing a Legal Challenge:

Areas for consideration:

- ▣ The “most important thing”

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- ▣ The library district

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- ▣ The board

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- ▣ Your policies

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Areas for consideration:

- ▣ The “most important thing”
- ▣ The library district
- ▣ The board
- ▣ Your policies
- ▣ Filings and such

Facing a Legal Challenge:

- ▣ The most important thing:
- ▣ “The most important thing about being in a gunfight is...”

Facing a Legal Challenge:

- ▣Bring a gun.....

Facing a Legal Challenge:

- ▣ Corollary –
- ▣ “The most important thing about going to court is.....”

Facing a Legal Challenge:

- ▣bring an attorney.....

Facing a Legal Challenge:

- ▣ Hire an attorney **NOW**
- ▣ Don't depend upon the County Attorney
- ▣ Don't depend upon a board member who is an attorney
- ▣ Don't depend upon free legal help – attorney's need to eat to!

Facing a Legal Challenge:

The attorney:

- ▣ Make sure they are licensed in KY
- ▣ If possible, make sure they have experience dealing with the government
- ▣ Pay them while they learn about you
- ▣ Don't be cheap – this is not the time to take the low bidder

Facing a Legal Challenge:

The Library District:

- ▣ Know which statute you were created and operate under.

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- ▣ Make sure you can find the fiscal court order establishing your district – in the courthouse, not in your filing cabinet

Facing a Legal Challenge:

The Library District:

- ▣ Know which statute you were created and operate under.
- ▣ There are four sets of operational statutes – and they stand independently
- ▣ Make sure you can find the fiscal court order establishing your district – in the courthouse, not in your filing cabinet
- ▣ Make sure you are complying with the legal requirements of the section under which you were created

Facing a Legal Challenge:

The Board:

- ▣ Do you have the correct number of board members?

Facing a Legal Challenge:

The Board:

- ▣ Do you have the correct number of board members?
- ▣ Are all your members actually eligible to be board members?
 - Do they live in your county?
 - Is there a conflict because they are on another board?
 - Do they have an interest in the sell of items or services to the library?
 - Are they a library employee?

Facing a Legal Challenge:

The Board:

- ▣ Do you have the correct number of board members?
- ▣ Are all your members actually eligible to be board members?
 - Were they correctly appointed by the County Judge, with “the approval of the fiscal court”?
 - Were they sworn? Was the officiating person eligible to swear them in? Was the correct oath used?

Facing a Legal Challenge:

The Board:

- ❑ Do you have the correct number of board members?
- ❑ Are all your members actually eligible to be board members?
- ❑ Have any of your board members missed 4 meetings within a 12 month period while serving on the board?
- ❑ Are your officers correctly appointed?

Facing a Legal Challenge:

The Board:

- ▣ Have board members received any restitution for expenses?
 - Was it legal?
- ▣ Have board members received any “gifts”
- ▣ Do board members receive any special services from the library?
- ▣ Is your treasurer bonded?
- ▣ Are your bills correctly approved for payment?

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 - Do you have a schedule of meetings for the year?

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 - Do you meet at least once each month?

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The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Do you have a schedule of meetings for the year?
 - Do you meet at least once each month?
 - Do you allow anyone to attend the meeting?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Do you have a schedule of meetings for the year?
 - Do you meet at least once each month?
 - Do you allow anyone to attend the meeting?
 - Are the meetings held in a legal location?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Do you have a schedule of meetings for the year?
 - Do you meet at least once each month?
 - Do you allow anyone to attend the meeting?
 - Are the meetings held in a legal location?
 - Do you avoid conducting business without a quorum?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Do you avoid making attendees identify themselves?
 - Do you allow any member of the public to speak during the meeting, or forbid all members of the public from speaking?
 - Do you post special meetings?
 - Does the posting include an agenda?
 - Do you stick to the agenda?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Do you post these notices at least 24 hours in advance?
 - Do you notify news media of any special meetings, if they have requested?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Meetings Act?
 - Have you ever called an emergency meeting – one held without giving notice?

Facing a Legal Challenge:

The Board:

- ▣ Are you compliant with the Open Records Act:
 - Do you keep legal board minutes?
 - Are the minutes available for public inspection after they have been approved?
 - Do you comply with Open Records Requests in a timely manner?
 - Do you know which records are subject to Open Records?

Facing a Legal Challenge:

Your policies:

Your library is a governmental institution.

Your policies must be legal, fair and equitable.

Any restrictions you place upon the public must meet legal standards

Facing a Legal Challenge:

Your policies:

- ▣ Do you have a written policy manual which is regularly reviewed?
- ▣ Has it been reviewed by your attorney?

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
- ▣ Some common problem areas:
 - Do you restrict religious groups from using your meeting room?
 - Do you restrict political groups from using your meeting room?
 - Have you imposed a lifetime “ban” from the library on anyone?

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
 - Do you discriminate based upon race, color, religion, national origin, age, sex, pregnancy, citizenship, familial status, disability, veterans status, or genetic information?
 - These are all protected classes under federal law

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
 - Do you conduct performance reviews?
 - ▣ Are they honest?
 - Are all staff treated the same, according to policy?
 - Do you comply with the Family Leave Act? With the provisions of HIPPA?

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
 - Do staff have considerable leeway in applying policies?
 - Are all of your policies applied evenly to everyone?
 - Are your policies available for public viewing?

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
 - Do you have an investment policy – is it legal?
 - Do you treat all funds – from any source – as public money?
 - Do you correctly bid all expenditures requiring bidding? Do you know what these are?
 - Do you artificially divide projects to avoid bidding?

Facing a Legal Challenge:

Your policies:

- ▣ Are your policies legal?
 - Are you compliant with the ethics policy provisions of HB1?
 - Does your budget show all library assets?
 - Is your budget balanced?

Facing a Legal Challenge:

Filings and such:

Failure of have required filings and submissions up to date can be detrimental in case of a legal action.

Facing a Legal Challenge:

Filings and such:

Filings have changed considerably with the introduction of HB1. However, if anything these have gotten more important.

Facing a Legal Challenge:

Filings and such:

- ▣ The library should be sure that:
 - The budget is correctly filed
 - The UFIR is filed
 - The district has filed with DLG and paid the yearly fee
 - The audit is correctly filed.....

Facing a Legal Challenge:

Filings and such:

...and that the AUDIT IS UP TO DATE

Facing a Legal Challenge:

Filings and such:

▣ Insurance

- Does the library have insurance?
- Does the board have “errors and omissions” or “officers liability” insurance?
- Do you have insurance on any vehicles owned by the library?

Conclusion:

- ❑ Failure to adequately address any of the questions asked or in this presentation can seriously hurt the library in case it faces a legal challenge, or needs to take legal action against anyone.
- ❑ The time to fix these problems is NOW, once you are sued it is too late

Contact

If you have any questions or I can be of any assistance, please feel free to contact:

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Thank

You!!! 😊