This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

LIBRARIES -- Library Trustees (authority to provide for defense and indemnification of library employees) -- Public Library (authority of library board and governing board of sponsor to provide for defense and indemnification of library employees)

PUBLIC OFFICERS AND EMPLOYEES -- Legal Expenses (defense and indemnification of public library employees)

PUBLIC OFFICERS LAW §18: There are two alternatives for conferring the benefits of section 18 of the Public Officers Law on employees of a public library: either (1) the board of trustees of the library may elect to confer the benefits of section 18 on library employees as a public library expense; or (2) the governing board of the sponsoring municipality or school district may confer section 18 benefits on library employees as a direct expense of the sponsor.

This is in reply to your letter in which you ask whether the trustees of a school district public library may adopt the defense and indemnification provisions of Public Officers Law §18 to cover library employees or whether the provisions must be adopted for library employees by the board of education of the sponsoring school district.

Public Officers Law §18, enacted originally by L 1981, chapter 277, is the principal defense and indemnification statute for "employees" of "public entities". Section 18 generally requires a "public entity" that has adopted the provisions of that section to provide for the defense and indemnification of its "employees" in any civil action or proceeding arising out of any alleged act or omission which occurred or allegedly occurred while the officer or employee was acting within the scope of his or her public employment or duties (Public Officers Law, '18[2]-[4]).

Insofar as here relevant, Public Officers Law §18(1)(a) defines the term "public entity" to include a school district or "any other separate corporate instrumentality or unit of government" (Public Officers Law §18[1][a][ii], [v]). The term "employee" is defined to include any person holding a position by election, appointment or employment "in the service of a public entity ..." (Public Officers Law §18[1][b]).

Shortly after the enactment of section 18, this Office expressed the opinion that a public library constituted a "separate corporate instrumentality or unit of government" within the definition of "public entity" and, therefore, the board of trustees of a public library could confer the benefits of section 18 on its employees (1981 Opns St Comp No. 81-343, p 375; see also 1982 Opns St Comp No. 82-37, p 47).
Several years after Opn No. 81-343, supra, was rendered, subdivision 13 of section 18 of the Public Officers Law was enacted by chapter 532 of the Laws of 1984. Subdivision 13 provides as follows:

The provisions of this section shall also be applicable to any public library supported in whole or in part by a public entity whose governing body has determined by adoption of a local law, ordinance, bylaw, resolution, rule or regulation to confer the benefits of this section upon the employees of such public library and to be held liable for the cost incurred under these provisions.

It is clear that this amendment was intended to authorize municipalities and school districts that sponsor public libraries to elect to confer the benefits of section 18 on employees of public libraries, at the direct expense of the municipality or school district (see Sponsor's Memorandum in Support of S. 573 of 1984; letter from Senator Hugh T. Farley to the Honorable Gerald C. Crotty, regarding S. 573C/A, 618C, July 18, 1984). There is nothing on the face of this amendment, however, indicating that a public library board of trustees may not independently determine to adopt section 18 for its library employees, in the absence of a determination by the sponsoring municipality or school district to adopt section 18 for library employees.

We are mindful that there is some indication in the legislative history of the 1984 amendment suggesting that the amendment was intended to provide municipalities and school districts authority to confer section 18 benefits on public library employees because, contrary to our conclusion in Opn No. 81-343, supra, it was believed that there was no existing authority for public library boards to cover such employees (see letter from Robert Stone, Esq., Counsel to the State Education Department, to Allen Boudreau, dated May 3, 1983 ["a library supported by a municipality or school district is not among those which can currently benefit from the provisions of section 18."])]. However, the legislative history is inconclusive in this regard (see, e.g., Memorandum of the Division of the Budget on S. 573 of 1984, dated July 20, 1984, citing Opn No. 81-343, supra, and noting that "[e]xisting law already allows for such indemnification protections"; see also Governor's Veto Message #298 of 1982, NYS Legislative Annual of 1982, p 355, regarding S. 8159-A, a bill that would have mandated that sponsoring municipalities and school district indemnify public library employees).

Consequently, we do not believe the 1984 amendment constrains us to supersede the conclusion in Opn No. 81-343, supra (compare 2001 Opns St Comp No. 2001-5, p 8). Moreover, we note that the conclusion in the 1981 opinion to the effect that a public library constitutes a "corporate instrumentality" or "unit of government" separate from the sponsoring municipality or school district for purposes of determining to defend and indemnify its employees, is consistent with subsequent caselaw that has upheld the autonomy of public libraries in connection with their decisions as to the purposes for which monies appropriated for the library are expended (Buffalo and Erie County Public Library v County of Erie, 1991, 171 AD2d 369, 577 NYS2d 993, affd 80 NY2d 938, 591 NYS2d 131; see also Education Law §216-a). Therefore, we continue to adhere to the view that section 18 authorizes a board of trustees of a public library to elect to provide section 18 benefits for its employees.

Accordingly, it is our opinion that there are two alternatives for conferring the benefits of section 18 of the Public Officers Law on employees of a public library:
either (1) the board of trustees of the library may elect to confer the benefits of
article 18 on library employees as a public library expense; or (2) the governing
board of the sponsoring municipality or school district may confer section 18 benefits
on library employees as a direct expense of the sponsor.

December 31, 2001

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