

**PUBLIC LIBRARY LAW IN  
NEW YORK STATE**

by

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NEW YORK LIBRARY ASSOCIATION  

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*The Voice of the Library Community*

The University of the State of New York, The State Education Department  
The New York State Library, Albany, New York 12230



## **PREFACE**

The updated version of this publication is a collaboration between the New York State Library's Division of Library Development, the New York Library Association and Allan Carter.



## INTRODUCTION

This publication is a compilation of statutes and regulations in New York State which pertain to public libraries. Whenever possible, they are accompanied by court decisions, administrative opinions, and, occasionally, memoranda to aid in their interpretation. While the importance of statutes, regulations and court decisions is understood by most laypersons, the same cannot be said for administrative opinions. "Construction and interpretation by an administrative agency of the law under which it acts provides a practical guide as to how the agency will seek to apply the law. However, despite the fact that the interpretation given to statutes and regulations by administrative regulation does so at his or her own peril and stands the risk of its not being followed by the courts. An erroneous construction of a statute by a state department cannot operate to confer a legal right in accordance with such construction. Also, the fact that an interpretation has been made by regulation or otherwise does not preclude a subsequent different, but correct, interpretation by the agency." (2 American Jurisprudence 2d, "Administration Law", section 81)

A New York case which reflects this view of administrative decisions is Armitage v. Board of Education of City of Auburn (122 Misc. Rep. 586, 203 NYS 325, 1924): "Another well-recognized canon of construction that the court may take judicial notice of the practical construction of the provisions of a statute given to it by the administrative officers charged with doubtful, to great, it not controlling, weight... This canon does not mean that the court can hide behind the ruling of the department of education, and blindly follow its lead, and thus escape the duty of interpreting the statute, because, after all is said and done, the court is the final arbiter as to the proper construction to be given to this act and in discharging that function should, if after mature deliberation it concludes that the position of the department is untenable, disregard its interpretation. However, great importance should be attached to the position taken by the department, especially when it has been universally acquiesced in by those interested." This opinion becomes particularly relevant in relation to the discussion of the judicial decisions of the Commissioner of Education below. For a fuller discussion of the role of administrative officers in the construction of statutes, see McKinney's Consolidated Laws of New York, Book 1 (Statutes), section 129.

The administrative decisions included in this publication which would carry the most weight would be the judicial decisions of the Commissioner of Education because (1) the Commissioner is charged with the administration of most of the laws which govern public libraries; (2) the Commissioner's office usually has a major role in drafting these laws (see Hotel Association of New York City v. Weaver, 155 NYS 2d 946); and (3) with the minor exception of PERB rulings, these decisions are the only ones in this publication which are established by statute, i.e., section 310 of the Education Law ("Appeals or petitions to the commissioner of education and other proceedings", partially reprinted in Part I of this publication). Interestingly enough, especially in the light of Armitage v. Board of Education quoted above, this section formerly stipulated that such judicial decisions "shall be final and conclusive [originally added by L. 1822 Chap. 266, sec. VII] and not subject to question or review in any place or court whatever" [added by L. 1864 Chap. 555, Title XII]. This phrase was deleted by L. 1976 Chap. 857. The Education Department's formal opinions of counsel are purely advisory, and have no statutory basis. A brief discussion of the history and legal significance of the Department's judicial decisions and opinions of counsel is contained in 1 Education Department Reports, pp. Iv-ix (1962).

With the exception of the PERB decisions, the limitations of which can be found in section 205 of the Civil Service Law, none of the other administrative decisions included in this volume have any statutory basis, and are to be considered persuasive but not legally controlling.

One other *caveat* should be mentioned. The compiler of this volume has not formal legal training, and thus is not able to tell if a particular opinion has been rendered obsolete by a later opinion, a court decision, or an amendment of the law in question. Before taking any actions based on an administrative opinion, the library's attorney should be consulted.

Since only excerpts of opinions are included, it would be a good idea to have the full opinion, which would contain legal precedents and a more detailed explanation of the legal justification. Although the quickest and cheapest method would be the Internet, at present the availability of administrative opinions on the Internet is limited. The State Education has the decisions of the Commissioner of Education from Vol. 31 (#12,545, July, 1991) on their website ([www.counsel.nysed.gov](http://www.counsel.nysed.gov)). The State Comptroller's Office (<http://www.osc.state.ny.us/legal/>) has opinions from 95-1; the Attorney General (<http://www.oag.state.ny.us/lawyers/lawyers.html>) has opinions from 1995. However, they are only indexed by subject (so far libraries, public libraries, etc. are not subject terms) and statute. Note also that the only difference between formal and informal opinions is that the former are in response to inquiries from state agency officials, and the latter from local officials; there is no difference in the level of importance.

The Committee on Local Government ([www.dos.state.ny.us/coog/coogwww.html](http://www.dos.state.ny.us/coog/coogwww.html)) has the most accessible opinions on the Internet. Opinions on the Freedom of Information Law are available from no. 7495 to present, and on the Open Meetings Law from no. 2173 to present. Both are found by subject, and both have three variations on the term "library" as subject headings.

The State Office of Real Property Services (<http://www.orps.state.ny.us/legal/opinions/index.cfm>), which on January 1, 1995 became the successor to the State Board of Equalization and Assessment, has opinions from v. 10 (Volumes 1-9 are referred to as SBEA Opinions of Counsel No., etc.). They are arranged by subject, but the term library or its variations is not yet a subject.

The state's Public Employment Relations Board's homepage ([www.perb.state.ny.us](http://www.perb.state.ny.us)) does have a very brief summary of all decisions since 2000. However, for the full decisions you must either go to a paid online subscription service or request a paper copy.

In regard to judicial decisions only the Court of Appeals decisions from 1990 are available on the Internet via Cornell University's Legal Information Institute ([www.law.cornell.edu/ny/ctap/](http://www.law.cornell.edu/ny/ctap/)).

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# **PART I**

## **STATUTES WHICH DIRECTLY RELATE TO PUBLIC LIBRARIES**

**ARTS AND CULTURAL AFFAIRS LAW**  
**ARTICLE 20—NEW YORK STATE CULTURAL RESOURCES ACT**

**§20.03. General definitions**

As used or referred to in this article and in any special law creating a trust for cultural resources, except as otherwise provided in such law, the following terms shall have the following meanings:

5. “**Cultural facility**” shall mean any structure, improvement, furnishing, equipment or other real or personal property that is or is to be used, owned, or occupied in whole or in part by a participating cultural institution, including but not limited to...libraries,...and any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution.

**§20.07. Creation and purposes of a trust**

1. A trust shall be created by a special law as a corporate governmental agency and a public benefit corporation, constituting a political subdivision of the state. A trust and its corporate existence shall continue until terminated by law; provided, however, that no such law take effect so long as the trust shall have bonds, notes or other obligations outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of a trust, all its rights and properties not otherwise disposed of shall pass to and be vested in the state. Any net earnings of a trust, beyond that necessary to retire any indebtedness of a trust or to implement the purposes set forth in this article and in any special law, may not insure to the benefit of any person other than the state, county or the municipality in which the principal office of the trust is located.
2. A trust shall exercise the powers granted to it by this article and by special law in cooperation with participating cultural institutions solely and exclusively in furtherance of the purposes of this article and such special law. Before entering into any agreement for the construction of a combined-use facility, a facility for a not-for-profit cultural organization, or before making a loan to a not-for-profit cultural organization, the board of trustees shall hold a public hearing and thereafter shall determine that development of such facility or the making of such loan is the most feasible means by which such purposes may be effectuated and that the architectural and design characteristics of the non-institutional portion are compatible with those of the institutional portion of such combined-use facility. Notice of such public hearing shall be published at least once no less than twenty days prior to such hearing in a newspaper of general circulation in the municipality or county in which such facility is located. Notice of such public hearing shall be served by certified mail upon the chairman of the planning board of any county in which such combined-use facility is or is designed to be developed, except that in a municipality, such notice shall be so served upon the chairman of the local community board in the area in which such facility is or is deigned to be developed; and notice of such public hearing shall be served upon the chairman of the planning board, or equivalent board, of any county in which the facility for a not-for-profit cultural

organization is, or is designed to be, developed, or in which, in the case of a loan, a not-for-profit cultural organization is located.

### **§35.01. Child performers**

1. It shall be unlawful, except as otherwise provided in this section, to employ, or to exhibit or cause to be exhibited, or to use, or have custody of, for the purpose of exhibition, use or employment, any child under the age of sixteen years, or for one who has the care, custody or control of such child as a parent, relative, guardian, employer or otherwise, to exhibit, use or to procure or consent to the use or exhibition of such child, or to neglect or to refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein, in the following actions:
  - (a) In singing; or dancing; or playing upon a musical instrument; or acting, or in rehearsing for, or performing in a theatrical performance or appearing in a pageant; or as a subject for use, in or for, or in connection with the making of a motion picture film; or;
  - (b) In rehearsing for or performing in a radio or television broadcast or program.
2. The provisions of subdivision one of this section shall not apply to the participation or employment, use or exhibition of any child...in the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic or educational institution....

### **§61.05. Free public libraries**

Any municipal corporation may establish and maintain a free public library or museum in accordance with the library provisions of sections two hundred fifty-three to two hundred seventy-one, both inclusive, of the education law.

## **CIVIL PRACTICE LAWS AND RULES**

### **§2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state**

**Issuance by court.** A subpoena duces tecum to be served upon a library...requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library...having custody of the book, document or other thing and the adverse party. Such subpoena must be served upon such library...having custody of the book, document or other thing and the adverse party at least twenty-four hours before the time fixed for the production of such records unless in the case of an emergency the court shall by order dispense with such notice otherwise required. Compliance with a subpoena duces tecum may be made by producing a full-sized legible reproduction of the

item or items required to be produced certified as complete and accurate by the person in charge of such library, or a designee of such person, and no personal appearance to certify such item or items shall be required of such person or designee, unless the court shall order otherwise pursuant to subdivision (d) of rule 2214 of this chapter. Where a stipulation would serve the same purpose as production of the book, document or other thing and the subpoena is required because the parties will not stipulate, the judge may impose terms on any party, including the cost of production of the book or document, and require such cost to be paid as an additional fee to the library, department or officer.

#### **§4509. Library records**

Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

*“It is the court’s determination that disclosure of the information sought [i.e., employees who used the Southern Adirondack Library System’s “Library Without Walls” electronic information service to explore the Internet] should not be permitted. ...Were this application to be granted, the door would be open to other similar requests made, for example, by a parent who wishes to learn what a child is reading or viewing on the ‘Internet’ via ‘LWW’ or by a spouse to learn what type of information his or her mate is reviewing at the public library.” (Quad/Graphics, Inc. v. Southern Adirondack Library System, 174 Misc. 2d 291, 664 NYS 2d 225, September 30, 1997).*

*“With regard to the request for releases [signed by parents whose children appeared on a promotional videotape produced by the library board of trustees], it [Section 409 of the CPLR] is applicable, the releases would be exempted from disclosure by [Freedom of Information Law, Section 87 (2) (a)].” (Committee on Open Government Advisory Opinion FOIL-AO-6046, April 26, 1990).*

*“Based upon [Section 87 (2) (a) through (l) of the Freedom of Information Law and Section 4509 of the CPLR], I believe that registration cards or other library records containing ‘names or other personally identifying details’ concerning library users are confidential.” (Committee on Open Government Advisory Opinion FOIL-AO-6721, July 10, 1991).*

*“While most library records, including bills, must be disclosed, I point out that [Section 4509 of the CDLR] dealing directly with records pertaining to library users requires that those records be confidential.” (Committee on Open Government Advisory Opinion FOIL-AO-8855, May 24, 1995).*

*“As I understand the foregoing [i.e. CPLR §4509], the Library is prohibited from disclosing records that contain personally identifying details regarding its users. If its election procedures*

*are inconsistent with the requirements of §4509, they should, in my view, be altered to comply with law [sic]."* (Committee on Open Government Advisory Opinion FOIL-AO-1336, February 26, 1999).

*[Note: concerned with a request about patrons accessing pornography on the internet]. "Based on [CPLR, section §4509], in so far as library records identifying a user of a library's service, I believe that the record must be withheld"* (Committee on Open Government Advisory Opinion FOIL -AO-1535, June 22, 1999.)

*"Insofar as library records [various library logs] identify users of a library's services, I believe that the records must be withheld. Further, even if §4509 does not apply, I believe that records identifiable to the users of a library could be withheld on the ground that disclosure would constitute 'an unwarranted invasion of personal privacy'"* [See Freedom of Information Law, §87 (2)(b)]. (Committee on Open Government Advisory Opinion FOIL-AO-13308, April 15, 2002.)

## **CIVIL RIGHTS LAW**

### **§40. Equal rights in places of public accommodation, resort or amusement**

All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat, of any person belonging to or purporting to be of any particular race, creed, color or national original [sic] is unwelcome, objectionable or not acceptable, desired or solicited. The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person. A place of public accommodation, resort or amusement within the meaning of this article, shall be deemed to include...public libraries..., and all educational institutions under the supervision of the regents of the State of New York; and any such public library...supported in whole or in part by public funds or by contributions solicited from the general public...

## **CIVIL SERVICE LAW**

### **§62. Constitutional oath upon appointment**

Every person employed by the state or any of its civil divisions, except an employee in the labor class, before he shall be entitled to enter upon the discharge of any of his duties, shall take and file an oath or affirmation in the form and language prescribed by the constitution for executive, legislative and judicial officers, which may be administered by any officer authorized to

take the acknowledgement of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed. In lieu of such oath administered by an officer, an employee may comply with the requirements of this section by subscribing and filing the following statement: "I do hereby pledge and declare that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the position of \_\_\_\_\_, according to the best of my ability." Such oath or statement shall be required only upon original appointment or upon a new appointment following an interruption of continuous service, and shall not be required upon promotion, demotion, transfer, or other change of title during the continued service of the employee, or upon the reinstatement pursuant to law or rules of an employee whose services have been terminated and whose last executed oath or statement is on file. The oath of office heretofore taken by an employee as previously required by law, and the oath of office hereafter taken or statement hereafter subscribed by any employee pursuant to this section, shall extend to and encompass any position or title in which such person may serve as an employee during the period of his continuous service following the taking of such oath or subscribing of such statement, and his acceptance of such new title shall constitute a reaffirmance of such oath or statement. The oath or statement of every state employee shall be filed in the office of the secretary of state, of every employee of a municipal corporation with the clerk thereof, and of every other employee, including the employees of a public library and the employees of boards of cooperative educational services, if no place be otherwise provided by law, in the office of the clerk of the county in which he shall reside. The refusal or wilful failure of such employee to take and file such oath or subscribe and file such statement shall terminate his employment until such oath shall be taken and filed or statement subscribed and filed as herein provided.

An enrolled member of an Indian nation or an Indian individual having an affiliation with an Indian nation recognized by the United States or the state of New York may elect to comply with the requirements of this section by instead subscribing and filing the following statement:

"I do solemnly affirm that I will faithfully discharge the duties of the position of \_\_\_\_\_ according to the best of my ability, and perform my duties in a manner consistent with the constitution of the United States and the constitution of the state of New York."

## **CORRECTIONS LAW**

### **ARTICLE 6-C- SEX OFFENDER REGISTRATION ACT**

#### **§168-e. Board of examiners of sex offenders**

- (a) If the risk of repeat offense is moderate, a level two designation shall be given to such sex offender. In such case the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the name of the sex offender, approximate address based on sex offender's zip code, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable

populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion.

Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notifications of such organizations in disseminating such information on level two sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

- (b) If the risk of repeat offense is high and there exists a threat to the public safety, a level three designation shall be given to such sex offender. In such case, the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the sex offender's name, exact address, address of the offender's place of employment, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public.

Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notifications of such organizations in disseminating such information on level three sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

## **EDUCATION LAW**

### **§2. Definitions**

Wherever used in this chapter, the following terms shall have the respective meanings hereinafter set forth or indicated:...

19. **Expenditures.** For purposes of computing aid to public school districts, boards of cooperative educational services, nonpublic elementary and secondary schools, public and cooperative library systems or public and free association libraries pursuant to this chapter or any other law, such aid shall be computed using state aid worksheets developed pursuant to regulations of the commissioner, designed to reflect use of the state comptroller's definition of expenditures to the extent possible. Such worksheet definitions of expenditures shall be used notwithstanding the fact that this chapter or other applicable law may use terms such as cash expenditures, expenses, costs, paid, payments, or such other terms.

#### §140. Historical documentary heritage grants and aid

1. **Short title.** This section shall be known and may be cited as the "*New York documentary heritage act*".

2. **Definitions.** As used in this section, the following terms shall mean:

*a. "Historical records".* Records that contain significant information that is of enduring value and are therefore worthy of long-term retention and systematic management. Historical records may include diaries, journals, ledgers, minutes, reports, photographs, maps, drawings, blueprints, agreements, memoranda, deeds, case files, and other material. They may take any of several physical forms: parchment, paper, microfilm, cassette tape, film, videotape, computer tapes, discs, and other "machine readable" formats.

*b. "Historical records program".* Any deliberate, organized program to collect, hold, care for, and make available historical records, including identifying, appraising, arranging, describing, and referencing them and using them in exhibitions and other public and educational programs.

*c. "Institutions eligible for historical records program grants".* Chartered or incorporated nonprofit archives, libraries, historical societies and museums and other nonprofit institutions in New York state which operate historical records programs and which meet standards to be established by the commissioner pursuant to regulations adopted for such purposes. Institutions operated by state or federal government agencies, and local government archives shall not be eligible for historical records project grants, except that an institution of the state university of New York or the city university of New York may apply for historical records project grants with regard to records other than internal records generated by the institution after July first, nineteen hundred forty-eight if it is a component of the state university of New York or after July first, nineteen hundred seventy-nine if it is a component of the city university of New York or after the subsequent date on which the institution became a component of such university.

[NOTE: Subsections d and e do not pertain to public libraries.]

*f. "Regional advisory and assistance agency".* A reference and research library resources system, or an alternate public or nonprofit agency or organization willing to provide historical records program development advice and assistance services covering a reference and research library resources system region which is acceptable to the commissioner.

[NOTE: The remainder of section 140 omitted]

### **§214. Institutions in the university**

The institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the university. The regents may exclude from such membership any institution failing to comply with law or with any rule of the university.

[NOTE: Sections 215 and 215-a omitted]

### **§216. Charters**

Under such name, with such number of trustees or other managers, and with such powers, privileges and duties, and subject to such limitations and restrictions in all respects as the regents may prescribe in conformity to law, they may, by an instrument under their seal and recorded in their office, incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way, associations of teachers, students, graduates of educational institutions, and other associations whose approved purposes are, in whole or in part, of educational or cultural value deemed worthy of recognition and encouragement by the university. No institution or association which might be incorporated by the regents under this chapter shall, without their consent, be incorporated under any other general law. An institution or association which might be incorporated by the regents under this chapter may, with the consent of the commissioner of education, be formed under the business corporation law or pursuant to the not-for-profit corporation law if such consent of the commissioner of education is attached to its certificate of incorporation.

*See Martin v. Board of Education, Union Free School District No. 17, June 4, 1963, in annotations following Section 226 (6) of the Education Law.*

*“It is...quite evident that a public library is a corporate entity and there is certainly nothing about the aforesaid statutes [i.e., sections 216, 226, 255 and 260 (1) of the Education Law and sections 3 and 14 of the General Corporation Law] which make such a corporate entity a part of the governmental agency which initiated it. The terms ‘establish’ and ‘maintain’ as used in the statutes are synonymous with the terms ‘initiate’ and ‘support.’ The latter term is used interchangeably as a matter of fact in the statutes... After the governmental agency has started or initiated the library, the mere fact that it continues to raise taxes for its support is incidental. The library would continue irrespective of whether any tax-support is continued by the agency. The support is, as a matter of fact, merely payment to the library corporation for library service and, as such, creates an implied contract. If the public library fails to give the service anticipated by the taxpayers, the support can be withdrawn at any time...[T]here is no validity to the theory that merely because the governmental agency contributes to the support of a body, that fact makes the body a part of the supporting agency.” (1 Educ. Dept. Rpts. 755, Formal Op. of Counsel No. 60, February 25, 1953).*

*“(1) The trustees of a village library may form an association for the purpose of raising money for the support of the library. (2) An association formed by a village library to raise money for*

*the library's support need not become incorporated in order to carry on the work intended. (3) An association formed to raise money for the support of the village library may maintain an interest account in a bank. (4) As a matter of law, the formation of a library association to raise money for the support of the library would have no effect on present contracts with the village or town." (Op. Comp. 61-580, August 31, 1961).*

#### **§216-a. Applicability of not-for-profit corporation law**

1. The term "education corporation" as used in this section means a corporation (a) chartered or incorporated by the regents or otherwise formed under this chapter, or (b) formed by a special act of this state with its principal purpose an education purpose and which is a member of the university of the state of New York,...

#### **§ 220. Distribution of assets**

4. The court shall direct the sale of sufficient designated assets to pay any outstanding debts and the cost of dissolution. The regents and the board of trustees may present to the court their recommendation as to the disposition of the remaining property of the corporation if there be library books, objects of art or of historical significance, as far as possible they shall not be sold but shall be transferred to libraries, museums or educational institutions willing to accept them. If a charter contains a provision indicating a proposed disposition of the assets in case of dissolution, such provision shall be followed by the court in its order as far as practicable. If there be any surplus moneys after payment of debts and the expenses of liquidation, the court may direct that the same be devoted and applied to any such educational, religious, benevolent, charitable or other objects or purposes as the said trustees may indicate by their petition and the said court may approve.

*"In the event of the revocation of a corporation's charter or the dissolution of a corporation under section 219, section 220 sets forth the procedure for the disposition of the corporation's property." (Op. Att.- Gen. 2000-F5, July 7, 2000. See also further citation from this opinion following Part II, Education Law, Section 219.)*

#### **§226. Powers of trustees of institutions**

The trustees of every corporation created by the regents, unless otherwise provided by law or by its charter, may:

1. **Number and quorum.** Fix the term of office and number of trustees, which shall not exceed twenty-five, nor be less than five. If any institution has more than five trustees, the body that elects, by a two-thirds vote after notice of the proposed action in the call for a meeting, may reduce the number to not less than five by abolishing the office of any trustee which is vacant and filing in the regents' office a certified copy of the action. A majority of the whole number shall be a quorum.

*[NOTE: See also section 41 of the General Construction Law]*

2. **Executive committee.** Elect an executive committee of not less than five, who, in intervals between meetings of the trustees, may transact such business of the corporation as the trustees may authorize, except to grant degrees or to make removals from office.
3. **Meetings and seniority.** Meet on their own adjournment or when required by their by-laws, and as often as they shall be summoned by their chairman, or in his absence by the senior trustee, on written request of three trustees. Seniority shall be according to the order in which the trustees are named in the charter or subsequently elected. Notice of the time and place of every meeting shall be mailed not less than five nor more than ten days before the meeting to the usual address of every trustee.
4. **Vacancies and elections; removals by board of regents.** Fill any vacancy occurring in the office of any trustee by electing another for the unexpired term; provided, however, that where trustees are elected by the legal voters the person so appointed to fill any such vacancy shall hold office until the next annual election of trustees. The office of any trustee shall become vacant on his death, resignation, refusal to act, removal from office, expiration of his term, or any other cause specified in the charter. If any trustee shall fail to attend three consecutive meetings without excuse accepted as satisfactory by the trustees, he shall be deemed to have resigned, and the vacancy shall be filled. Any vacancy in the office of trustee continuing for more than one year, or any vacancy reducing the number of trustees to less than two-thirds of the full number may be filled by the regents. The regents may remove any trustee of a corporation created by them for misconduct, incapacity, neglect of duty, or where it appears to the satisfaction of the regents that the corporation has failed or refuses to carry into effect its educational purposes. A hearing in the proceeding for the removal of such trustees shall be had before the board of regents or a committee thereof and the trustees shall be given at least ten days' notice of the time and place of such hearing. In case of removal the regents may appoint successors to the trustees so removed. The provisions of this section as to removal and filling of vacancies in trustees shall not apply to corporations now or hereafter established and maintained by a religious denomination, order or sect. No person shall be ineligible as a trustee by reason of sex.

*“The complaint is that of a taxpayer under the provisions of section 51 of the General Municipal Law to restrain certain acts claimed to be illegal and wasteful of public funds on the part of the defendants as members of the library board of union free school district No. 28, town of Hempstead....A school district is a civil division of the State, and the board of education is the agency to which the State delegates the power and duty of controlling the schools in the district ... Such school districts, in general, are not municipal corporations, and the districts and their officers are not subject to a taxpayer’s action as provided in section 51 of the General Municipal Law... If such an action cannot be maintained against a school district, it surely may not be maintained against a subordinate body in the district, chartered by the Board of Regents for very limited purposes. It cannot be claimed on any reasonable or logical basis that this library board is a municipal corporation.” (Johnston v. Gordon, 247 AD 40, 284 NYS 149, December 27, 1935).*

*“Clearly, Education Law Section 260 (2) puts the power to appoint trustees of the public libraries in the appropriate municipal board -- here, the town board. However,...Education Law Section 226 (4) provides that vacancies caused for any reason shall be filled by the board of trustees of the library, unless otherwise provided in its charter. The charter in this case places*

*the appointing power in the town board only where a vacancy is caused by the expiration of a term. Vacancies caused by any other reason are to be filled for the balance of the unexpired term by the board of trustees... The court concludes that Education Law Section 226 (4) controls... In the court's opinion, the issue is whether or not the informal practice adopted by the board of trustees and the town board allows the present members of petitioner's board to be considered de jure trustees duly qualified to act as members of the board of trustees. The court concludes they are de jure members."* (Matter of Cairo Public Library v. Valentin, 132 Misc. 2d 887, 505 NYS2d 821, August 5, 1986).

*"Subdivision 4 of section 226 gives the board [of trustees] power to fill any vacancy occurring in the office of any trustee by electing another for the unexpired term. This specific statute in relation to educational corporations is controlling and consequently the provisions of the Public Officers Law would not be applicable."* (1 Educ. Dept. Rpts. 725, Formal Op. of Counsel No. 20, July 2, 1951).

*"It is my opinion that Education Law Section 260 (2) is controlling over Education Law Section 226 (4) in respect to the manner of filling vacancies on the Board of Trustees of the Williston Park Public Library."* (Op. Att.-Gen. 70-127, December 18, 1959).

*"The library board of trustees – not the town board – possesses the power to fill vacancies for unexpired terms on the town public library board."* (Op. Compt. 74-326, April 3, 1974).

5. **Property holding.** Take and hold by gift, grant, devise or bequest in their own right or in trust for any purpose comprised in the objects of the corporation, such additional real and personal property, beyond such as shall be authorized by their charter or by special or general statute, as the regents shall authorize within one year after the delivery of the instrument or probate of the will, giving, granting, devising or bequeathing such property, and such authority given by the regents shall make any such gift, grant, devise or bequest operative and valid in law. Any grant, devise or bequest shall be equally valid whether made in the corporate name or to the trustees of a corporation, and powers given to the trustees shall be powers of the corporation.

*"Under the above statutes [i.e., sections 1123, now section 262, and 68, now 226 (5) of the Education Law] the duties of the elected trustees contemplate the use by them of their best judgment in the management of the library. The courts of this State have uniformly allowed such bodies the largest latitude of discretion where they could do so consistently with established principles of statutory construction."* (Kahn v. Blinn, 60 NYS 2d 413, January 10, 1946).

*"A gift or bequest to the library trustees or the library trustees incorporated is an absolute gift for corporate purposes and not a technical trust. The corporate purposes are to manage the public library of the municipality or district which elected the library trustees. If the donor has directed that such property be invested and the income used only for corporate purposes, the investment should be made by the trustees and should be selected from the securities which are eligible for municipal investments. The library trustees are elected by the municipality to serve as managers of its public library. The trustees are in fact a part of the authorized municipal machinery for carrying out a municipal purpose. Moneys which become the absolute property of the trustees for public libraries should be invested therefore in the same securities as are eligible to the municipality itself. The security should be kept by the trustees who are responsible for*

*them and the income expended by the trustees for corporate purposes.” (Op. Att.-Gen. 54-150, May 20, 1954).*

*“A town library may not make a gift of municipal moneys or property to a group of students who have been working for the library for compensation, even where such monies are derived from an unconditional gift made to the library. A library may not accept donations which are dedicated for the purpose of making gifts to employees since this would not constitute a proper municipal purpose.” (Op. Compt. 85-40, June 28, 1985).*

6. **Control of property.** a. Buy, sell, mortgage, let and otherwise use and dispose of its property as they shall deem for the best interests of the institution; and also to lend or deposit, or to receive as a gift, or on loan or deposit, literary, scientific or other articles, collections, or property pertaining to their work; and such gifts, loans or deposits may be made to or with the university or any of its institutions by any person, or by legal vote of any board of trustees, corporation, association or school district, and any such transfer of property, if approved by the regents, shall during its continuance, transfer responsibility therefor to the institution receiving it, which shall also be entitled to receive any money, books or other property from the state or other sources to which said corporation, association or district would have been entitled but for such transfer.

*“Section 226 pertains primarily to the management of educational institutions which are incorporated by the Board of Regents pursuant to section 216 of the Education Law and which are private in their origin and ownership and derive their funds in the main from private sources. These institutions are to be distinguished from those which are public or governmental in nature and are supported by funds derived from taxation. However, a public library, in addition to moneys raised by the school district by taxation, is authorized to and does receive gifts and funds from other sources, as do the private institutions incorporated by the Board of Regents pursuant to section 216. In providing for incorporation of a public library by the Board of Regents, it is obvious that the Legislature has recognized the educational character and functions of a public library and the desirability of placing it under the supervision of the Board of Regents. However, this does not alter the fact that a public library owes its existence to the electors of the school district and not to the Board of Regents. Providing for incorporation by the Board of Regents does not serve to convert a public library from a corporate entity governmental in origin and development into a private one. While it may be that public libraries, by virtue of their growth and development, are entitled to separation and independence from the school district, until the Legislature clearly and expressly provides for this separation and independence, a public library continues as an agency of the school district (9 Op. St. Comp., 1953, No. 6012, pp. 52, 53). The court finds that all that was intended by the Legislature by subdivision 6 of section 226 was to authorize purchases by the library of property with moneys other than those received by taxes. To the extent that the property was purchased by money raised by taxes, the purchase was unauthorized.” (Martin v. Board of Education, Union Free School District No. 17, Town of Oyster Bay, et. al., 39 Misc. 2d 519, 241 NYS 2d 396, June 4, 1963). See also discussion of this decision in Op. Compt. 79-450, quoted later in this annotation.*

*“[A]ttention is called to the provisions of section 68 [predecessor of section 226] of the Education Law, which states, generally, the powers of corporations created by the Board of Regents. Under subdivision 6 of this section the library board has the power to sell, buy,*

*mortgage, let and otherwise use and dispose of its property. While this subdivision does not specifically contain the expression 'borrow', certainly such term is included in the other general terms used in this section." (Appeal of the Board of Trustees of Long Beach Public Library, Education Dept. Case No. 3100, 50 State Dept. Repts. 507, May 10, 1935).*

*"The board of trustees of a school district public library may lease space in a library building, title to which is held in the name of such board, provided it determines that such lease is for the best interests of the library." (10 Op. Compt. 121, # 6616, April 30, 1954).*

*"Inquiry: What is the proper procedure for the sale of a rare book acquired by a village library through an unconditional gift? ... There is no statutory requirement that property owned by a public library be sold at public auction and, therefore, such property, including books, may be sold at public or private sale. Quite obviously, however, a substantial effort should be made to obtain the best possible price, whether through a negotiated sale or otherwise. The proceeds of such sale belong to the library and may be applied toward any lawful library expenditure... In passing, we would suggest that a library contemplating the private sale of a valuable book should seek several appraisals of the value of such book prior to the sale thereof. We might also note that library moneys and the expenditure thereof are not the ultimate concern of the 'parent' municipality (village, in this case) and hence, we see no reason why the budget of the municipality should or could reflect a transaction of the type under consideration herein. Since the proceeds of the proposed book sale do not become village moneys, there is no way in which they could logically be treated in the village budget. Finally, we should point out the letter of inquiry herein concerns itself with the sale of a rare book which has been donated to the library. Although the gift appears to be unconditional, with the result that there is no legal impediment to the sale of the book by the library, we are prone to question the wisdom of such sale. No doubt the donor of the rare book predicated his gift upon the proposition that a public library would be the ideal repository for such a book. Perhaps the library trustees should be encouraged to retain the book and preserve it for posterity, thus perpetuating the idea behind the gift. In any event, that part of this opinion which discusses the use of the proceeds of the sale of the book should not be construed as this Department's unqualified endorsement of the sale itself, inasmuch as we are not advised of any of the details of the sale or who the purchaser might be." (Op. Compt. 75-1273, December 19, 1975).*

*"Education Law section 226 (6) provides that the trustees of every corporation created by the Regents, including, presumably, the trustees of a public library, may buy, sell, mortgage, let and otherwise use and dispose of its property as they shall deem for the best interests of the institution. In addition, we note that moneys, once received from school district appropriations or from other sources, are funds of the library and may be expended by the library board of trustees for any lawful purpose. We are of the opinion that payments on a purchase money mortgage are such a lawful purpose." (Op. Compt. 76-199, April 8, 1976).*

*"...While §226 (6) gives to a public library the power to buy and sell real property, neither that section nor any other provision of law gives to such libraries the power to condemn land for library purposes. In the absence of such statutory authority, the library obviously cannot exercise the power of condemnation. While the library does not possess such power, the school district board of education is empowered to acquire property, by condemnation, 'for school purposes, and for any other purpose for which such property may be acquired as provided [in the Education Law]' (Educ L §404 (2)). Since Education Law §255 (1) authorizes a school*

*district which has established a school district library to acquire property for library purposes, §404 clearly authorizes the school district to condemn property for library purposes... While a school district library could not issue obligations pursuant to the Local Finance Law to finance the construction of a building on land owned by the library, it could, generally speaking, mortgage property to finance such construction.” (Op. Compt. 76-771, August 31, 1976).*

*“A public library belonging to a school district may acquire an easement for the purpose of easier ingress and egress to its property and as part of such acquisition it may agree to maintain and repair such easement.” (Op. Compt. 81-125, April 22, 1981).*

*“The trustees of a city public library may sell two bookmobiles belonging to the library at either a public or private sale and may use the proceeds of such sale in such manner as they shall deem to be in the best interests of the library.” (Op. Compt. 83-9, January 24, 1983).*

*See Op. Compt. 95-30 after section 11 of the General Municipal Law regarding precedence of that section over 226 (6).*

b. Notwithstanding any other provision of law, prior to the discarding of used or surplus books or other such reading materials by trustees of a chartered public or free association library which receives over ten thousand dollars in state aid, such trustees shall offer to donate such books or materials to a not-for-profit corporation or political subdivision located within the area of the library system or offer to sell such books or materials to the general public. The trustees shall retain any proceeds received from the sale of such books and materials for the purpose of maintaining and improving library service within the system.

7. **Officers and employees.** Appoint and fix the salaries of such officers and employees as they shall deem necessary who, unless employed under special contract, shall hold their offices during the pleasure of the trustees; but no trustee shall receive compensation as such. The president or chief executive officer of an association library corporation shall be elected by the trustees from their own number and shall be the chairman of the board.

*“Although employees of a village public library generally may be regarded as village employees, it is a moot question whether power to fix vacations for such employees is in the library board or the village board.” (10 Op. Compt. 361, #6957, November 15, 1954. However, see Inf. Op. Att.-Gen. 61-105 below).*

*“There is a definite power in the trustees to fix the salaries of their paid personnel (Education Law, section 226, subd. 7), and I find no law which provides otherwise. The salary fixing powers of town boards do not, in my opinion, apply to paid personnel of free public libraries.” (Inf. Op. Att.-Gen. 55-23, January 28, 1955).*

*“The trustees of a public library may employ a qualified person to make a survey of the operating efficiency and services of the library.” (12 Op. Compt. 278, #8210, July 23, 1956).*

*“[T]he board of trustees of a municipal public library lacks power to grant vacations, sick leave, or leaves of absence to its officers or employees.” (Op. Compt. 59-831, December 29, 1959).*

*“Salaries of employees of a town public library incorporated pursuant to Education Law section 255 are within the control of the board of trustees of such library, and salaries may be increased by the trustees despite the existence of a rule of the town board prohibiting increases in town employees’ salaries generally.” (Op. Compt. 60-86, March 29, 1960).*

*“[T]he power to appoint and fix salaries would impliedly carry with it the power to grant vacations to employees.” (Op. Att.-Gen. 61-105, May 24, 1961). See 10 Op. Compt. 361 above, which was quoted in this opinion.*

*“Section 226 does not require or mandate the appointment of officers or employees. Therefore, there is no requirement that the trustees of a public library provide for officers or employees. They may, however, provide for such officers or employees as they deem necessary.... There is no authority for the board of trustees of a public library to appoint one of their number as an officer or employee of the library. Such an appointment is contrary to public policy, since it is against good conscience that a board with appointing power should appoint one of its own members to office.” (Op. Compt. 62-5, February 14, 1962). See also Op. Compt. 77-125.*

*“The trustees of a school district public library may engage the services of an attorney.” (Op. Compt. 64-457, November 18, 1964).*

*“The board of trustees of a school district library may require the children’s librarian to reside on the premises if the board believes this to be a necessary precaution. The value of housing provided for a school district librarian must be determined by the board of trustees and included in the computation of the librarian’s total salary.” (Op. Compt. 65-480, August 30, 1965). See also Op. Att.-Gen. 68-122, October 29, 1968, following Education Law section 260 (1).*

*“The board of trustees of the town public library, rather than the town board or the librarian, have the authority to employ and dismiss library personnel.” (Op. Compt. 74-614, June 7, 1974). See also Op. Compt. 74-597.*

*“Subject to relevant civil service provisions, a library board of trustees may contract with a firm to perform the functions of a business manager. However, the library board cannot relinquish its statutory discretionary powers and duties to the firm under the contract.” (Op. Compt. 81-33, February 23, 1981).*

*“A public library is an educational corporation chartered by the New York State Board of Regents empowered with the responsibility to hire, fire, and pay its employees... Thus, under the statutory scheme, a public library is separate and distinct from the municipality that created it... However, the relationship between the municipality and the public library may be varied by contract, express or implied... ”(Beers v. Incorporated Village of Floral Park, 262 AD 2d 315, 691 NYS 2d 546, June 1999)*

8. **Removals and suspensions.** Remove or suspend from office by vote of a majority of the entire board any trustee, officer or employee engaged under special contract, on examination and due proof of the truth of a written complaint by any trustee, of misconduct, incapacity or neglect of duty; provided, that at least one week's previous notice of the proposed action shall have been given to the accused and to each trustee.

[NOTE: Subdivision 9 omitted]

10. **Rules.** Make all by-laws and rules necessary and proper for the purposes of the institution and not inconsistent with law or any rule of the university; but no rule by which more than a majority vote shall be required for any specified action by the trustees shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

*“It is fundamental that the board of trustees has the right to adopt regulations... and as long as such regulations do not impede, hinder or unduly delay an inspection of records by a trustee, they must be honored.”* (Matter of Gorton v. Dow, 54 Misc. 2d 509, 282 NYS 2d 841, August 22, 1967).

*“The trustees of a public library may provide for the method of disbursing private funds received and held by the public library, including what officer and officers must sign or countersign checks.”* (Op. Compt. 62-52, February 14, 1962).

### §253. Public and association libraries and museums

1. All provisions of this section and of sections two hundred fifty-four to two hundred seventy-one inclusive shall apply equally to libraries, museums, and to combined libraries and museums, and the word “**library**” shall be construed to mean reference and circulating libraries and reading rooms.

*See Op. Compt. 65-788, December 1, 1965, following Education Law, section 261.*

3. The term “**public**” library as used in this chapter shall be construed to mean a library, other than professional, technical or public school library, established for free public purposes by official action of a municipality or district or the legislature, where the whole interests belong to the public; the term “**association**” library shall be construed to mean a library established and controlled, in whole or in part, by a group of private individuals operating as an association, close corporation or as trustees under the provisions of a will or deed of trust; and the term “**free**” as applied to a library shall be construed to mean a library maintained for the benefit and free use on equal terms of all the people of the community in which the library is located.

*“In view of the definition of a free association library contained in section 253 of the Education Law, it is clear that although such a library performs a valuable public service, it is nevertheless a private organization, and not a public corporation.... Nor can it be described as a ‘subordinate governmental agency’ or a ‘political subdivision’.... It is a private corporation, chartered by the Board of Regents.... As such, it is not within the purview of section 101 of the General Municipal Law and we hold that under the circumstances it was proper to seek unitary bids for construction of the project as a whole.”* (French v. Board of Education of Three Village Central School District of Brookhaven and Smithtown, 72 AD 2d 196, 424 NYS 2d 235, January 28, 1980).

*“There does not appear to be authority for a town board to raise money by single tax levy or the issuance of bonds to pay a share of the cost of erecting an addition to a free association library....”* (Op. Att. Gen. 37-277, March 10, 1937).

*“Since a ‘free association library’ is a private association, the appropriation of public money by a municipality to assist such library is subject to the restrictions of Section 1 of Article VIII of the New York State Constitution.... It will, therefore, follow that since a ‘free association library’ is a private association a city may not make a gift of its public money to such an association.” (1 Op. Compt. 487, #910, October 24, 1945). [NOTE: this opinion may no longer be valid. See esp. Op. Compt. 67-711, 11/14/1967, which is quoted extensively in Part II, State Const., VIII, 1.]*

*See 3 Op. Compt. 191, May 21, 1947, following Education Law, section 259 (1).*

*“The common law rule that no officer of a municipality or other political subdivision of the State may be interested in a claim against the political subdivision of which he is an official, with certain exceptions, is applicable to trustees of a free association library.” (3 Op. Compt. 485, #2462, November 6, 1947).*

*“A member of the town board of a town which annually appropriates town funds for library purposes need not be named to and cannot be compelled to serve upon the board of trustees of a free association library receiving town support.” (Inf. Op. Att.-Gen. 49-102, December 14, 1949).*

*“In our opinion, a contract entered into between [a] village and [a] free association library could provide that money paid to the library by the village must be applied by the library for specific purposes set forth in the contract.” (6 Op. Compt. 253, #4790, September 18, 1950).*

*“In view of the statutory definition of a free association library..., it may well be argued that such a free association library is not a private association within the meaning of the constitutional provision. While the free association library is an institution established and controlled in part by a group of private individuals operating as an association and as such partakes to a certain extent of a private nature, the paramount feature of such a library is the fact that it is maintained solely*

*as a public service, for the benefit and free use on equal terms of all the people of the community.” (1 Educ. Dept. Rpts. 707, Formal Op. of Counsel No. 4, August 11, 1951).*

*“A village may not erect a library building for the purpose of leasing or conveying such building to a free association library.” (8 Opt. Compt. 87, #5594, March 19, 1952).*

*“I have on prior occasions advised that ‘a public library is not a part of any governmental agency’.... It is my opinion therefore that librarians do not come within the statutory provision relating to lottery sales agents, and accordingly may not legally sell New York State lottery tickets on library premises.” (7 Educ. Dept. Repts. 161, Formal Op. of Counsel No. 218, July 26, 1967).*

*See 7 Educ. Dept. Repts. 102 following section 256 (1) of the Education Law.*

*“[A]though it provides a service to the public, a free association library is a private organization, and, as such, its function has no relation to any function of town government. Therefore, a town may not construct a building to house a free association library. [NOTE: The opinion at this point lists alternative arrangements that a town and a free library association may legally enter into].” (Op. Compt. 69-985, January 13, 1970).*

*“The purposes of both free association libraries and cooperative library systems are entirely public in nature and are dedicated to providing free library service to the people of the communities in which such libraries or systems are located which purposes are supported in substantial part, but not necessarily entirely, by tax revenues raised both in the locality and by the State. I therefore conclude that free association libraries and cooperative library systems are primarily publicly oriented and substantially publicly supported and thus are organizations performing an essentially governmental and public function.” (Op. Att.-Gen. 72-24, September 14, 1972).*

*“Where a free association library wishes to permit the use of the library building by a private theater group to conduct plays open to the public for which an admission fee is to be charged and retained by the group, it is subject to the constitutional and statutory restraints affecting a municipal public library.” (Op. Compt. 72-819, October 18, 1972).*

*“In my opinion, the language offered by the court [in French v. Board of Education, quoted earlier] clearly provides a basis for distinguishing between an association or free association library as opposed to a public library. For purposes of applying the Freedom of Information Law, I do not believe that an association library, a private non-governmental entity, would be subject to that statute; contrarily, a public library, which is established by government and ‘belong[s] to the public’... would be subject to the Freedom of Information Law.” (Adv. Op. on Open Meeting Law OML-AO-2130 by Comm. On Open Gov’t, August 19, 1992). See also FOIL-AO-7280, August 12, 1992; FOIL-AO-13277, March 27, 2002; OML-AO-3579, January 29, 2003*

3. The term **“Indian library”** shall be construed to mean a public library established by the tribal government of the Saint Regis Mohawk tribe, the Seneca Nations of Indians or the Tonawanda Seneca tribe and located on their respective reservations, to serve Indians residing on such reservations and any other persons designated by its board of trustees.

### **§254. Standards of library service**

The regents shall have power to fix standards of library service for every free association, public and hospital library or, with the advice of the appropriate tribal government and library board of trustees, Indian library which receives any portion of the moneys appropriated by the state to aid such libraries, or which is supported in whole or in part by tax levied by any municipality or district. In the case of a hospital library or a library serving a hospital, such standards shall be established in consultation with the commissioner of health. If any such library shall fail to comply with the regents requirements, such library shall not receive any portion of the moneys appropriated by the state for free, hospital or Indian libraries nor shall any tax be levied by any municipality or district for the support in whole or in part of such library.

*“Librarians to a considerable extent are probably born, not made. Nevertheless, it is no proper part of judicial duty to nullify and set aside educational requirements and regulations and rules designed by the authorities for the proper administration of libraries and substitute its judgment as to what should or should not be required as to service and promotion.” (Application of Little, 44 NYS 2d 456, October 25, 1943).*

*See Op. Compt. 65-289, December 1, 1965, following Education Law, section 261.*

## §255. Establishment of a public library

1. By a majority vote at any election, or at a meeting of the electors duly held, any county, city, village, town, school district or other body authorized to levy and collect taxes; or by vote of its board of supervisors or other governing elective body any county, or by vote of its common council or by action of a board of estimate and apportionment or other proper authority any city, or by vote of its board of trustees any village, or by vote of its town board any town, or any combination of such voting bodies, may individually or jointly authorize the establishment of a public library with or without branches, and may appropriate money raised by tax or otherwise to equip and maintain such library or libraries or to provide a building or rooms for its or their use. Any such municipality or district may acquire real or personal property for library purposes by gift, grant, devise, bequest or condemnation and may take, buy, sell, hold and transfer either real or personal property for public library purposes. Whenever twenty-five taxpayers shall so petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted, provided that due public notice of the proposed action shall have been given. Whenever the electors of a school district at a district meeting duly held shall have authorized the establishment of a public library under the provisions of this section, at such meeting or at any subsequent meeting duly held, they may determine by a majority of the voters present and voting on the proposition to levy a tax to be collected in installments for the purchase or condemnation of a site and the erection thereon of a library building or the erection of a library building on land acquired otherwise than by purchase or condemnation, or for the purchase of land and a suitable building thereon and make necessary alterations and additions and equip such building for use as a library.

*See Martin v. Board of Education, Union Free School District No. 17, Town of Oyster Bay, 39 Misc. 2d 519, 241 NYS 2d 396, June 4, 1963 quoted following Education Law, section 226 (6).*

*“[The petitioners, members of the Board of Trustees of the Syosset Public Library of Central School District No. 2, Town of Oyster Bay] do not own or may they are [sic] Trustees of the Syosset Public Library own the proposed library site. It is the School District which will own the property (section 255, Education Law). As a non owner [sic] of property the petitioners can show no special damage, which is required before the violation of a zoning ordinance may be the subject of an action for a declaratory judgment...” (Matter of Knott, New York Law Journal, April 10, 1968, p. 17, col. 7)*

*“While an unexpended balance of the general funds of a free public library established by a town, on hand at the end of a fiscal year, should be used to reduce the tax levy for the following year, a sum equivalent to such unexpended balance may be appropriated by the town to a capital reserve fund created by such town for library purposes. Additional sums may be appropriated from time to time by the town to such a capital reserve fund.” (3 Op. Compt. 423, #2389, September 29, 1947).*

*“Reading the above sections of law together, it is our opinion that title to real property acquired pursuant to section 256 [i.e., 255]... should rest in the school district and not in the library corporation. Although a library corporation has power to acquire title to real property under the cited statutes, the language of section 256 [i.e., 255], apparently contemplates that the district is to take title to property obtained thereunder. It will be noted in this connection, that*

*the statute specifies that 'Any such...district may acquire real or personal property...' It would follow, however, that a public trust devolves upon the district to devote such property to library purposes.... Section 255 of the Education Law grants authority to the school district to raise money by tax to equip and maintain the library. As previously stated, this section also grants the power to the district to acquire real and personal property for library purposes. No mention can be found in the law of a power residing in the trustees to acquire property in either their name or the name of the library corporation, with taxes raised by the district for library purposes. It should also be noted that section 268 of the Education Law speaks of a transfer of its [the district's] property." (4 Op. Compt. 609, #3456, December 10, 1948).*

*"Even though section 56 [now section 9-9127] of the Village Law contains no precise reference to the submission of a proposition to establish a public library, it is my opinion that section 255 of the Education Law specifically authorizes such procedure and thus overcomes the general prohibition against the submission of a proposition at a municipal election without statutory authority.... Reading [section 255] in its entirety it seems to me to enable village electors to vote upon such a question at any village election, including the annual election. If the proposition is adopted, it is my view that the trustees must include the item for library facilities in the next annual village budget." (Inf. Op. Att.-Gen. 49-9, January 24, 1949).*

*"(1) A petition presented to a town board for the submission of a proposition on the establishment of a public library should be subscribed and acknowledged by persons who are the owners of property assessed upon the last preceding town assessment role. (2) If such a petition is subscribed and acknowledged by the required number of qualified persons the town board may not reject the petition for the reason that the names of unqualified persons also appear on the petition. (3) If establishment of a public library is voted, funds therefor may be appropriated from surplus revenues, unexpended balances and the contingent fund or may be borrowed pursuant to the Local Finance Law. (4) Only persons who are electors of the town and who own property which was assessed upon the last preceding assessment roll of the town may vote upon a proposition to establish a public library." (5 Op. Compt. 27, #3551, February 10, 1949).*

*"Where a town has not voted to make a fixed annual appropriation to the public library organized by it but has appropriated a specific amount therefor in its current budget, such amount may be supplemented during the year from amounts available in the town's contingent fund." (5 Op. Compt. 238, #3858, June 3, 1949). Similarly, see Op. Compt. 68-508, quoted below.*

*"Public Library not required to obtain a building permit as provided for under town building code." (7 Op. Compt. 304, July 18, 1951).*

*"A village may accept the gift of a library together with the realty on which it is situated, including rent-paying offices." (Inf. Op. Att.-Gen. 51-121, December 10, 1951).*

*"The library board clearly has no authority to issue the obligations described pursuant to the Local Finance Law. Notwithstanding opinions to the contrary (see 50 St. Dept. 507, 509), we believe that a substantial doubt exists as to whether public library trustees possess the power to borrow in any manner. In any event, the library has no authority to pledge the credit of the school district.... Pursuant to section 255 of the Education Law and Local Finance Law,*

*however, the school district may issue bonds or capital notes to finance the construction of a new library building.” (9 Op. Compt. 95, #6056, March 18, 1953).*

*“The statute authorizes the school district to construct the building and to issue bonds therefor. The bonds are authorized at a school meeting upon the affirmative vote of the voters of the school district. It seems, therefore, clear that the title to the library building is vested in the school district and that it is the obligation of the school board to erect it.” (1 Educ. Dept. Rpts. 785, Formal Op. of Counsel No. 82, April 13, 1953).*

*“A public library created by a village pursuant to section 255 of the Education Law, although incorporated by the Regents (Education Law, section 261), is a mere branch or department of the village, having no independent or separate status as an agency of government.” (9 Op. Compt. 126, #6088, April 27, 1953) See also 11 Op. Compt. 303 below.*

*“Real property for village library purposes should be acquired jointly by the village and the library trustees as tenants in common. Moneys in the contingent fund may be appropriated to pay the village’s share of the purchase price, where no item for this purpose was included in the current budget.” (9 Op. Compt. 142, #6166, May 4, 1953).*

*“Where school district bonds are issued to provide library facilities, the board of education, rather than the library trustees, must acquire the site, employ an architect, and let contracts. Plans, however, should be approved by the board of trustees.” (9 Op. Compt. 428, #6448, December 1, 1953).*

*“Employees of a public library of a village are considered village employees for purpose of Workmen’s Compensation coverage under a county self-insurance plan.” (11 Op. Compt. 303, #7337, June 8, 1955). See also Op. Compt. 65-28.*

*“Trustees of a town library may authorize major repairs to a library building. The library fund should be used to pay library maintenance and repair costs if adequate to do so; but, where necessary, the town board may by resolution transfer surplus funds, unexpended balances, contingent funds, or the proceeds of authorized borrowing to the library fund.” (Op. Compt. 59-23, May 20, 1959).*

*“Village library moneys may not be expended for floral tributes to be sent to the funeral of a former chairman of the board of trustees of such library.” (Op. Compt. 59-1058, January 20, 1960).*

*“The village board of trustees may not contribute the sum of \$2,500 to a public library located in the village without submitting the proposed expenditure to a referendum, if an original proposition approved by referendum establishing such library fixed a maximum annual amount that may be expended therefor. Where no such maximum annual expenditure was so fixed by referendum, no referendum is necessary to make a further expenditure therefor.” (Op. Compt. 61-152, May 22, 1961).*

*“The budget of a public library may not include an item for refreshments to be served to volunteer workers of such public library.” (Op. Compt. 63-524, July 25, 1963).*

*“[I]t is my conclusion that the Board of Education is not acting in accordance with the statutory scheme in submitting to the voters for approval a proposition to construct a library building on a site which has not been approved by the library trustees. It follows that having submitted such proposition against the stated position of the board of trustees of the public library, the proposition approved by the voters for improvement of the Depot Road site for the purpose of constructing a public library building thereon must be regarded as directory and not mandatory.” (In the Matter of the Appeal of the Board of Trustees, South Huntington Public Library... from Action of the Board of Education, Union Free School District, No. 13, 5 Educ. Dept. Rpts. 158, Jud. Dec. of the Commissioner No. 7620, April 13, 1966). See discussion of this decision in 8 EDR 70 below.*

*“A consolidated school district library can only be erected pursuant to statute by vote of the electorate of the consolidated school district and its cost is shared by all property holders within the said district.” (Op. Compt. 66-962, December 19, 1966).*

*“A cooperative library system, not being governmental in nature, must comply with a city’s zoning ordinance in order to construct an office building in the said city.” (Op. Compt. 67-543, June 23, 1967).*

*“When no appropriation has been made for the operation of the public library, the town may obtain such funds from any true surplus, unexpended balance, the contingent fund, or the proceeds of budget notes.” (Op. Compt. 68-508, September 20, 1968).*

*“The relationship between the board of education of a school district and the board of trustees of a school district library with respect to construction of library facilities was discussed at some length in Matter of the Appeal of the Board of Trustees, South Huntington Public Library (5 Ed. Dept. Rep. 58 (1966) [cited above].... Thus, it is clear that the initial responsibility for site designation of a library facility lies with the library trustees rather than with the school board, although title to the facility would remain in the school district, subject to a right of use and possession by the trustees of the library board...The South Huntington case, however, presents a situation directly contrary to that posed in these appeals [NOTE: see also Matter of Knott above]. In South Huntington, the school board attempted to direct a site designation despite objections from the library trustees. Here, the school board acted pursuant to the express instructions given to the library board, obtained voter approval, and took steps necessary to implement the results of the referendum. Since financing and construction of the facility lies within the jurisdiction not of the library board but of the school board, the library trustees are not free to direct the school board to submit a proposition to rescind the prior designation in the absence of clear and convincing evidence that the original vote was obtained as a result of fraud or misrepresentation or that there has been a material change of circumstances since the initial submission of the proposition to the school district electorate.” (Appeal of Leon Brown from the action of the Trustees of the Library Board of Syosset, New York, 8 Educ. Dept. Repts. 70, Jud. Dec. No. 7920, September 30, 1968).*

*“While a village board may increase or decrease its annual appropriation to a village library where no appropriation has been fixed by the voters, the village board may not reduce the appropriation to zero or to such a minimum level as would force the abolition of the library, unless the voters approve such abolition.” (Op. Compt. 73-1192, January 17, 1974).*

*“A public library may pay membership dues of its librarians who belong to professional associations such as the American Library Association, if it determines that such payment would serve a public purpose and be beneficial to the library.” (Op. Compt. 80-472, September 16, 1980).*

*“One person may simultaneously serve as a member of the board of a central school district and as a trustee of a library created by that school district.” (Op. Compt. 81-110, August 31, 1981).*

*“We conclude that a village may purchase a building for use as a public library and lease a portion of that building to a post of the American Legion at a nominal rent for a term not to exceed five years, provided there is no interference with the public use. A lease for a term greater than five years must be supported by fair and adequate consideration.” (Op. Att.-Gen. 82-77, October 12, 1982).*

*“There does not appear to be any authority... for a public library to sponsor an event which is primarily of a social nature.... In the absence of such authority, we believe that sponsoring a party for the senior citizens of the sponsoring municipality or school district is not a proper library purpose and that an expenditure of public library moneys for such a party would be improper....” (Op. Compt. 90-63, May 15, 1990).*

*See Op. Compt. 95-15 following sec. 259 (1) of the Education Law.*

*“Respondent board’s argument that [New Rochelle’s] fiscal support has transformed [the New Rochelle Public Library] into a municipal library lacks merit. No provision of the Education Law provides for such a transformation. Municipal funding of a school district public library, while permitted by Education Law §255, does not change the character of the library.” (Appeal of the Board of Trustees of the New Rochelle Public Library, Educ. Dept. Rpts., Jud. Dec. No.14,827, December 24, 2002.)*

2. Upon the request of a majority of the members of the boards of trustees of two or more libraries chartered by the regents, if it shall appear to the satisfaction of the commissioner that the establishment of a cooperative library system will result in improved and expanded library service to the area and that the area is suitable for the establishment of such a cooperative library system, the commissioner may call a joint meeting of the trustees of such libraries for the purpose of determining whether a cooperative library system shall be established and electing a board of trustees of such cooperative library system. If it shall appear to the commissioner that the area proposed for the cooperative library system is not sufficient to warrant the establishment of such system; that such area is not otherwise suitable or that for sufficient other reason such cooperative library system as proposed should not be established he shall disapprove such request.
  - (a) Notice of such meeting shall be given by the commissioner to each trustee by mail to his last known address at least five days prior to such meeting. At such meeting the board of trustees of each library participating shall have five votes.
  - (b) Such meeting shall be called to order by the person designated by the commissioner and shall thereupon organize by the election of a chairman. At such meeting a resolution in substantially the following form shall be presented for the action of the

meeting: "Resolved that a cooperative library system be established consisting of the following libraries chartered by the regents..... (name libraries) for the purpose of expanding and improving library service in the area served by the above named libraries."

- (c) If the resolution described above is adopted, then the meeting shall proceed to elect a board of trustees of such library system to consist of not less than five nor more than twenty-five members as determined by the meeting.
- (d) Within one month after taking office, the trustees-elect shall apply to the regents for a charter as a cooperative library system.
- (e) The board of trustees shall manage and control such cooperative library system and shall have all the powers of trustees of other educational institutions in the university as defined in this chapter. Such board shall elect a president, secretary and treasurer. Before entering upon his duties, such treasurer shall execute and file with the trustees an official undertaking in such sum and with such sureties as the board shall direct and approve. The treasurer need not be a member of such board. The funds of the cooperative library system shall be deposited in a bank or banks designated by the board of trustees and shall be expended only under the direction of such trustees upon properly authenticated vouchers.
- (f) The term of office of trustees shall be five years except that the members of the first board of trustees shall determine by lot the year in which the term of office of each trustee shall expire so that as nearly as possible the terms of one-fifth of the members of such board will expire annually. Thereafter, the successors of such trustees shall be elected annually by a meeting of the trustees of the participating libraries in the cooperative library system. No trustees shall hold office consecutively for more than two full terms. Such meeting shall be called by the secretary of the cooperative library system who shall give notice to all the trustees of participating libraries in the manner provided in subparagraph a of this subdivision for giving notice of the meeting to authorize the establishment of such cooperative library system.
- (g) A contract may be entered into between the board of trustees of a cooperative library system and the department under which the state library will provide services, facilities and staff to the cooperative library system upon terms agreed upon by and between the parties to such contract.
- (h) Nothing herein contained shall be deemed to deprive any participating library of its property.
- (i) The board of trustees of any library chartered by the regents which is not participating in a cooperative library system may adopt a resolution requesting that such library become a participating library in a cooperative library system. Duplicate copies of such resolution certified by the clerk of such board of trustees shall be filed with the board of trustees of the cooperative library system. If such board approve such resolution such approval shall be endorsed thereon and a copy

thereof shall be filed with the commissioner. Upon such resolution being approved by the commissioner such additional library shall become a participating library in such system and shall have the same rights, duties and privileges as other libraries participating therein.

- (j) The participating libraries in such library system shall be those libraries, members of the boards of trustees of which join in petitioning the commissioner to call the meeting for the establishment of the cooperative library system pursuant to this section, and who are named in the resolution voted upon by such meeting and in the charter of the library system.
- (k) The board of trustees of each public library system shall meet no fewer than six times a year.

*“In his decision, the Commissioner [of Education] noted that the Education Law is silent with respect to residence of a trustee of a co-operative library system, and it neither requires that such trustees be residents of the county they represent, nor does it preclude representation by a duly elected nonresident.... The Commissioner was of the opinion that a duly constituted co-operative library system has construed a provision of its own charter in the exercise of its own inherent authority, that such interpretation was neither arbitrary nor capricious, and that he would not substitute his judgment or interpretation for that duly arrived at by the trustees of the library board.” (Carson v. Nyquist, 59 Misc. 2d 577, 299 NYS 2d 891, February 22, 1969).*

*“Section 255 of the Education Law... provides in subdivision 2 that a co-operative library system may be established upon the request of two or more libraries chartered by the Board of Regents when it appears to the commissioner that such a system ‘will result in improved and expanded library service to the area.’ All 52 member libraries in the Suffolk system are either*

*public or free association libraries and the trustees are elected by vote of their boards of trustees. The principle source of revenue is State aid.... The creation of a co-operative library system is authorized by the very same section which authorizes the creation of other public libraries and the statute provides that such a system can only be established with the approval of the commissioner.... The Suffolk Cooperative Library System was chartered by the Board of Regents after having been approved by the commissioner and it is subject to State regulation and is the recipient of State funds.” (Smith v. Jansen, 85 Misc. 2d 81, 379 NYS 2d 254, December 16, 1975).*

*“While §255(2) is not crystal clear as to the precise powers and duties which may be exercised by a cooperative library system, it is manifest that the purpose of such a system is to provide various and sundry library services to the member or participating libraries, or, through and in cooperation with such libraries, to the residents of the area served by the libraries. The Legislature has not clothed these systems with the power to establish and operate libraries, or to absorb the participating libraries. In short, the system must work and operate through the participating libraries in effecting expanded and improved library service in the area. It is equally evident that the system is limited, in the geographical scope of its activities, to the physical area served by the participating libraries. ...Conclusion: A cooperative library system may not contract with a village which does not contain a library for the furnishing of certain library services within the village.” (Op. Compt. 66-369, April 19, 1966).*

*“A library system may convey a parcel of real estate to the county in exchange for a conveyance by the county of a county-owned parcel of real estate, providing a local law is adopted, subject to a permissive referendum authorizing such exchange of the parcels by the county.” (Op. Compt. 67-200, June 5, 1967).*

*“No distinction is made under Section 255 (2) of the Education Law between cooperative library systems established by the trustees of public libraries alone, by the trustees of association libraries alone, or by the trustees of both types of libraries jointly. Whatever the status of the participating libraries, the resultant system is a separate entity possessing its own board of trustees, who have the same powers as trustees of other educational institutions in the University of the State of New York.” (In the Matter of Nassau Library System and Nassau Chapter, Civil Service Employees’ Association, Inc., PERB I-399.47, August 14, 1968).*

*“I conclude that a cooperative library system is not a ‘civil division’ of the State within the meaning of Article V, Section 6, of the New York State Constitution and therefore the provisions of the Civil Service Law with reference to appointments and promotions of personnel in such systems do not apply.” (Op. Att.-Gen. 71-15, August 11, 1971).*

*“The purposes of both free association libraries and cooperative library systems are entirely public in nature and are dedicated to providing free library service to the people of the communities in which such libraries or systems are located which purposes are supported in substantial part, but not necessarily entirely, by tax revenues raised both in the locality and by the State. I therefore conclude that free association libraries and cooperative library systems are primarily publicly oriented and substantially publicly supported and thus are organizations performing an essentially governmental and public function.” (Op. Att.-Gen. 72-24, September 14, 1972).*

*“Generally, the trustees of a cooperative library system may determine that membership in the local chamber of commerce would be for the best interests of the library system, and may expend moneys for membership dues in the chamber of commerce.” (Op. Compt. 81-22, February 6, 1981).*

*“A ‘federated library system’ is not authorized to provide for salary reductions for the purchase of tax-sheltered annuities for its employees.” (Op. Compt. 82-1, January 5, 1982).*

3. Trustees of a reference and research library resources system shall have those powers set forth in section two hundred twenty-six of this article with respect to trustees of corporations chartered by the regents, and in addition shall have the following powers and duties:
  - (a) The board of trustees of a reference and research library resources system shall include at least one representative of each constituent public library system, at least one representative of the member academic library with the largest collection, and at least two nonlibrarians from the research community served by the system.
  - (b) The term of office of trustees shall be five years except that the members of the first board of trustees shall determine by lot the year in which the term of office of each trustee shall expire so that as nearly as possible the terms of one-fifth of the

members of such board will expire annually. Thereafter, the successors of such trustees shall be elected annually by a meeting of the designated representatives of the member institutions participating in the reference and research library resources system. No trustee shall hold office consecutively for more than two full terms. Such annual meeting shall be called by the secretary of the reference and research library resources system who shall give notice to all the participating libraries by mail at least five days prior to such meeting.

- (c) The board of trustees shall meet no fewer than six times a year.
4. By a majority vote of the tribal government of an Indian reservation, or upon the request of the tribal government of an Indian reservation, an Indian library may be established, with or without branches, and may make application to the state or other source for money to equip and maintain such library or libraries or to provide a building or rooms for its uses. Notwithstanding the provisions of section seven of the Indian law, the board of trustees of such library, on behalf of the tribal government, may acquire real or personal property for use by an Indian library by gift, grant, devise, bequest and may take, buy, sell, hold and transfer either real or personal property for the purposes of such library. No more than one Indian library may be established on a reservation and such library shall serve all inhabitants of that reservation. No such library shall be established on any reservation that has fewer than three hundred permanent residents and one thousand acres of land.
  5. The boards of trustees of any two, or more, public libraries, Indian libraries, reference and research library resources systems, cooperative library systems, or association libraries, as defined in this article, may pool surplus funds to be used for the purchase of certificates of deposit in any bank or trust company, provided that such certificate of deposit be secured by a pledge of obligations of the United States of America, or any obligation fully guaranteed or insured as to interest and principal by the United States of America acting through an agency, subdivision, department or division thereof, or obligations of the state of New York. Each participating public library, Indian library, reference and research library resources system, cooperative library system or association library shall be entitled to its pro-rata share of interest earned on such certificates in proportion to its contribution to the purchase price of such certificates.

## **§256. Contracts**

1. Any authority named in section two hundred fifty-five may, individually or jointly with another municipal or district body or tribal government, grant money for the support of the cost of maintaining or the cost of any capital improvements to or expenditure for one or more: free association libraries, provided such libraries are registered by the regents; public libraries, provided such libraries are registered by the regents; and cooperative library systems approved by the commissioner; or may, individually or jointly with another municipal or district body or tribal government, contract with the trustees of a free association library registered by the regents, or with any municipal or district body having control of such a library, or with the trustees of the cooperative library system, or with the trustees of a public library registered by the regents to furnish library services to the people of the municipality, district or reservation for whose benefit the contract is made, under

such terms and conditions as may be stated in such contract. The amount agreed to be paid for such services under such contract shall be a charge upon the municipal or district bodies or tribal government which agree to make the payment and shall be paid directly to the treasurer of the free association library, public library or of the cooperative library system.

*“The second issue on this appeal is whether a school district may underwrite the costs of capital improvements to a free association library. By virtue of subdivision 1 of section 256 of the Education Law, as amended, such authority is apparent.” (French v. Board of Education of Three Village Central School District of Brookhaven and Smithtown, 72 AD 2d 196, 424 NYS 2d 235, January 28, 1980).*

*“Proceeding upon the principle that it is competent for the inhabitants of a town or other municipality to raise money by taxation for the erection and maintenance of school buildings and the operation of schools and for educational purposes generally, as provided by law, it is in my opinion likewise competent for towns and other municipalities, acting through proper agencies, to tax themselves for the establishment or maintenance of a library, or to pay for library privileges, as provided by the enactments of the University Law applicable to the subject matter under consideration, and that such taxing is for a purpose within the meaning and protection of the Constitution. If I am correct in my reasoning as to the constitutionality of the two sections of the law which we are examining, it follows that a fixed sum of money agreed to be appropriated by a town or other municipality, to share in the cost of maintaining a library, continues as an annual appropriation, and the amount thereof may be compelled to be levied and collected annually, for the purposes specified, until the agreement entered upon is abrogated.” (Op. Att.-Gen. 1903-514, December 11, 1903). See affirmation, Op. Att.-Gen. 27-257.*

*“There is no question but that the maintenance of a library is a proper municipal purpose. [Section 1118-a of the Education Law, predecessor to present day 256 (1)] gives the power to an authority named in Section 1118 [now 255] of the Education Law to contract with a free library as described for the furnishing of such services. The authorities described in Section 1118 of the Education Law comprise among others a village and town.” (1 Op. Compt. 264, #711, July 10, 1945).*

*“A town board may contract with the trustees of a free public library for the furnishing of library privileges to the people of the town. Such contract may provide for payment by the town for such privileges.” (2 Op. Compt. 554, #1629, October 4, 1946). See also Op. Att.-Gen. 61-141, below.*

*See also 4 Op. Compt. 42, #2629, February 2, 1948 following Education Law, Section 259 (1).*

*“The town mentioned has a public library which it supports.... If the town board determines that the library facilities afforded by such library are not sufficient for the people in the town, we believe it then has the power to contract for library privileges with the free association library in the adjoining town under Education Law, section 256. The town has no power to make a donation to the free association library....” (5 Op. Compt. 536, #4269, December 3, 1949).*

*“It is our opinion that section 256, while authorizing a town to grant money for the support of a free association library, does not permit a town to make a lump sum payment to the trustees of such library.... We do not hold that a town may not expend its money for library purposes. In*

*the absence of a contract for library services as provided in section 256, the money appropriated by the town to assist this library should be retained by the supervisor and expended by him under direction of the library trustees on properly authenticated vouchers....” (7 Op. Comp. 387, #5412, October 11, 1951). See also 12 Op. Compt. 127 and Op. Compt. 63-176, below.*

*“A town...is authorized by the express provisions of [section 256] to make a contract with a public library for library services.” (1 Educ. Dept. Rpts. 754, Formal Op. of Counsel No. 59, February 5, 1953).*

*“A town board may grant money for the support of a free association library registered by the Regents or may contract for library services as provided in section 256 of the Education Law.” (9 Op. Compt. 189, #6159, May 20, 1953). See also Op. Compt. 59-866.*

*“There is no authority for a village wholly located in a school district to contract with a free public library established by such school district for the furnishing of library privileges to residents of the village; such village may, however, ‘share the cost’ of maintaining such library as agreed upon with the school board.” (11 Op. Compt. 211, #7244, May 18, 1955).*

*“Any expenditure made by a town for library privileges must be paid from general town funds; there is no authority for a tax for library purposes only on the unincorporated area of the town.... Accordingly, even though a village has its own library, a town tax for library purposes must be levied on the entire area of the town.” (11 Op. Compt. 435, #7491, July 14, 1955).*

*“(1) A town board may not appropriate moneys to be paid directly to the trustees of a free association library in the absence of a contract. (2) A contract for library services may exceed one year. However, when it is for a longer term, the supervisor should be authorized to make each annual payment by resolution of the town board.” (12 Op. Compt. 127, #8024, March 26, 1956).*

*“A town may not pay excessive rental for village property, but it may share in the cost of maintaining a public library.” (Op. Compt. 58-1086, December 23, 1958).*

*“The inclusion of a library within the county system, together with the payment of moneys for support and maintenance by the county, makes the upkeep of the library a matter of county, rather than village, concern; and therefore, annual appropriations for the support and maintenance by the village should be discontinued.” (Op. Compt. 61-304, May 16, 1961).*

*“It is my opinion that a town may make an annual contribution to a village public library provided that such contribution is pursuant to an agreement allowing the residents of the town full library privileges.” (Op. Att.-Gen. 61-141, August 15, 1961).*

*“There is no limit to the amount a town can expend for a contract with the local free association library.” (Op. Compt. 61-765, December 5, 1961).*

*“A town may contribute to the support of a free association library or contract therewith for library services. Taxes may be voted therefore and be considered as annual appropriations until changed by further vote.” (Op. Compt. 64-413, May 22, 1964).*

*“A city may not contribute a sum of money to a private corporation which will use the same for the support of a free association library.” (Op. Compt. 64-778, September 16, 1964).*

*“A town board may contract to make payments to a free association library, one of the trustees of which is a member of the town board.” (Op. Compt. 64-1083, March 1, 1965).*

*“The funds to be paid pursuant to a contract for the support of a free association library by a central school district must be raised over the whole area of the central school district.” (Op. Compt. 65-264, April 15, 1965).*

*“A town may not agree with a village to increase the amount it has contracted to pay the village in return for free library privileges for the benefit of the people of the town.” (Op. Compt. 65-486, September 2, 1965).*

*“A free association library must have a contract before it may receive support from a central school district.” (Op. Compt. 65-724, October 19, 1965).*

*“Where a city school district and a free association library are still performing the terms and conditions of a contract for library privileges executed many years ago, they seem to have impliedly and validly extended such contract by their acts, notwithstanding that any formal written extensions of such contract have long since expired.” (Op. Compt. 66-417, June 27, 1966).*

*“While no referendum is either required or permitted concerning the making of a contract between a town and a free association library for library services, the town board could hold a public hearing on this matter.” (Op. Compt. 66-1049, November 28, 1966).*

*“No special town hearing is required for a town to enter a contract with a library under which the town contracts for library service...” (Op. Compt. 67-93, January 26, 1967).*

*“A library contract under Education Law section 256 may run for a five-year period, but the board of trustees each year should authorize the annual payment to the library.” (Op. Compt. 67-29, February 20, 1967). See earlier opinion 12 Op. Compt. 127, #8024 above.*

*“A town may grant a sum of money in aid of a free association library located in an adjacent town, or may contract with the library trustees for library privileges.” (Op. Compt. 67-482, June 2, 1967).*

*“Where two municipalities agree to share the cost of operation, in specified proportions, of a public library owned by one of them, money raised by taxation by both of them, in the specified proportions, cannot be expended for an architectural study of modernization and extension of the library.” (Op. Compt. 67-619, October 24, 1967).*

*“A town may grant moneys for the support of a free association library if the services provided by such library are available to and accessible by the residents of the town. Such appropriations must be held by town fiscal officer and paid out on duly authenticated vouchers under direction of the library trustees.” (Op. Compt. 67-771, November 14, 1967).*

*“Pursuant to [section 256] it appears that the village may enter into a contract with the county whereby either the village will build the library [on park land] and the county use and maintain it, or whereby the village and county will share the cost of construction and the county will use and maintain the library. Into whatever contractual obligation the parties enter, it is necessary that the village retain ownership of the premises, as park lands may not be alienated without a legislative enactment permitting it.” (Op. Att.-Gen. 67-149, November 20, 1967).*

*“The provisions of section 256... provide the basis for the legal authority for the appropriation of funds by a school district for the support of a library. There is no restriction in the statute as to the purpose for which money so appropriated may be used. Such a grant [i.e., an appropriation for the “acquisition or erection...of a proposed new library building”] is not a gift to the library, but rather is made in consideration of the provision of public library services to the people of the community. The provision of public library services is, of course, a proper school district purpose.” (Appeal of Richard R. Boyle from the action of the Board of Trustees of the Great Neck Free Association Library, 7 Educ. Dept. Rpts. 102, Jud. Dec. No. 7844, January 2, 1968).*

*“[A] village may appropriate moneys for the support of a free association library. If the appropriation is made pursuant to a contract, then the entire sum may be turned over to the library and, if there is no contract, then the sum must be held by the village treasurer and paid upon the direction of the library trustees upon properly authenticated vouchers.” (Op. Compt. 68-254, March 29, 1968).*

*“A town may grant money in support of a library in an adjacent town, although there are two other libraries within the town, if the residents of the town receive additional or improved services because of the availability of this other library.” (Op. Compt. 68-231, March 29, 1968).*

*“I do believe...that it would be better practice for respondent and other school districts who wish to contract for library services under section 256 to submit the appropriations to the voters as separate propositions rather than as items in the school budget, and I recommend that they follow that practice in the future. Library services are separate and distinct from the operation of the schools, and, as long as voter approval is required by law, the voters should be given the opportunity to vote separately on these two disparate items.” (Appeal of Thomas L. Baasch from action of the Board of Education of Central School District No. 6 of the Town of Huntington, County of Suffolk, 10 Educ. Dept. Rpts. 194, Jud. Dec. No. 8271, April 28, 1971).*

*“(1) A town may not acquire land by condemnation on behalf of a free association library for the construction of a new library. (2) A free association library may not acquire land by condemnation.” (Op. Compt. 71-344, July 21, 1971).*

*“[I]t is our position that a town may enter into a contract for library services with a cooperative library system if the library that is to service the town’s residents is so located that it is reasonably accessible to the residents and if its availability would amount to an improvement in the library services available to these people. If the library is not reasonably accessible to town residents or if its availability would provide no benefit to the town in the form of better library service for the town’s residents, it is our opinion that the town may not enter into the contract... With regard to payment under contract for library services, section 256(1) directs that the amount agreed to be paid shall be paid directly to the treasurer of the cooperative library*

*system. In the event that a town enters into such a contract, the town would...pay the contract amount to the treasurer of the cooperative library system rather than to the individual library that is to service the town's residents under the contract.” (Op. Compt. 72-128, February 14, 1972). See reaffirmation of this opinion in Op. Comp. 99-5, July 18, 1999.*

*“A town may contract with a free association library for library services and use federal revenue-sharing funds for the consideration for such contract.” (Op. Compt. 74-1043, September 27, 1974). See also Op. Compt. 76-553, June 17, 1976.*

*“[A] town may provide money for the operation of a village library. While the language of [section 256 (1)] appears to authorize an outright ‘grant’ of money by the town to the village library, it is the opinion of this Department that, where a town wishes to contribute to a village library, the parties should enter into a contract for services rendered. In this manner, the town may bind the contracting entity to provide its residents with complete access to the library facilities.” (Op. Compt. 74-1097, December 3, 1974). See also Op. Compt. 76-391, April 21, 1976.*

*“A municipality may not issue obligations to finance the cost of physical betterments and improvements to a free association library building.” (Op. Compt. 77-693, October 4, 1977).*

*“[Section 256 (1)] clearly authorizes a municipality both to grant money to, and to contract for services with, a free association library registered by the regents. A ‘grant’ connotes the payment of moneys to the library without the execution, necessarily, of a contract setting forth terms and conditions in connection with such payment.... The grant may consist, in whole or part, of Federal Revenue Sharing Funds.” (Op. Compt. 79-410, September 4, 1979). See also Op. Compt. 82-110.*

*“In appropriate circumstances, a school district may separately contract with the trustees of both a free association and a village public library for library services rendered to the people of the school district. Alternatively, the school district and both libraries may enter into an agreement whereby the free association library agrees to render services to the school district, and the public library, in turn, agrees to render services to residents of part of the area served by the free association library in exchange for part of the consideration paid by the school district to the free association library. ...Moneys paid by a school district to a public or free association library under a contract are charged to the entire area of the district.” (Op. Compt. 82-27, January 25, 1982).*

*“A town may not construct a building expressly for use by a free association library in exchange for library services. However, it may permit the library to use space in an existing town facility or transfer title of unneeded town real property to the library in exchange for library services or monetary consideration. Contracts for the provision of library services to a town by a free association library appear to be governmental in nature and thus cannot bind successor governing boards.” (Op. Compt. 83-117, May 23, 1983).*

*“Section 256, ...in addition to authorizing a village to contract with a town library, also authorizes the village to ‘grant moneys for the support of the cost of maintaining or the cost of any capital improvement to or expenditure for one or more’ public libraries registered by the regents. We have interpreted the term ‘grant’ as used in section 256 to contemplate a gift or*

*donation of moneys to the library.... Therefore, the village board may determine to grant moneys to the town library even though the library is already supported by town-wide taxes and the library does not specifically agree, in return, to provide consideration to the village...". (Op. Compt. 90-2, February 20, 1990).*

*"[A]ccordingly, a school district may enter into a contract pursuant to section 256(1) of the Education Law with a cooperative library system under which library services will be provided to residents of the school district by member libraries of the cooperative library system. The amount stated in the contract and approved as an appropriation for library purposes by the voters of the school district must be paid to the treasurer of the cooperative library system. (Op. Compt. 99-5, July 8, 1999).*

2. When the municipality agreeing to make the payment or grant is a town in which there are one or more incorporated villages, which village or villages jointly with such town contract with the trustees of a cooperative library system, a free association library or with another municipal district or body having control of a public library whether or not such district or body is an incorporated village in such town, the amount appropriated by the town board in such town shall be a charge upon the taxable property of that part of the town outside of any such incorporated village.

*See discussion in Op. Compt. 74-1097 after subsection 1 above.*

### **§257. Acceptance of conditional gift**

By majority vote at any election or at a meeting of the electors, duly held, any municipality or district or by three-fourths vote of its council any city, or any library or any designated branch thereof if so authorized by such vote of a municipality, district or council, or any combination of such voting bodies, may accept gifts, grants, devises or bequests for library purposes or for kindred affiliated educational, social and civic agencies on condition that a specified annual appropriation shall thereafter be made for the maintenance of a library or branches thereof, or of such kindred affiliated agencies, by the municipality or district or combination so authorizing such acceptance, or upon such other conditions as may be stipulated in the terms of the gift. Such acceptance when approved by the regents of the university under seal and recorded in its book of charters shall be a binding contract, and such municipality or district shall levy and collect yearly in the manner prescribed for other taxes the amount stipulated and shall maintain any so accepted gift, grant, devise or bequest intact and make good any impairment thereof, and shall comply with all other conditions set forth in the stated terms of the gift.

NOTE: *Sections 258 and 258-a omitted*

### **§259. Library taxes**

- 1.a. Taxes, in addition to those otherwise authorized, may be voted for library purposes by any authority named in section two hundred fifty-five of this part and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor until changed by further vote and shall be levied and collected yearly, or as directed, as are other general taxes. In the case of a school district the appropriation for library purposes shall be submitted to the voters of the district in a separate resolution and shall not be submitted as a part of the appropriation of the necessary funds to meet the estimated expenditures of the

school district. All moneys received from taxes or other public sources for library purposes shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that money received from taxes and other public sources for the support of a public library or a free association library or a cooperative library system shall be paid over to the treasurer of such library or cooperative library system upon the written demand of its trustees. All such moneys paid over to a public library treasurer shall be deposited and secured in the manner provided by section ten of the general municipal law and the library trustees or the library treasurer, if the trustees shall delegate such duty to him, may invest such moneys in the manner provided by section eleven of such law.

*“In the court's opinion, the appropriation in 1958 [for the public library] must be considered as the amount fixed by the district for the annual maintenance of the library until it is increased by the adoption of another and larger budget or until support of the library is withdrawn by formal unequivocal action of the voters. The defeat of a proposed increased budget cannot be construed as such a withdrawal of support.”* (Peninsula Public Library v. Board of Education of Union Free School District No. 15, Town of Hempstead, *New York Law Journal*, June 2, 1959, p.15, col.3).

*“The court agrees with the contention of the petitioners that article 37 of the Education Law providing for the centralization of elementary and high schools does not purport to be concerned with libraries... The only effect that centralization could have on tax-supported libraries emanates from section 259 of the Education Law which requires that the vote of library taxes be by an ‘authority’ having the power to levy and collect taxes. This requirement operates to extend the vote to the qualified voters of the entire Central School District and places upon the Board of Education of that central district the duty to levy and collect the library tax, a duty which prior to centralization rested upon the Board of Education of the Union Free School District which was absorbed into the Central School District. It does not follow, however, that article 37 of the Education Law or the laying out and organizing of a central school district under such article worked a change in the area upon which the library tax was to be levied... From a practical point of view there is no difficulty involved in levying separate or additional taxes on the areas comprising the former Union Free School Districts now embraced in the Central School District.”* (Locust Valley Library et al. v. Board of Education of Central School District No. 3 of the Town of Oyster Bay, 54 Misc. 2d. 315, 282 NYS 2d 376, July 25, 1967).

See Cairo Public Library v. Valentin, 132 Misc. 2d 887, 505 NYS 2d 821, August 6, 1986, following Education Law, section 226(4).

*“There appears to have been no limitation upon the resolution which authorized the appropriation of \$500 for the support of the library, as adopted at the annual district meeting in 1918, nor has any action been taken by said district changing or modifying the vote then taken. The provisions of section 1122 [now 259(1)] of the Education Law are, therefore, applicable and the appropriation of \$500 so made at the annual district meeting in 1918 must stand as an annual appropriation for each succeeding year for the benefit of this library, until such appropriation is changed by further vote.”* (Appeal of Lime Public Library, Educ. Dept. Case No. 543,21 State Dept. Rpts. 566. December 17, 1919).

*See Op. Att.-Gen. 37-277, March 10, 1937, following Education Law, section 253 (2).*

*"[I]t is the duty of the collector [of the school district] to segregate and keep separate the amount of money collected for the school district. Because in the city of Long Beach the money is turned over to the treasurer and placed in a specific account, the school money should be placed in one account and the library money in another. It is the duty of the collector of this district under one present method of collection of taxes, where no differentiation is made on the tax bill, to separate the lump sum so that each account receives its proportionate amount." (Appeal of the Board of Trustees of Long Beach Public Library, Educ. Department, Case #3100, 50 State Dept. Rpts. 507, May 10, 1935). See also 2 Op. Compt. 501, #1577, September 4, 1946. However, see Op. Compt. 91-57 below.*

*"Unexpended balances in the town highway and library funds may not be used to pay contributions due from a town to the New York Retirement System for its town employees." (Inf. Op. Att.-Gen. 44-65, May 9, 1944).*

*"[I]t is my opinion that the amount of the annual appropriation for the support of the public library may not be paid in a lump sum to the treasurer thereof by the village but must be expended in accordance with the terms of section 1122 [now 259 (1)] of the Education Law." (1 Op. Compt. 68, #517, February 26, 1945). See also 3 Op. Compt. 718, #1803, December 31, 1946.*

*"It is therefore the opinion of this office that any appropriations made by a city for either a public library or a free association library can only be expended upon proper audit on verified claims duly submitted." (1 Op. Compt. 247, #691, June 29, 1945).*

*"Where a public library has been established by a village pursuant to section 1118 [now 255] of the Education Law, all receipts for library purposes, received either by the village or the library corporation from taxes, gifts, fines or any other source, should be kept by the village treasurer." (1 Op. Compt. 267, #713, July 10, 1945). See also 2 Op. Compt. 233, #1297, May 8, 1946; 3 Op. Compt. 31, #1844, January 16, 1947; Inf. Op. Att.-Gen. 49-78, September 12, 1949.*

*"Since the library described is a free public library, it is the opinion of this office that the fines and refunds should be paid over to the treasurer of the union free school district, deposited by him in the separate library account, paid out and expended by him under the direction of the trustees as outlined in said Section [1122, now 259 (1)] for library purposes." (1 Op. Compt. 437, #871, October 5, 1945). See also 3 Op. Compt. 60, February 5, 1947. However, see Op. Compt. 91-57 below.*

*"A sum raised by tax by a city for library purposes to assist a 'free association library' pursuant to section 1122 [now 259 (1)] of the Education Law may not be paid in a lump sum to the treasurer of such association in the absence of a contract for fixed library services to be rendered or [sic; probably should be on] authenticated vouchers therefor." (1 Op. Compt. 487, #910, October 24, 1945). See also 3 Op. Compt. 191, #2077, May 21, 1947.*

*"State moneys received by a town 'public library' should be paid to the town supervisor and expended by him only under the direction of the library trustees and upon properly authenticated vouchers." (1 Op. Compt. 573, #995, December 5, 1945).*

*"While the general rule is that payment for services should be made by check, there may be cases of authorized temporary emergency or occasional minor services for which payment by check is not practicable. In such cases, library trustees of a free public library may audit and approve for payment claims of the librarian for amounts paid by him or her for such services, provided receipts for money so paid are attached to such claims."* (2 Op. Compt. 233, #1297, May 8, 1946).

*"Library trustees of free public libraries are entrusted with the power and duty to direct the expenditure of library moneys kept by municipal treasurers, to audit claims payable therefrom, and to authorize payment for such audited claims by such treasurers. Unless moneys appropriated by the town are required by contract to be paid to the village and thus to be kept by the village treasurer pending payment out, such town moneys should be kept by the supervisor of the town as a separate library fund pending payment out under direction of the library trustees in the same manner as that outlined with respect to payment out by the village treasurer."* (2 Op. Compt. 237, #1301, May 9, 1946). However, see Op. Compt 91-57 below.

*"We believe... that the municipal treasurer is not required to pay any claim audited and allowed by the library board (and within the funds available therefor), unless such claim is properly authenticated, is regular on its face and is not obviously illegal either on its face or because of facts known to such treasurer...We believe that fines, etc. collected by the librarian of a free public library should be turned over to the municipal treasurer at reasonable intervals."* (2 Op. Compt. 618, #1689, October 31, 1946). See discussion of this opinion in Op. Compt. 87-84.

*"It would be the view of this Department that such unexpended balance of moneys raised by tax by a school district for a school district public library organized pursuant to section 1118 [now 255] of the Education Law may be used subsequent to the end of the fiscal year in which some sums were raised by tax, for any lawful library purpose."* (3 Op. Compt. 142, #2017, April 23, Educ.L.,sec.259 (cont'd)

*"A school district may pay in one amount the total sum contracted to be paid to a public library if such single payment is so provided in the contract."* (4 Op. Compt. 42, #2629, February 2, 1948).

*"When taxes have been voted for library purposes by a town, the amount of such taxes may not be increased for such purposes without the approval of the voters of such town unless it was otherwise directed by such vote."* (4 Op. Compt. 97, March 8, 1948). See also 7 Op. Compt. 70, #5068, January 30, 1951, applying same to villages.

*"All bills submitted to the village board must be itemized although first audited by the library trustees."* (4 Op. Compt. 123, #2753, April 16, 1948).

*"It is my opinion...that the amount raised by taxation by a school district...for the establishment or support of a public library, must be included in computing the amount of real estate taxes which may be levied by such school district in any fiscal year."* (Op. Att.-Gen. 51-134, June 11, 1951).

*“The president of a board of education is wholly without power to alter the budget of a school district library. As stated in [Section 259 of the Education Law], the amount once voted by the voters of the school district remains an annual appropriation until changed by the voters of the school district.” (1 Educ. Dept. Rpts. 715, Formal Op. of Counsel No. 8, July 11, 1951).*

*“It has been repeatedly held that it is not within the power of a treasurer to pass on the propriety of the orders drawn upon him and that the treasurer may not assume the board of trustees prerogative of determining whether or not the bill should be paid. (Appeal of Board of Trustees of the Levittown Public Library 72 St. Dept. Rpts. 50, Educ. Dept. Case #5583, July 27, 1951).*

*“[I]t would appear that section 259...is not in violation of the constitutional provision of article VIII, section 1, insofar as it provides that money received from taxes for the support of a free association library shall be paid over, in lump sum or otherwise, to the treasurer of such a library.” (1 Educ. Dept. Rpts. 707, Formal Op. of Counsel No 4, August 1, 1951).*

*“Request of money to the trustees of the village public library, the income and principal of which is to be used for stated purposes, most by kept by the village treasurer with other library moneys in a separate fund and must be expended by him under the direction of the library trustees. The library trustees direct the investment of the fund.” (8 Op. Compt. 72, #5563, February 29, 1952). However, see Op. Compt. 91-57 below.*

*“The function of audit is clearly one that requires the exercise of discretion. Under settled principles of law, therefore, such function may not be delegated by the library board to one of its members or to the librarian. All claims must be duly audited and approved or disallowed by the board as such. The village treasurer acts at his peril and without authority if he pays claims from the library fund which have not been duly audited and approved in this manner (see Op. Compt. 618, 1946).” (8 Op. Compt. 332, #5897, October 20, 1952). See also Op. Compt 63-691, extending provision to county libraries.*

*“A school district treasurer who ex officio acts as treasurer of the school district public library may not at the same time occupy the office of trustee of such public library.” (8 Op. Compt. 379, #5949, December 8, 1952).*

*“[N]o authority is vested in the board of education to offset against the amount finally approved by the voters for library purposes the amount of any balance remaining in the library fund or the amount of anticipated library revenues. It would be entirely appropriate for the district voters, however, to take such amounts into consideration in fixing the levy for library purposes.... There seems to be no statute requiring the board of trustees of the library to hold aside the moneys described for use the following year...A board of education has no authority to ‘loan’ school funds to the library trustees in anticipation of the receipt of taxes levied for library purposes.” (9 Op. Compt 52, #6012, February 26, 1953).*

*“As a matter of law, we are of the opinion that the library board could not compel the school authorities to credit the library fund with the full amount voted for library purposes prior to the actual collection of the taxes levied. Where school taxes are collected in installments, therefore, would be entitled to receive only a proportionate part of the receipts from each installment...A school district public library board is not bound by an itemized budget and has complete control*

*over the purposes for which moneys in the library fund may be expended...The library board may, therefore, employ an architect to prepare plans for the proposed building, notwithstanding the absence of a provision for such an expense in the current library budget.” (9 Op. Compt. 95, #6056, March 18, 1953).*

*“While the Education Law does not require the library board to itemize its request for an appropriation submitted to the board of education, the board of education may, as a practical matter, require such itemization as a condition precedent to providing an appropriation for library purposes. This is not to say, however, that the board of education may control the purpose for which moneys so appropriated, or other moneys credited to the library fund, are to be expended. An itemized request would not be binding upon the library board which, as in the case of union free school districts, has complete control over the purpose of expenditures from the library fund. The board of education is limited to determining the total amount to be appropriated by the school district for the maintenance of the library.” (9 Op. Compt. 114, 6077, April 22, 1953). See also Op. Compt 72-553 below.*

*“[U]nexpended balances in the library fund at the close of a village fiscal year must remain to the credit of such fund and do not revert to the general fund...With reference to an inquiry concerning the setting aside of moneys in the library fund for contingent or emergency purposes, we are of the opinion that such action is entirely within the discretion of the library trustees. They, not the village board, have control over the purposes for which library moneys may be expended.” (9 Op. Compt. 126, #6088, April 27, 1953). See also Op. Compt 58-331, and Op. Compt. 80-260.*

*“Unexpended balances may not be used for library purposes where no provision is made therefore in the town budget. However, appropriations for such purposes may be made from the contingent fund or surplus fund.” (9 Op. Compt. 189, #6159, May 20, 1953).*

*“In my opinion section 259 does not relate to those public moneys, whether derived from taxes or the sale of bonds, which are appropriated for the acquisition of a site and the erection of a building for public library use, and, therefore, public moneys appropriated for such purposes are under the control of the school district officials.” (Op. Att.-Gen. 53-141, November 24, 1953).*

*“A gift which is directed by the donor to be kept intact or invested and the income used for the donee corporation’s general purposes, is considered in our law an absolute gift to the corporation for one or more of its corporate purposes and is not a technical trust...Since no technical trust arises in such case, Personal Property Law, section 21, which enumerates the kind of securities eligible for investment by a trustee, is inapplicable. A municipality should invest the fund in governmental, state or municipal securities, the holding of which by a municipality or district will not violate Article VIII, section 1 of the New York State Constitution. The income arising from such investments of the municipality should be deposited in the library fund described in Education Law section 259, 'and shall be expended only under direction of the library trustees, \_\_\_'... A donor may intend that his gift or bequest shall be held by the library trustees incorporated in trust for the benefit of the municipality which has established and maintains the library. The donor may direct that the principal sum be invested in securities eligible to investment by trustees under Personal Property Law section 21, and the income therefrom be paid over to the municipal treasury for deposit in the library fund as provided in*

*Education Law, section 259.” (Op. Att.-Gen. 54-150, May 20, 1954). See explanatory opinion immediately following. See also Op. Compt. 58-631.*

*“[I]t is my opinion that moneys given or bequeathed to the public library trustees as such or to the library trustees as incorporated are not required to be held in the custody of the treasurer of the municipality or district which established the public library. Such moneys may, therefore, be held in the custody of a library officer designated by the library trustees.” (Op. Att.-Gen. 54-153, July 26, 1954).*

*“A library established by a school district is an agency of such district. Library trustees must let contracts for public work and purchases by competitive bidding in accordance with section 103 of the General Municipal Law.” (11 Op. Compt. 356, #7388, June 20, 1955).*

*“The town supervisor is the custodian of public library funds, which he should deposit in a special library account and disburse only under the direction of the library trustees... His checks need not be countersigned.” (12 Op. Compt. 112, #8003, March 19, 1956). See also Op. Compt. 59-23. However, see Op. Compt. 91-57 below.*

*“Library trustees may designate a library officer to be custodian of moneys given or bequeathed to the trustees of a municipally established public library. The treasurer of the municipality is not statutory custodian of such funds.” (Op. Compt. 57-720, December 3, 1957). See further discussion in Op. Compt. 59-961 below.*

*“Library funds may not be used to serve refreshments unless they were received as gifts under terms which would permit such a use.” (Op. Compt. 58-687, August 4, 1958). See also Op. Compt. 63-524 following section 255 (1).*

*“This Department...has stated that the trustees of a public library may designate a library officer to be custodian of moneys given or bequeathed to the library and that the municipal treasurer is not the statutory custodian of such funds...It should be pointed out, however, that the term 'custodian' as used in these opinions is not necessarily synonymous with the term 'treasurer'. The former term pertains to one who is charged with the keeping of the thing in his custody and implies a responsibility for its protection and preservation; the latter term pertains to one having moneys held by him. A treasurer, therefore, must of necessity be also the custodian of pertinent funds, but a custodian need not have the full powers of a treasurer...The offices of trustee and treasurer of a public library are incompatible.” (Op. Compt. 59-961, January 21, 1960). See also Op. Compt. 73-719 below.*

*“In our opinion, there is no doubt that a library board may direct or permit the use of its property for library – sponsored public concerts. The day has passed when a proper library program was exclusively concerned with books and reading. A library program which includes the presentation of special programs of an intellectual and cultural nature (i.e. films, discussion groups, and musical programs) is widely approved...A public library board may give credit in publicly financed program announcements to private associations which cooperate in the presentation of the library’s program.” (Op. Compt. 60-795, October 5, 1960).*

*“Where a proposition authorizing the establishment of a public library was submitted to and adopted by the electors of a town, and the proposition specified a maximum annual expenditure,*

*the town board may not appropriate for library purposes an amount in excess of such maximum.” (Op. Compt. 60-957, December 20, 1960).*

*“A school district may not charge the library fund designated for a school district public library the interest charges for any borrowing required to make advances to such library fund.” (Op. Compt. 61-18, March 3, 1961).*

*“A public library may not legally expend funds to sponsor and publish a pamphlet prepared by a League of Woman Voters or to purchase copies for free distribution or distribution at a nominal charge.” (Op. Compt. 61-25, March 9, 1961).*

*“A town public library should not purchase fuel oil from a company in which the town supervisor is a partner.” (Op. Compt. 61-855, December 26, 1961).*

*“Thus, in the case of a school district public library, moneys from taxes and other public sources must be kept by the treasurer of the school district. The Education Law is silent as to the keeping of moneys received by the public library from private sources, such as gifts, donations, bequests, etc. This Department has previously expressed the opinion (13 Op. St. Compt. 220, 1957) as has the Attorney General (1954 Op. Att.-Gen. 153) that moneys from such private sources may be kept by a library officer appointed by the trustees of the public library as the custodian of moneys so received. The library trustees may, however, deposit moneys from private sources with the fiscal officer of the municipality or school district...With respect to the question of signing checks issued by the public library, the distinction between public and private funds must again be noted. Section 259 (1) provides that the fiscal officer of the municipality or school district shall have custody of public moneys and shall expend them under the direction of the library trustees. Such fiscal officer would follow his ordinary practices and procedures in issuing checks for such expenditures.” (Op. Compt. 62-52, February 14, 1962). Note that quotations from this opinion can also be found following section 226 (7) of the Education Law.*

*“Apparently, it was the intent of the Legislature [when it added the second sentence to section 259 (1), L. 1959 chap. 160] that, in the case of school districts, the appropriation for library purposes should not be considered as annual appropriations, and the separate resolution authorizing the appropriation for library purposes must be submitted to the voters each year.” (Op. Compt. 63-176, March 14, 1963).*

*“A school district public library may expend, over and above its annual appropriation, additional funds raised through overdue book fines and cash gifts, and may accumulate such items from year to year as an emergency fund.” (Op. Compt. 63-689, November 19, 1963).*

*“Since the library board of trustees would lose control over the expenditure of surplus moneys in the library fund by their transfer into a capital reserve fund, it is our opinion such funds may not legally be transferred to a capital reserve fund established by the board of supervisors. However, surplus moneys could indirectly be used if the board of supervisors were to appropriate part of the money normally budgeted for operating expenses to a capital reserve fund. Additional sums could be appropriated by the county to the reserve fund from time to time.” (Op. Compt. 64-20, March 1, 1965).*

*“The board of trustees of a library, and not the legislative body of the municipality or district which supports it, has the authority to adopt a form for the certification, or other means of authentication, of claims and payrolls.” (Op. Compt. 66-67, March 23, 1966).*

*“Library fines are public monies and may be used to pay for a portion of a condemnation award. Since the fine money is public money, there is no necessity that title be taken in the joint names of the school district and the library.” (Op. Compt. 67-238, April 4, 1967).*

*“No part of the money raised by taxation for a school district public library should be turned over to the library but should be held in a special library fund by the school district treasurer and expended by him under direction of the library trustees on properly authenticated vouchers.” (Op. Compt. 69-804, October 30, 1969).*

*“(1) A proposition to raise money for library purposes need not be submitted to the voters each year if the amount to be raised remains unchanged. (2) The amount to be raised by a school district for library purposes must be submitted to the voters as a resolution separate from the regular school district budget. (3) The defeat of a resolution to raise a greater amount for library purposes does not invalidate the resolution adopted earlier, and the district may continue to raise the amount lowered.” (Op. Compt. 70-471, December 21, 1970).*

*“A board of education of a school district may call a special meeting of the school district to vote a tax to provide additional funds for a free association library.” (Op. Compt. 70-975, January 15, 1971).*

*“It appears...that not only do library trustees lack the authority to control appropriations, but also they have no authority to accumulate a reserve fund from the revenues in question. These revenues can and should be used to reduce the tax levy for library purposes, and the city council should take them into consideration when making library appropriations and revenue estimates...” (Op. Compt. 71-203, April 1, 1971).*

*“A town board may authorize the expenditure of funds for library services with a free association library contingent upon the existence of such a library...A town board may not place limitations and restrictions upon the expenditure by the town library board of trustees of funds appropriated for library purposes.” (Op. Compt. 72-6, April 7, 1972).*

*“Where a village budget appropriates money for a village public library by line items, the library board of trustees may disregard the line items and use the moneys as it sees fit in administering the affairs of the library.” (Op. Compt. 72-553, July 3, 1972).*

*“The office of school district treasurer and that of treasurer of a public library established by the district are separate and distinct offices.” (Op. Compt. 73-184, April 3, 1973).*

*“The board of trustees of a school district public library may not appoint one of its members to the position of library treasurer.” (Op. Compt. 73-719, August 13, 1973).*

*“Where the board of trustees of a public library established and supported by a school district requires the board of education to conduct a district meeting to elect a library trustee, the costs of such election are a school district expense.” (Op. Compt. 74-174, March 28, 1974).*

*“A school district which is ordered to make a real property tax refund may not recover from the school district library an amount equal to the proportionate reduction of taxes levied for library purposes” (Op. Compt. 75-1210, November 16, 1975). See reaffirmation of this opinion in Op. Compt. 95-5, July 5, 1995.*

*“A chargeback by a school district against a school district library, to recover a portion of the salaries of school district personnel who also renders services to the library, is impermissible.” (Op. Compt. 76-674, July 21, 1976).*

*“While my understanding of these provisions [Retirement and Social Law sections 30(c) and 17 (b), regarding contributions to the New York State Retirement System for employees]... leads me to the conclusion that the school district, as the participating employer, must assess and pay for the employer’s contribution for library employees, these provisions do not thereby require that the amount necessary appear as an item in the budget submitted on behalf of the school district.” (Appeal of Alvin D. Delman, et al., 16 Educ. Dept. Rpts. 416, Jud. Dec. No. 9453, June 21, 1977)*

*“Where school district library moneys are paid over to the library treasurer pursuant to Education Law section 259 (1), the school district treasurer and board of education have no further responsibilities with respect to such moneys.” (Op. Compt. 77-891, December 7, 1977). See also Op. Compt. 78-166, March 14, 1978, applying above to city public library.*

*“It is our opinion that this provision [i.e. second sentence of section 259 (1) beginning "In the case of a school district...] requires the board of education of a district to submit the library appropriation to the voters if so requested by the board of trustees of the library. The library appropriation is separate from the school district budget and does not directly affect it. The school board has no discretion in the matter and must submit the appropriation request to the electorate and allow the voters to decide whether an increase in the library budget is justified.” (Op. Compt. 81-167, May 28, 1981). See discussion of this opinion in 30 Educ. Dept. Rpts. 172, Nov. 13, 1990 below.*

*“(1) The board of trustees of a town public library may not incur expenses in excess of the amount appropriated by the town board for library purposes unless the library has moneys available from other sources; (2) It is the duty of the library board to audit and approve or disapprove claims payable from the library fund.” (Op. Compt. 82-84, March 10, 1982) See also Op. Compt. 87-84, November 17, 1987.*

*“The withholding of Federal, State and local income taxes from employees salaries and the transmission of moneys to the payroll account are actions which do not require submission of claims for audit and approval by a public library board of trustees. Upon the adoption of a resolution so authorizing, a public library may pay claims for utility services in advance of audit. Such claims should be audited at the next regularly scheduled meeting.” (Op. Compt. 82-271, October 29, 1982.*

*“A school district may be relieved of its responsibilities as the custodian of the public library funds but only where the trustees of the public library have appointed a library treasurer and demanded in writing that all library moneys be turned over to him.” (Op. Compt. 83-32, February 14, 1983).*

*“[A] town could pay moneys collected for the support of a school district public library directly to the library treasurer if such payment is made pursuant to a municipal cooperation agreement entered into between the town and the school district. The authorization for municipal cooperation agreements is found in Article 5-G of the General Municipal Law.” (Op. Compt. 83-80, April 18, 1983).*

*“Under the present statutory scheme, municipal public libraries have no authority to mandate the amount of money to be appropriated by sponsoring municipalities for library purposes, nor may such authority be provided by local law. An act of the State Legislature would be required to grant a municipal public library such authority.” (Op. Compt. 83-96, May 2, 1983).*

*“Current expenses arising out of the employment of library personnel, including the cost of providing Workers' Compensation, unemployment insurance and disability benefits insurance, are properly a charge against the library fund.” (Op. Compt. 83-242, December 16, 1983).*

*“A municipal or school district treasurer with custody of library moneys must perform those services which are incidental to holding and disbursing funds. This includes maintenance of a bank account for the moneys, investment of the moneys as authorized by the library trustees, payroll preparation and incidental accounting functions. There is no authority to charge the library for the cost of such services.” (Op. Compt. 86-54, August 19, 1986).*

*“Surplus moneys of a school district public library may be carried forward from year to year without regard to the limitation contained in section 1318 of the Real Property Tax Law.” (Op. Compt. 87-49, July 9, 1987).*

*“Libraries may operate on previously approved budgets and obtain tax levies therefore until such a budget is changed by vote. Since the prior year's budget was approved for the library and not the cash flow schedule subsequently submitted by the library, the library is entitled to the tax dollars necessary to fund its previously approved budget, not the previously submitted cash flow. Additionally, the library is not required to use its surplus to reduce the amount of tax levied.” (29 Educ. Dept. Rpts. 316, Jud. Dec. No. 12, 306, March 23, 1990).*

*“Education Law section 255 (1), which addresses the establishment of ‘public libraries’, authorizes a school district to levy and collect taxes for that purpose. Therefore, a school district is authorized to levy and collect taxes under section 259 (1)... The State Comptroller has interpreted this provision [i.e., second sentence of section 259 (1) (a) beginning “In the case...] to require a board of education to submit a library appropriation to the voters if requested by the library's board of trustees. The board of education ‘has no discretion in the matter and must submit the appropriation request to the electorate’ (emphasis added) (Op. State Compt. 81-167).” (Appeal of the Board of Trustees of the Earlville Free Library, 30 Educ. Dept. Rpts. 172, Jud. Dec. No. 12, 423, November 13, 1990).*

*“Library fund moneys of a village public library held in the custody of the village treasurer may be commingled with moneys of the village, subject to the consent of the library board.” (Op. Compt. 91-57, January 7, 1992).*

*“Thus, pursuant to section 259(1), taxes voted for library purposes are considered to be an annual appropriation unless and until changed by further vote and must be levied and collected*

*in the same manner as other general taxes. Further, all moneys received from taxes or other public sources for library purposes must be kept in a separate library fund by the municipality or school district treasurer or, upon written demand of the library trustees, must be paid over to the treasurer of the library. Since the treasurer of the sponsoring municipality or school district holds library fund money as custodian for the library and invests the moneys, upon authority of the library board, we have concluded that interest earned on such investment must be credited to the library fund and not to the general fund of the sponsor district for interest costs on tax anticipation notes issued in anticipation of taxes levied for library purposes. (Op. Compt. 92-28, September 30, 1992).*

*“Neither the board of trustees nor the separate treasurer of a town public library is required pursuant to Town Law, section 123, to annually account to, or submit its books for audit to, the town board.” (Op. Compt. 93-15, March 18, 1993).*

*“A school district making a real property tax refund attributable to either an administrative correction of an error on a tax roll or a court ordered assessment reduction may not recover from the school district public library an amount equal to the proportionate reduction of taxes for library purposes.” (Op. Compt. 95-15, July 5, 1995).*

*“[O]nce the voters have approved the levy of taxes for library purposes, such taxes remain in effect each year, without annual voter approval, until altered in a subsequent proposition. Thus, since the library tax was already in effect and no expenditure was proposed, no monetary amount was required.” (Appeal of Jack L. Cole et al., 37 Educ. Dept. Rpts. 407, Jud. Dec. No. 13, 891, March 18, 1998).*

*See 10 Op. Counsel SBRPS No. 59, May 6, 1998, following Part II, RPTL Sec. 425.*

*“I find the respondent [i.e. Board of Education of the Union-Endicott Central School District] acted properly by submitting both [competing] library propositions to the voters at the annual meeting, Pursuant to Education Law § 259(1), respondent was obligated to place petitioners [i.e. Board of Trustees of the George F. Johnson Memorial Library] proposition on the ballot...However, this obligation did not strip respondent of its authority to place on the ballot a contrary proposition duly submitted, seeking the elimination of library funding.” (40 Educ. Dept. Rpts, Jud. Dec.No.14,490, November 30, 2000).*

*“It is our opinion that the library board of trustees at a school district public library may determine to accumulate library fund monies for capital purposes (Op. Compt. 2002-7, July 18, 2002)*

*“[§259 (1)] contemplates that any authorized authority may vote to levy a tax which shall be considered an annual appropriation unless changed by ‘further vote’ of that same authority . . . It simply does not authorize the school district to levy a tax based upon the city’s past decision to fund [the New Rochelle Public Library] . . . Because respondent city authorized the appropriation of \$2,725,345 for NRPL, only respondent city can levy taxes based on that appropriation.” (Appeal of the Board of Trustees of the New Rochelle Public Library, 42 Educ .Dept.Rpts. \_\_\_, Jud. Dec. No. 14, 827, December 24, 2002)*

*“Thus, once district voters approve the levy of taxes for library purposes, such taxes remain in effect each year, without annual voter approval, until altered in a subsequent proposition . . . Because district voters approved a \$10,000 annual appropriation to petitioner in May 2001, respondent did not need voter approval at the 2003 annual election to appropriate \$10,000 to petitioner.” Appeal of the Beaver Falls Library, 43 Educ. Dept. Rpts. \_\_\_\_\_, Jud. Dec. No, 15,002, December 12, 2003)*

b. (1) Except as provided in subparagraph two of this paragraph, whenever qualified voters of a municipality, in a number equal to at least ten per centum of the total number of votes cast in such municipality for governor at the last gubernatorial election, shall so petition and the library board of trustees shall endorse, the question of increasing the amount of funding of the annual contribution for the operating budget of a registered public or free association library by such municipality to a sum specified in said petition, shall be voted on at the next general election of such municipality, provided that due public notice of the proposed action shall have been given. An increase in library funding provided pursuant to this paragraph shall not apply to a municipal budget adopted prior to the date of such election.

(2) Solely for the purposes of this paragraph, the term “municipality” shall:

(i) not include a city with a population of one million or more,

(ii) mean only a county when the public libraries located in such county are members of a federated public library system whose central library is located in a city of more than three hundred thousand inhabitants.

*“The Senate sponsor of the bill [i.e. L.1995 chap.416] indicates that the statute was meant to provide voters an opportunity to directly influence funding for local public library services . . . The provision was drafted to accomplish this purpose by extending to voters served by public libraries in most municipalities the same opportunity to vote on library funding as that enjoyed by voters served by school district and special district libraries.” ( George F. Johnson Memorial Library v. Springer, 11 A. D., 3d 804,783 1445 2d 138, October 22, 2004)*

*In addition to allowing taxpayers, rather than taxspenders,[sic] decide how much of their tax dollars shall be spent in support of local libraries, this bill will help to evenly distribute the cost of financing public libraries. Under the existing library system structure, the residents of some municipalities that do not fund a library or that contribute very little to library funding are permitted to use the same facilities that the residents of municipalities that contribute much more are using. This inequity is not always caused by disparities in community wealth. Rather, in some library systems, certain municipalities are simply free-loading off other municipalities. Although this bill will not automatically eliminate this problem, it allows the voters of communities to decide to increase their library contribution if the 48a they are not contributing their fair share.” (Governor’s Approval Memorandum #56, 1995 accompanying his approval of L. 1995 Chap. 414, which added section 259 (b) to the Education Law).*

*“In short, while the voters served by certain kinds of libraries within cooperative library systems (created by agreement of the boards of chartered member libraries) and federated library systems (created by action of the county legislature(s) involved) can vote on library funding, others cannot.*

*A negative consequence is that inequities in library funding between neighboring communities can prompt patrons from the lower- or non-funding municipality to travel to the higher-funding municipality's library to use its services. This legislation would begin to mitigate the inequities of this situation by extending to all New York State voters served by cooperative and federated library systems the right to vote on whether to increase local library funding. ...The mechanism is similar to the existing one for establishing local libraries in section 255 of the Education Law, and the one for voting on funding in school district public libraries and special district public libraries in section 259 (1) of the Education Law." (Introductory memorandum justifying L. 1995 Chap. 414).*

*"The State Education Department supports this bill, which should have beneficial financial effects for some public libraries, by providing a mechanism for increasing the contribution of a municipality to a public library by the voters of the municipality. Since the statute refers to a municipality and not to a district, it would not apply to a school district public library." (Memorandum by Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs for the State Education Department, approving the bill which became L. 1995 Chap. 414).*

2. In the case of a joint public library authorized to be established by two or more municipalities or districts pursuant to section two hundred fifty-five of this chapter, the governing bodies of the participating municipalities and districts shall enter into an agreement designating the treasurer of one of the participating municipalities or districts to be the treasurer of the joint public library. The agreement shall be for a period of not less than one year nor more than five years and the state comptroller and the commissioner of education shall be notified in writing by the board of library trustees of such agreement and designation.

The municipality or district whose treasurer is designated to serve as treasurer of a joint public library may be compensated for the services rendered by such official to the library. The amount to be paid for such services shall be determined by agreement between the governing body of the municipality or district and the board of library trustees, and shall be paid at least annually from the public library fund.

3. The treasurer of a joint public library shall maintain the separate library fund required by subdivision one of this section and shall credit to such fund all moneys received. The state aid apportioned to a joint public library, amounts appropriated by participants toward its support and all amounts received from other sources shall be paid to the library treasurer. Appropriations for the library made by the participating municipalities or districts shall be paid in full to the library treasurer within sixty days after the beginning of the library fiscal year.

Disbursements for purposes of a joint public library shall be made by the treasurer in the manner prescribed in subdivision one of this section.

Within thirty days after the close of the fiscal year the treasurer shall make an annual report of the receipt and disbursement of library moneys to the board of library trustees and to the governing body of each of the participating municipalities or districts.

4. Notwithstanding the provisions of subdivisions one and three of this section, the library trustees may by resolution establish a petty cash fund, in such amount as they shall

determine, for any employee who has supervision of any library or branch thereof. Expenditures from such fund may be made by such employee in advance of audit by the library trustees, but only after the submission of properly itemized and authenticated vouchers for materials, supplies or services furnished to the library or branch thereof and upon terms calling for payment to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. At each meeting of the library trustees a list of all expenditures made from such fund since the last meeting of the trustees, together with the vouchers supporting such expenditures, shall be presented by such employee to the library trustees. The trustees shall direct the treasurer to reimburse such petty cash fund in an amount equal to the total of such bills which the trustees shall so allow. Any of such bills or any portion of such bills which the library trustees shall refuse to allow shall be the personal liability of such employee and he shall promptly reimburse such petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to such employee after the action of the library trustees in disallowing an amount so expended, such amount shall be withheld from such salary payment to such employee and, if necessary, subsequent salary payments and paid into such petty cash fund until an amount so disallowed by the library trustees has been repaid in full to the petty cash fund.

## §260. Trustees

1. Public libraries authorized to be established by action of the voters or their representatives shall be managed by trustees who shall have all the powers of trustees of other educational institutions of the university as defined in this chapter; provided that the number of trustees of county public libraries and Indian libraries shall not be less than five nor more than fifteen and that the number of trustees of other public libraries shall not be less than five nor more than fifteen. The number of trustees of joint public libraries authorized to be established by two or more municipalities or districts or any combination thereof shall be not less than five nor more than twenty-five, as determined by agreement of the voting bodies empowered to authorize the establishment of such libraries pursuant to subdivision one of section two hundred fifty-five of this chapter and shall be set forth in the resolution authorizing the establishment of such joint public library. Such resolution shall also set forth the number of such trustees which each of the participating municipalities or districts shall be entitled to elect or appoint, and the terms of office of the first trustees as determined in accordance with subdivision three of this section.

*“[I]t seems clear that under the various statutes delegating powers to various libraries and the contract made with the city of New York that the board of trustees of the library is the body charged with the duty of distributing the fund already appropriated by the board of estimate. The board of trustees was intended, both by the statutes and the contract, to have discretionary powers so long as they were exercised in good faith to fix the various salaries of its employees and carry out generally its administrative duties.”* (Brooklyn Public Library v. Craig, 201 App. Div. 722, 194 NYS 715, May 1922).

*“Under the above statutes [i.e., sections 1123, now 260, and 68, now 226 (5), of the Education Law], the duties of the elected trustees contemplate the use by them of their best judgment in the management of the library. The courts of this State have uniformly allowed such bodies the largest*

*latitude of discretion where they could do so consistently with established principles of statutory construction.” (Kahn v. Blinn, 60 NYS 2d 413, January 10, 1946).*

*“The management at a public library vests in trustees elected by the voters of the school district..., and within one month after taking office the first Board of Trustees is required to apply to the New York State Board of Regents for a charter... A corporation so chartered by the Board of Regents is a district corporation within the purview of section 3 of the General Corporation Law. Although a district corporation and a school district are included within the definition of public corporation..., a school district constitutes a municipal corporation..., whereas a district corporation includes any territorial division of the State other than a municipal corporation...The two districts, consequently, are separate and distinct corporate entities so that a notice of claim served on a Board of Education cannot be deemed to convey notice to the Board of Trustees of a library district...” (Matter of Maik v. Massapequa Library Board of Trustees, 46 Misc. 2d 159, 258 NYS 2d 916, April 6, 1965). See discussion of the case in Op. Compt. 72-539.*

*“It is axiomatic that a trustee of a municipal corporation, having the ultimate responsibility over the affairs of the corporation..., has an absolute right to inspect the records maintained by that corporation.” (Gorton v. Dow, 54 Misc. 2d 509, 282 NYS 2d 841, August 22, 1967).*

*“It would appear, therefore, that the Legislature intended to vest in the library trustees the exclusive right to manage and control library property regardless of whether the title thereto is in the library corporation or school district; that consequently the board of education has no duties or powers relative to the management and control of such property... We conclude that although the trustees are given the power to direct the expenditure of the tax moneys, property acquired thereby is owned by the school district.” (4 Op. Compt. 609, #3456, December 10, 1948).*

*See 10 Op. Compt. 361, November 15, 1954, following Education Law, Section 226 (7).*

*“A trustee of a school district public library may not be treasurer with respect to public monies appropriated and should not act as treasurer with respect to private gifts received.” (Info. Op. Att.-Gen. 57-20, February 20, 1957).*

*“The library trustee may not sell insurance to the school district.” (Op. Compt. 59-773, October 22, 1959).*

*“The board of trustees of a public library may enter into a contract with a private corporation whereby the corporation will install in the public library a coin-operated automatic photocopy machine, and the library may participate in a share of the receipts of such machine.” (Op. Compt. 63-72, March 7, 1963). See also Op. Compt. 68-32, February 27, 1968.*

*“While it is not clear whether the ‘public employer’ to be negotiated with under the Taylor Law in the case of a village public library is the board of trustees of such library or the board of trustees of the village itself, in the interest of securing an overall, comprehensive plan for all village employees it would seem that the village board should be considered the ‘public employer.’” (Op. Att.-Gen. 68-122, October 29, 1968).*

*“We conclude that a teacher employed by a central school district may simultaneously serve as a trustee of a public library established by that school district.” (Op. Att.-Gen. 84-5, February 14, 1984).*

*“Although the town board appoints the trustees of a public library, the trustees are empowered to increase their number, subject to the statutory maximum.” (Op. Compt. 90-5, March 5, 1990).*

*“[T]here is no limitation on the number of terms that may be served by a trustee of a school district library.” (Op. Att.-Gen. 198-10, February 24, 1998).*

2. The trustees of public libraries authorized to be established by cities shall be appointed by the mayor and confirmed by the common council, in counties they shall be appointed by the county board of supervisors or other governing elective body, in villages they shall be appointed by the village board of trustees, in towns they shall be appointed by the town board, in school districts they shall be elected by the legal voters in the same manner as trustees are elected in the school district which established said library, and on Indian reservations they shall be elected at a general tribal election or otherwise designated by the chiefs or head men of an Indian tribe; that notwithstanding the fact that county, town or local school district lines do not penetrate the reservation boundary, Indians residing on reservations shall be eligible to serve as trustees of public libraries established in school districts to the same extent as they are qualified voters pursuant to subdivision three of section twenty hundred twelve of this chapter; that the first trustees shall determine by lot the year in which the term of office of each trustee shall expire and that a new trustee shall be elected or appointed annually to serve for three or five years to be determined by the entity establishing the public library. Notwithstanding the foregoing provisions of this subdivision, in any case where a town is a contributor to the support of any such public library in a village located within the town the appointment of trustees of such library who reside outside the village but within such town shall be subject to the approval of the town board of such town. The charter of any public library granted prior to April thirtieth, nineteen hundred twenty-one, which provides for trustees, their terms of office and method of election or appointment in a manner differing from that hereinbefore provided, shall remain in full force and effect until the regents, upon application of the library trustees, shall amend the charter to conform to the provisions of law in effect when such amendment is made.

*See Cairo Public Library v. Valentine, 132 Misc 2d 887, 505 NYS 2d 824, August 5, 1986 following Education Law section 226 (4).*

*“A member of the town board of a town which annually appropriates town funds for library purposes need not be named to and cannot be compelled to serve upon the board of trustees of a free association library receiving town support.” (Inf. Op. Att.-Gen. 49-102, December 14, 1949).*

*“[T]he village manager may appoint the trustees of the public library, since such appointment would be the function of the village board of trustees in a village which has no village manager...” (Op. Compt. 64-129, March 4, 1964).*

*“It is my opinion that Education Law section 260(2) is controlling over Education Law section 226(4) in respect to the manner of filling vacancies on the Board of Trustees of the Williston Park Public Library. Therefore, the Village Board of Williston has the authority to fill a vacancy on the Board of Trustees of the Williston Park Public Library.” (Op. Att.-Gen. 70-127, June 1, 1970).*

*“One person may simultaneously serve as a member of the board of a central school district and as a trustee of a library created by that school district.” (Op. Att.-Gen. 81-110, August 31, 1981). See also Op. Att.-Gen. 85-25, April 23, 1985.*

*See Op. Att.-Gen. 84-5, February 14, 1984, following Education Law section 260(1).*

*“Residency in the city is required to qualify for appointment as a trustee to a city public library.” (Op. Att.-Gen. 85-36, May 8, 1985).*

3. The trustees of a joint public library authorized to be established by two or more municipalities or districts or any combination thereof shall be appointed or elected by the body authorized by subdivision two of this section to elect or appoint trustees of public libraries authorized to be established by such municipality or district. The number of such trustees to be elected or appointed by each of the participating municipalities or districts shall be determined as provided in subdivision one of this section. The term of office of such trustees shall be three or five years except that the terms of the first trustees shall be so arranged that the terms of as nearly as possible to one-third or one-fifth of the members shall expire annually.
4. No person who is a member of any municipal council or board authorized by this section to appoint public library trustees in any municipality shall be eligible for the office of such public library trustee in such municipality.

*“This provision specifically prohibits any member of the town board from serving as a town library trustee. Even in the absence of subdivision 4, however, the holding of these two positions by the same person would be prohibited.” (Op. Compt. 65-102, September 30, 1965).*

5. The boards of trustees of public, free association and Indian libraries shall hold regular meetings at least quarterly, and such boards shall fix the day and hour for holding such meetings.
6. The board of trustees of a library system or a public or free association library chartered by the regents of the state of New York may determine to contribute annually a sum of money to assist the Library Trustees Foundation of New York in fostering, encouraging and promoting the further development of library activities throughout the state and financing programs in this state which will assist in the dissemination of information leading to the improvement and extension of library services.
7. The board of trustees of a public library established and supported by a school district shall, in addition to powers conferred by this or any other chapter, be authorized in its discretion to call, give notice of and conduct a special district meeting for the purpose of electing library trustees and of submitting initially a resolution in accordance with the

provisions of subdivision one of section two hundred fifty-nine of this chapter. Such meeting shall be held prior to the first day of July but subsequent to the first day of April. Should the board of trustees of the library determine, in its discretion, not to notice and conduct such a meeting, then the election and budget vote will be noticed and conducted by the board of education of the school district as part of its annual meeting.

*See Matter of Bean v. Board of Education of Union Free School District, No. 17, Town of Oyster Bay, 71 Misc. 2d 747, 336 NYS 2d 703, September 22, 1972, following Education Law, section 260 (9).*

*“The trustees of a free association library may not...cause a special meeting of a school district which provides financial support to the free association library.” (Op. Compt. 70-975, January 15, 1971).*

*“The boards of trustees of a school district public library may require the board of education to call a special district meeting for the purpose of electing library trustees and obtaining approval of the library budget.” (Op. Comp. 73-4, January 15, 1973).*

8. Candidates for the office of trustee of a public library established and supported by a school district shall be nominated by petition which shall meet the requirements of subdivision a of section two thousand eighteen of this chapter, except that such candidates shall be elected in the manner specified in subdivision b of such section except that the nominating petition filed pursuant to subdivision a or b of such section shall be signed by at least twenty-five qualified voters of the library district, or two percent of the voters who voted in the last previous annual election of members of the library board of trustees, whichever is greater. The provisions of this subdivision shall not apply to a charter granted prior to April thirtieth, nineteen hundred seventy-one that provides for a different procedure.
9. The board of trustees of a public library established and supported by a school district, in addition to any other powers conferred by this chapter, may, in its discretion, call, give notice of and conduct a special district meeting of the qualified voters of the school district for any proper library purpose, including the re-submission of a defeated library appropriation, at a time and place designated by said board of trustees, except as to those purposes set forth in subdivision seven of this section.

*“The purpose of the 1970 amendment [L. 1970, Chap. 860, adding subdivisions 7-10 to section 260]...was (to) clarify and extend the statutory powers of boards of trustees of school district public libraries...In view of this stated intent, it is understandable that petitioner would seek to exercise greater control over submission of its budget to the electorate than was formerly permitted. However,...specifically excepted from the ‘proper library purpose[s]’ governed by the provisions of subdivision 9 are ‘those purposes set forth in subdivision seven’. One of the purposes for a special district meeting set forth in subdivision 7 is that of ‘submitting a resolution in accordance with the provisions of subdivision one of section two hundred fifty-nine’, i.e. an annual library appropriation resolution...If it be intended that library boards be empowered to require the resubmission of defeated budgets of their electorates, the Legislature can expressly so provide by appropriate amendment of subdivisions 7 and 9 of*

section 260.” (Matter of Bean v. Board of Education of Union Free School District No. 17, Town of Oyster Bay, 71 Misc 2d 747, 336 NYS 2d 707, September 22, 1972).

“Such special district meeting [i.e. for the purpose of electing library trustees and obtaining approval of the library budget, quoted following section 260(7)] must be held at the same place or places as the regular meetings or elections of the school district.” (Op. Compt. 73-4, January 15, 1973).

“I also note that respondent incorrectly asserts that petitioner, a village public library, has authority under Education Law §260 (9) to give notice of and to conduct a special meeting concerning resubmission of a defeated library appropriation. Education Law §260 (9) vests only a school district public library with such authority.” (Appeal of the Weller Library Commission, 42 Educ. Dept. Rpts.- \_\_, Jud. Dec. No. 14,875, May 30, 2003)

See Op. Compt. 80-154, June 20, 1980, following section 260(10) below.

10. The board of trustees of a public library established and supported by a school district, in addition to any other powers conferred in this chapter, shall have the power to determine the necessity for construction of library facilities, to select a library site or sites, to select the architect, and to require that the board of education call, give notice of and conduct a special district meeting in accordance with the provisions of subdivision nine of this section for the purpose of designating and acquiring a site or sites and authorizing the issuance of obligations of the school district for acquisition and construction of library facilities, or either.

“While the issue is not free from doubt, it would seem that there is no requirement of voter approval at a special meeting solely on the issue of whether the construction of such facility is necessary. However, since obligations are to be issued to finance the elevator [in a school district-owned building of a school district public library], the voters will, in fact be heard on that issue, in the context of a vote authorizing the issuance of obligations. Thus, the voters, in essence, will be approving both the construction of the elevator and the issuance of obligations to finance it at the meeting called by either the library board of trustees or the board of education.” (Op. Compt. 79-474, October 15, 1979).

“A proposition to approve and finance the installation of an elevator in a school district-owned library building may be presented to the district voters as a school district expenditure. If the

school board refuses to submit such proposition, the library trustees may compel the board to submit the proposition to a vote, either as a part of the annual appropriation for library purposes or as a separate appropriation, with the moneys to be expended on authorization of the library trustees. The consent of the board of education is not necessary in order for the library trustees to undertake the project.” (Op. Compt. 80-154, June 20, 1980).

“A school district public library may finance construction of an addition to the library building, title to which is in the school district, by means of a mortgage loan if it acquires a leasehold interest in the building.” (Op. Compt. 82-127, May 10, 1982). See supplementary opinion 82-199 below.

*“A subordination agreement whereby a school district subordinates its interest in real property which it has leased is not a conveyance of such property within the meaning and intent of section 405 of the Education Law and not subject to voter approval.” (Op. Compt. 82-199, July 27, 1982, expanding 82-127 above).*

*“Proceeds from the sale of obligations issued for the construction of a public library building may be used to purchase such items as tables, chairs, bookcases and computers.” (Op. Compt. 86-3, February 3, 1986).*

*“The authority to control the use of school district property is vested by the provisions of Education Law section 1709 in boards of education... However, the special provisions of section 260 (10) confer upon the trustees of a school district public library the right to require the call of a special district meeting to consider a site for the library. This provision must be construed in a manner consistent with section 1709 (10) and with the purposes of both provisions... It is my conclusion that the voters of the district, who support both the school district and the library, should be allowed to determine whether title to or a 50-year leasehold in the school building should be conveyed to the board of library trustees... The consequences of any determination on the proposed transfer of title or long-term lease must be borne by the voters of the district, and I conclude that the proposition should be submitted to them for their determination.” (Appeal of the Board of Library Trustees of the North Merrick Public Library, 25 Educ. Dept. Rpts. 321, Jud. Dec. No. 11, 601, February 27, 1986).*

*“Although [section 260 (10)] quite clearly provides that a board of trustee [sic] of a public library may require a board of education to call a special district meeting, the purpose of the proposed meeting would be to vote upon a proposition to transfer school district property. A decision to transfer school district real property rests in the first instance with the board of education, notwithstanding the fact that voter approval must be obtained to effectuate most conveyances of interests in such property. Absent extraordinary circumstances, the Commissioner of Education will not substitute his judgment for that of a board of education with respect to decisions involving the use of school property.” (Appeal of the Board of Trustees of the Peninsula Public Library, 27 Educ. Dept. Repts 299, Jud. Dec. No. 11, 953, March 17, 1988).*

11. Whenever the board of trustees of a public library shall call, give notice of and conduct a special district meeting under subdivision seven or nine of this section, such meeting shall be established, noticed and conducted in the same manner and to the same extent as such meetings were theretofore established, noticed and conducted by the board of education of the school district, the board of trustees of the libraries making all the determinations and taking all action in respect thereto otherwise required of the board of education of the school district, except that the meeting need not, in the discretion of the board of trustees of the library, be held in separate election districts in those school districts where election districts have been established by the board of education. The board of registration shall meet as provided in section two thousand fourteen of this chapter and notice of the meeting shall be given in accordance with the provisions of sections two thousand four and two thousand seven of this chapter. The cost of all such meetings and registrations shall be a charge to the library.

*[Note that the following sections of the Education Law do not mention public libraries, but are germane to meetings of the boards of trustees of school district libraries: 1716 (“Estimated expenses for ensuing year”); 2004 (“Notice of annual meeting in union free school district”); 2006 (“Special meeting in common school district”); 2007 (“Special meeting in union free school district”); 2012 (“Qualifications of voters at district meetings”); 2014 (“Registration of voters”); 2015 (“Register to be filed; addition to and correction of register; challenges”); 2016 (“Review of registration procedure by supreme court or county judge”); and 2018 (“Nomination of candidates for the office of member of the board of education in all union free school districts or for the office of member of the board of trustees in all common school districts which have elected to vote for trustees at a time or place separate from the annual meeting”); see also annotations for sec. 2007 in Part II of this monograph.]*

Notwithstanding any other provision of law, prior to the discarding of used or surplus books or other such reading materials by trustees of a chartered public, cooperative or free association library which receives over ten thousand dollars in state aid, such trustees shall offer to donate such books or materials to a not-for-profit corporation or political subdivision located within the area of the library system or offer to sell such books or materials to the general public. The trustees shall retain any proceeds received from the sale of such books and materials for the purpose of maintaining and improving library service within the system.

12. The board of trustees of a public, free association or Indian library which provides public access to the internet shall establish a policy governing patron use of computer terminals which access the internet. Verification of such policy shall be included in the annual report submitted to the department.

#### **§260-a. Meetings of board of trustees**

Every meeting, including a special district meeting, of a board of trustees of public library systems, cooperative library system, public library or free association library, including every committee meeting and subcommittee meeting of any such board of trustees in cities having a population of one million or more, shall be open to the general public. Such meetings shall be held in conformity with and in pursuance to the provisions of article seven of the public officers law. Provided, however, and notwithstanding the provisions of subdivision one of section ninety-nine of the public officers law, public notice of the time and place of a meeting scheduled at least two weeks prior thereto shall be given to the public and news media at least one week before such meeting.

“With respect to the reference in section 260-a to the inclusion of every committee meeting and subcommittee meeting of any such board of trustees in cities having a population of one million or more, I believe that the language in question was added to the statute to emphasize that not only are governing bodies subject to the Open Meetings Law, but that committees and subcommittees designated by governing bodies are also subject to the Law. In short, based upon the definition of public body, it is my view that library boards of trustees are intended to be considered as ‘public bodies’. If that is so, a committee designated by a public body would, in my opinion, also be subject to the Open Meetings Law.”(Adv. Op. Committee on Open Gov’t OML-AO-1371, March 17, 1987).

*“[T]here is nothing in the Open Meetings Law that would preclude members of a public body from conferring by telephone. However, a series of telephone calls among the members which results in a decision, without benefit of a meeting, would in my opinion violate the Law...Based on the language quoted above [i.e. section 41 of the General Construction Law], a public body cannot carry out its powers or duties except by means of an affirmative vote of a majority of its total membership taken at a meeting duly held upon reasonable notice to all of the members. As such, it is my view that a public body has the capacity to act, i.e. to vote, only during duly convened meetings...Lastly, from a philosophical perspective, I would conjecture that public bodies were created by the Legislature in an attempt to enable a group of individuals having different points of view to deliberate collectively in an effort to reach a better decision than could be reached by a single individual...As such, I believe that conducting public business by means of a series of ex parte telephone communications would not only violate the spirit, if not the letter of the Open Meetings Law, but it would also be inconsistent with the purpose for which public bodies were created.”* (Adv. Op. Committee on Open Gov't OML-AO-1386, May 7, 1987).

*“[I]t is clear that the Open Meetings Law is applicable to governing bodies, such as city councils, town boards, school boards and the like, as well as committees, subcommittees or similar bodies created by governing bodies. Since the Library Board was created by the Town, Board, I believe that it constitutes a public body subject to the requirements of the Open Meetings Law... [U]nder the terms of both the Open Meetings Law and section 260-a of the Education Law, the Library Board, which serves as the board of trustees of a public library, is, in my opinion, clearly required to comply with the Open Meetings Law...[N]otice must be provided prior to all meetings, regardless of whether the meetings are considered formal or otherwise...Meetings must be conducted open to the public...Lastly, section 106 of the Open Meetings Law...requires that minutes must include reference to all motions, proposals, resolutions, action taken, the date and the vote of the members.”* (Adv. Op. Committee on Open Gov't OML-AO-1493, April 8, 1988).

*“[T]here is nothing in the Open Meetings Law that would preclude members of a public body from conferring by telephone. However, a series of telephone calls among the members which results in a decision or a meeting held by means of a telephone conference, would in my opinion violate the law.”* (Adv. Op. Committee on Open Gov't OML-AO-1694, December 22, 1989).

*“[T]he Open Meetings Law, in my opinion, imposes no obligation upon a public body to construct a new facility or to renovate an existing facility to permit barrier-free access to physically handicapped persons. However, I believe that the Law does impose a responsibility upon a public body to make ‘all reasonable efforts’ to ensure that meetings are held in facilities that permit barrier-free access to physically handicapped persons. I do not believe that a member’s home is generally an appropriate location for a meeting of a public body. Aside from the issue of barrier-free access to physically handicapped persons, a home is not a public facility, and many have suggested that entry into a home to attend a meeting provides a sense of board of education. The board of registration shall meet as provided in section two thousand intrusion or intimidation...In my view, holding a meeting at a member’s home would generally be unreasonable and inconsistent with the intent of the law.”* (Adv. Op. Committee on Open Gov't OML-AO-1887, February 20, 1991).

*“[I]f a meeting is scheduled at least two weeks in advance, notice must be given to the news media and posted at least one week prior to the meeting. If a meeting is scheduled at least one*

*week but less than two weeks in advance, notice of the time and place must be given to the news media and to the public by means of posting not less than seventy-two hours prior to the meeting. If a meeting is scheduled less than a week in advance, again, notice of the time and place must be given to the news media and posted in the same manner as described above [i.e. section 104 of the Open Meetings Law], 'to the extent 'practicable', at a reasonable time prior to the meeting... I believe that minutes of open meetings must be prepared and made available within two weeks of the meetings to which they pertain...I point out that there is nothing in the Open Meetings Law or any other statute of which I am aware that requires that minutes be approved. Nevertheless, as a matter of practice or policy, many public bodies approve minutes of their meetings. ...Nothing in the Open Meetings Law pertains to agendas or 'putting the public on the agenda'... [T]he law is silent with respect to the issue of public participation. Consequently, by means of example, if a public body does not want to answer questions or permit the public to speak or otherwise participate at its meetings, I do not believe that it would be obliged to do so."* (Adv. Op. Committee on Open Gov't OML-AO-2130, August 19, 1992).

*"From my perspective, the Board [of the Clinton Essex Franklin Library System] can validly take action only at a meeting in which a quorum is present. Further, I do not believe that a vote can validly be taken by secret ballot."* (Adv. Op. Committee on Open Gov't OML-AO-2796, September 18, 1997).

*"From my perspective, boards of trustees of libraries that are governmental entities, such as school district public libraries, as well as committees consisting of members of those boards, would constitute 'public bodies' subject to the Open Meetings Law even if §260-a of the Education Law had not been enacted. Association libraries, however, are typically not-for-profit corporations which...are 'private organizations' separate from government. As such, absent the enactment of §260-a of the Education Law, I do not believe that they would be required to comply with the Open Meetings Law."* (Adv. Op. Committee on Open Gov't OML-AO-2843, March 2, 1998).

*"From my perspective, in view of the remedial nature of the Freedom of Information and Open Meetings Laws, and the clear intent of Section 260-a of the Education [sic] to require accountability on the part of library boards of trustees, all such boards must prepare and disclose their minutes in a manner consistent with the [sic] both the Open Meetings and Freedom of Information Laws. Further, based on a judicial decision, I believe that they must include an indication of the manner in which board members cast their votes...While some library boards of trustees may not be subject to the Freedom of Information Law because they serve as the governing bodies of not-for-profit corporations separate from government, it would be anomalous in my view to be subject to the Open Meeting Law but exempt from critical requirements of that statute, specifically, those pertaining to minutes of their meetings. For that reason, because of the obvious intent of section 260-a of the Education Law, and because of the general nature of the libraries subject to that statute and the Open Meetings Law, I believe that the entities falling within the scope of those provisions must prepare and generally disclose minutes of meetings as described above."* (Adv. Op. Committee on Open Gov't FOIL-AO-10855/OML -AO-2901, June 15, 1998).

*"[I]t is clear that a library board of trustees including [Southern Adirondack Library System] Board is required to comply with the Open Meetings Law. In the context of your inquiry, although the Board of SALS is required to comply with the Open Meetings Law, that is so not*

*because it is a public body, but rather due to the specific direction imposed by §260-a of the Education Law. That being so, and in view of the language of §260-a of the Education Law, a committee of a library board of trustees would be required to comply with the Open Meetings Law only if it is a committee of a public body as suggested earlier, or if it is a committee of a Library Board of trustees in New York City, the only city in the state with a population above one million." (Adv. Op. Committee on Open Gov't OML-AO-3026, May 12,1999).See also FOIL-AO-13848, January 29, 2003.*

*"As you suggested, the [Northern New York Library Network] does not appear to be a public library system or cooperative library system as these entities are described in §255 of the Education Law, nor is it a public library or a free association library. If that is so, because the network is not a governmental entity, it appears that the meetings of its governing body are not subject to either the Open Meetings Law or section 260-a of the Education Law." ( Adv. Op. Committee on Open Gov't OML-AO-3615, April 14, 2003.)*

### **§260-b. Reduction of salaries for purchase of annuities**

Each board of trustees of a library system, cooperative library system, public library or free association library in its discretion, may enter into a written agreement with any employee of such board to reduce the annual salary as otherwise payable by law of such employee for the purpose of purchasing an annuity for such employee. Any such agreement may be terminated at any time upon written notice by either such employee or such board. Nothing contained in this section shall be construed to diminish or impair any benefits to which such employee or his legal representatives or beneficiaries would be otherwise entitled had such salary reduction agreement not be entered into in accordance with the provisions of this section.

### **§260-c. Reduction of salaries for tax-deferred annuities**

The board of trustees of a library system, cooperative library system, public library or free association library, in its discretion, may enter into a written agreement with any of its employees to reduce the annual salary, as otherwise earned and payable by law, of such employee for the purpose of providing a tax-deferred annuity for such employee under the retirement system in which such employee is currently a member, but only if such retirement system specifically provides for such tax-deferred annuities, and subject to any provisions and limitations applicable thereto. Any such agreement may be terminated upon written notice by either such employee or such board. Nothing contained in this section shall be construed to diminish or impair any benefits to which such employee or his legal representatives or beneficiaries would be otherwise entitled had such salary reduction agreement not be entered into in accordance with the provisions of this section.

### **§261. Incorporation**

Within one month after taking office, the first board of trustees of any such public library or Indian library shall apply to the regents for a charter in accordance with the vote establishing the library.

*"There is no authority in the Education Law whereby a village may establish a library or reading center without a Regents Charter, except through a contract for library privileges with a chartered*

*library or a municipality controlling the same. However, a reading room equipped with tables, lamps, chairs, and a few books and periodicals, would seem a valid village recreational project to be encompassed and financed by the village recreation program.” (Op. Compt. 65-788, December 1, 1965).*

### **§262. Use of public and Indian libraries**

Every library established under section two hundred fifty five of this chapter shall be forever free to the inhabitants of the municipality or district or Indian reservation, which establishes it, subject always to rules of the library trustees who shall have authority to exclude any person who willfully violates such rules; and the trustees may, under such conditions as they think expedient, extend the privileges of the library to persons living outside such municipality or district or Indian reservation.

*“Under this section a public library has the power and the duty to protect its books and other property. It is clear that the use by subscribers of...paper bags would tend to protect the books of the library. In the opinion of this Department, protective carrying bags for the books may be offered for sale by a public library, provided they are offered at cost and their purchase is not obligatory upon patrons. We attach these provisos because a public library is not authorized to engage in business for profit and it is doubtful that it may make any charge a prerequisite to the exercise of a borrower’s privileges...Imprinting of the library’s name and other material calculated solely to advance legitimate library purposes is permissible. However, should the question of selling advertising space upon such bags ever arise, it is our view that acceptance of commercial advertising would be unlawful.” (Op. Compt. 59-473, July 17, 1959).*

*“The board of trustees of a town library may not permit the use of the library building to stage plays by a private theater group where an admission fee is charged and the proceeds are retained by the group.” (Op. Compt. 72-298, June 7, 1972).*

### **§263. Reports**

Every library or museum, other than a school library, which enjoys any exemption from taxation or receives state aid or other privilege not usually accorded to business corporations shall make the report required by section two hundred fifteen of this chapter, and such report shall relieve the institution from making any report now required by statute or charter to be made to the legislature or to any department, court or other authority of the state. These reports shall be summarized and transmitted to the legislature by the regents with the annual reports of the university.

*“Section 263 of the Education Law does not operate to relieve public libraries from the requirement that annual financial reports be filed with the State Comptroller pursuant to section 30 of the General Municipal Law.” (Op. Compt. 97-21 October 20, 1997).*

### **§264. Injuries to property**

Whoever intentionally injures, defaces or destroys any property belonging to or deposited in any incorporated library, reading-room, museum or other educational institution, shall be punished by imprisonment in a state prison for not more than three years, or in a county jail for not more

than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

### **§265. Detention**

Whoever willfully detains any book, newspaper, magazine, pamphlet, manuscript or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution, such article or other property may be kept, shall be punished by a fine of not less than one nor more than twenty-five dollars, or by imprisonment in jail not exceeding six months, and the said notice shall bear on its face a copy of this section.

*“Violation of Education Law section 265 constitutes a misdemeanor within meaning of Penal Law. Prosecution therefore may be commenced by information laid before a magistrate.” (Op. Att.-Gen. 63-165, July 18, 1963).*

### **§265-a. Defense of lawful detention**

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass or invasion of civil rights brought by any person by reason of having been detained on or in the immediate vicinity of the premises of a public library or association library for the purpose of investigation or questioning as to the ownership of any materials, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the librarian in charge, his or her authorized employee or agent, and that such peace officer, librarian, employee or agent has reasonable grounds to believe that the person so detained was committing or attempting to commit larceny on such premises of such materials. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed, unauthorized possession of materials owned or belonging to the public library or association library, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the public library or association library relative to the ownership of the materials.

### **§266. Transfer of libraries**

By vote similar to that required by section two hundred fifty-five of this chapter any municipality or district or tribal government or combination of districts, or by action of its trustees at a meeting duly held any association library, incorporated or registered by the regents, may, when such vote or action has been duly approved by the regents, transfer, conditionally as provided in section two hundred fifty-seven of this chapter, or otherwise, the ownership and control of its library with all its property, real and personal, or any part thereof, to any municipality, or district, or institution providing for free library service; and the trustees or body making the transfer shall thereafter be relieved of all responsibility pertaining to property thus transferred.

*“In our view, Education Law section 266 applies to the sale or transfer of a library or library property as a going concern and not to the transfer of a building which formerly housed a*

library that had moved to another location.” (*Briody v. Village of Hereiston*, 188 A.D. 2d 1017, 591 NYS 2d 909, December 1992).

“Title to a building used for school district public library purposes, which is owned by the school district, may be transferred to the public library corporation under the conditions imposed by section 268 [now 266] of the Education Law.” (4 Op. Compt. 614, #3463, December 14, 1948).

“Property of village library may not be transferred without consideration to free association library formed to serve village.” (6 Op. Compt. 253, #4749, September 18, 1950).  
See Op. Compt. 65-940, January 26, 1966.

“Where the charter of a free association library is duly cancelled, the assets thereof may be transferred to a town public library without the approval of the town board.” (Op. Compt. 72-6, April 7, 1972).

“Education Law §266 appears to provide a way for all the assets of a public library to be transferred to a free association library without voter approval.” (Op.Att.-Gen.2000-F5, July 7, 2000). See also quotation of this opinion following Part II, Education Law, Section 219.

### **§267. Local neglect**

If the local authorities of any library supported wholly or in part by state money fail to provide for the support of such library and the public usefulness of its books, the regents shall in writing notify the trustees of said library what is necessary to meet the state's requirements, and on such notice all said library's rights to further grants of money or books from the state shall be suspended until the regents certify that the requirements have been met; and if said trustees shall refuse or neglect to comply with such requirements within sixty days after service of such notice, the regents may remove them from office and thereafter all books and other library property wholly or in part paid for from state moneys shall be under the full and direct control of the regents who, as shall seem best for public interests, may appoint new trustees to carry on the library, or may store it, or distribute its books to other libraries.

### **§268. Abolition**

Any library established by public vote of any municipality or district, or by vote of the common council of any city, or by vote of the board of trustees of any village, or by action of school authorities, or by vote of the tribal government of an Indian reservation, or under section two hundred fifty-five of this chapter, may be abolished by majority vote at an election, or at a meeting of the electors duly held, provided that due public notice of the proposed action shall have been given, or by vote of such tribal government. If any such library is abolished, its property shall be used first to return to the regents, for the benefit of other free association or public or school libraries in that locality, the equivalent of such sums as it may have received from the state or from other sources as gifts for public use. After such return any remaining property may be used as directed in the vote abolishing the library, but if the entire library property does not exceed in value the amount of such gifts, it may be transferred to the regents for public use, and the trustees shall thereupon be free from further responsibility. No abolition of a public library shall be lawful until

the regents grant a certificate that its assets have been properly distributed and its abolition completed in accordance with law.

*“Where the village board wishes to abolish the library, it must comply with Education Law §268, which requires that the abolition be approved by the electors of the village. Since the abolition of the library requires approval by the electorate, we are of the opinion that a village board may not accomplish the abolition on its own, indirectly, by ceasing all appropriations for the library or by reducing the budget to such a minimum amount as would force the closing of the library. Rather, the village must submit the question of abolition to the village voters as required by §268.”* (Op. Compt. 73-1192, January 17, 1974). See also Op. Compt. 74-326, April 3, 1974, Op. Att.Gen-2000-F5, July 7, 2000.

### **§269. Library extension service**

By such means, in such manner and upon such conditions as the regents may prescribe, they shall make provision for a library extension service for the promotion, organization and supervision of free libraries; for supplying information, advice, assistance or instruction on any matter pertaining to library methods or practice or to the establishment, equipment, organization or administration of libraries; for the acquisition, preparation and circulation of traveling libraries and other educational material; for aiding and encouraging study clubs; and for the employment of all suitable efforts to bring within the reach of all the people of the state, and awaken their desire for increased opportunities and facilities for reading and study.

*[NOTE: Section 270 omitted]*

### **§271. Apportionment of state aid to Indian libraries**

Any Indian library chartered by the regents or in the absence of such library any tribal government contracting for service from a chartered and registered library or approved library system shall be entitled to receive state aid during each calendar year consisting of the following amounts:

1. Eighteen thousand dollars, except that in calendar year nineteen hundred ninety-one such sum shall be seventeen thousand five hundred dollars, and except that in calendar year nineteen hundred ninety-two such sum shall be seventeen thousand eight hundred seventy-five dollars, and
2. The sum of eighteen dollars and twenty cents per capita for persons residing on the reservation served by the Indian library or contract as shown by the latest federal census or certified by the New York state director of Indian services, except that in calendar year nineteen hundred ninety-one such sum shall be seventeen dollars per capita for persons residing on the reservation served by the Indian library or contract as shown by the latest federal census or certified by the New York state director of Indian services, and except that in calendar year nineteen hundred ninety-two such sum shall be seventeen dollars and eighty-seven cents per capita for persons residing on the reservation served by the Indian library or contract as shown by the latest federal census or certified by the New York state director of Indian services, and

3. The sum of one dollar and fifty cents per acre of area served by the Indian library or contract, except that in calendar year nineteen hundred ninety-one such sum shall be one dollar and thirty cents per acre of area served by the Indian library or contract and except that in calendar year nineteen hundred ninety-two such sum shall be one dollar and thirty-seven cents per acre of area served by the Indian library or contract.

Such sums shall be paid to the Indian library board of trustees for the use of the Indian library, or in the absence of such a board, to the tribal government for a contract for library service. Nothing contained in this section shall be construed to diminish the funds, services or supplies provided to any Indian library by a library system as defined in section two hundred seventy-two of this article. Increases in appropriations for such purposes during a calendar year shall be pro rated.

## **§272. Conditions under which library systems are entitled to state aid**

### **1. Public library systems**

- a. The term "*public library system*" as used in this article means:
- (1) A library established by one or more counties.
  - (2) A group of libraries serving an area including one or more counties in whole or in part.
  - (3) A library of a city containing one or more counties.
  - (4) A cooperative library system established pursuant to section two hundred fifty-five of this chapter, the plan of library service of any of which shall have been approved by the commissioner.
- b. The "*area served*" by a public library system for the purposes of this article shall mean the area which the public library system proposes to serve in its approved plan of service. In determining the population of the area served by the public library system the population shall be deemed to be that shown by the latest federal census for the political subdivisions in the area served. Such population shall be certified in the same manner as provided by section fifty-four of the state finance law except that such population shall include the reservation and school Indian population and inmates of state institutions under the direction, supervision or control of the state department of correction, the state department of mental hygiene and the state department of social welfare. In the event that any of the political subdivisions receiving library service are included within a larger political subdivision which is a part of the public library system the population used for the purposes of computing state aid shall be the population of the larger political subdivision, provided however, that where any political subdivision within a larger political subdivision shall have taken an interim census since the last census taken of the larger political subdivision, the population of the larger political subdivision may be adjusted to reflect such interim census and, as so adjusted, may be used until the next census of such larger political subdivision. In

the event that the area served is not coterminous with a political subdivision, the population of which is shown on such census, or the area in square miles of which is available from official sources, such population and area shall be determined, for the purpose of computation of state aid pursuant to section two hundred seventy-three by applying to the population and area in square miles of such political subdivision, the ratio which exists between the assessed valuation of the portion of such political subdivision included within the area served and the total assessed valuation of such political subdivision.

- c. Members of a public library system shall be those public, free association, and Indian libraries located within the service area which have been admitted to membership prior to July first, nineteen hundred seventy-eight, or which apply for and are granted membership subsequent to that date with the approval of the commissioner. No public library system shall be subject to any loss of benefits under these provisions where such system has made reasonable effort to prevent the unapproved withdrawal of such library from the system and the system demonstrates, in a manner satisfactory to the commissioner, that the residents of the area encompassed by the withdrawing library will continue to benefit from the library service provided by the public library system.
- d. **"Approved plan"** as used in this article means a plan of library service by a public library system approved by the commissioner subsequent to May first, nineteen hundred fifty-eight.
- e. Approval shall not be given to a public library system unless it will serve at least two hundred thousand people or four thousand square miles of area, provided, however, that provisional approval may be given to a public library system which will serve at least fifty thousand persons provided the area served includes three or more political subdivisions and provided further that a satisfactory plan of expansion of service to be followed during the ensuing five-year period is adopted by such library system and approved by the commissioner.
- f. The board of trustees of the public library system shall submit to the commissioner the plan of library service. Such plan shall be supported by such information as the commissioner may require in the form prescribed by him.
- g. No such plan of library service shall be approved by the commissioner unless he finds that it provides for the residents of the area served thereby a method conforming to the regulations of the commissioner by which the participating libraries are obligated to permit the loan of books and material among members of the system for use on the same basis permitted by the library which owns or controls them.
- h. The commissioner shall by regulation provide the standard of service with which such a public library system must comply. Such regulations shall among other things, relate to the total book stock; the diversity of such book stock with respect to general subjects and type of literature, provided that such regulation

shall not, directly or indirectly, prohibit the inclusion of a particular book, periodical or material or the works of a particular author or the expression of a particular point of view; annual additions to book stock; circulation of book stock; maintenance of catalogues; number and location of libraries or branch libraries; hours of operation and number and qualifications of personnel, necessary to enable a public library system to render adequate service. Such regulations may establish standards which differ on the basis of population; density of population; the actual valuation of the taxable property within the area served; the condition of library facilities in existence on April first, nineteen hundred fifty-seven; the amount raised by taxation by or for the area served; the relation of such amount to population and actual value of the property taxed; the relation of the amount of funds received by a public library system from local taxes to that derived from private contributions; or on such other basis as the commissioner finds necessary to provide for the equitable distribution of state aid.

- i. Each public library system receiving state aid pursuant to this section and section two hundred seventy-three shall furnish such information regarding its library service as the commissioner may from time to time require to discharge his duties under such sections. The commissioner may at any time revoke his approval of a plan of library service if he finds that the public library system operating under such plan no longer conforms to the provisions of this section or the regulations promulgated by the commissioner hereunder; or, in the case of provisional approval, if such library system no longer conforms to the agreement, plans or conditions upon which such provisional approval was based. In such case a public library system shall not thereafter be entitled to state aid pursuant to this section or section two hundred seventy-three unless and until its plan of library service is again approved by the commissioner.
- j.
  - (1) In the event that the sum total of local sponsor support raised by local taxation exclusive of the sum raised for capital expenditures for the support of a public library system and participating libraries in a twelve month period is less than ninety-five per centum of the average of the amounts raised for such purposes by local taxation for the two preceding twelve month periods, the state aid to which such library system would otherwise be entitled shall be reduced by twenty-five per centum. Such state aid shall likewise be reduced by twenty-five per centum in the event that the public library system shall refuse after reasonable notice to make provision for the expansion of the area served in accordance with the regulations of the commissioner. In the first year in which any library system changes its reporting from the calendar year to a fiscal year other than the calendar year, it shall file any additional reporting schedules deemed necessary by the commissioner for the purpose of determining maintenance of effort as required herein, in order that no period of time shall be exempt from such requirement.
  - (2) In the event that the total sum raised by local taxation, exclusive of the sum raised for capital expenditures, for the support of a central library of a public library system in a twelve month period, is less than ninety-five per

centum of the average of the amounts raised for such purposes by local taxation for the two preceding twelve month periods, the state aid to which such library system would otherwise be entitled for the development of its central library shall be reduced by twenty-five per centum. In the first year in which any library system changes its reporting from the calendar year to a fiscal year other than the calendar year, it shall file any additional reporting schedules deemed necessary by the commissioner for the purpose of determining maintenance of effort as required herein, in order that no period of time shall be exempt from such requirement.

- (3) The commissioner may waive the requirements of subparagraphs one and two of this paragraph, if the commissioner determines that the application of such subparagraphs would result in excessive hardship for the public library system or central library brought about by an extraordinary change in a local sponsor's economic condition, loss by a local sponsor of state aid to local governments provided under section fifty-four of the state finance law, or by a natural disaster. Such waiver may be granted only one time to each public library system or central library between the first day of January, two thousand and the thirty-first day of December, two thousand five. The commissioner may grant such waiver for a period of up to two consecutive calendar years. The commissioner shall report any waivers granted under this subparagraph to the speaker of the assembly, the temporary president of the senate, and the chairs of the legislative fiscal committees.
  - (4) A "local sponsor" shall mean any municipality, district or school district, as defined in the general municipal law, or any combination thereof.
- k. In promulgating regulations and approving, rejecting or revoking plans of library service pursuant to this section, consideration shall be given to:
- (1) The prevention of unreasonable discrimination among the persons served by such public library system.
  - (2) The need for rapid expansion of library facilities in areas not now served.
  - (3) The need of each public library system for the professional services of an adequate number of librarians having, in addition to general familiarity with literature, special training with respect to book selection and organization for library use.
  - (4) The need for a book stock sufficient in size and varied in kind and subject matter.
  - (5) The need for regular fresh additions to book stock.
  - (6) The need for adequate books, materials, and facilities for research and information as well as for recreational reading.

- (7) The need for libraries, branches, and other outlets convenient in location, and with adequate hours of service.
- (8) The desirability for the integration of existing libraries and new libraries into systems serving a sufficiently large population to support adequate library service at a reasonable cost.
- (9) The need for the economic and efficient utilization of public funds.
- (10) The need for full utilization of local pride, responsibility, initiative and support of library service and the use of state aid in their stimulation but not as their substitute.
- (11) The needs of special populations.

*“Accordingly, in the absence of an express legislative authorization to the contrary, it is our opinion that member public libraries must comply with competitive bidding requirements in the purchase of books. This is not to say that a library may not still purchase books through the system, as an option or, perhaps, a requirement. Education Law, §272 and the Commissioner of Education’s regulations (8 NYCRR Part 90) anticipate centralized purchasing of books by the system for member libraries to, among other things, aid in overall planning and help control duplications. However, in order to fulfill bidding requirements, purchases of books by the system for or on behalf of a member public library which purchases from the system would be subject to competitive bidding requirements where such purchases would be subject to bidding requirements if made by the member library itself. In the absence of an express legislative authorization to the contrary, it is our opinion that the mere fact that a member public library purchases books through an entity which itself is not subject to bidding requirements does not exempt such purchases from bidding requirements. To conclude otherwise would be to sanction a circumvention of such requirements.” (Op. Compt. 80-35, March 4, 1980).*

## 2. **Reference and research library resources systems**

- a. The term ***“reference and research library resources system”*** as used in this article means a duly chartered educational institution resulting from the association of a group of institutions of higher education, libraries, non-profit educational institutions, hospitals, and other institutions organized to improve reference and research library resources service. Such reference and research library resource systems may be registered upon meeting the standards set forth by the commissioner.
- b. The ***“area served”*** by a reference and research library resources system for the purposes of this article shall include not less than seven hundred fifty thousand persons, as based upon the latest approved federal census, or not less than ten thousand square miles; and the defined area of service shall:
  - (1) Include more than one county; and
  - (2) Respect the integrity of the area of service of a public library system; and

- (3) Constitute a service area effectively related to the availability of information resources and services and to the area of service of other reference and research library resources systems, as determined by the commissioner.

c. Membership in a reference and research library resources system

- (1) The membership shall include at least four chartered degree-granting institutions of higher education of the four year level whose libraries meet departmental standards.
- (2) Membership shall also include either:
  - (i) at least one chartered degree-granting institution of higher education offering graduate programs for a masters degree whose library holds not less than two hundred seventy-five thousand volumes and currently receives not less than three thousand periodical titles, or
  - (ii) a public library which holds not less than four hundred thousand adult volumes and currently receives not less than one thousand five hundred periodical titles.
- (3) The membership may also include approved public and school library systems which are within the region served by the reference and research library resources system.

*[Note: Subdivisions (4) and (5) do not relate to public libraries in general.]*

- (6) The member institutions of each reference and research library resources system shall be broadly representative of the chartered educational agencies, nonprofit organizations, hospitals and other special libraries providing library service within the defined area of services of the system.

d. Plan of service

- (1) The reference and research library resources system shall submit a plan of service to the commissioner for approval, in a form to be prescribed by the commissioner to cover resources, needs, proposed program, budget, contractual agreements, and any other information which the commissioner may require.
- (2) The plan of service must show the manner in which the reference and research library resources system will improve the library resources and services presently available in the area to the research community, including improved reader access.
- (3) The plan of service shall indicate the manner in which the reference and research library resources system strengthens the library programs of its

members and the manner in which the system program is related to appropriate regional programs in higher education.

- (4) The plan of service shall identify the resources and needs of each hospital library, or library serving hospitals and show the manner in which the reference and research library resources system will improve hospital library services and in which it will assist each hospital library which does not meet the regents' standards to attain such standards and will assist each non-member hospital library or library serving a hospital to attain membership in the system.
- e. The commissioner shall by regulation establish the standard of service to be met by such a reference and research library resources system.
  - f. Each reference and research library resources system receiving state aid pursuant to this section and section two hundred seventy-three of this article shall furnish such information regarding its library service as the commissioner may from time to time require to discharge his duties under such sections. The commissioner may at any time revoke his approval of a plan of library service if he finds that the library system operating under such plan no longer conforms to the provisions of this section or the regulations promulgated by the commissioner hereunder. In such case a library system shall not thereafter be entitled to state aid pursuant to this section and section two hundred seventy-three of this article unless and until its plan of library service is again approved by the commissioner.
  - g. In promulgating regulations and approving, rejecting or revoking plans of library service pursuant to this section, consideration shall be given to:
    - (1) The prevention of unreasonable discrimination among the persons served by such library system;
    - (2) The need for regional resources of sufficient size and varied in kind and subject matter;
    - (3) The need for adequate books, materials (print and non-print) and facilities for research and information;
    - (4) The need for outlets convenient in time and place for the sharing of library materials;
    - (5) The need for the economic and efficient utilization of public funds;
    - (6) The need for full utilization of local responsibility, initiative and support of library service and the use of state aid in their stimulation but not as their substitute;

- (7) The need for adequate books, materials, including both print and non-print materials, and facilities for current medical information services to be provided each hospital.

**§273. Apportionment of state aid to libraries and library systems**

1. Any public library system providing service under an approved plan during a calendar year shall be entitled to receive during that calendar year state aid consisting of the following amounts:
  - a. An annual grant of:
    - (1) Ten thousand dollars where the library system serves less than one county, or
    - (2) Twenty thousand dollars where the library system serves one entire county, or
    - (3) Where the library system serves more than one county the system shall be entitled to receive twenty-five thousand dollars for each entire county served and/or ten thousand dollars for each county, any part of which is served by the library system. If an entire county is served by two or more library systems, each of which serves a part thereof, each of such library systems shall be entitled to receive a grant of ten thousand dollars and in addition, a pro rata share of an additional sum of ten thousand dollars, such share to be computed in accordance with the ratio which the population of the area of the county served by such library system bears to the total population of the county, as determined under subdivision one of section two hundred seventy-two of this article.
  - b. In a library system which submits a plan for further development of its central library, which plan shall be approved by the commissioner in relation to standards for such central libraries, the amount of central library development aid shall be:
    - (1) thirty-two cents per capita of the population within the chartered area of service of such library system with a minimum amount of one hundred five thousand dollars, and
    - (2) an additional seventy-one thousand five hundred dollars to the library system for the purchase of books and materials including nonprint materials, as defined in regulations of the commissioner, for its central library. Ownership of library materials and equipment purchased with such central library aid provided by this paragraph shall be vested in the public library system.
  - c. The sum of ninety-four cents per capita of population of the area served.
  - d. (1) An amount equal to the amount by which expenditures by the library system for books, periodicals, binding and nonprint materials during the preceding fiscal year exceeds forty cents per capita of population of the area served but the total apportionment pursuant to this subparagraph shall not exceed

sixty-eight cents per capita of population served. In the first year in which any library system changes its reporting from the calendar year to a fiscal year other than the calendar year, it shall file any additional reporting schedules deemed necessary by the commissioner for the purpose of determining state aid for the calendar year.

- (2) Each public library system with an automation program to support bibliographic control and interlibrary sharing of information resources of member libraries, and to coordinate and integrate the automated system or systems of such member libraries consistent with regulations of the commissioner, shall be eligible to receive an amount equal to seven percent of the amount earned in subparagraph one of this paragraph, or seventy-six thousand five hundred dollars, whichever is more.
- e. The sum of fifty-two dollars per square mile of area served by the library system in the case of library systems serving one county or less . Such sum shall be increased by five dollars for each additional entire county served, provided, however, that no apportionment pursuant to this paragraph shall exceed seventy-two dollars per square mile of area served . If an entire county is served by two or more library systems, each of which serves a part thereof, each of such library systems shall be entitled to receive, in addition to the aid computed in accordance with the foregoing provisions of this paragraph, a pro rata share of an increase of five dollars to be computed as follows: the sum resulting from the computation of five dollars per square mile of area served by the one of such library systems which would receive the largest amount of aid pursuant to this paragraph shall be pro rated among the library systems serving such county in accordance with the ratio which the population of the area served by each of such library systems bears to the population of the county as determined under subdivision one of section two hundred seventy-two of this article.
- f. (1) Local library services aid. Except in cities with a population in excess of one million inhabitants, each chartered and registered public and free association library meeting standards of service promulgated by the commissioner, and each public or free association library serving a city with a population of one hundred thousand or more which merged with the public library system on or before January first, nineteen hundred seventy-six and which meets standards of service promulgated by the commissioner, shall be eligible to receive annually thirty-one cents per capita of the population of the library's chartered service area as on file with the commissioner on January first, of the calendar year for which aid is payable , or, thirty-one cents per capita of the population of the city with a population of one hundred thousand or more whose public or free association library merged with the public library system on or before January first, nineteen hundred seventy-six, with a minimum amount of one thousand five hundred dollars, except that no library shall receive less than the amount of local library services aid received in two thousand one. Regulations of the commissioner shall provide a method for establishing changes in chartered service areas or determining

populations thereof. Local library services aid shall be paid to the system for distribution within thirty days of receipt to its member libraries in accordance with this subdivision. Notwithstanding any contrary provisions of this subparagraph, the commissioner shall establish procedures under which a public or free association library may apply for a waiver of the requirements of the standards of service; provided, however, that any such waivers may only be granted in the same year in which the commissioner has apportioned a reduction adjustment.

- (2) Local services support aid. Except in cities with a population in excess of one million inhabitants, each public library system operating under an approved plan of service shall be eligible to receive annually local services support aid equal to two-thirds of the total dollar amount paid in local library services aid to the member libraries of the system plus thirty-one cents per capita of the system's population who do not reside within the chartered service area of a member library.
  - (3) Local consolidated systems aid. In cities with a population in excess of one million inhabitants, each public library system operating under an approved plan of service shall be eligible to receive annually local consolidated system aid equal to the sum of (i) thirty-one cents per capita of the population served by the system, but not less than the amount of local library incentive aid received in nineteen hundred ninety-one as reported on the library's nineteen hundred ninety-one annual report; and (ii) an additional amount equal to two-thirds of the total dollar amount computed for the system pursuant to clause (i) of this subparagraph.
- g. In addition to the sums otherwise provided in paragraphs a, b, c, d, e, f, h, and i of this subdivision, the New York Public Library shall receive an amount equal to its actual expenditures for books, periodicals and binding for its research libraries which expenditures are not otherwise reimbursed or seven hundred sixty-seven thousand dollars, whichever is less, and the additional sum of five million six hundred forty-nine thousand six hundred dollars for the general support of such research libraries. In addition to any other sums provided to such library, the sum of two million dollars shall be payable annually to the New York Public Library for the general support of library services provided by the New York Public Library to the students of the City University of New York and the sum of one million dollars shall be payable annually to the New York Public Library for the general support of its science, industry and business library.
- h. (1) Coordinated outreach services. Each public library system which provides coordinated outreach services, as defined by regulations to be promulgated by the commissioner, to persons who are educationally disadvantaged or who are members of ethnic or minority groups in need of special library services, or who are unemployed and in need of job placement assistance, or who live in areas underserved by a library, or who are blind, physically disabled, have developmental or learning disabilities, or who are, aged or confined in institutions, shall be entitled to receive annually forty-three

thousand dollars and thirteen cents per capita of the total population of the area served.

- (2) Adult literacy grants , The commissioner shall award annual grants for approved expenses for library-based programs conducted by public library systems and public and free association libraries which are members of a public library system to assist adults to increase their literacy skills. The commissioner shall award such grants having determined that such programs are being operated in direct coordination with local public schools, colleges and other organizations which are operating similar adult literacy programs. Annual state aid of two hundred thousand dollars shall be awarded for grants in accordance with regulations promulgated by the commissioner. Ninety percent of the amount of any such adult literacy grant shall be payable to the library or system upon approval by the department. The final ten percent shall be payable upon completion of the project.
  
- (3) Family literacy grants. The commissioner shall award annual grants for approved expenses for library-based family literacy programs for pre-school and school age children and their parents conducted by public library systems and public libraries and free association libraries which are members of a public library system. Annual state aid of three hundred thousand dollars for grants shall be awarded in accordance with regulations promulgated by the commissioner Ninety percent of the amount of any such family literacy grant shall be payable to the library or system upon the approval by the department. The final ten percent shall be payable upon completion of the project.i. In addition to any other sums involved for such purposes, the New York Public Library shall receive annually the sum of seven hundred thirty-four thousand dollars for the program of the Schomburg center for research in black culture, and the additional sum of nine hundred eighty-four thousand dollars for the program of the library for the blind and physically handicapped.
  - j. In addition to any other sums provided to such library, the sum of two hundred fifty thousand dollars shall be paid annually to the New York Historical Society for making its library services available to the public.
  - k. In addition to any other sums provided to such library, the sum of three hundred fifty thousand dollars shall be payable to the Brooklyn Public Library for its business library for each calendar year.
  - l. In addition to any other sums provided to such library, the sum of fifty thousand dollars shall be payable annually to the Buffalo and Erie County Public Library for a continuity of service project approved by the commissioner for each calendar year.
  - m. In addition to any other sums provided to such library system, the sum of thirty thousand dollars shall be payable annually to the Nassau County library system for

a continuity of service project approved by the commissioner for each calendar year.

- n. The minimum annual grant available to a library system under paragraphs a, c and e and sub-paragraph one of paragraph d of this subdivision shall be six hundred seventy-five thousand dollars.
2. Within the amounts appropriated therefor moneys paid out pursuant to this section shall be paid out of the state treasury on vouchers certified by the commissioner after audit by and upon the warrant of the comptroller.
  3. The commissioner may waive the requirement that a public library system serve an entire county to earn the maximum annual grant under subparagraphs two and three of paragraph a of subdivision one of this section and paragraphs b, c, e and h of subdivision one of this section where the commissioner deems reasonable effort has been made by the system to encourage membership by all libraries in the county.
  4. Reference and research library resources system.
    - a. Any reference and research library resources system providing service under an approved plan during a calendar year shall be entitled to receive annual state aid consisting of an annual grant of two hundred seventy thousand dollars plus the sum of one dollar and fifty cents per square mile of area served plus the sum of six cents per capita of the population of the area served. Each system may annually appropriate funds received under this provision to obtain matching funds from the National Endowment for the Humanities in the United States Newspaper Program. The annual amount payable to each approved system under this paragraph shall be payable on or before July first, provided that, upon receipt of annual system activity reports satisfactory to the commissioner, the commissioner shall determine the amount of any under- or overpayment and shall apply such adjustment to the next annual payment due such system.
    - b. The commissioner is hereby authorized to expend up to five hundred six thousand dollars annually in each state fiscal year to provide formula grants to approved reference and research library resources systems for provision of consumer health and medical information services for all types of libraries and library systems. Such grants shall assist libraries in providing access to timely and accurate medical and health information for medical personnel and for the general public. In addition to any other sum provided in this subdivision, each reference and research library resources system providing service under an approved plan with a consumer health and medical library information services program for all types of libraries and library systems shall be eligible to receive an annual formula grant. Such formula grants shall be determined on the basis of criteria to be prescribed by the commissioner. The commissioner shall provide the annual amount payable to each approved system under this paragraph in the following manner:
      - (1) Funds shall be available to each reference and research library resources system in such manner as to insure that the ratio of the amount each system is

eligible to receive equals the weighted ratio of the total number of institutions as defined in sub-paragraph two of this paragraph in the region served by the system to the total number of such institutions in the state.

- (2) For the purposes of determining the amount of funds available to each system, institutions and their weightings are as follows:
  - (i) not-for-profit hospitals licensed by the New York state health department, with a weighting of two,
  - (ii) for-profit teaching hospitals licensed by the New York State health department, with an additional weighting of one; and
  - (iii) member institutions of a reference and research library resources system, excluding public and hospital libraries, with a weighting of one.

*[NOTE: Subdivisions 4 c and 5 omitted]*

6. Regional bibliographic data bases and interlibrary resources sharing

- a. The commissioner shall award annually to each of the approved nine reference and research library resources systems, from funds appropriated by the legislature for an annual grant for an automation program (i) to support bibliographic control and interlibrary sharing of information resources among all types of libraries and library systems in an area not less than that of a reference and research library resources system, and (ii) to coordinate and integrate the automated circulation systems of the component member public library system or systems, school library system or systems and other automated systems within the area of the reference and research library resources system. Each reference and research library resources system of such region shall be entitled to an annual grant of two hundred thousand dollars plus the sum of two cents per capita of the population served.
- b. To be eligible for a grant, each reference and research library resources system shall meet the requirements set forth in regulations adopted by the commissioner which shall include standards relating to library automation, continuous development of the data base, and updating, access and linking of the data base programs. Each reference and research library resources system shall include in its approved plan of service a description of a regional library automation program, which shall include all library systems in the region that are members of the reference and research library resources system.

7. Conservation and preservation of library research materials

- a. The commissioner shall award in any state fiscal year an annual grant of one hundred twenty-six thousand dollars for a program of conservation and/or preservation of library materials to each of the following comprehensive research libraries: Columbia university libraries, Cornell university libraries, New York state library, New York university libraries, university of Rochester libraries, Syracuse university libraries, the

research libraries of the New York public library, state university of New York at Albany library, state university of New York at Binghamton library, state university of New York at Buffalo library, and state university of New York at Stony Brook library.

- b. To be eligible for such grants, each such comprehensive research library must submit both a five-year plan and an annual program budget. The plan must satisfy criteria to be established by the commissioner in regulations relating to the identification of library research materials, the need for their preservation, and the means of their conservation.
- c. Additional grants, the sum of which shall not exceed three hundred fifty thousand dollars in any state fiscal year, may be made to any or all of the eleven comprehensive research libraries for preservation and/or conservation of library research materials on the basis of project proposals. Approval of such proposals, and determination of funding level, shall be based upon their contribution to development of cooperative programs and/or facilities for conservation and/or preservation works in the state, including but not limited to such factors as: institutional commitment to development of a collective capacity and coordinated approach to conservation and preservation of research materials important to the people of the state; research value of materials to be preserved and/or conserved; appropriateness of conservation and preservation techniques in accordance with statewide planning and national standards; institutional capacity for successful completion of the project, including facilities, experience, and technical expertise; availability of staff with appropriate training and expertise; contribution of the institution to the project in matching funds and staff resources; and volume of interlibrary lending and access to holdings by the public. Ninety percent of each such grant shall be payable upon approval by the department and the remaining ten percent shall be payable upon project completion.
- d. Other agencies and libraries, as defined in regulations promulgated by the commissioner, which are not eligible for funding under paragraph a of this subdivision, may receive separate grants the sum of which shall not exceed five hundred thousand dollars in any state fiscal year to support the preservation and/or conservation of unique library research materials. Such agencies and libraries shall submit proposals which shall be evaluated and determinations of approval and funding shall be made on the same basis set forth in paragraph c of this subdivision. Ninety percent of each such grant shall be payable upon approval by the department and the remaining ten percent shall be payable upon project completion.
- e. Funds made available under the provisions of this section may be used by comprehensive research libraries and other agencies eligible for funding to obtain matching funds from the national endowment for the humanities preservation program.
- f. The commissioner shall establish an office for coordination of conservation and/or preservation of library research materials to identify the conservation and/or preservation needs of libraries within the state, to assess the technology available

for such conservation preservation, and to coordinate the conservation and preservation efforts resulting from this legislation.

10. State aid for summer reading programs. The commissioner is hereby authorized to expend the funds of the love your library fund, established in section ninety-nine-1 of the state finance law, which shall provide grants for participation in statewide summer reading programs as coordinated by the state library to public library systems on the basis of criteria to be developed by the commissioner. Upon a determination by the commissioner that there is adequate revenue available for a grant program in the up coming fiscal year, grants shall be awarded as follows:
  - (a) sixty percent of the funds appropriated pursuant to this section shall be made available to public library systems for use by member libraries by the commissioner in such manner as to insure that the ratio of the amount received within each system to the whole of the aid made available pursuant to this paragraph is no greater than the ratio of the population served by such system to the population of the state; and
  - (b) forty percent of the funds appropriated pursuant to this section shall be made available to library systems for use by their member libraries within each system by the commissioner in such manner as to insure that an equal amount is received within each system in the state.

*[NOTE: Subdivisions 8 and 9 omitted]*

#### **§273-a. State aid for library construction**

1. State aid shall be provided for up to fifty percent of the total projects approved costs, excluding feasibility studies, plans or similar activities, for projects for the acquisition, construction, renovation or rehabilitation, including leasehold improvements, of buildings of public libraries and library systems chartered by the regents of the state of New York or established by act of the legislature subject to the limitations provided in subdivision four of this section and upon approval by the commissioner. For purposes of this subdivision an amount of eight hundred thousand dollars shall be available for each calendar year. Aid shall be provided on approved expenses incurred during the period commencing July first and ending June thirtieth for up to three years, or until the project is completed, whichever occurs first. Ninety percent of such aid shall be payable to each system or library upon approval of the annual application. The remaining ten percent shall be payable upon project completion.
2. Each application for state aid shall be submitted by the board of trustees of the library or library system responsible for the operation of the subject building to the commissioner for his review and approval, after having been reviewed and approved by the governing board of the public library system of which such library is a member. Each application shall:
  - a. demonstrate that resources are or shall be available to provide for maximum utilization of the project if approved;

- b. contain verification in such form as may be acceptable to the commissioner that the total cost of the project, exclusive of state aid, has been or will be obtained;
  - c. demonstrate that library operations would be made more economical as a consequence of approval;
  - d. be limited to one project concerning such building, provided that no building shall be the subject of more than one application per year; and
  - e. provide such other information as may be required by the commissioner.
3. In approving any application the commissioner shall consider the condition of existing libraries and, where appropriate, the needs of isolated or economically disadvantaged communities, provided that no application shall be approved for a project that is deemed by the commissioner to have been completed prior to the date of the application.
4. Aid shall be distributed pursuant to this section as follows:
  - a. sixty percent of the funds appropriated pursuant to this section shall be made available to libraries within each system by the commissioner in such manner as to insure that the ratio of the amount received within each system to the whole of the aid made available pursuant to this paragraph is no greater than the ratio of the population served by such system to the population of the state;
  - b. forty percent of the funds appropriated pursuant to this section shall be made available to library systems or libraries within each system by the commissioner in such manner as to insure that an equal amount is received within each system in the state;
  - c. any funds made available pursuant to paragraph a or b of this subdivision which by April first of each succeeding fiscal year, are declined by such libraries or library systems for any reason, or which cannot otherwise be used by such libraries or library systems for any reason, shall be made available by the commissioner to other eligible libraries within such system, or if no such library can use such funds shall be reallocated among the other library systems and their libraries in a manner that will to the extent possible provide from such reallocated funds an equal amount to each such system.
5. The commissioner shall adopt rules and regulations as are necessary to carry out the purposes and provisions of this section.

**§285. State aid for cooperation with correctional facilities**

1. Each public library system operating under an approved plan of service which has a state correctional facility or facilities within its area of service shall be awarded an annual grant of nine dollars twenty-five cents per capita for the inmate population of such a

facility of facilities to make available to the inmate population of such facility or facilities, in direct coordination with the correctional facilities libraries, the library resources of such system. The commissioner shall adopt any regulations necessary to carry out the purposes and provisions of this subdivision.

2. The commissioner is authorized to expend up to one hundred seventy-five thousand dollars annually to provide grants to public library systems operating under an approved plan of service for provision of services to county jail facilities. Such formula grants shall assist the library system in making available to the inmate population of such facility or facilities the library resources of such system. Such grants shall be available to each public library system in such manner as to insure that the ratio of the amount each system is eligible to receive equals the ratio of inmates served by the county jail facility to the total number of inmates served by county jail facilities in the state as of July first of the year preceding the calendar year in which the state aid to public library systems is to be paid. Inmate populations shall be certified by the New York state commission of correction. The commissioner shall adopt any regulations necessary to carry out the purposes and provisions of this subdivision.

### **§293. Establishment of interstate library district**

One or more incorporated public libraries of this state, by majority action of the board of trustees thereof, may enter into an agreement with one or more public library agencies in another state or states which have adopted the interstate library compact for the purpose of establishing and maintaining an interstate library district. For the purposes of this act, a cooperative library system established under article five of this chapter shall be deemed to be a public library.

### **§294 Appointment of members of governing board of interstate library district**

- (a) The board of trustees of each public library which is a party to an agreement establishing an interstate library district pursuant to section two hundred ninety-three of this article, shall appoint a member or members to represent such library on the governing board of such interstate library district. The number of such representatives shall be determined by the agreement establishing such interstate library district.
- (b) The governing board of such interstate library district shall be a body corporate.
- (c) Such governing board shall administer such interstate library district as provided in this act

### **§295. Support of interstate library district**

Any library, library system, county, city, village, town or school district of this state may provide funds, including funds received from local taxation for state aid for the support and operation of an interstate library district established as provided herein, in accordance with the

terms of the agreement establishing the same provided that such agreement together with the plan of library service thereunder has been approved by the commissioner.

### **§296. Compact administrator**

The commissioner of education shall be the administrator for the interstate library compact pursuant to article ten of the compact.

### **§297. Withdrawal**

The commissioner of education is hereby designated as the official who is authorized to send and receive the notices provided in article eleven of the compact in the event of withdrawal of this state or any other state from the compact.

[NOTE: For a copy of the Interstate Library Compact, see L. 1963, Chap. 787, post.]

### **§310. Appeals or petitions to commissioner of education and other proceedings**

Any party conceiving himself aggrieved may appeal by petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this article. The petition may be made in consequence of any action:...

5. By any trustees of any school library concerning such library, or the books therein, or the use of such books.

*“The only provision of Education Law section 310 that gives the Commissioner of Education jurisdiction to review the actions of library trustees is Education Law section 310 (5), which permits appeals from actions taken by trustees of any school library concerning the library or its books. The library district whose trustees were the target of this appeal was a special district and not a ‘school library’ within the meaning of Education Law section 310 (5). Therefore, the appeal, which challenged the denial of direct free access to the library, was dismissed for lack of jurisdiction.” (Appeal of Iannone et al., 32 Educ. Dept. Rpts. 635, Jud. Dec. No. 12, 939, June 8, 1993).*

6. By any district meeting in relation to the library or any other matter pertaining to the affairs of the district....

*See Matter of Carson v. Nyquist, 59 Misc. 2d 577, 299 NYS 2d 891, February 22, 1969, following Education Law, section 255 (2).*

*“The trustees of Mount Vernon Public Library appeal to the Commissioner of Education from the action taken by the board of education of that city in deleting certain moneys from the library budget as submitted to such board by the library trustees... [I]t will be observed that this is an appeal by the board of trustees of a corporation established by the Board of Regents for the purported action of a board of education. Certainly, the library corporation is an aggrieved*

*party, its budget having been cut by the board of education, and therefore has the right to seek any relief which any aggrieved party may obtain through appeal to the Commissioner of Education. Furthermore, any act of a board of education is clearly reviewable by the Commissioner of Education under the provisions of section 890 [now 310] of the Education Law. ...My attention has not been called to any statute making the board of education a party to the determination of the amount of money which is to be levied and collected for the purpose of making a grant to this library. The present provisions of the Education Law which give to boards of education certain control over libraries, relate to those libraries which are known as school libraries which boards of education still establish and maintain in the public schools for the benefit of the pupils in attendance thereat. They do not relate, however, to independent corporations established by the Board of Regents, over which the board of education has no jurisdiction or control... While there is no legal objection to the board of trustees of the library submitting its budget to the board of education for advice and comment, there is no obligation on its part to do so, the board of trustees may submit such budget directly to the common council for levy and collection. The common council has the legal right to determine the amount of money to be given to the library, pursuant to the provisions of section 1118 [now 255] of the Education Law, irrespective of any advice given to the board of education.” (Matter of Appeal of Trustees of the Mount Vernon Public Library for Action Taken by Board of Education of the City of Mount Vernon, 65 State Dept. Rpts. 22, Department of Education, Case No. 4832, October 8, 1942).*

*“Education Law section 310 confers appellate jurisdiction upon the Commissioner of Education with respect to certain specific matters. Pursuant to section 310 (5) and (6), the Commissioner’s jurisdiction extends to action by trustees of school district public libraries and elections in such districts. However,...the Roosevelt Public Library District differs substantially from a school district public library, especially in its close connection with and dependence on town government. In the absence of any statute specifically granting to the Commissioner quasijudicial jurisdiction with respect to disputes involving this library district, this appeal must be dismissed for lack of jurisdiction.” (Appeal of Geraldine Moore etc., 20 Educ. Dept. Rpts. 27, Jud. Dec. No. 10, 299, July 14, 1980).*

*“In order to maintain an appeal to the education commissioner pursuant to Education Law section 310, a party must be aggrieved in the sense of having suffered personal damage or impairment of that party’s rights. A board of education may not maintain an appeal to the commissioner on the basis of an alleged legal injury to its residents or taxpayers, neither may a town maintain such an appeal” (Appeal of Town of Smithtown, 28 Educ. Dept. Rpts. 337, Jud. Dec. No. 12, 128, February 13, 1989).*

### **§318. Distribution of surplus computers**

1.

General definitions. As used in this section:

- (a) “Computer” means a computer central processing unit (CPU) and, where attached to a CPU, such computer cases, computer memory, cards and other peripheral devices as may reasonably be viewed functionally as one unit.

- (b) “Computer software” means executable computer programs and related data files on computer-related media, including but not limited to floppy disks, hard disks, optical and magneto-optical computer data storage devices.
  - (c) “Computer equipment” means computers, computer memory, cards, and associated peripheral devices, including but not limited to floppy disk drives, hard disk drives, printers, modems, computer-related cables and networking devices, scanners, computer monitors and computer software.
2. The commissioner and the commissioner of general services shall within one hundred eighty days of the effective date of this section, in consultation with members of the computer industry, representatives of school boards associations, and teachers’ organizations, develop guidelines by which the monetary value of surplus computer equipment can be compared with its potential educational value, in order to assist the commissioner of general services to implement the provisions of section one hundred sixty-eight of the state finance law.
3. The commissioner shall, within one hundred eighty days of the effective date of this section, and with the advice and counsel of the office of general services:
- (a) develop guidelines governing distribution of state owned surplus computer equipment to learning institutions involved in the repair and restoration of such computer equipment; such guidelines shall identify technical educational programs in the colleges and schools within the state with the capacity to repair and restore computer equipment and which may use the repair of such equipment in the technological training of their students;
  - (b) develop guidelines under which repaired and restored computer equipment shall be equitably distributed, subject to the following guidelines:
    - (i) distribution of state-owned surplus computer equipment shall be provided to public schools, the division of youth, public libraries, and other public and private institutions for secular educational use, and to not-for-profit institutions for use by individuals with disabilities, upon proof of need, and subordinate to the requirements of the public schools, the division for youth and libraries of New York State;
    - (ii) distribution of surplus computer equipment shall be based on competitive proposals from schools, the division for youth, libraries, and other public and private educational programs for secular educational use, including not-for-profit institutions serving persons with disabilities, which shall demonstrate need and specific plans for the use of such equipment; and
    - (iii) the department shall assist applicants in preparing such proposals.
4. (a) The commissioner is hereby authorized to seek and to accept the transfer of title of surplus computer equipment of educational value from agencies of the state and from the office of general services for further distribution consistent with the

purposes of this section and pursuant to the guidelines developed under subdivisions two and three of this section. Such distribution shall be performed by the office of general services upon the request of the commissioner. Any transportation costs for shipping such surplus equipment shall be borne by the office of general services.

- (b) The department shall periodically distribute copies of an inventory of surplus computer equipment that is available for distribution contemplated by this section to educational institutions under its supervision and to such other institutions as the commissioner shall have designated, and make it known that those institutions may submit proposals to obtain such computer equipment. Upon a proposal having been approved pursuant to this section, the office of general services shall deliver such computer equipment to the recipient pursuant to paragraph (c) of this subdivision.
  - (c) The office of general services may charge reasonable fees to the final recipients of such computer equipment for shipping and handling, including costs associated with shipping such computer equipment to institutions authorized pursuant to this section to repair or restore such computer equipment, provided that such fees shall not exceed one-half the value of the computer equipment as determined pursuant to subdivision two of this section, provided that such fees are published, updated, and distributed with the inventories to the department, and provided that requests for proposals for such computer equipment contain a summary of accompanying fees. Nothing herein shall be construed to prohibit such institutions involved in the repair and restoration of such computer equipment from arranging for the shipping and handling of such computer equipment to and/or from such institution on its own.
5. The commissioner may accept any and all donations of money, equipment, supplies, materials or services, from any person, firm, association, foundation, or corporation, and may receive and utilize the same in fulfilling the purposes and provisions of this section. Any donation so accepted shall be reported in the report required by subdivision six of this section. Such report shall include the nature and amount of the donation and the identity of each donor, except where such donor has requested anonymity in writing.
6. The commissioner shall:
- (a) Keep inventory of computer equipment distributed under this section to educational facilities based on information provided to the commissioner by the office of general services; and
  - (b) In collaboration with the commissioner of general services, report every two years to the governor, the temporary president of the senate, the speaker of the assembly, the inspector general and the state comptroller. The initial report shall be submitted on the first of July, not more than two years after the date on which this section shall have become law. The report shall include but not be limited to current inventories of surplus computer equipment in the possession of the department and of the office of general services, inventories of surplus computer equipment that have been distributed to educational institutions, summaries of requests and deliveries to the various institutions, the criteria used in determining which

institutions received what equipment, and recommendations for more effective means of carrying out their duties under this section.

7. To promote the purposes of this section, the commissioner shall examine alternative methods for service, repair, and distribution of computer equipment and may apply for and utilize such state and federally funded programs as may appear effective and consistent with the purposes of this section. Any grant or services accepted under this part shall be reported in the biennial report required by subdivision six of this section. Such report shall include the nature, amount and source of each grant or services.
8. Nothing in this section shall limit the authority of the commissioner or the commissioner of general services to establish mechanisms by which donated or state-owned surplus property that is not computer equipment, but has educational usefulness for enhancing technological and scientific literacy that substantially exceeds its monetary value, may be provided to public and private institutions for educational use.
9. In developing and carrying out guidelines under this section, the commissioner of general services and the commissioner shall ensure that software will not be transferred pursuant hereto if such transfer would cause a breach of a computer software license agreement or an infringement of a copyright.
10. [NOTE: section 10 has been omitted.]

#### **§405. Conveyance of property to public corporations**

In addition to any other power conferred or possessed by virtue of any provisions of this chapter, the board of education, trustee or trustees of any school district may convey any school site or lot and the buildings thereon and appurtenances or any part thereof, provided that title to any such school property is in such board, trustee or trustees, and when no longer needed, either without consideration or for such consideration and upon terms and conditions as such board, trustee or trustees may determine to a public corporation, as defined in the general construction law, provided that such real property is to be used by such corporation for the purposes of the corporation or for a public use. In any school district, except a city school district in a city having a population of one hundred twenty-five thousand inhabitants or more, such sale and conveyance shall be submitted to the voters of the district for approval at an annual or special district meeting in the same manner as is now provided by law for the submission of propositions. A board of cooperative educational services or a board of education, without approval of the voters of the school district and upon such consideration as the board may determine, may convey an easement or right of way over school property for public utility services to any municipality, municipal district, authority or public utility. In any city of over one hundred, twenty-five thousand population any sale or conveyance shall be subject to approval by the local governing board of such city.

*See section 23 of L. 1996 Chap. 172 after section 2601-a of the Education Law.*

## **§416. School taxes and school bonds**

1. A majority of the voters of any school district, present and voting at any annual or special district meeting, duly convened, may authorize such acts and vote such taxes as they shall deem expedient for making additions, alterations, repairs or improvements, to the sites or buildings belonging to the district, or for altering and equipping for library use any former schoolhouse belonging to the district, or for the purchase of other sites or buildings, or for a change of sites, or for the purchase of land and buildings for agricultural, athletic, playground or social center purposes, or for the erection of new buildings, or for building a bus garage, or for buying apparatus, implements, or fixtures, or for paying the wages of teachers, and the necessary expenses of the school, or for the purpose of paying any judgment, or for the payment or refunding of an outstanding bonded indebtedness, or for such other purpose relating to the support and welfare of the school as they may, by resolution, approve.
2. On all propositions arising at said meetings involving the expenditure of money, or authorizing the levy of a tax in one sum or by installments, the vote thereon shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such meetings; and they may direct the moneys so voted to be levied in one sum, or by installments, which shall be of such amounts and levied in such years as may be determined, within such limitations as may be fixed by the voters, by the trustees or board of education. No such tax shall be authorized to be levied by installments as a condition precedent to the issuance of bonds or capital notes unless the notice of the meeting shall state that such tax will be proposed and the object or purpose thereof. Such notice shall comply with the requirements of section 41.10 of the local finance law.
3. No addition to or change of site or purchase of a new site or tax for the purchase of any new site or structure, or for grading or improving a school site, or for the purchase of an addition to the site of any schoolhouse, or for the purchase of lands and buildings for agricultural, athletic, playground or social center purposes, or for building any new schoolhouse or for the erection of an addition to any schoolhouse already built, or for the payment or refunding of an outstanding bonded indebtedness, shall be voted at any such meeting in a union free school district or a city school district which conducts annual budget votes in accordance with article forty-one of this chapter pursuant to section twenty-six hundred one-a of this chapter, unless a notice by the board of education stating that such tax will be proposed, and specifying the object thereof and the amount to be expended therefor, shall have been given in the manner provided herein for the notice of an annual meeting. In a common school district the notice of a special meeting to authorize any of the improvements enumerated in this section shall be given as provided in section two thousand six. The board of education of a union free school district or a city school district which conducts annual budget votes in accordance with article forty-one of this chapter pursuant to section twenty-six hundred one-a of this chapter, may determine that the vote upon any question to be submitted at a special meeting as provided in this section shall be by ballot, in which case it shall state in the notice of such special meeting the hours during which the polls shall be kept open. Printed ballots may be prepared by the board in advance of the meeting and the proposition or propositions

called for in the notice of the meeting may be submitted in substantially the same manner as propositions to be voted upon at a general election.

*See section 23 of L. 1996 Chap. 172 after section 2601-a of the Education Law.*

4. And whenever a tax for any of the objects hereinbefore specified shall be legally voted, the board of trustees or board of education shall make out their tax list, and attach their warrant thereto, in the manner provided in article seventy-one of this chapter, for the collection of school district taxes, and shall cause such taxes or such installments to be collected at such times as they shall become due.
5. No vote to raise money shall be rescinded, nor the amount thereof be reduced at any subsequent meeting, unless it be an adjourned meeting or a meeting called by regular and legal notice, which shall specify the proposed action, and at which the vote upon said proposed reduction or rescinding shall be taken by ballot or by taking and recording the ayes and noes of the qualified voters attending and voting thereat.
6. Notwithstanding the foregoing provisions of this section, propositions for the construction of a new schoolhouse or an addition to a present schoolhouse at the same site shall not be submitted for a vote more than twice during any twelve month period and in no event shall a proposition be submitted for a vote less than ninety days after a vote on the same or similar proposition. However, the prohibition of this subdivision shall not apply to a proposition to approve an additional amount necessary to carry out a construction project, where the voters have approved an initial building project and it is determined that the bids for such project are in excess of the approved amount.
7. The provisions of this section shall not apply to a city school district in a city having a population of one hundred twenty-five thousand inhabitants or more.

*See section 23 of L. 1996 Chap. 172 after section 2601-a of the Education Law.*

#### **§1709. Powers and duties of boards of education**

The said board of education of every union free school district shall have power, and it shall be its duty:

10. To alter and equip for use as a public library any former schoolhouse or part thereof, the title to which is vested in the board, when duly authorized by the qualified voters of the school district.

*See 25 Educ. Dept. Rpts. 321, February 27, 1986 after Educ. L. 260 (10).*

11. To sell, when authorized by a vote of the qualified voters of the school district, any former school site or lot, or any real estate the title to which is vested in the board, and the buildings thereon, and appurtenances or any part thereof, at such price and upon such terms as said voters shall prescribe, and to convey the same by deed to be executed by the board or a majority of the members thereof. Also to exchange real estate belonging to the district for the purpose of improving or changing schoolhouse sites. All deeds or other

conveyances of real property heretofore made and delivered, executed by said board of education by its officers, or in the manner in which deeds are executed by corporations, or executed in any other manner, shall be as valid and of the same force and effect as if executed by said board of education or a majority of the members thereof; but this provision shall not affect any action or proceeding pending at the time of the taking effect hereof.

*“It would seem that a school district may convey a library building, without consideration, to the school district public library established in the district, and that the school district public library may convey, without consideration, a portion of its real property to the school district.” (Op. Compt. 81-81, April 3, 1981).*

**§2018-a. Absentee ballots for school district elections**

1. The board of education of any union free, central or central high school district which elects school board members by ballot and provides for personal registration of voters, shall provide for absentee ballots for the election of members of the board of education and school district public library trustees, the adoption of the annual budget and school district public library budget and referenda, in accordance with the provisions of this section.
- 1-a. In counties with a population of one million of more, the board of education of any school district which elects school board members pursuant to the provisions of sections two thousand seven and two thousand thirteen of this article shall provide for absentee ballots for the election of members of the board of education and school district public library trustees, the adoption of the annual budget and school district public library budget and referenda, in accordance with the provisions of this section.

**§2018-b. Absentee ballots for school district elections by pool registration**

1. Notwithstanding the provisions of sections two thousand fourteen and two thousand eighteen-a of this article, the trustees or the board of education of any common, union free, central or central high school district which does not provide for the personal registration of voters for school district meetings and elections but which elects trustees or school board members by ballot, shall provide for absentee ballots for the election of the trustees or members of the board and school district public library trustees, the adoption of the annual budget and school district public library budget and referenda.
- 1-a. Notwithstanding the provisions of sections two thousand fourteen and two thousand eighteen-a of this article, in any county with a population of one million of [sic.] more, the trustees or the board of education of any school district which does not provide for the personal registration of voters for school district meetings and elections but which elects trustees or school board members pursuant to the provisions of section two thousand thirteen and either section two thousand six or section two thousand seven of this article shall provide for absentee ballots for the election of the trustees or members of the board and school district public library trustees, the adoption of the annual budget and school district public library budget and referenda.

*“The votes cast by the four absentee voters interviewed by the Mohawk Police Department were improper, either because the voter was available to vote in person on election day, or because the absentee ballots were not handled in accordance with the procedures outlined in Education Law §2018-b. Accordingly, these votes must be disregarded,” (Appeal of the Weller Library Commission, 42 Educ. Dept. Rpt. \_\_\_\_, Jud. Dec. No. 14,875, May 30, 2003.)*

### **§2021. Powers of voters**

The inhabitants entitled to vote, when duly assembled in any district meeting, shall have power, by a majority of the votes of those present and voting:

9. To designate any former schoolhouse and appurtenances, or any part thereof, the title to which is vested in the board, as a public library building, and to vote a tax on the taxable property of the district, pursuant to section two hundred fifty-five of this chapter, to pay the cost of necessary alterations and equipment to convert such schoolhouse or part thereof to library use.
11. To vote a tax for the establishment of a school library and the maintenance thereof, or for the support of any school library already owned by said district, and for the purchase of books therefor, and such sum as they may deem necessary for the purchase of a bookcase or bookcases.

See 1 Educ. Dept. Rpts. 715, July 11, 1951, following Education Law, section 259 (1) [Note that the section 2015 referred to is now section 2021].

**§2022-a.** [Note that this section, amended by L. 1996 chap. 171, was repealed by L. 1997 Chap. 436, pt. A, section 25.]

### **§2023. Levy of tax for certain purposes without vote**

1. If the qualified voters shall neglect or refuse to vote the sum estimated necessary for teachers' salaries, after applying thereto the public school money's and other moneys received or to be received for that purpose, or if they shall neglect or refuse to vote the sum estimated necessary for ordinary contingent expenses including the purchase of library books and other instructional materials associated with a library, the sole trustee, board of trustees, or board of education may levy a tax for the same, in like manner as if the same had been voted by the qualified voters.

### **§2503. Powers and duties of board of education**

Subject to the provisions of this chapter, the board of education:

4. b. May maintain public libraries pursuant to section two hundred fifty-five of this chapter, or may contract with any public library or any free association library registered by the regents pursuant to section two hundred fifty-six thereof;

*“It is my opinion that subdivision 4 b of section 2503 qualifies section 259 and therefore the board of education of a city school district of a city with a population of less than 125,000 would*

*have the power to include in the annual budget of the city school district an annual appropriation to maintain the school district libraries. It is further my opinion that many resolutions in similar situations passed pursuant to section 259 would now, as far as amount is concerned, be no longer conclusive in city school districts of cities with a population of less than 125,000. It will be necessary that in such districts the board of education of the city school district include each year in the annual budget of such district the amount that said board of education wishes to appropriate for the maintenance of the school district library.” (1 Educ. Dept. Rpts. 763, Formal Op. Of Counsel No. 64, February 27, 1952).*

*“The board of education may include in the annual budget of the district an appropriation to maintain a public library of the district established pursuant to section 255 of the Education Law. The amount of such appropriation, if any, is entirely within the discretion of the board of education. Hence, it would be appropriate for such board to consider any balance remaining in the library fund in arriving at the amount to be appropriated for library purposes.” (9 Op. Compt. 114, #6077, April 22, 1953).*

*“There is no requirement that the Long Beach Public Library, a school district public library, submit its budget to the school board for approval.” (Op. Compt. 65-806, November 23, 1965).*

14. Shall call special district meetings of the qualified voters of the district, whenever it shall deem it necessary and proper, except as otherwise provided in section twenty-six hundred one-a of this chapter; shall give notice of special or annual elections; and shall submit propositions to the voters at such special or annual meetings.

*See section 23 of L. 1996 Chap. 172 after section 2601-a of the Education Law.*

### **§2511. Purchase and sale of real and personal property**

1. The board of education may purchase real and personal property for any of the purposes authorized by law and shall take title thereto in the name of the school district. The board of education is hereby empowered to sell and convey the same, when it deems it for the best interest of the school district, except that the purchase, acquisition and sale of real property and motor vehicles for the transportation of children shall be subject to the approval of the voters, to the same extent as in a union free school district. In the event that an owner of real property refuses to sell such property to the board of education or such owner is unable to agree with such board on the purchase price thereof, such board shall have authority to institute such proceedings and take such action as may be necessary to acquire title to such property pursuant to the eminent domain procedure law.

*See section 23 of L. 1996 Chap. 172 after sec. 2601-a of the Education Law.*

### **§2512. Buildings and sites**

1. Such board of education is authorized and it shall have power to designate sites, to purchase, repair, reconstruct, improve or enlarge school buildings or other buildings or sites, and to construct new buildings, provided that the purchase, repair, reconstruction, improvement or enlargement of school buildings or other buildings or sites, and

construction of new buildings shall be subject to voter approval, to the same extent as in a union free school district.

5. When the real property of the school district is no longer needed for educational purposes, such board may sell or dispose of such property, subject to voter approval, and the proceeds thereof shall be credited to the funds under the control and administration of the board of education.

*For subdivisions 1 and 5, see section 23 of L. 1996 Chap. 172 after sec. 2601-a of the Education Law.*

#### **§2515. Fiscal year**

The fiscal year for city school districts of cities with less than one hundred twenty-five thousand inhabitants shall be the period commencing with July first and ending with June thirtieth next following.

*See section 23 of L. 1996 Chap. 172 after sec. 2601-a of the Education Law.*

#### **§2530. Power to contract indebtedness**

Each city school district shall be authorized to expend money for any of the objects or purposes which it is authorized to accomplish by law and may contract indebtedness in its name pursuant to the local finance law. The provisions of section four hundred sixteen of this chapter shall be applicable to such districts.

*See section 23 of L. 1996 chap. 172 after sec. 2601-a of the Education Law.*

#### **§2554. Powers and duties of board of education**

Subject to the provisions of this chapter, the board of education in a city shall have the power and it shall be its duty:

10. To establish and maintain libraries which may be open to the public.....

### **ARTICLE 53 – SCHOOL ELECTIONS IN CITY SCHOOL DISTRICTS OF CITIES WITH LESS THAN ONE HUNDRED TWENTY-FIVE THOUSAND INHABITANTS**

#### **§2601. Application of article**

This article shall apply to each city school district of a city which has less than one hundred twenty-five thousand inhabitants, according to the latest federal census, except as otherwise provided in section twenty-six hundred one-a of this chapter and except as otherwise provided by subdivision nine or nine-a of section twenty-five hundred two of this chapter.

*See section 23 of L. 1996 Chap. 172 after sec. 2601-a below.*

## **§2601-a Procedures for adoption of school budgets in small city school districts**

1. The board of education of each city school district subject to this article shall provide for the submission of a budget for approval of the voters pursuant to the provisions of this section.
2. The board of education shall conduct all annual and special school district meetings for the purpose of adopting a school district budget in the same manner as a union free school district in accordance with the provisions of article forty-one of this chapter, except as otherwise provided by this section. Notwithstanding any other provision of law to the contrary, the board may conduct the budget vote separately on the same day designated by law for holding the annual meeting, or the following Wednesday, consistent with sections two thousand four, two thousand thirteen and two thousand twenty-two-a of this chapter. The provisions of this article, and where applicable subdivisions nine and nine-a of section twenty-five hundred two of this chapter, governing the qualification and registration of voters, and procedures for the nomination and election of members of the board of education shall continue to apply, and shall govern the qualification and registration of voters and voting procedures with respect to the adoption of a school district budget.
3. The board of education shall prepare a proposed school district budget for the ensuing year in accordance with the provisions of section seventeen hundred sixteen of this chapter. No board of education shall incur a school district liability except as authorized by the provisions of section seventeen hundred eighteen of this chapter. Such proposed budget shall be presented in three components: a program component, a capital component and an administrative component which shall be separately delineated in accordance with regulations of the commissioner after consultation with local school district officials. The administrative component shall include, but need not be limited to, office and central administrative expenses, traveling expenses and salaries and benefits of all certified school administrators and supervisors who spend a majority of their time performing administrative or supervisory duties, any and all expenditures associated with the operation of the board of education, the office of the superintendent of schools, general administration, the school business office, consulting costs not directly related to direct student services and programs, planning and all other administrative activities. The program component shall include, but need not be limited to, all program expenditures of the school district, including the salaries and benefits of teachers and any school administrators or supervisors who spend a majority of their time performing teaching duties, and all transportation operating expenses. The capital component shall include, but need not be limited to, all transportation capital, debt service, and lease expenditures; costs resulting from judgments in tax certiorari proceedings or the payment of awards from court judgments, administrative orders or settled or compromised claims; and all facilities costs of the school district, including facilities lease expenditures, the annual debt service and total debt for all facilities financed by bonds and notes of the school district, and the costs of construction, acquisition, reconstruction, rehabilitation or improvement of school buildings, provided that such budget shall include a rental, operations and maintenance section that includes base rent costs, total rent costs, operation and maintenance charges, cost per square foot for each facility leased by the school district, and any and all expenditures associated with custodial salaries and benefits, service contracts, supplies,

utilities, and maintenance and repairs of school facilities. For the purposes of the development of a budget for the nineteen hundred ninety-seven—ninety-eight school year, the board of education shall separate its program, capital and administrative costs for the nineteen hundred ninety-six—ninety-seven school year in the manner as if the budget for such year had be presented in three components. Except as provided in subdivision four, nothing in this section, shall preclude the board, in its discretion, from submitting additional items of expenditure to the voters for approval as separate propositions or the voters from submitting propositions pursuant to section two thousand eight and two thousand thirty-five of this chapter.

4. In the event the qualified voters of the district reject the budget proposed pursuant to subdivision three of this section, the board may propose to the voters a revised budget or may adopt a contingency budget pursuant to subdivision five of this section. The school district budget for any school year, or any part of such budget or any propositions involving the expenditure of money for such school year shall not be submitted for a vote of the qualified voters more than twice.

[NOTE: sections 5 and 6 are omitted.]

Section 23 of L. 1996 Chap. 172, as amended by L. 1998 Chap. 400, stipulated the following:

**§23.** This act shall take effect September 1, 1996, and shall apply to the adoption of budgets of city school districts in cities having a population of less than one hundred twenty-five thousand inhabitants and the school district public libraries of such school districts for the 1997-98 school year and thereafter and the conduct of special and annual district meetings on and after such date; provided that nothing in this act shall be construed to limit application of the provisions of sections 259 and 260 of the education law requiring a separate vote on budget propositions for affected school district public libraries for 1997-98 and thereafter and relating to the powers and duties of the trustees of the affected school district public libraries; and provided further that:

- (1) section three of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after the effective date of chapter 644 of the laws of 1995;
- (2) sections eleven and twenty-one of this act shall take effect July 1, 1997;
- (3) where the review process has been initiated for a capital project under the state environmental quality review act for the construction, reconstruction, rehabilitation or improvement of a school building or facility prior to the effective date of this act, voter approval of such capital project pursuant to this act shall not be required except where voter approval of a bond resolution would have been required under the provisions of paragraph b of section 37.00 of the local finance law or section 2612 of the education law in effect on the date such review is initiated; and
- (4) the provisions of this act shall not apply to bond resolutions approved by the board of education of a city school district prior to the effective date of this act.

## **§2602. Annual and special school district meetings**

1. Except as otherwise provided in this chapter, including the provisions of this act, an annual school election shall be held on the same day as the annual budget vote pursuant to the provisions of article forty-one of this chapter in each city school district, except that the city school district of the city of Albany shall conduct its annual election separately on the day specified in subdivision nine of section twenty-five hundred two of this chapter.
2. Except as otherwise provided in section twenty-six hundred one-a of this article, special school district meetings may be called in each city school district by the board of education thereof in accordance with sections two thousand four and two thousand seven of this chapter, whenever such board shall deem it necessary and proper.
3. Notwithstanding any provisions of article forty-one of this chapter to the contrary, the polls of such annual and special district meetings shall be open during such consecutive hours, not less than nine, beginning not earlier than seven o'clock in the forenoon, and two of which hours shall be after six o'clock in the evening, as the board of education shall by resolution determine.

See section 23 of L. 1996 Chap. 172 after section 2601-a above.

## **ESTATES, POWERS, AND TRUSTS LAW**

### **§8-1.3 Certain charitable trusts regulated**

- (a) Any person desiring in his lifetime to promote the public welfare by founding, endowing and maintaining, within this state, a public library, museum or other educational institution, a chapel, crematory or a board of trade or chamber of commerce may, by a disposition for such purpose, transfer property to a trustee named in such disposition or to his successor.
- (b) The creator of such disposition may describe:
  - (1) The nature, object and purpose of the institution to be founded, endowed and maintained or of the corporation to be benefited thereby.
  - (2) In case of the founding of an institution, the name by which it shall be known.
  - (3) The powers and duties of the trustee and, if accounting is required, the manner in which and to whom he shall account; but the powers conferred shall not be exclusive of other powers which may be necessary to enable such trustee to execute fully the object of such disposition.
  - (4) Such rules for the management of the property as the creator may prescribe; but, unless otherwise provided, such rules shall be advisory only and shall not preclude the trustee from making such changes as new circumstances may from time to time require.

- (5) The manner and by whom the successor to the trustee named in the disposition is to be appointed.
- (6) The place where, and the time when, the buildings necessary and proper for the institution shall be erected, and the character and extent of such buildings. The creator may provide for all matters necessary and proper to carry out the purposes of the institution, and may provide for such lectures, exhibitions, instruction or amusement in connection therewith as he may consider desirable.
- (c) The trustee named in the disposition or his successor may sue and defend, in the name of an institution established by such disposition, with respect to all matters affecting such institution.

*“If the law of charitable uses which prevailed in England prior to our revolution, prevailed here, there is not much question but that a gift for a free public library would be regarded as a charitable use, and that the trust in question, although vested in individuals, with a provision for perpetual succession, would not be within the rule of perpetuities, governing legal limitations of real or personal property...But it has been finally settled that the English law of charitable uses never became a part of the law of this state..., and the validity of trusts for objects which were denominated charitable under the English law are in this state governed by the same rule by which the validity of trusts for other purposes are determined. The statute limits the period during which the power of alienation of real property and the absolute ownership of personal property may be suspended. It can no more be suspended beyond the prescribed period by a trust than by a limitation of a strictly legal estate.” (Cottman v. Grace, 112 NY 288, 20 St. Rep. 783, 19 NE 839, January 1889)*

*“The collection being completely separate and distinct from the Library’s pre-existing reading room, the Court cannot allow the interests of the reading room to be considered. Thus, it is not appropriate for the payment to the Library for the benefit of the reading room of \$2,500,000 to be a condition to the transfer of the collection . . . While such a payment might result in the continued existence of the reading room, it unfairly and unreasonably limits the Court’s ability to ensure that the purpose of the 1930 indenture is best accomplished because it eliminates certain entities from consideration .” (In the Matter of Board of Trustees of the Huntington Free Library and Reading Room, New York State Court of Appeals WL31549102, 2004)*

## EXECUTIVE LAW

### ARTICLE 7-A - SOLICITATION AND COLLECTION OF FUNDS FOR CHARITABLE PURPOSES

#### §172-a. Certain persons exempted.

- 2. The following persons shall not be required to register with the attorney general:
  - (g) [A] library which files annual financial reports as required by the state education department

## GENERAL MUNICIPAL LAW

### §10. Deposits of public money; security

1. For purposes of this section:
  - a. “Local government” shall mean any municipal corporation, school district, board of cooperative educational services, district corporation, special improvement district governed by a separate board of commissioners, industrial development agency or authority or a public library.
  - b. “Public funds” shall mean funds of a local government.
  - c. “Public deposits” shall mean deposits of public funds in a bank or trust company which are available for all uses generally permitted by the bank or trust company to the depositing local government for actually and finally collected funds under the bank’s or trust company’s account agreement or policies.
  - d. “Bank” shall mean a bank as defined by the banking law or a national banking association located and authorized to do business in New York.
  - e. “Trust company” shall mean a trust company as defined by the banking law and located and authorized to do business in New York.
  - f. “Eligible securities” shall mean any of the following:
    - (i) Obligations issued by the United States of America, an agency thereof or a United States government sponsored corporation or obligations fully insured or guaranteed as to the payment of principal and interest by the United States of America, an agency thereof or a United States government sponsored corporation.
    - (ii) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
    - (iii) Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the market value of the obligation that represents the amount of the insurance or guaranty.
    - (iv) Obligations issued or fully insured or guaranteed by this state, obligations issued by a municipal corporation, school district or district corporation of this state or obligations of any public benefit corporation which under a specific state statute may be accepted as security for deposit of public moneys.
    - (v) Obligations issued by states (other than this state) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.

- (vi) Obligations of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
  - (vii) Obligations of counties, cities and other governmental entities of another state having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
  - (viii) Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.
  - (ix) Any mortgage related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by banks under the limitations established by federal bank regulatory agencies.
  - (x) Commercial paper and bankers' acceptances issued by a bank (other than the bank with which the money is being deposited or invested) rated in the highest short-term category by at least one nationally recognized statistical rating organization and having maturities of not longer than sixty days from the date they are pledged.
  - (xi) Zero-coupon obligations of the United States government marketed as "treasury strips".
- g. Eligible surety bond" shall mean a bond executed by an insurance company authorized to do business in this State, the claims-paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations.
- h. "Eligible letter of credit" shall mean an irrevocable letter of credit issued in favor of the local government for a term not to exceed ninety days by a bank (other than the bank with which the money is being deposited or invested) whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company's commercial paper and other unsecured short-term debt obligations) are rated in one of the three highest rating categories (based on the credit bank or holding company) by at least one nationally recognized statistical rating organization or by a bank (other than the bank with which the money is being deposited or invested) that is in compliance with applicable federal minimum risk-based capital requirements.
2. a. The governing board of every local government shall designate one or more banks or trust companies for the deposit of public funds, the disposition of which is not otherwise provided for by law, received by chief fiscal officer or any officer authorized by law to make deposits. Such designation shall be by resolution of the governing board or, in the case of a city, such other body as may be authorized or required by law to designate depositories. Such resolution shall specify the maximum amount which may be kept on deposit at any time in each such bank or trust company. Such designations and amounts may be changed at any time by further resolution.

- b. Except as otherwise provided by law, all deposits shall be made to the credit of the local government. The deposit of public funds pursuant to this subdivision shall release the officer making the deposit and his or her surety from any liability for loss of such public funds by reason of the default or insolvency of any such bank or trust company.
    - c. The governing board of a local government, in which a banking development district has been designated by the superintendent of banks pursuant to section ninety-six-d of the banking law, may designate a bank, trust company or national bank located in such district for the deposit of public funds, the disposition of which is not otherwise provided for by law, received by the chief fiscal officer or other officer authorized by law to make such deposits. Such designation shall be by resolution of the governing board or, in the case of a city, such other body as may be authorized or required by law to designate depositories. Such resolution shall specify the maximum amount which may be kept on deposit at any time with such bank, trust company or national bank located in such district. Subject to an agreement between such governing board and such banking institution, public funds deposited in such banking institution may earn a fixed interest rate which is at or below such banking institution's posted two year certificate of deposit rate. In those instances where there is such an agreement, its terms and conditions shall also be specified in the resolution. Any such designation, amount, or agreement provisions may be changed at any time by further resolution.
3. All public deposits in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereafter amended shall be secured in accordance with this subdivision:
  - a. The officers making a deposit may accept a pledge of eligible securities having in the aggregate a market value at least equal to the aggregate amount of public deposits from such officers, together with a security agreement from the bank or trust company. The security agreement and custodial agreement referred to below may be the same agreement including when the bank or trust company holding the public deposits holds the collateral for the public body. The security agreement shall provide that such eligible securities are being pledged by the bank or trust company as security for the public deposits, together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposit upon a default. It shall also provide for the conditions under which the securities held may be sold, presented for payment, substituted or released and the events of default which will enable the local government to exercise its rights against the pledged securities. Unless registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the local government or to a bank or trust company with which the local government has entered into a written custodial agreement. The custodial agreement shall provide that the pledged securities will be held by the custodial bank or trust company as agent of, and custodian for, the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities and it shall also provide for the manner in which the

custodial bank or trust company shall confirm the receipt, substitution or release of the collateral. Such agreement shall provide for the frequency of revaluation of collateral by the custodial bank or trust company and the substitution of collateral when a change in the rating of a security causes ineligibility pursuant to paragraph f of subdivision one of this section. Such agreement shall include all provisions deemed necessary and sufficient to secure in a satisfactory manner the local government's interest in the collateral. Such agreement may also contain such other provisions as the governing board may deem necessary.

- b. Whenever eligible securities delivered to a custodial bank or trust company pursuant to this paragraph are transferred by entries on the books of a federal reserve bank or other book-entry system operated by a federally regulated entity without physical delivery of the evidence of such obligations, the records of the custodial bank or trust company shall show, at all times, the interest of the local government in such securities as set forth in the security agreement.
  - c. In lieu of or in addition to the deposit of eligible securities, the officers making a deposit may accept an eligible surety bond payable to such local government as security for the payment of one hundred percent, or an eligible letter of credit payable to such local government as security for the payment of one hundred forty percent, of the aggregate amount of public deposits from such officers and the agreed upon interest, if any. The terms and conditions of any eligible surety bond shall be approved by the governing board.
  - d. For purposes of determining the market value of securities as required by this subdivision:
    - (i) The eligible securities described in subparagraphs (viii), (x) and (xi) of paragraph f of subdivision one of this section shall be valued at eighty percent of their market value.
    - (ii) The eligible securities described in subparagraph (ix) of paragraph f of subdivision one of this section shall be valued at seventy percent of their market value.
    - (iii) Of the eligible securities described in subparagraphs (v), (vi) and (vii) of paragraph f of subdivision one of this section, those securities rated in the highest category shall be valued at one hundred percent of their market value; those securities rated in the second highest rating category shall be valued at ninety percent of their market value; and those securities rated in the third highest rating category shall be valued at eighty percent of their market value. When two nationally recognized statistical rating organizations rate a security in two different categories, the security shall be considered to be rated in the higher of the two categories.
4. (a) Notwithstanding any other provision of law to the contrary, the chief fiscal officer, other officer authorized by law to make deposits, may, subject to the approval of the governing body of a local government, by resolution, enter into a contract with a

courier service for the purpose of causing the deposit of public funds with a bank or trust company as provided in this section.

- (b) The entrusting of public funds for deposit pursuant to paragraph (a) of this subdivision shall release the officer entrusting the public funds to the courier service and his or her surety from any liability for loss of such public funds by the courier service in the process of delivering such public funds to the designated bank or trust company.
- (c) The local government authorizing the deposit of public funds by a courier service pursuant to paragraph (a) of this subdivision shall require the courier service to obtain a surety bond for the full amount entrusted to the courier, payable to the local government and executed by an insurance company authorized to do business in this state, the claims paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations, to insure against any loss of public funds entrusted to the courier service for deposit or failure to deposit the full amount entrusted to the courier.
- (d) A deposit made by a courier on behalf of a local government shall be deemed to be a deposit made by the chief fiscal officer or other officer entrusting such funds for purposes of the requirements contained in this section for securing public deposits.
- (e) A bank or trust company may, from time to time and as agreed upon with a local government, reimburse all or part of, but not more than, the actual cost incurred by the local government in transporting cash, negotiable instruments or other items for deposit through a courier service. Any such reimbursement agreement shall apply only to a specified deposit transaction, and may be subject to such terms, conditions and limitations as the bank or trust company deems necessary to ensure sound banking practices, including, but not limited to, any terms, conditions or limitations that may be required by the banking department or other federal or state authority.

### **§11. Temporary investments**

- 1. For purposes of this section, the terms “local government”, “bank” and “trust company” shall have the same meanings as in section ten of this article.
- 2. The governing board of any local government or, if the governing board so delegates, the chief fiscal officer or other officer having custody of the moneys may temporarily invest moneys not required for immediate expenditure, except moneys the investment of which is otherwise provided for by law, in special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in this state, provided however, that such time deposit account or certificate of deposit shall be payable within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained and provided further that such time deposit account or certificate of deposit be secured in the same manner as is provided for securing deposits of public funds by subdivision three of section ten of this article.

3. Investments pursuant to this section may also be made in obligations of the United States of America or in obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America or in obligations of the state of New York. In addition, moneys in any reserve fund established pursuant to section six-c, six-d, six-e, six-f, six-g, six-h, six-j, six-k, six-l, six-m or six-n of this article may be invested in obligations of the municipality, school district, fire district or district corporation which has established the reserve fund, or in the case of a capital reserve fund established for a town or county improvement district, obligations of the town or county issued for the purposes of such district. All investments made pursuant to this subdivision shall be subject to the following conditions:
  - a. Such obligations shall be payable or redeemable at the option of the owner within such time as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event, at the option of the owner, within two years of the date of purchase. Obligations that are purchased pursuant to a repurchase agreement shall be deemed to be payable or redeemable for purposes of this paragraph on the date on which the purchased obligations are scheduled to be repurchased by the seller thereof. Any obligation that provides for the adjustment of its interest rate on set dates shall be deemed to be payable or redeemable for purposes of this paragraph on the date on which the principal amount can be recovered through demand by the holder thereof.
  - b. Such obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company or, with respect to the city of New York, a reputable dealer in such obligations as shall be designated by the state comptroller, in this state. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company or dealer in obligations only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the local government by the bank or trust company. All obligations held in the custody of a bank or trust company pursuant to this paragraph shall be held by such bank or trust company pursuant to a written custodial agreement as set forth in paragraph a of subdivision three of section ten of this article.
3. Notwithstanding any other provision of law, the governing board of a local government may authorize the aforementioned officers to turn over the physical custody and safekeeping of the evidences of the investments made pursuant to this section to (a) any bank or trust company incorporated in this state, or (b) any national bank located in this state, or (c) any private banker duly authorized by the superintendent of banks of this state to engage in business here. All such private bankers shall, as private bankers, maintain a permanent capital of not less than one million dollars in this state. The said officers may direct such bank, trust company or private banker to register and hold any such evidences of investments in its custody, in the name of its nominee. Such officers may deposit or authorize such bank, trust company or private banker, to deposit, or arrange for the deposit of any such evidence of investments with a federal reserve bank or other book-entry transfer system operated by a federally regulated entity to be credited to an account as to

which the ownership of, and other interests in, such evidences of investments may be transferred by entries on the books of such federal reserve bank or other book-entry transfer system operated by a federally regulated entity without physical delivery of any such evidences of investments. The records of any such bank, trust company or private banker shall show, at all times, the ownership of such evidences of investments, and they shall, when held in the possession of such bank, trust company or private banker be, at all times, kept separate from the assets of such bank, trust company or private banker. All evidences of investments delivered to a bank, trust company, or private banker pursuant to this subdivision shall be held by such bank, trust company or private banker pursuant to a written custodial agreement as set forth in paragraph a of subdivision three of section ten of this article. When any such evidences of investments are so registered in the name of a nominee, such bank, trust company or private banker shall be absolutely liable for any loss occasioned by the acts of such nominee with respect to such evidences of investments.

5. A county clerk may invest any money collected on behalf of the state until such time as the money is required to be remitted to the state. The county clerk shall invest the state money only in those investments authorized by this section and payable within such time as the proceeds shall be required to be remitted to the state. Any interest that accrues on moneys invested pursuant to this subdivision shall be payable in equal shares to the state and to the county provided, however, that any fee or service charges associated with the investment shall be paid from such interest.
6. Except as may otherwise be provided in a contract with bond or note holders, any moneys of a political subdivision authorized to be invested pursuant to this section may be commingled for investment purposes; provided, however, that any investment of commingled moneys shall be payable or redeemable at the option of the owner within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained or as otherwise specifically provided in this section. The separate identity of the sources of such funds shall at all times be maintained and income received on moneys commingled for the purpose of investment shall be credited on a pro rata basis to the fund or account from which the moneys were invested.
7. The chief fiscal officer of each local government shall maintain or cause to be maintained a proper record of all books, notes, securities or other evidences of indebtedness held by or for such subdivision for the purpose of investment. Such record shall at least identify the security, the fund for which held, the place where kept and entries shall be made therein showing date of sale or other disposition and the amount realized therefrom.

*“General Municipal Law, section 11, as amended by chapter 708 of the Laws of 1992, sets forth general investment authority for ‘local governments’. The term ‘local government’ is defined to include public libraries.... Prior to its amendment in 1992, section 11 did not specifically mention public libraries. Similarly, section 1723-a of the Education Law, which governed investments by school districts, was silent as to the investment of the moneys of a school district public library. Since the primary purpose of the 1992 amendments to section 11 was to provide a uniform statute governing the investment of moneys held by local governments..., we believe section 11 now takes precedence over the general authority found in section 226 (6) of the Education Law of a public library to use and dispose of its property. Accordingly,...it is our opinion that moneys held in the*

*custody of the chief fiscal officer or other officers of a public library, whether obtained from public or private sources, may be invested only as prescribed in General Municipal Law section 11, except that investments of gifts, grants or bequests in the form of a true trust are subject to the 'prudent investor' provisions of Estates, Powers and Trusts Law, sections 11-2.2 and 11-2.3." (Op. Compt. 95-30, December 2, 1996).*

### ARTICLE 3-REPORT OF FINANCIAL CONDITION

#### §30. Reports

- ...
3. An annual report of financial transactions shall be made by the treasurer of each public library and library service system established pursuant to section two hundred fifty-five of the education law...

...

*"Since the term 'financial transactions' as used in section 30 (3) is not limited to those transactions involving public source moneys, the report should include information both on public and private source moneys." (Op. Compt. 88-76, April 12, 1988).*

*See Op. Compt. 97-21 following Education Law, section 263.*

#### §31. Form of reports

The report shall be in the form to be prescribed by the comptroller and shall contain:

1. A statement of the receipts of such municipal corporation, industrial development agency, district, agency or activity from all sources and of all accounts or revenue which may be due and uncollected at the close of the fiscal year.
2. A statement of the disbursements of such municipal corporation, industrial development agency, district, agency or activity during the fiscal year.
3. A detailed statement of the indebtedness of the municipal corporation, industrial development agency, district, agency or activity at the close of the fiscal year, the provisions made for the payment thereof, together with the purposes for which it was incurred.
4. A detailed statement of installment purchase contracts entered into by a municipal corporation, school district, district corporation or board of cooperative educational services, the provisions made for the payment thereof, the purposes for which such contract was entered into, whether such contract was financed by the execution and delivery of certificates of participation, and such other information as the comptroller shall require.
5. A statement of the costs of ownership and operation and of the income of each and every public service industry owned, maintained or operated by any such municipal corporation, industrial development agency, district, agency or activity.
6. Such further or more specific information in relation to the cost of any branch of the service, or the cost of any improvement, of such municipal corporation, industrial development agency, district, agency or activity, as may be required by the comptroller.

## **§52. Liability insurance for officers and employees**

Each city, county, fire district, school district, town, village, town improvement district governed by a separate board of commissioners and each public library as defined in section two hundred fifty-three of the education law, may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officers and employees against liability for claims arising from their acts while exercising or performing or in good faith purporting to exercise or perform their powers and duties...

*“The board of trustees of a school district public library possesses implied authority to purchase liability insurance to protect such trustees from claims arising out of the performance of their duties.” (Op. Compt. 77-76, February 17, 1977).*

## **§77-b. Expenses of certain public officers and employees attending conventions, conferences and schools.**

1. Definitions. As used in this section, the following terms shall mean:
  - (a) Municipality. A city, county, town, village, school district, cooperative educational services district, improvement district, soil conservation district, public library, community college, fire district.
  - (b) Governing Board...the trustees of a public library...
  - (c) Conference. A convention, conference, or school conducted for the betterment of any municipality or a convention or conference of firemen or firemanic officers if believed to be of benefit to the municipality.
2. The governing board of a municipality may, by a majority vote, authorize any of its members or any officer or employee or the chief or assistant chief of its fire department or other person who has been elected pursuant to law to a public office of a municipality for which the term of office has not commenced to attend a conference. Such authorization must be by resolution adopted prior to such attendance, duly entered in the record of the proceedings of the municipality. However, the governing board may delegate the power to authorize attendance at such conference to any executive office or any administrative board.
3. All actual and necessary registration fees, all actual and necessary expenses of travel, meals and lodging and all necessary tuition fees incurred in connection with attendance at a conference shall be a charge against the municipality and the amount thereof shall be audited, allowed and paid in the same manner as are other claims against such municipality.
4. Where authorization to attend a conference shall have been granted by any executive officer or administrative board no claim or expenses shall be audited, allowed or paid unless there shall be attached thereto a travel order or similar document signed by such executive officer or by the chairman of the administrative board, as the case may be,

authorizing the claimant to attend such conference. If travel is by car, owned by any person so authorized, he shall receive an amount not to exceed the amount which the governing board allows as mileage.

5. No person shall be entitled to any compensation for the time spent in attending such a conference except that no deductions shall be made from the salary of a person so attending because of such attendance.
6. Advances of money for estimated expenditures, for registration fees, travel, meals, lodging and tuition fees may be made to a person duly authorized to attend a conference provided itemized vouchers showing actual expenditures are submitted after such attendance and moneys advanced in excess of such expenditures are refunded to the municipality or expenditures in excess of such estimate are audited and paid by the municipality. Where an officer or employee fails to return such excess advance, at the time of submitting his itemized vouchers or upon demand after audit of such voucher, the municipality shall deduct the amount of such unreturned excess advance from the salary or other money owed the officer or employee by the municipality.

*“The library trustees should be paid their actual and necessary expenses incurred in attending library conferences.” (Op. Compt. 59-908, January 27, 1960).*

*“A school district public library may not pay the expenses of a library employee taking college courses related to the administration of the public library, unless such attendance is pursuant to official orders and thus part of his official duties.” (Op. Compt. 65-198, March 23, 1965).*

*“A village treasurer may pay the educational expenses of a library employee taking courses related to the administration of the public library, where such attendance is pursuant to an official request and authorization and thus part of her official duties.” (Op. Compt. 68-985, November 27, 1968).*

*“The board of trustees of a public library may authorize a staff member to attend a conference of a professional organization, such as the American Library Association, and may provide reimbursement of certain expenses.” (Op. Compt. 80-472, September 16, 1980).*

*“A public library, in accordance with subdivision 6 of section 77-b of the General Municipal Law, may provide for cash advances for its officers and employees duly authorized to attend conferences.” (Op. Compt. 89-10, April 16, 1989).*

**§104-c. Disposal of surplus computer equipment** [*per. L. 1998, Chap. 618, sec 3, this section is repealed effective July 1, 2007*]

1. Definitions. As used in this section:

- (a) “Computer” means a computer central processing unit and, where attached to a computer central processing unit, such computer cases, computer memory, card and other peripheral devices as may reasonably be viewed functionally as one unit.

- (b) "Computer equipment" means computers, computer memory, cards and associated peripheral devices including, but not limited to, floppy disk drives, hard drives, printers, modems, computer-related cables and networking devices, scanners, computer monitors, and computer software.
  - (c) "Computer software" means executable computer programs and related data files on computer-related media including, but not limited to, floppy disks, hard disks, optical and magneto-optical computer data storage devices.
2. Notwithstanding any other provision of law, the governing board of a political subdivision may by resolution, adopt policies authorizing the disposal of computers, computer software and computer equipment no longer needed for the purposes of the political subdivision through donation to public schools, public libraries, and other public and private institutions for secular educational use, and to not-for-profit institutions for use by individuals with disabilities, upon proof of need by such institution and subordinate to the requirements of the public schools and libraries of the state. Such donation shall be based on a public notification process and competitive proposals from schools, libraries, and other public and private educational programs for secular education use, and not-for-profit institutions serving persons with disabilities, which shall demonstrate need and specific plans for the use of such equipment.
  3. Every resolution enacted pursuant to this section shall provide that no computer software of a political subdivision shall be transferred if such transfer would cause a breach of a computer software license agreement or an infringement of a copyright.

**§ 109-a. Purchases through the office of general services by certain public associations**

The New York State Association of Counties, the Association of Towns of the State of New York, the New York State Town Clerk's Association, Inc., the New York State Conference of Mayors and Other Municipal Officials, the New York State School Boards Association, Inc., the New York Planning Federation and the Association of Fire Districts of the State of New York, any nonpublic elementary and/or secondary school of the state of New York, which provides the instruction required by section thirty-two hundred four and article seventeen of the education law, and which is chartered by, registered with or subject to examination and inspection by the department of education and which is a not for profit institution and any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities, may make purchases, except of printed material, through the office of general services subject to such rules as may be established from time to time pursuant to sections one hundred sixty-three and one hundred seventy-four-a of the state finance law and subdivision eight-a of section one hundred three of this article which may establish limitations with respect to commodities and impose such other appropriate conditions upon purchasing as deemed necessary by the commissioner of general services in order to protect the state's own purchasing interests; and that such association, school, library, library system or cooperative library system shall accept sole responsibility for any payment due the vendor. Boards of education may permit such nonpublic schools to make purchases pursuant to this section through the school district in which the nonpublic school is located, provided that any administrative costs incurred by the school district will be paid by the nonpublic school.

## **ARTICLE 7-TRUSTS FOR PARKS AND LIBRARIES IN VILLAGES AND TOWNS**

### **§140. Trusts for public parks, playgrounds, libraries and public buildings**

It shall be lawful to grant and devise real estate, and to give and bequeath personal property to trustees and their successors in trust, for the purpose of creating, continuing and maintaining, according to the terms, conditions and provisions of such grant, gift, devise or bequest, one or more public parks, or public playgrounds, or a public library, or a public building, or for the purpose of aiding and instructing children, or for any one or more of such purposes, in any city, village or town of this state. The number of such trustees shall not be less than three nor more than nine.

### **§141. Trustees a corporation**

Whenever any grant, gift, devise or bequest shall have been made, under the provisions of this article, such trustees shall thereupon become and be a body politic and corporate with the name which shall have been specified by the donor in making the donation, and with the number of trustees, within the foregoing limits, named by the donor; and such corporation shall have full power to take and hold all property which shall have been and also which shall thereafter be granted, given, devised or bequeathed to it as aforesaid for said uses and purposes, and shall possess the powers and be subject to the provisions and restrictions contained in general corporation law. If no name shall have been specified by the donor as aforesaid, the name of the corporation shall be such as the said trustees shall adopt, certify and file in the county clerk's office of the county in which the interested city, village or town is located.

### **§142. Eligibility of trustees**

In case of the death of a trustee or of his resignation, removal from office, or inability to discharge the duties of his office, his place shall be deemed to be vacant, and may be filled by the remaining trustees; and, in default of their so making an appointment within three months, the appointment to fill the vacancy shall be made by the supreme court, on the petition of any inhabitant of the interested city, village or town, and after due notice to the other trustees and to the mayor of the city, president of the village or supervisor of the town. Said trustees shall be subject to removal by said court for malfeasance or misfeasance in office, upon such notice and after trial in such manner as said court shall direct.

### **§143. Management and appropriation of property**

Trustees created under the provisions of this article shall have the custody and management of all the property of such corporation, and shall appropriate the same, so far as the terms, provisions and conditions of the donations will permit, for the purpose of aiding and instructing children, or for providing suitable grounds for such a public park or parks and properly preparing, beautifying, embellishing and keeping up and maintaining the same, or for furnishing and supplying such library with a suitable and proper edifice, rooms, furniture, books, maps, magazines and whatever may be necessary to make, keep up and maintain a good and complete library, or for one or more of such purposes, and paying the expenses of the trust. Demising lands donated to the corporation and investing and keeping money in, vested at interest, and using the rents and interest therefrom for aiding and instructing children or for park purposes or library purposes, shall be deemed to be an appropriation of such property for said purposes.

#### **§144. Parks, playgrounds and libraries to be free**

All parks, playgrounds and libraries existing under this article shall be free and open to the public for use and enjoyment, subject only to such reasonable rules and regulations as the trustees from time to time shall adopt and promulgate.

#### **§145. Subject to visitation of supreme court**

All corporations existing under this article, together with their books and vouchers, shall be subject to the visitation and inspection of the justices of the supreme court, or of any person or persons who shall be appointed by the supreme court for that purpose; and it shall be the duty of the trustees or a majority of them, in the month of December in each year, to make and file in the office of the county clerk of the county in which the interested city, village or town is situate, a certificate under their hands, stating the names of the trustees and officers of such corporation, with any inventory of the property, effects and liabilities thereof, with an affidavit of the truth of such inventory and certificate. Said trustees shall be entitled to such compensation as said court shall fix. Said court shall also have power to control the discretion of said trustees in determining what property may be demised and for how long; also how much money may be invested and kept invested on interest to produce an income for the purpose of aiding and instructing children or to keep up and maintain the parks or libraries, or either of such purposes; and also in a summary way to determine the reasonableness of any rules and regulations, upon complaint of any inhabitant of the interested city, village or town, and upon notice to said trustees.

#### **§146. Devises and bequests restricted**

This article shall not be construed or held to authorize any devise or bequest whatever of more than one-half of the estate of the testator or testatrix over and above the payment of debts, liabilities and expenses, in case he or she shall leave a husband, wife, child, descendant, or parent him or her surviving. The validity of a devise or bequest for more than such one-half may be contested only by a surviving husband, wife, child, descendant or parent.

#### **§462. Inter local agreements authorized**

1. Any public agency of this state may enter into interlocal agreements with any public agency or agencies of any other state or states providing for any of the following:
  - (a) The exchange, furnishing or providing by one or more of the contracting public agencies, to one or more of the other contracting public agencies of services, personnel, facilities, equipment, or any other property or resources for any one or more of the following purposes or uses: (19) Libraries or bookmobiles

### **ARTICLE 18-CONFLICTS OF INTEREST OF MUNICIPAL OFFICERS AND EMPLOYEES**

#### **§800. Definitions**

When used in this article and unless otherwise expressly stated or unless the context otherwise requires:

1. “**Chief fiscal officer**” means a comptroller, commissioner of finance, director of finance or other officer possessing similar powers and duties, except that in a school district the term shall not mean a member of the board of education or a trustee thereof.
2. “**Contract**” means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.
3. “**Interest**” means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.
4. “**Municipality**” means a...public library...
5. “**Municipal officer or employee**” means an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds...
6. “**Treasurer**” means a county treasurer, city treasurer, town supervisor, village treasurer, school district treasurer, fire district treasurer, improvement district treasurer, president of a board of health of a consolidated health district, county vocational education and extension board treasurer, treasurer of a board of cooperative educational services, public general hospital treasurer, or other officer possessing similar powers and duties.

### **§801. Conflicts of interest prohibited**

Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above and (2) no chief fiscal officer, treasurer, or his deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

*“(1) A prohibited conflict of interest does not exist where a salesman employed by a publishing company is also a trustee of a public library which is a member of a cooperative library system, and where the public library places orders for books through said system which, in turn, purchases the books from the publishing company, if: (a) the remuneration of the salesman is not directly affected as a result of the contract between the company and the library system; and*

*(b) the duties of the salesman do not directly involve the procurement, preparation or performance of any part of the contract. (2) However, a prohibited conflict of interest would exist if the salesman’s normal duties involve handling the account of the particular library system if he intentionally refrains from assuming such duties.” (Op. Compt. 67-385, July 19, 1967).*

*“A prohibited conflict of interest does not arise where the trustee of a school district public library sells insurance to the school district in which such library is located.” (Op. Compt. 67-664, September 5, 1967).*

*“No prohibited conflict of interest occurs when a member of a town historical area board of review contracts with the town for the rendering of his professional services in connection with a building for the town public library district.” (Op. Compt. 68-813, October 28, 1968).*

*“Although there is no express statutory prohibition against such dual board membership [i.e., membership on the board of education of a school district and membership on a board of trustees of a public library established and supported by that school district], concurrent membership on the board of education and the library board of trustees does give rise to an incompatibility of offices...I find, therefore, that the office of member of the board of education and the office of member of the board of trustees of a school district public library are legally incompatible.” (Matter of Appeal of Powers, 9 Educ. Dept. Rpts.179, Jud. Dec. No. 8133, April 27, 1970).*

*“A conflict of interest does not arise where a member of a central school district board of education is employed by the school district public library.” (Op. Compt. 73-820, October 3, 1973).*

*“A member of a Library Board of Trustees may not simultaneously hold the position of paid custodian of the library.” (Op. Att.-Gen. 79-230, September 14, 1979).*

*“A member of a public library board of trustees does not have an interest in a contract between the library and an architectural firm which employs the board member’s daughter, but the board member should excuse himself or herself from any discussions and votes on matters relating to the contract. A public library may adopt a code of ethics which should provide standards of conduct in relation to, among other things, contracts between the library and firms which employ relatives of library officers and employees.” (Op. Compt. 91-26, July 10, 1991).*

## **§802 Exceptions**

The provisions of section eight hundred one of this chapter shall not apply to:

1. a. The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his deputy or employee, has an interest in such bank or

trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;

- b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;
  - c. The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
  - d. The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefor is approved by order of the supreme court upon petition of the governing board;
  - e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;
  - f. A contract with a membership corporation or other voluntary non-profit corporation or association;
  - g. The sale of bonds and notes pursuant to section 60.10 of the local finance law;
  - h. A contract in which a municipal officer or employee has an interest if such contract was entered into prior to the time he was elected or appointed as such officer or employee, but this paragraph shall in no event authorize a renewal of any such contract;
  - i. Employment of a duly licensed physician as school physician for a school district upon authorization by a two-thirds vote of the board of education of such school district, notwithstanding the fact that such physician shall have an interest, as defined in section eight hundred one of this chapter, in such employment.
2.
    - a. A contract with a corporation in which a municipal officer or employee has an interest by reason of stockholdings when less than five per centum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee;
    - b. A contract for the furnishing of public utility services when the rates or charges therefore are fixed or regulated by the public service commission;

- c. A contract for the payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his official duties and are so designated as an office or chamber;
- d. A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part time service in the official duties of the office;
- e. A contract in which a municipal officer or employee has an interest if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of one hundred dollars.
- f. A contract with a member of a private industry council established in accordance with the federal job training partnership act or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the council and the member does not vote on the contract.

**§803. Disclosure of interest**

- 1. Any municipal officer or employee who has, will have, or later acquires an interest in any actual or proposed contract with the municipality of which he is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to the governing body thereof as soon as he has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body. Once disclosure has been made by an officer or employee with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures need be made by such officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.
- 2. Notwithstanding the provisions of subdivision one of this section, disclosure shall not be required in the case of an interest in a contract described in subdivision two of section eight hundred two hereof.

**§804. Contracts void**

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

[NOTE: Section 804-a omitted]

**§805. Violations**

Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article shall be guilty of a misdemeanor.

### **§805-a. Certain action prohibited**

1. No municipal officer or employee shall:
  - a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;
  - b. disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;
  - c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
  - d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
2. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

[NOTE: Section 805-b omitted]

### **§806. Code of ethics**

1. (a) The governing body of each county, city, town, village and school district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Such code shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.
- (b) Effective on and after January first, nineteen hundred ninety-one, such codes of political subdivisions, as defined in section eight hundred ten of this article, may

contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body, as defined in section eight hundred ten of this article. Nothing herein shall be construed to restrict any political subdivision or any other municipality from requiring such a filing prior to January first, nineteen hundred ninety-one. Other than as required by subdivision two of section eight hundred eleven of this article, the governing body of any such political subdivision or other municipality may at any time subsequent to the effective date of this paragraph (b), adopt a local law, ordinance or resolution pursuant to subdivision one of section eight hundred eleven of this article and any such political subdivision or municipality, acting by its governing body, may take such other action as is authorized in such subdivision. Any political subdivision or other municipality to which all of the provisions of section eight hundred twelve of this article apply may elect to remove itself from the ambit of all (but not some) provisions of such section in the manner authorized in subdivision three of such section eight hundred twelve. In such event any such political subdivision or municipality shall be subject to certain conditions and limitations (set forth in paragraphs (a), (b) and c) of such subdivision three which shall include, but not be limited to, the promulgation of a form of an annual statement of financial disclosure described in subdivision one of such section eight hundred eleven.

2. The chief executive officer of a municipality adopting a code of ethics shall cause a copy thereof to be distributed to every officer and employee of his municipality. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

[NOTE: Remainder of section 806 is omitted]

### **§807. Posting of statute**

The chief executive officer of each municipality shall cause a copy of this article to be kept posted in each public building under the jurisdiction of his municipality in a place conspicuous to its officers and employees. Failure to post any such copy shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof.

[NOTE: Remainder of Article 18 omitted.]

## **INSURANCE LAW**

### **§107. Definitions of terms of general use in this chapter**

- (a) In this chapter, unless the context otherwise requires:
  - (51) "Public entity" means:
    - (e) a public library, as defined in section two hundred fifty-three of the education law, authorized to operate in this state;

### **§3435. Group property/casualty insurance**

- (a) This section shall apply to public entities as defined in section one hundred seven of this chapter, organizations described by section 510(c)(3) of the United States internal revenue code, Type B corporations formed pursuant to paragraph (b) of section two hundred one of the not-for-profit corporation law, and organizations described by section two hundred sixteen-a of the education law.
- (b) Notwithstanding any other provision of this chapter, group coverage for homogeneous groups formed for purposes other than obtaining insurance may be approved, subject to regulations to be promulgated by the superintendent, for the kinds of insurance permitted in subsection (c) of this section, provided such policies shall be available to all eligible members of such group upon application.
- (c) Group policies may be written pursuant to this section for any of the kinds of insurance authorized by subsection (a) of section one thousand one hundred thirteen of this chapter, except the kinds of insurance authorized by paragraphs one, two, three, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three and twenty-five of such subsection.
- (d) Group policies approved pursuant to this section shall not be eligible for the filing exemptions specified in section six thousand three hundred one of this chapter.

## **ARTICLE 47—MUNICIPAL COOPERATIVE HEALTH BENEFIT PLANS**

### **§4702 . Definitions**

As used in this article:

- (f) **“Municipal corporation”** means within the state of New York, a city with population of less than one million or a county outside the city of New York, town, village, board of cooperative educational services, school district, a public library, as defined in section two hundred fifty-three of the education law, or district, as defined in section one hundred nineteen-n of the general municipal law.

## **LOCAL FINANCE LAW**

### **§37.00 Referenda on bond resolutions or capital note resolutions; school districts**

- a. In a school district other than a city school district a bond resolution or a capital note resolution shall not be adopted by the finance board thereof unless a tax to be collected in installments shall have been voted in the manner provided in the education law, as amended from time to time, for the object or purpose for which such resolution authorizes the issuance of obligations. The foregoing provisions of this paragraph shall not apply to:
  - 1. A bond resolution or capital note resolution adopted by the finance board of a school district authorizing the issuance of bonds or capital notes for the payment of all or part of a

judgment, award or a compromised or settled claim against the school district for the acquisition of land or rights in land, to the extent that the amount of such judgment, award or claim exceeds the amount authorized to be expended for such acquisition of land or rights in land, provided such excess amount does not exceed fifteen per centum of the amount so authorized to be expended.

2. A bond resolution which authorizes the issuance of bonds pursuant to section 92.00 of this chapter where prior to the issuance by a school district of the bond anticipation note or notes to be refunded by such bonds a tax to be collected in installments has been voted in the manner provided in the education law for the object or purpose for which such note or notes were issued.
3. A bond resolution or capital note resolution which authorizes the issuance of bonds or capital notes for the payment of judgments, or compromised or settled claims against such a school district, or awards or sums payable by such a school district pursuant to a determination by a court, or an officer, body or agency acting in an administrative or quasi-judicial capacity.
  - b. In a city school district a bond resolution adopted by the finance board thereof shall not become effective unless a proposition approving such resolution shall have been adopted at a special or annual school district meeting held in accordance with article forty-one and fifty-three of the education law. The foregoing provisions of this paragraph shall not apply to a bond resolution authorizing the issuance of bonds:
    1. For the payment of judgments, or compromised or settled claims against such city school district, or awards or sums payable by such city school district pursuant to a determination by a court, or an officer, body or agency acting in an administrative or quasi-judicial capacity; or
    2. Where a tax to be collected in installments has been voted in the manner provided in the education law, prior to July first, nineteen hundred fifty-one, for the object or purpose for which such resolution authorizes the issuance of bonds; or
    3. Where such resolution authorizes the issuance of bonds pursuant to section 92.00 of this chapter and prior to the issuance by a school district of the bond anticipation note or notes to be refunded by such bonds a tax to be collected in installments has been voted in the manner provided in the education law for the object or purpose for which such note or notes were issued.

Notwithstanding the foregoing provisions of this paragraph, the finance board of a city school district may provide in any bond resolution or capital note resolution that such resolution, shall not become effective unless a proposition approving such resolution is adopted at a special or annual district meeting held in accordance with article forty-one and fifty-three of the education law.

*See section 23 of L. 1996 Chap. 172 after section 2601-a of the Education Law.*

## PENAL LAW

### **§235.10. Obscenity; presumptions**

1. A person who promotes or wholesale promotes obscene material, or possesses the same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.
2. A person who possesses six or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

The provisions of this section shall not apply to public libraries or association libraries as defined in subdivision two of section two hundred fifty-three of the education law, or trustees or employees of such public libraries or association libraries when acting in the course and scope of their duties or employment.

### **§263.20. Sexual performance by a child; affirmative defenses**

2. In any prosecution for any offense pursuant to this article, it is an affirmative defense that the person so charged was a librarian engaged in the normal course of his employment, . . . provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, or is in any way responsible for acquiring such material for sale, rental or exhibition.

## PUBLIC AUTHORITIES LAW

### **§1676. Definitions:**

2. The term “dormitory” shall mean any of the following :
  - b). . . public library
32. The term “public library” shall mean those libraries set forth in section 5 of the chapter of the law of nineteen hundred ninety-three which added this subdivision, as defined as a public library or as an association library pursuant to section two hundred fifty-three of the education law.

### **§1680. Dormitories at certain educational institutions other than state operated institutions and statutory or contract colleges under the jurisdiction of the state university of New York.**

33. Notwithstanding any other provision of law, subject to the approval of the voters pursuant to sections two hundred fifty-five and two hundred sixty of the education law, a public library shall have full power and authority to assign and pledge to the dormitory authority any and all public funds to be apportioned or otherwise made payable by the state, or a political subdivision, as defined in section one hundred of the general municipal law, in an amount sufficient to make all payments required to be made by such public library

pursuant to any agreement entered into between such public library and the dormitory authority. All state and local officers are hereby authorized and required to pay all such funds so assigned and pledged to the dormitory authority or upon the direction of the authority to any trustee of any authority bond or note issued, pursuant to a certificate filed with any such state or local officer by the authority as required by such agreement.

*[Note: For a list of libraries eligible to receive the funds described in section 33, see L. 1993, Chapter 672, Section 5 at end of Part 1]*

*“Currently public libraries in New York State must seek capital funding through securing conventional mortgages rather than public financing resulting in much higher interest costs. Furthermore, most library boards and staff do not possess the detailed knowledge necessary to successfully administer and complete major construction projects. By utilizing the Dormitory Authority taxpayers can save hundreds of thousands of dollars in interest costs and can be ensured their projects will be successfully completed.” (Memorandum of Assemblyman Steve Englebright from the Governor’s Bill Jacket for L. 1993 Chap 672).*

## **PUBLIC BUILDINGS LAW**

### **ARTICLE 4-A—CONSTRUCTION OF PUBLIC BUILDINGS TO PROVIDE ACCESS AND USE BY THE PHYSICALLY HANDICAPPED**

#### **§50. Definitions**

As used in this article

1. **“Public building”** means any building or portion thereof, other than a privately owned residential structure, public housing structure, police, fire or correction structure, constructed wholly or partially with state or municipal funds, whether tax funds, funds obtained through bond issues or grants or loans under any state law, which is likely to be used by physically handicapped persons, including, but not limited to theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, transportation terminals and stations, factories, office buildings and business establishments.
4. **“Facilities”** shall mean and include those facilities as defined in the provisions of the state building construction code relating to facilities for the physically handicapped.
5. **“Physically handicapped”** means
  - (a) impairment requiring confinement to a wheel chair; or
  - (b) impairment causing difficulty or insecurity in walking or climbing stairs or requiring the use of braces, crutches or other artificial supports; or impairment caused by amputation, arthritis, spastic condition or pulmonary cardiac or other ills rendering the individual semi ambulatory; or
  - (c) total or partial impairment of hearing or sight causing insecurity or likelihood of exposure to danger in public places; or

(d) impairment due to conditions of aging and incoordination.

6. **“Reconstruction, rehabilitation, alteration or improvement”** shall mean only that work which results in a substantial change in the structure or facilities of a public building and shall not include minor repairs necessary for ordinary maintenance.

### **§51. Construction of public buildings**

In addition to any other requirements respecting the construction of a public building and facilities thereof, the new construction, reconstruction, rehabilitation, alteration or improvement of all such buildings and facilities shall conform to the requirements of the state building construction code relating to facilities for the physically handicapped, except work already completed, work in progress, or work for which schematic designs have been approved by the effective date of this act. This section shall not be effective if its provisions will impair the structural stability of the public building or its facilities...[Note that remainder of section 51 pertains specifically to New York City Transit Authority].

### **§52. Compliance**

The official, governing body or board having design approval authority for state or municipal building construction shall determine whether a proposed structure is a “public building” within the meaning of this article and shall ensure that the design of any such building complies with the requirements hereby imposed.

### **§53. Assistive listening systems**

1. All new public buildings, construction of which commences after January first, nineteen hundred ninety-one, containing an auditorium, theater, meeting hall, hearing room, amphitheater, or room used in any similar capacity which are so designated by the appropriate building and fire code shall have equipped and installed an assistive listening system for use by hearing impaired persons who require the use of such a system to improve their reception of sound.
2. Standards for such systems shall be developed by the state fire prevention and building code council upon receiving recommendations from the advisory board on assistive listening systems in places of public assembly.
3. For purposes of this section, the term “assistive listening system” shall mean situational-personal acoustic communication equipment designed to improve the transmission and auditory reception of sound.

## **PUBLIC HEALTH LAW**

### **§1399-o. Smoking restrictions**

2. Except as provided in subdivision three, four and five of this section, smoking shall not be permitted and no person shall smoke in any indoor area open to the public, including but not limited to any indoor area open to the public in:
  - (f) libraries;

## PUBLIC OFFICERS LAW

### §3. Qualifications for holding office

6. The provisions of this section requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he shall be chosen or within which his official functions are required to be exercised, shall not apply to the appointment of trustees of a public village library, who reside outside the village in which such library is located.

*“[W]e believe that the trustee of the Nassau Library System vacates his office when he ceases to be a resident of Nassau County.” (Op. Compt. 79-255, July 5, 1979).*

*“We conclude that residency in the city is required to qualify for appointment [as a trustee] to a city public library.” (Op. Att.-Gen. 83-36, p. 110, May 8, 1985).*

### §10. Official oaths

Every officer shall take and file the oath of office required by law, and in...the oath of office...of every other officer, including the trustees and officers of a public library...in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

*“Trustees of a town public library are local public officers and must file an oath or office.” (Op. Compt. 59-23, May 20, 1959).*

*“The members of the board of trustees of a cooperative library system and the treasurer elected by them (if not a member of the board) must take the constitutional oath of office prescribed by State Constitution Article XIII section 1.” (Op. Compt. 67-860, December 7, 1967).*

*“Members and officers of school boards and library trustees are required to take a constitutional oath before assuming office, and this must be filed in the office of either the clerk of the board or the county clerk, as the case may be.” (Op. Comp. 67-1014, December 21, 1967).*

### §18. Defense and indemnification of officers and employees of public entities

3.
  - (a) Upon compliance by the employee with the provisions of subdivision five of this section, the public entity shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the public entity employing such employee.
  - (b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the chief legal officer of the public entity or other

counsel designated by the public entity determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice, provided, however, that the chief legal officer or other counsel designated by the public entity may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the public entity to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing board of the public entity.

- (c) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.
  - (d) Where the employee delivers process and a written request for a defense to the public entity under subdivision five of this section, the public entity shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any questions pertaining to the obligation to provide for a defense.
4. (a) The public entity shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided further that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the governing body of the public entity.
- (b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
  - (c) Nothing in this subdivision shall authorize a public entity to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to section fifty-one of the general municipal law; provided, however, that the public entity shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.
  - (d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the chief administrative officer of the public entity; and if not

inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the public entity.

5. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon: (I) delivery by the employee to the chief legal officer of the public entity or to its chief administrative officer of a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the public entity based upon the same act or omission, and in the prosecution of any appeal.
6. The benefits of this section shall insure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.
7. This section shall not in any way affect the obligation of any claimant to give notice to the public entity under section ten of the court of claims act, section fifty-e of the general municipal law, or any other provision of law.
8. Any public entity is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, or authorized by law to transact business in this state, against any liability imposed by the provisions of this section, or to act as a self-insurer with respect thereto.
9. All payments made under the terms of this section, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.
10. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.
11. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of any public entity by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.
12. Except as otherwise provided in this section, benefits accorded to employees under this section shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment; unless the governing body of the public entity shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.
13. 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 . . . 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 . . . Consequently, we do not believe that the 1984 amendment [i.e. section 13] constrains us to supercede the conclusion in Opn. No. 81-343 [below] . . . 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 case law . . . (Op. Comp. 2001-12, December 31, 2001).*

14. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

*“[S]ection eighteen of the Public Officers Law applies to all public libraries, including school district libraries, as well as public libraries of a city, county, village or town.” (Op. Compt. 81-343, October 13, 1981). See Op. Comp. 2001-12 after subsection 13 above.*

*“Board members named in a lawsuit may participate in the village, and library boards’ deliberations, regarding the village’s and library’s liability as named entities in the lawsuit, and may be present when the boards convene in executive session to receive the advice of counsel.” (Op. Att.-Gen. 197-32, July 30, 1997).*

## **REAL PROPERTY TAX LAW**

### **§420-a. Nonprofit organizations; mandatory class**

1. (a) Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.
  
6. Such real property outside a city owned by a free public library or held in trust by an educational corporation for free library purposes shall be so exempt from taxation although a portion thereof is leased or otherwise used for purposes of income, if such income is necessary for and is actually applied to the maintenance and support of such library.

*“So long as the general public continue to have free access to this extensive and valuable library, surely it is practically, and to all intents and purposes, a ‘public library.’ Under such circumstances, to criticize the library as but an incident to the relator’s purposes, would seem to be ungracious. ...The words ‘public library’ are not technical. They have acquired, by judicial decisions, no precise legal meaning. They are words of common use and ought, therefore, as between the public, which is invited to free enjoyment and a disinterested society...to be interpreted as they are commonly understood.” (People ex rel. The American Geographical Society v. The Commissioners of Taxes and Assessments for the City and County of New York, 75 Hun 505, July 1877).*

*“The most serious contention made by the respondents is the claim that, while the relator’s charter creates a public library, it does not use its property for public purposes. The charge is made that admission is limited to accredited persons who have made application in writing. As the court reads the stipulated facts, the library is divided into two working parts. The rules are designed to protect the valuable documents and other works so that they will not be handled by any but those who will not injure them. Nobody is denied admission. The library has a place in our public institutions. The public is not barred. There is no discrimination. It has an educational value as a library not existing elsewhere in this city. It is not made less public by its rules for they appear to be necessary if the collection is to be preserved for the public which will succeed the present generation. The mere fact that the number of persons using the facilities of this library is not as great as in the case of other public libraries and institutions does not alter the fact that this library is available to the public generally and affords the use, under necessary and reasonable safeguards, of a rare and valuable collection. Certainly, no instance is shown where any member of the public has been discriminated against or refused the use of the library’s facilities.” (People ex rel. The Pierpont Morgan Library v. Miller et al., 177 Misc. 144, 29 NYS 2d 445, July 7, 1941)*

*“A public library is wholly exempt from taxation if in fact the income derived from the rental of a portion of the library building is necessary for and actually applied to the maintenance and support of the library.” (9 Op. Compt. 233, #6222, June 15, 1953).*

*“A town may grant a total exemption to real estate owned by a free association library, where a building thereon contains not only the library but also an income-producing apartment, provided that the income therefrom is necessary for and applied to the support and maintenance of the said library.” (Op. Compt. 68-372, August 9, 1968).*

*See 5 Op. Counsel SBEA No. 53, October 20, 1975, following Real Property Tax Law, section 420-b.*

*“Organizations exempt from federal income tax under section 501 (c )(3) of the Internal Revenue Code (26 USCS) are generally exempt from real property taxation pursuant to section 420-a or 420-b of the Real Property Tax Law . . .” (11 Op. Counsel SBRPS No. 5, November 27, 2002)*

#### **§420-b. Nonprofit organizations; permissive class**

1. (a) Real property owned by a corporation or association which is organized exclusively for bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, bar association, medical society, library, patriotic or historical purposes, for

the development of good sportsmanship for persons under the age of eighteen years through the conduct of supervised athletic games, for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association, or by another such corporation or association as hereinafter provided, shall be exempt from taxation; provided, however, that such property shall be taxable by any municipal corporation within which it is located if the governing board of such municipal corporation, after public hearing, adopts a local law, ordinance or resolution so providing. None of the following subdivisions of this section providing that certain properties shall be exempt under circumstances or conditions set forth in such subdivisions shall exempt such property from taxation by a municipal corporation whose governing board has adopted a local law, ordinance or resolution providing that such property shall be taxable pursuant to this subdivision.

- (b) No local law, ordinance or resolution adopted pursuant to this subdivision shall provide for the taxation of any particular property or owner. Any such local law, ordinance or resolution shall apply alike to all property owned by any corporation or association organized for one or more of the purposes specified in such local law, ordinance or resolution, and used for carrying out thereupon one or more of such purposes. Any purpose so specified in the local law, ordinance or resolution must be one of the purposes listed in paragraph (a) of this subdivision, but the purposes so specified in the local law, ordinance or resolution need not include all the purposes listed in said paragraph. Any local law, ordinance or resolution adopted pursuant to this subdivision may be amended or repealed.
  - (c) Real property such as specified in paragraph (a) of this subdivision shall not be exempt if any officer, member or employee of the owning corporation or association shall receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees; or if it be not in good faith organized exclusively for one or more of such purposes.
2. If any portion of such real property is not so used exclusively to carry out thereupon one or more of the purposes listed in subdivision one of this section, but is (a) leased or (b) otherwise used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be exempt; provided, however, that such real property shall be fully exempt from taxation although it or a portion thereof is used (a) for purposes which are exempt pursuant to this section or sections four hundred twenty-a, four hundred twenty-two, four hundred twenty-four, four hundred twenty-six, four hundred twenty-eight, four hundred thirty or four hundred fifty of this article by another corporation which owns real property exempt from taxation pursuant to such sections or whose real property if it owned any would be exempt from taxation pursuant to such sections, (b) for purposes which are exempt pursuant to section four hundred eight of this chapter by a corporation which owns real property exempt from taxation pursuant to such

section, (c) for purposes which are exempt pursuant to section four hundred sixteen of this chapter by an organization which owns real property exempt from taxation pursuant to such section or whose real property if it owned any would be exempt from taxation pursuant to such section or (d) for purposes relating to civil defense pursuant to the New York state defense emergency act, including but not limited to activities in preparation for anticipated attack, during attack, or following attack or false warning thereof, or in connection with drill or test ordered or directed by civil defense authorities; and provided further that such real property shall be exempt from taxation only so long as it or a portion thereof, as the case may be, is devoted to such exempt purposes and so long as any moneys paid for such use do not exceed the amount of carrying, maintenance and depreciation charges of the property or portion thereof, as the case may be.

3. Such real property from which no revenue is derived shall be exempt though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon if (a) the construction of such buildings or improvements is in progress or is in good faith contemplated by such corporation or association or (b) such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more of such purposes shall be erected upon such premises or some part thereof.
4. Such real property shall be so exempt although it is used as a polling place upon days of registration and election.
5. Such real property outside a city owned by a free public library or held in trust by an educational corporation for free library purposes shall be so exempt from taxation although a portion thereof is leased or otherwise used for purposes of income, if such income is necessary for and is actually applied to the maintenance and support of such library.
6. Real property exempt pursuant to this section from taxation by all municipal corporations within which it is located shall also be exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter. Real property which is taxable by one or more, but not all, of the municipal corporations within which it is located, pursuant to subdivision one of this section shall also be exempt from such levies and assessments to the same extent except that:

such real property taxable by a town shall be subject to any such levies and assessments which are imposed to defray the costs of improvements or services furnished by the town or by a special district established pursuant to the town law;

such real property taxable by a county shall be subject to any such levies and assessments which are imposed to defray the costs of improvements or services furnished by the county or by a special district established pursuant to the county law; and

such real property taxable by a city shall be subject to any such levies and assessments which are imposed to defray the cost of improvements or service furnished by the city.

7. An exemption may be granted pursuant to this section only upon application made by the owner of the property on a form prescribed by the state board. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.

*“Real estate owned by a library and not used exclusively for such purposes is subject to taxation. In the case of a library located outside of a city, the real estate of such library shall not be taxed as to that portion thereof leased or otherwise used for purposes of income, when such income is necessary for and actually applied to the maintenance and support of such library.” (7 Op. Compt. 153, #5162, April 19, 1951).*

*“A library, organized as a nonprofit corporation under the Membership Corporations Law, is entitled to an exemption from village taxation of its real property when such property is used for library purposes and no officer, member, or employee of such corporation receives pecuniary profit from its operations.” (Op. Compt. 61-615, October 10, 1961).*

*See Op. Compt. 68-372, August 9, 1968, following section 420-a (6), above.*

*“[V]acant land located outside a city, which is owned by a free public library and leased as a hunting preserve, is not entitled to an exemption pursuant to subdivision 6 of section 421 of the Real Property Tax Law.” (5 Op. Counsel SBEA No. 53, October 20, 1975).*

*See 11 Op. Counsel SBRPS No. 5 after section 420-a, above.*

#### **§438. Trustees of a hospital, playground and library; hospital for benefit of a city**

1. Real property held by trustees named in a will or deed of trust or appointed by the supreme court of the state of New York for hospital, public playground and library purposes, as set forth in sections four hundred twenty-a and four hundred twenty-b of this article, shall be exempt from taxation and exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this article, to the same extent and subject to the same conditions and exceptions as if owned by a corporation.

#### **§1322. Collecting officer’s notice in districts other than city school districts**

1. In each district other than a city school district, upon the receipt of a warrant for the collection of taxes, the collecting officer shall cause a notice to be published in a newspaper, or two newspapers, if there be two, having general circulation in the school district stating that he has received such warrant and will receive all taxes which may be paid to him within one month from the time of the first publication thereof. Such notice shall be published at least twice and for such other times as the school authorities may direct; provided, however, that if there is no newspaper having general circulation in such district, such notice shall be posted immediately in at least twenty public place in such district. The collecting officer shall also, upon the receipt of the warrant, mail statements of taxes in the same manner as provided in section nine hundred twenty-two of this chapter for city and town collecting officers; provided, that where the school district has levied a tax for purposes of a public library established pursuant to section two hundred

fifty-five of the education law or has levied a tax on behalf of a library district pursuant to special act, the amount of the taxes attributable to library purposes shall be separately stated on each statement of taxes. Upon resolution duly adopted by the authorities of the school district, the collecting officer shall cause to be enclosed with the statement showing the amount of tax due, a summary of the adopted budget and an explanation of the computation of the tax rate.

#### **§1324. Collecting officer's notice in city school districts**

Except as otherwise provided in section thirteen hundred twenty-six or section thirteen hundred twenty-seven of this chapter, the collecting officer of a city school district on receipt of a warrant for the collection of taxes, shall cause a notice to be published in a newspaper, or two newspapers, if there be two, having a general circulation in such city school district, stating that he has received such warrant and will receive all such taxes which may be paid to him within one month from the date of the first publication of such notice. The date upon which such warrant expires shall be specified in such notice. Such notice shall be published at least twice and for such other times as the school authorities may direct. The collecting officer shall also, upon the receipt of the warrant, mail statements of taxes in the same manner as provided in section nine hundred twenty-two of this chapter for city and town collecting officers; provided, that where the school district has levied a tax for purposes of a public library established pursuant to section two hundred fifty-five of the education law or has levied a tax on behalf of a library district pursuant to special act, the amount of the taxes attributable to library purposes shall be separately stated on each statement of taxes; provided further, that where the school district is required to levy and collect taxes for free association libraries the amount attributable to library purposes shall be stated on a separate line on each statement of taxes. Upon resolution duly adopted by the authorities of a city school district, the collecting officer shall cause to be enclosed with the statement showing the amount of tax due, a summary of the adopted budget and an explanation of the computation of the tax rate.

### **RETIREMENT AND SOCIAL SECURITY LAW**

#### **§30. Participation by municipalities [in the State Employees Retirement System]**

- c. Participation by a municipality pursuant to this section shall cover all agencies of the government of such municipality, including the free public library, if any, of such municipality, unless separate participation by any such agency or school district public library has been approved pursuant to section thirty-one, thirty-one-a or thirty-two of this article.

*“A school district is defined as a municipality under subdivision 19 of section 2 of the Retirement and Social Security Law. Participation by a municipality in the retirement system covers all agencies of the municipality (Retirement and Social Security Law, section 30, subdivision c). Under the facts here presented there was a reasonable basis for the interpretation made by the Comptroller that the respondent library (a school district library) was an agency of the municipality.” (Finkelstein Memorial Library v. Central School District No. 2, Towns of Ramapo, Clarkstown, Orangetown and Haverstraw, 34 AD 2d 781, 331 NYS 2d 243, May 1970).*

*“Neither Roosevelt Public Library District or Uniondale Public Library District are those described by the provisions of the Retirement and Social Security Law, section 30, subdivision c, inasmuch as they are neither ‘free’ public libraries available to all residents of the town, nor are they agencies of the town as contemplated by that statute. The Joint Legislative Committee to Study the New York State Employees’ Retirement System interpreted subdivision c as not applicable to public authorities or districts which have separate corporate existence. Both the Roosevelt Public Library District and Uniondale Public Library District are distinct entities not created for the Town but for districts within the Town and, as such, cannot be construed as agencies of the government of a municipality of the type described in section 30, subdivision c of the Retirement and Social Security Laws...Accordingly, I conclude that the employees of the Roosevelt Public Library District and the Uniondale Public Library District are not employees of the Town of Hempstead for the purpose of obtaining benefits from the State Social Security Agency and the New York State Employees’ Retirement System. Such benefits may be provided for them, through the following of proper procedures, by the Public Library Districts and not by the Town of Hempstead.” (Op. Att.-Gen. 71-92, April 28, 1971).*

### **§31-a. Participation by school district public libraries**

- a. A school district public library, by resolution legally adopted by its board of trustees, may elect to become a participating employer in the retirement system, separate and distinct from the school district. Acceptance of the school district public library as a participating employer in the retirement system shall be mandatory with the comptroller.
- b. The officers and employees of such library shall be credited with such periods of prior service as shall be certified by the library for service rendered to it, or its predecessor, or the state, or in any other capacity approved by such library and the comptroller. Service for such library after the date on which it commences to participate in the retirement system shall be considered as member service. An officer or employee of such library who, as of the date he is so approved for membership in the retirement system, is already a member thereof, shall not have his total credit reduced by such approval. Any reserve held on account of any such officer or employee in the pension accumulation fund shall be used as an offset against the deficiency contribution payable thereafter by such library on account of such officer or employee for any prior service credit and any such previous credit.

## **STATE FINANCE LAW**

### **§99-l. Love your library fund**

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the “love your library fund.”
2. Such fund shall consist of all revenues received by the department of motor vehicles pursuant to section four hundred four-v of the vehicle and traffic law, and all other

moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law.

3. Moneys of the fund, following appropriation by the legislature shall be expended only for the purposes of providing funding for the statewide summer reading program set forth in subdivision ten of section two hundred seventy-three of the education law. Moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers approved and certified by the commissioner of education. Any interest received by the comptroller on moneys on deposit in the love your library fund shall be retained in and become part of such fund.

### **§ 163. Purchasing services and commodities**

4. General provisions for purchasing services. State agency procurement practices for services shall incorporate the following:
  - e. Any officer, body or agency of a political subdivision as defined in section one hundred of the general municipal law or a district therein, may make purchases of services through the office of general services' centralized contracts for services, subject to the provisions of section one hundred four of the general municipal law. The commissioner may permit and prescribe the conditions for the purchase of services through the office of general services' centralized contracts for services by any public authority or public benefit corporation of the state including the port authority of New York and New Jersey. The commissioner is authorized to permit any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities, to make purchases of services through the office of general services' centralized contracts provided, however, that such entity so empowered shall accept sole responsibility for any payment due with respect to such purchase.

## **UNIFORM CITY COURT ACT**

### **§1809. Procedures relating to corporations, associations, insurers and assignees**

1. No corporation, except a municipal corporation, public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit, no partnership, or association and no assignee of any small claim shall institute claim shall institute action or proceeding under this article, nor shall this article apply to any claim or cause of action brought by an insurer in its own name or in the name of its insured whether before or after payment to the insured on the policy.
2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the

authority of any person who appears for the corporation in defense of a small claims court case.

*“The purpose of this bill is to allow school district libraries to bring suit in small claims court. Although Education Law section 265 makes it a criminal offense to refuse to return library materials, district attorneys refuse to prosecute these cases because of the minor nature of the crime. However, every year public libraries are unable to recover thousands of dollars of unreturned materials. Coupled with the inflationary pressure which increases the cost of purchasing library materials every year, replacement of these overdue materials places an intolerable burden on library budgets in these times of fiscal strenuousness. Public libraries must be provided with the mechanism to recover these materials or their value in order that the willfulness of a minority does not place an undue burden upon the majority of taxpayers.” (Memorandum of Senator Marino regarding L. 1982, Chap. 15, in New York State Legislative Annual, 1982, p. 25).*

## UNIFORM DISTRICT COURT ACT

### **§1809. Procedures relating to corporations, insurers and assignees**

1. No corporation, except a municipal corporation, public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit, and no assignees of any small claim shall institute an action or proceeding under this article, nor shall this article apply to any claim or cause of action brought by an insurer in its own name or in the name of its insured whether before or after payment to the insured on the policy.
2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case.

*For statement of legislative intent see memorandum following section 1809 of the Uniform City Court Act.*

## UNIFORM JUSTICE COURT ACT

### **§1809. Procedures relating to corporations, associations, insurers and assignees**

1. No corporation, except a municipal corporation, public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit, no partnership, or association and no assignee of any small claim shall institute an action or proceeding under this article, not shall this article apply to any claim or cause of action brought by an insurer in its own name or in the name of its insured whether before or after payment to the insured on the policy

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by an attorney as well as by any authorized officer, director, or employee of the corporation provided that the appearance by a non-lawyer on behalf of a corporation shall be deemed to constitute the requisite authority to bind the corporation in a settlement or trial. The court or arbitrator may make reasonable inquiry to determine the authority of any person who appears for the corporation in defense of a small claims court case.

*For statement of legislative intent see memorandum following section 1809 of the Uniform City Court Act.*

## VEHICLE AND TRAFFIC LAW

### §404-v. Distinctive “Love your library” plates

1. Any person residing in this state shall, upon request, be issued a distinctive “Love your library” license plate of a design approved by the commissioner. Application for said license plate shall be filed with the commissioner in such form and detail as the commissioner shall prescribe.
2. A distinctive plate issued pursuant to this section shall be issued in the same manner as other number plates upon the payment of the regular registration fee prescribed by section four hundred one of this article provided, however, that an additional annual service charge of twenty-five dollars shall be charged for such plate. All moneys received as annual service charges under this section shall be deposited to the credit of the love your library fund established pursuant to section ninety-nine-l of the state finance law; and shall be used for library related programs and resources authorized by the commissioner of education. Provided, however, that one year after the effective date of this section, funds in the amount of six thousand dollars, or so much thereof as may be available, shall be allocated to the department to offset costs associated with the production of such license plates.

### L.1953 Chap. 768, as amended, CITY AND COUNTY PUBLIC LIBRARIES

(McKinney’s Consolidated Laws of New York Annotated, “Unconsolidated Laws,” Title 16, sections 6211-6227; New York Consolidated Laws Service, “Unconsolidated Laws,” Chapter 80).

§1. The governing body of any county is hereby authorized and empowered to establish a free public library, with or without branches, to be known as a city and county public library and to levy and raise by taxation and appropriate such sums as shall be necessary to establish, equip and maintain such library and branches, provide buildings and accommodations therefor, and provide the necessary salaries and expenses of a director, deputy directors, librarians, assistants and other employees, which said sums shall be charges upon the county. The levy, appropriation and use of such sums of money so raised are declared to be for the benefit of the county and are declared to be for a county purpose. Upon the establishment of a city and county public library, the county may acquire real or personal property for library purposes by gift, grant, devise, bequest, or pursuant to the provisions of the eminent domain procedure law, and may take, buy,

sell, hold and transfer either real or personal property and administer the same for public library purposes.

The term "city library" as used herein shall mean any circulating library, reference library, or association library located within a city and organized under any general or special law, or created under or pursuant to the provisions of any will or deed of trust.

The term "county public library" shall mean any library having trustees appointed by the governing body of any county.

**§2.** The trustees of any city and county public library, when established as aforesaid, shall consist of fifteen members appointed by the board of supervisors or other governing body of a county, all of whom shall be citizens of the United States, at least eight of whom shall be electors of the city and at least five of whom shall be electors of the county outside the city. The first board of trustees shall include among the fifteen members so appointed at least three members of the board of trustees of any county public library, in counties having a county public library, at least three members of the board of trustees of each city library, included in the consolidation. The first board of trustees shall take office upon appointment and shall hold office until the end of the second calendar year following the year of their appointment. The board of supervisors or other governing body of the county shall then appoint fifteen members of said board of trustees, three for a term of one calendar year, three for a term of two calendar years, three for a term of three calendar years, three for a term of four calendar years and three for a term of five calendar years. One trustee of each group of three shall be selected from a list of three nominees for that group named by the mayor of the city with the approval of the common council or other governing body of such city. Thereafter there shall be appointed annually by the board of supervisors or other governing body three trustees for a full term of five calendar years, one of whom shall be selected from a list of three nominees named by the mayor of the city with the approval of the common council or other governing body of such city. The board of supervisors or other governing body shall fill, for the unexpired term, any vacancy which occurs during a term of office without restriction except as to citizenship and residence requirements.

**§3.** Within one month after taking office, the first board of trustees of the city and county public library shall apply to the board of regents of the state of New York for a charter.

**§4.** The fifteen trustees appointed as provided in section two shall serve without compensation and shall constitute a board which, upon the granting of a charter by the board of regents of the state of New York, shall be a body corporate, and shall have all the powers and duties of trustees of other educational institutions of the university of the state of New York, including but not limited to the following exclusive powers and duties:

- (a) To determine and cause to be carried out all policies and principles pertaining to the operations and selection of library material of such city and county public library, and, subject to the provisions of section fifteen of this act, the exclusive power and authority to appoint and remove employees of such city and county public library, to fix and define their authority and duties, and to fix their salaries within the limits of available appropriations, such employees to include a competent director and deputy directors as provided in section fourteen of this act;

- (b) To establish the headquarters of a city and county public library and to establish such branches and book stations as may be necessary and to provide one or more book trucks for the distribution of books, as they may deem desirable;
- (c) To take and hold by gift, grant, devise or bequest in their own right or in trust for any purpose comprised in the objects of the corporation, any real or personal property, and to take possession of, use, insure, protect and maintain any and all property, real or personal, which may be conveyed or transferred to such city and county public library or to such trustees, or placed under it or their jurisdiction;
- (d) To buy, sell, mortgage, let or otherwise use or dispose of the property of such city and county public library as they shall deem for the best interests of such library, and to lend or deposit, or to receive as a gift, or on loan or deposit, literary, or scientific or other articles, collections or property pertaining to its work;
- (e) To continue and to manage, operate, supervise and oversee any library or libraries made a part of or placed under the jurisdiction of such city and county public library and to cause the services performed by any such library or libraries to be continued;
- (f) To assume and take over the supervision, direction and management and the employment of all personnel of any library or libraries made a part of or placed under the jurisdiction of a city and county public library, subject only to the specific limitations hereinafter provided herein;
- (g) Generally to do, perform and carry out all the necessary, usual or customary acts and duties required by law and done and performed by trustees of libraries in the state of New York;
- (h) To meet and organize annually after its members are appointed, and elect from among its members a chairman, a vice-chairman, a secretary and an executive committee of five of its members, which committee, in intervals between meetings of the trustees, may transact such business as the trustees may authorize;
- (i) To promulgate and enforce rules and regulations for the conduct of its business.

**§5.** The board of trustees of any city and county public library shall submit annually a budget request to the comptroller or other fiscal officer of the county in such form and at such time as may be from time to time required by the comptroller or other fiscal officer. The appropriation of all moneys by the board of supervisors or other governing body of any county, its payment to, and its use and expenditure and accounting therefor by the city and county public library and the auditing thereof shall in all respects be subject to and governed by the provisions of the budget or fiscal laws applicable to such county and shall include the general power to examine and audit granted to the comptroller or other fiscal officer of the county and the comptroller or such officer shall report the results of any such audit to the board of supervisors or other governing body of the county.

**§6.** The board of trustees of any city and county public library may contract with the trustees of any free library within the county registered, by the regents, or with any municipal or district body having control of such library, to furnish library privileges to the people of the county, under such terms and conditions as may be stated in such contract and within such amounts appropriated by the board of supervisors or other governing body and other available funds, as may be agreed upon by the contracting parties. The amount agreed to be paid for such privileges under such contract shall be a charge upon the county and shall be paid in the manner authorized by sections one and five of this act.

**§7.** The trustees of any existing county public library are authorized and empowered to transfer to the county all its right, title and interest in and to any real and personal property used by such county public library; and upon the establishment of any city and county public library as aforesaid, and the assumption by it of all the liabilities, duties and obligations of such county public library, the trustees of such county public library are authorized and empowered to vote to dissolve the said library corporation, and to certify such vote to the board of regents of the state of New York; whereupon such county public library shall be considered as dissolved. Any devise, bequest, gift or grant contained in any will or other instrument, in trust or otherwise, made before or after the dissolution or intended for the benefit of such county public library shall inure to or for the benefit of the city and county public library, and so far as is necessary for that purpose the city and county public library shall be deemed to be the successor to the county public library; provided, however, that all such devises, bequests, gifts or grants shall be devoted by any city and county public library to the purposes intended by the testator, donor or grantor.

**§8.** Any city is hereby authorized and empowered by resolution to be adopted pursuant to the city charter to enter into an agreement or agreements with any city library canceling and abrogating any contract between said parties, and assigning and transferring to such city library all its right, title and interest in any and all books, papers, documents, works of art and personal property of every name, nature and description covered by said contract, and any related lease or contract of occupancy may also be cancelled by agreement. Any city library is authorized and empowered by resolution to be adopted by the votes of a majority of its trustees, or if it has members, by a majority vote of such members, present in person or by proxy at a meeting of such members called for that purpose to enter into such agreements.

**§9.** Any city library is authorized and empowered by resolution to be adopted by the votes of a majority of its trustees, or if it has members, by a vote of a majority of said members of those present in person or by proxy at a meeting of such members called for that purpose and notwithstanding the provisions of any general or special law, to convey, transfer and assign to any city and county public library all its right, title and interest in and to all its money and securities, and to convey and transfer to any county all its right, title and interest in and to all its real estate, books, papers, documents, music, works of art, and real and personal property of every name, nature and description, on condition that the governing board of any county authorizes the acceptance of such conveyances and transfers to the county and to the city and county public library and agrees, in consideration therefor, that such personal property and such land and buildings if so accepted by the county or the avails thereof, if the same shall be sold, shall be used by the county solely for the purposes of the city and county public library and that an annual appropriation shall be made by the county for the maintenance of library service within the city which service shall be at least equal to that then provided; and upon the further condition that the city and county public library undertakes to accept and administer the gifts and

trust funds held by the city library and so conveyed to it for the purposes intended by the testator, donor or grantor of such gifts or trust funds and to discharge the debts, obligations and liabilities of the city library.

**§10.** Upon the making and acceptance of such conveyance and transfer as aforesaid, and the certification of that fact to the board of regents of the state of New York, any city library shall be considered as dissolved. Any devise, bequest, gift or grant contained in any will or other instrument, in trust or otherwise, made before or after the dissolution or intended for the benefit of any city library shall inure to or for the benefit of the city and county public library, and so far as is necessary for that purpose the city and county public library shall be deemed to be the successor to any city library; provided, however, that all such devises, bequests, gifts or grants shall be devoted by the city and county public library to the purposes intended by the testator, donor or grantor.

**§11.** Whenever the board of supervisors or other governing body of any county shall have established a city and county public library as provided herein, any city may, subject to the acceptance thereof by said board of supervisors or other governing body, without other authorization and notwithstanding any provisions of the charter of the city or other general or special law and for such consideration as may be agreed upon or without consideration convey or lease or transfer to a city and county public library or the county the whole or any part of the lands of the city used for branch library purposes, together with the buildings thereon and the furniture, fixtures and appurtenances thereof.

**§12.** Notwithstanding the provisions of any general or special law, whenever the board of supervisors or other governing body of a county shall have established any city and county public library as provided herein,

- (a) The trustees of any library established under a will are authorized to convey and transfer to the city all their right, title and interest in and to the money, securities, trust funds, real estate, books, papers, documents, music, works of art, phonograph records and real and personal property of every name, nature and description now used by or forming a part of such library.

Upon making the conveyance and transfer as aforesaid such trustees shall be relieved of any and all further responsibility, liability or accountability in connection with their duties as trustees of such library.

- (b) Any city is authorized and empowered by a resolution or resolutions to be adopted pursuant to the city charter to accept the aforesaid conveyance, transfer and assignment; to designate the city and county public library as trustee to administer the bequest made in any will creating a library and in furtherance thereof, (1) to transfer to the city and county public library charge and possession of all moneys, securities and trust funds transferred to the city by the trustees of any such library created under a will subject to the restrictions on the use thereof placed thereon by the will creating such library or by any other donor thereof; (2) to transfer to the county, but solely for the use of the city and county public library, all books, papers, documents, music, works of art, phonograph records and personal property of every name, nature and description received by said city from the trustees of any such library created by a

will and (3) without other authorization and notwithstanding any provision of any city charter, and for such consideration as may be agreed upon, or without consideration, to convey and transfer to the county all its right, title and interest in and to the land and buildings occupied by such library created by a will, subject, however, to the acceptance of such transfer and conveyance by the board of supervisors or other governing body of the county; such land and buildings, if so accepted by the county, or the avails thereof, if the same shall be sold, shall be used by the county solely for the purposes of such city and county public library.

**§13.** The unexpended balance of any appropriations made by any county to a county public library, any city library or any library created by a will for the year in which the consolidation provided by this act shall take place shall, upon such consolidation be deemed to have been made to the city and county public library and shall, subject to the provisions of sections four and five of this act, be available for the purposes of such city and county public library notwithstanding any contracts then in force between such county and any such city library.

**§14.** The board of trustees of any city and county public library is specifically authorized to appoint a director who shall be the chief librarian of such library and such deputy directors as may be determined by said board of trustees. Such deputy directors shall be authorized generally to act for and in the place of the director during his absence or inability to act, and shall have such other duties as may be defined by such board of trustees. The term of office of the director and of each deputy director shall be for a period of three years. The director shall be the administrative and executive officer of the library, and, subject to the supervision and control of the board of trustees of the library, shall perform the functions necessary to properly and efficiently conduct, manage and operate the said library in order to carry out the provisions of this act. The director shall be a citizen of the United States and he shall not be a member of the board. The director, before entering upon the discharge of any of his official duties, shall take and file an official oath in the manner prescribed in section ten of the public officers law and shall also furnish an official undertaking in an amount, in such form and with such sureties, as shall be approved by the board of supervisors or other governing body of any county.

**§15. 1. Findings and policy**

Competitive examinations for appointments or employment in the operation of such libraries whose employees may not be under civil service laws, when and if consolidated into any city and county public library would be impractical in that such requirement of competitive tests would irreparably disorganize library service, interrupt continuous operation of such libraries, and place an undue financial burden on the county.

2. Notwithstanding any provision to the contrary contained in any general, special or local law, where employees affected, are not under civil service laws, when and if any city library and any library created by a will are consolidated into any city and county public library as provided herein, the latter shall continue to employ all employees of such libraries who shall then have been in the employ of such libraries or either of them for one year or more immediately prior to such consolidation and who shall be citizens or shall have filed declarations of intention to become citizens heretofore or within six months after such consolidation takes effect. The positions so held by such employees shall be in the non-competitive class of the civil service, and such employees shall

continue to be employed in similar or corresponding positions and shall have the seniority theretofore held by them as among themselves. The personnel officer or similar authority of any county, however, after notice to any such employee of the reasons therefor, and after according such employee a hearing, must exclude him from further employment if he finds that he has failed to prosecute his application for citizenship in good faith and with due diligence. Not later than one year after such consolidation, the personnel or other similar officer of any county shall determine for what positions or class of positions competitive examinations have become feasible and shall thereupon reclassify the various positions with the approval of the state civil service commission. The then incumbents of such positions shall continue to hold their positions without further examination; provided, however, that all new positions created after such consolidation and all vacancies occurring in positions already established shall be filled in accordance with the civil service law and rules. During the period between the date of such consolidation and the date of classification, no person employed pursuant to the provisions of this section shall be removed except as provided in subdivision two of section twenty-two of the civil service law and in the case of veterans or exempt volunteer firemen, except as provided in subdivisions one and two of section twenty-two of the civil service law. The said board of trustees may, however, dispense with any unnecessary positions. It may transfer any employee from one position to another or change the title or designation of employment in accordance with civil service rules, with the approval of the personnel or similar officer of any county. The names of employees whose positions are so dispensed with shall be placed on a civil service preferred eligible list in the manner and subject to the provisions of section thirty-one of the civil service law, provided that their former positions or comparable positions are ultimately determined to be in the competitive class.

3. Upon such consolidation as aforesaid the permanent employees of any library who has civil service status shall be transferred to the city and county public library and shall retain their present civil service classification and status and shall be transferred without further examination or qualification. The board of trustees of any city and county public library may abolish City & unnecessary offices or positions. It may transfer employees from one position to another or change the title or designation of employment, in accordance with the civil service rules with the approval of the personnel officer or similar authority of any county.

**§16.** All purchases made from appropriations by the board of supervisors or other governing body of any county, of supplies and services rendered by contract for said library, shall be made under the procedure provided by law for the making of purchases by the said county.

**§17.** If any part of this act or the application thereof to any person for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and the application thereof to other persons or circumstances, but shall be confined in its operation to the section or part of the act and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared the intent of the legislature that this act would have been adopted had such invalid provision or application not been included.

§18. This act shall take effect immediately.

*“An employee is one who works under the supervision and direction of his employer who controls the manner in which the work is done; the sine qua non being control... The Librarians are exclusively supervised and directed by the Board which controls not only their work, but also their appointment, removal, authority, duties, and salaries within limits of available appropriations. The [Buffalo and Erie County Public] Library is not a branch of the county government, but is a distinct and separate corporation, receiving budgetary contribution from the county, like other educational agencies...The Board may be likened to a Board of City & Education... It follows that the Library is the public employer of the Librarians... (County of Erie v. Board of Trustees of the Buffalo and Erie County Public Library, 62 Misc. 2d 396, 308 NYS2d 515, March 16, 1970).*

*“Accordingly, plaintiff should be granted judgment declaring that the Library is not a County department, but is a distinct and separate corporation chartered by the State University Board of Regents; that the Library, not the County, has the power and duty to determine and carry out all policies and principles pertaining to operations of the Library; that Library trustees have the exclusive power and duty to use Library property and to appoint, manage and control Library personnel, including the power to fix the salaries of such personnel within the available appropriation; that the County may not interfere with the proper exercise of the Trustees power to appoint personnel; that upon adoption of the County budget, the County share of the Library appropriation constitutes a fund for Library purposes, and the use and expenditure of the available appropriation is within the exclusive management and control of the Library Trustees, subject to the audit powers of the County Comptroller and subject to those fiscal laws applicable to the expenditure of public funds generally; that New York State library aid to the Library pursuant to sections 272 and 273 of the Education Law, local revenues generated by activities of the Library, and the County share of the final appropriation is the property of the Library and must be kept and maintained in a separate fund subject to the exclusive use of the Library Trustees upon the submission of appropriate vouchers, or, upon written demand of the Trustees, to be paid over to the Library treasurer; that the County may not ‘pre-encumber’, impound or otherwise interfere with the ‘Trustees’ use and expenditure of Library funds, except, however, that the Legislature may, by appropriate resolution, reduce the Library’s appropriation pursuant to section 1806 of the Erie County Charter; that unexpended funds from the Library appropriation in any fiscal year remain the separate property of the Library and do not lapse; and that, to the extent consistent with the foregoing declarations, the Library is not subject to the Erie County Administrative Code.” (Buffalo and Erie County Public Library v. County of Erie, 171 AD 2d 369, 577 NYS 2d 993, November 15, 1991).*

*“[S]ince a ‘city and county public library’ is a ‘public library’..., we believe that such a library is a ‘municipality’ for purposes of article 18. Thus, it is our opinion that the library trustees are authorized promulgate [sic] an annual financial disclosure form for completion and filing by library officers and employees. In addition, since a ‘city and county public library’ is not ordinarily regarded as a branch of county government, we believe that the library trustees are not county officers or employees for purposes of article 18. Therefore, it is also our opinion that a county may not require the trustees of a ‘city and county public library’ to complete and file an annual financial disclosure form promulgated by the county.” (Op. Compt. 97-17, September 29, 1997).*

## L. 1963 Chapter 787, INTERSTATE LIBRARY COMPACT

### ARTICLE I. POLICY AND PURPOSE

Because the desire for the services provided by the libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

### ARTICLE II. DEFINITIONS

As used in this compact:

- (a) “**Public library agency**” means any unit or agency of local or state government operating or having power to operate a library.
- (b) “**Private library agency**” means any non-governmental entity which operates or assumes a legal obligation to operate a library.
- (c) “**Library agreement**” means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

### ARTICLE III. INTERSTATE LIBRARY DISTRICTS

- (a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.
- (b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

- (c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:
1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.
  2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.
  3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.
  4. Employ professional, technical, clerical and other personnel and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.
  5. Sue and be sued in any court of competent jurisdiction.
  6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.
  7. Construct, maintain and operate a library, including any appropriate branches thereof.
  8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

#### **ARTICLE IV. INTERSTATE LIBRARY DISTRICTS, GOVERNING BOARD**

- (a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.
- (b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

## **ARTICLE V. STATE LIBRARY AGENCY COOPERATION**

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

## **ARTICLE VI. LIBRARY AGREEMENTS**

- (a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:
1. Detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable.
  2. Provide for the allocation of costs and other financial responsibilities.
  3. Specify the respective rights, duties, obligations and liabilities of the parties.
  4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.
- (b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.
- (c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

## **ARTICLE VII. APPROVAL OF LIBRARY AGREEMENTS**

- (a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state and except that in the state of New York, such agreement shall be submitted to the counsel for the state education department for such determination. The attorneys general and such counsel shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and

shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

- (b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a ) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

#### **ARTICLE VIII. OTHER LAWS APPLICABLE**

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

#### **ARTICLE IX. APPROPRIATIONS AND AID**

- (a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.
- (b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to it.

#### **ARTICLE X. COMPACT ADMINISTRATOR**

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

## **ARTICLE XI. ENTRY INTO FORCE AND WITHDRAWAL**

- (a) This compact shall enter into force and effect immediately upon its enactment into law and by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.
- (b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

## **ARTICLE XII. CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

*[NOTE: For implementation of L. 1963, Chapter 787, see Education Law, sections 293-297, ante.]*

### **L. 1978 Chapter 787, as amended, STATE ASSISTANCE TO LIBRARY SYSTEMS**

#### **§17. Pilot projects for regional networks for intersystem cooperation**

- 1. The commissioner of education is authorized to study methods to achieve greater cooperation and organizational linkage among the present providers of library services, and to conduct pilot projects. Such pilot projects may be of two types: (a) regional intersystem cooperative networks and (b) school library systems.
- 2. Regional intersystem cooperative pilot project regions shall be coterminous with existing reference and research library resources system regions. There shall be two such pilot projects, each to include approved public library systems, a reference and research library resources system, and one or more school library systems which may include non-public school libraries as defined in regulations of the commissioner. Each such pilot project shall be developed by a council of seven persons appointed by the commissioner from recommendations submitted by the participating systems, such council to include three representatives of the member public library systems, two representatives of the reference and research library system, and two representatives of member school library systems. No more than one million and fifty-five thousand dollars shall be available for the operation of such pilot projects in any twelve months. The commissioner shall determine the amount to be allocated to each of the two pilot projects, based upon the characteristics

of the projects awarded grants in accordance with subdivision four of this section, but in no event shall the amount allocated to a project be less than two hundred thousand dollars. Among other factors, such allocations shall be based on a consideration of the proportion of the population of each pilot project region to the combined population of the two regions. Of the total amount allocated for each such pilot project up to sixty-one thousand two hundred fifty dollars for the third year of operation and sixty-five thousand dollars for the fourth year of operation and thereafter may be available for the operation of each school library system or systems participating in the regional intersystem cooperative network pilot project.

[NOTE: Subsection 3 omitted.]

4. Pilot projects established in subdivisions two and three of this section shall be designed to operate for sixty months, shall be awarded competitively by the commissioner, and shall be implemented under regulations developed by the commissioner. Such regulations shall include but not be limited to eligibility criteria, standards of service and operation, standards for compatibility for computerized systems and other techniques, consideration of the needs of special populations, requirements for monitoring, evaluation, and governance, and provisions which ensure that approval, rejection, or revocation of pilot project grants shall be administered without discrimination. Such regulations shall also specify that the pilot projects shall be chosen to (a) ensure optimum evaluation of the potentials for regional intersystem cooperation and for cooperation among school libraries, and (b) to realistically evaluate what problems must be overcome and what fiscal resources would be needed to create intersystem cooperation within typical regions of the state and among school libraries. The commissioner shall make reports of his activities and accomplishments in pilot projects under this act on or before October first of each year commencing with nineteen hundred seventy-nine, and shall make his final report within sixty days of sixty months of operation. In making these reports, the commissioner shall also make recommendations as to any legislation he deems necessary in connection with his findings. In addition to the pilot projects described in subdivision three of this section, there shall be two additional pilot projects for medical information services established in public library systems by the commissioner of education. Such pilot projects shall be allocated twenty thousand dollars each year for two years commencing July first, nineteen hundred eighty-one. Such allocations totaling forty thousand dollars shall for the first year be allocated from the seven million five hundred thousand dollars for "Additional aid to public libraries pursuant to a chapter of the laws of nineteen hundred eighty-one" appropriated by chapter fifty-three of the laws of nineteen hundred eighty-one.

**L. 1993 Chapter 672, as amended [Amending the Public Authority Laws relating to construction and financing of facilities for certain public libraries]**

§ 5. The following libraries shall be eligible public libraries for purposes of title 4 of article 8 of the public authorities law:

Comeswogue Public Library  
 Rogers Memorial Library Company  
 Hendrick Hudson Free Library  
 Riverhead Free Library

Northern Onondaga Public Library District  
Suffern Free Library  
Haverstraw King's Daughters Public Library  
Crandall Public Library  
Sayville Library  
Monroe Free Library  
Harborfields Public Library  
Howland Public Library  
Patchogue-Medford Library  
New City Library  
Babylon Public Library  
Lindenhurst Memorial Library  
Great Neck Library  
Caledonia Public Library  
Bayport-Blue Point Public Library  
The Bryant Library  
Swan Library

**L. 1999 Chapter 193 [An act to approve building aid funds for leased library space]**

Notwithstanding any other provisions of law, in a city school district in a city having a population greater than one hundred fifty thousand but less than one hundred seventy-five thousand, upon approval by the commissioner of education of a lease executed by the board of education pursuant to subdivision 6 of section 2554 of the education law on October 5, 1995, such lease and all payments made pursuant to such lease on or after August 1, 1996 shall be deemed pre-approved for the purposes of section 403-b [Leasing of surplus school buildings], subdivision 6 of section 2554 [Powers and duties of board of education] and subdivision 6 of section 3602 [Apportionment of public moneys to school districts employing eight or more teachers] of the education law. [Note that none of these sections are included in this publication].



## **PART II**

### **JUDICIAL DECISIONS AND ADMINISTRATIVE OPINIONS CONCERNING STATUTES WHICH DO NOT DIRECTLY PERTAIN TO PUBLIC LIBRARIES**

## CIVIL SERVICE LAW

### ARTICLE XIV - PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT [Note: Popularly known as the State's □Taylor Law.]"

#### §201. Definitions (Sections 6(a) and 7(a))

*“Although the [Nassau Library] System has many of the trappings of a governmental entity..., it is a private, separate legal entity controlled by a board of trustees which has the power to hire and fire its employees without any governmental infringement. Neither the System nor its trustees possess governmental powers, they merely provide a service... [I]n my opinion, the Nassau Library System is not an agency as defined by the Freedom of Information Law and is therefore not within the scope of the Law.” (Committee on Public Access to Records, FOIL-AO-115, March 12, 1975).*

*“The employer is a cooperative library system chartered by the Board of Regents pursuant to Sections 255(2)(a) to (i) of the Education Law...No distinction is made under Section 255(2) of the Education Law between cooperative library systems established by the trustees of public libraries alone, or by the trustees of both types of libraries jointly. Whatever the status of the participating Libraries, the resultant system is a separate entity possessing its own board of trustees, who have the same powers as trustees of other educational institutions in the University of the State of New York... It would clearly be improper to apply the term ‘instrumentality or unit of government’ to any corporate entity solely on the basis of the state or county aid it receives, the fact that it was established pursuant to a charter by permission of the legislature, or the fact that it performs a public service which is performed by other organs in the public sector as well. Accordingly, we find that the employer is not a ‘government’ or ‘public employer’ within the meaning of Section 201(7) of the Act. Thus, we have no statutory authority by which to exercise jurisdiction over the employer.” (Matter of Nassau Library System and Nassau Chapter, Civil Service Employees Association, PERB 1-399.47, August 14, 1968.) See also Matter of North Country Library System and Watertown Chapter, Civil Service Employees Association, PERB 1-399.48, August 14, 1968. See also Matter of Queens Borough Public Library and Queens Borough Public Library Guild, Local 1321, D.C. 37, AFSCME, AFL-CIO, PERB 13-3056, quoted later in this section, for a liberalization of the conclusions reached in these two decisions.*

*“Inasmuch as the library is merely a facility of the town and is reliant upon the town specifically with regard to its ability to function in the labor relations arena, I find that the town is the employer of the employees involved herein... [I]t is now well settled that occupational differences alone do not warrant fragmentation. Inasmuch as the employees working at the library are not subject to unique terms and conditions of employment, it is clear that their interests do not conflict with those of all other employees and that there is nothing in the record to indicate that they must be in a separate unit in order for an employee organization to negotiate effectively on their behalf.” (Matter of Town of Greenburgh and Greenburgh Public Library Employees Association and Greenburgh Employees’ Association, PERB 1-438, January 17, 1969).*

*“A public library established by a city is an arm or agency of government; therefore, the proper authority with which to enter into and negotiate collectively, concerning terms and conditions of employment for members of the library staff, would be the city of Binghamton.” (PERB 2-5007, advisory opinion, June 2, 1969).*

*“Having determined that...a joint employer relationship exists [i.e. New York City and the New York Public Library], we do not now deal with the question of whether the deduction of agency shop payments on behalf of District Council No. 37 constitutes an improper practice. Instead, we defer to the jurisdiction of New York City’s Board of Collective Bargaining.” (Matter of New York Public Library, Astor, Lenox and Tilden Foundations, and Richard M. Brower, and District Council 37 etc., PERB 5-3045, August 31, 1972; in a later opinion, PERB 6-3021, PERB concluded that it had jurisdiction because the term of the New York City Board of Collective Bargaining had expired, and ruled that agency shop wage deductions by the Library were illegal.” (The two court decisions below followed).*

*“We find that PERB was in error in holding that it had jurisdiction since we believe that the record fails to establish any reasonable basis upon which to conclude that the city is the employer of the Library employees, joint or otherwise, or that the Library itself is a government or public employer within the meaning of the act... As found by PERB, there is little doubt (certainly with relation to the branch system) that the Library is virtually entirely dependent upon the city for its operations... and it is to be noted that Library voluntarily has come under the city’s career and salary plan... [F]or practical reasons the extent of financing agreed to yearly by the city will determine to a great extent the scope and limitations of the branch library systems and will also have some impact upon the research division. Nevertheless, the Library is not bound by city budget limitations for it may seek financing elsewhere, and in fact, the record indicates that the Library has undertaken projects not approved or funded by the city. And, further, when the city imposed a job freeze, it was not applicable to the research division and affected the branch libraries only because of its practical consequence... As noted above, not only is the Library a separate and distinct body from the city, but by contract it (the Library) retains general control over the direction and management of its own affairs... [U]nder all the traditional tests it is the Library that is the employer and not the city... In short, the strong financial dependence of the Library upon the city, in and of itself, does not transform the Library personnel into city employees even under the Taylor Act and it does not make the city a joint employer... We conclude that the city is neither the employer of Library personnel nor a joint employer with the Library for the purposes of the Taylor Act and further, that the Library is not a government or public employer within the meaning of the act, and therefore, PERB acted in excess of its jurisdiction.” (New York Public Library v. New York State Public Employment Relations Board, 45 AD 2d 271, 357 NYS 2d 522, July 9, 1974, affid 37 NY 2d 752, 374 NYS 2d 625, 337 NE 2d 136).*

*“We now realize that the examples of governmental powers which were given by this Board in North County Library System are too narrow and do not encompass the operative characteristics of ‘government’... The powers referred to in the sixth category in Section 201.6 (a) of the Taylor Law are merely the authority of the public corporation to conduct its day-to-day affairs in the course of furnishing the services that it provides pursuant to law... Queens Borough is controlled by a board of trustees, all the members of which derive their authority from the Mayor of the City of New York, except for the ex officio members, who are themselves elected officials of the city of New York. This distinguishes Queens Borough from the New York Public Library and is*

sufficient to constitute Queens Borough as a public employer within the meaning of the Taylor Law.” (Matter of Queens Borough Public Library and Queens Borough Public Library Guild etc., PERB 13-3056, August 7, 1980). See also PERB 17-5003.

“Matter of New York Public Lib. v. Public Employment Relations Bd... is controlling over the instant matter, and on the basis of that authority, PERB’s determinations must be annulled... While the Mayor has the power to appoint petitioner’s [i.e. Queens Borough Public Library] trustees, the Mayor does not have removal power... Also, the trustees have five-year terms, a period exceeding that of the appointing Mayor... A part from the statutory power of appointment, there is no indication that the Mayor has any effective control over the administration of petitioner.” (Matter of Queens Borough Public Library v. Public Employment Relations Board of the State of New York and Queens Borough Library Guild, Local 1321 etc., 104 AD 2d 993, 480 NYS 2d 771, October 1984, *affd* 64 NY 2d 1099, 489 NYS 2d 907, 479 NE2d 252).

“We conclude that a library district whose board of trustees is elected by the public, and whose budget is approved by public vote, is a public employer under section 201 of the Civil Service Law.” (Att.-Gen. Op. 86-72, December 16, 1986).

## EDUCATION LAW

### § 219 Change of name or charter

“In addition, Education Law §219 permits the Regents to abolish a corporation that they have incorporated. Education Law §268 does not purport to be the exclusive procedure for the abolition of a public library, and therefore the procedures set forth in section 219 apply to public libraries as they do to other corporations chartered by the Regents, and permit a public library to be abolished without voter approval... We conclude that although voter approval is required to abolish a public library under Education Law §268, a public library may be abolished or dissolved under section 219 and 220 without voter approval. Furthermore, all the property of a public library may be transferred to a free association library under section 266 without voter approval.” (Op. Att.-Gen. 2000- F5, July 7, 2000.)

### §404. Acquisition of real property

See Op. Att.-Gen. 1953-141, November 24, 1953, following Part I, Education Law, section 259(1).

“While the [school district public] library does not possess such power [i.e. condemn land for library purposes], the school district board of education is empowered to acquire property, by condemnation, ‘for school purposes, and for any other purpose for which such property may be acquired as provided [in the Education Law]’ (Educ. L. Sec. 404(2)). Since Education Law section 255(1) authorizes a school district which has established a school district library to acquire property for library purposes, section 404 clearly authorizes the school district to condemn property for library purposes” (Op. Compt. 76-771, August 31, 1976).

#### **§1604. Powers and duties of trustees [of common school districts] (subsection 27)**

*See Op. Comp. 65-198, March 23, 1965, following Part I, General Municipal Law, Section 77-b.*

#### **§2007. Special meeting in union free school district**

*“The second question concerns the ability of the board of education to accede to the wishes rather than the direction of the library board, and to resubmit a proposition to rescind the designation and the authorization for the issuance of bonds. Generally speaking, a board of education has inherent discretion pursuant to the provisions of Education Law section 2007 ‘to call special district meetings of the inhabitants of the district whenever they shall deem it necessary and proper...’ Since there has been no proof that the original mandate was obtained as a result of fraud or misrepresentation or that a material change in circumstances has occurred since the initial submission, I hold that the school board is not free to submit the proposition in question. Mere dissatisfaction with the result where the board itself has procured such a result is an inadequate justification for what, in effect, will constitute a resubmission.”* (Matter of the Appeal of Leon Brown from the action of the Trustees of the Library Board of Syosset, New York, 8 Educ. Dept. Rpts. 70, Jud. Dec. No. 7920, September 30, 1968).

*“The power to call a special meeting or election of a union free school district is vested by statute in the board of education (Educ.L. sect.2007). I have no alternative, therefore, but to conclude that the action of the board of trustees of the Farmingdale Public Library in purporting to call a meeting of the electorate for the purpose of voting on the library appropriation and electing a library trustee is without authority and ineffective. While it can be understood that a library board may hold the opinion that it would be desirable that a vote on the library appropriation be held at a time separate and apart from the annual meeting of the school district, it is clear that the decision rests in the discretion of the board of education. In view of the budgetary and other problems confronting boards of education at this time, I cannot conclude that the refusal of the board of education to accede to such request constitutes an abuse of its discretion.”* (Matter of Board of Education of Union Free School District No. 22, Towns of Oyster Bay and Babylon, 8 Educ. Dept. Rpts. 185, Jud. Dec. No. 8001, May 21, 1969).

*“I conclude, therefore, that [t]he cost of meetings held by the Union Free School District No. 12 of the Town of Hempstead held on behalf of the library authorized to be established by chapter 604 of the Laws of 1963, should be borne by the school district and that the officials of such meeting must be qualified voters of the school district in which the library is authorized to be created. I further conclude that pursuant to Education Law, Sections 2007 or 260(7)(9), that such meetings may be held at a different time and place than the regular school district meeting.”* (*Op. Att.-Gen. 74-69, January 26, 1974*).

*“Such a budget request [i.e. an appropriation proposition requested by a library board to be placed on the ballot at the annual meeting of a central school district] could also be included in a budget revote, under section 2007, if the board of education so desires. Under this section it is up to the board to call a meeting whenever they shall deem it necessary and proper. Further, subdivision (3)(a) of that section provides that the board of education shall be authorized to give the notices required by subdivision 1 of section 2004 by publishing such notices once in each week within the two weeks next preceding such special meeting, the first publication to be at least 14 days before such meeting. However, this two-week notice under subdivision 3(a) is*

*applicable only where the board calls for a revote on a previously defeated budget of the district. We believe that should a board include within a revote a new proposition for increasing aid to libraries or call a meeting solely for the purpose of voting on a library appropriation, then the four-weeks notice, as set forth in section 2004, would be required. Of course, if a library appropriation is included with a revote on the district budget, the library appropriation should be a separate proposition on the ballot.” (Op. Compt. 81-167, May 28, 1981).*

### **§2008. Call of special district meeting by district superintendent (subsection 2)**

*“The authorization for voters to petition for a special meeting can be found in section 2008(2) and under that provision a proposition to increase the library budget could be submitted to a special district meeting called by petition.” (Op. Compt. 81-167, May 28, 1981).*

*“A school board is required to place a library funding proposition on the ballot when requested to do so by a free association library . . . [T]here is no express statutory provision that authorizes unilateral action by a board of education.” (Appeal of the Beaver Falls Library, 43 Educ. Dept. Rpts. \_\_, Jud. Dec. No. 15,002, December 12, 2003)*

### **§2035. Use of voting machines at school district meetings or elections (subsection 2)**

*See 37 Educ. Dept. Rpts. 407, March 18, 1998 after Educ. L. 259 (1) (a).*

### **§2037. Determination of meeting or election disputes**

*“The propriety of a referendum with respect to a library site voted to be acquired by voters in a school district is, under section 2037 of the Education Law, within the exclusive jurisdiction of the Commissioner of Education. Since petitioners have a right of appeal to the Commissioner, the petition in this article 78 CPLR proceeding is dismissed.” (Rynsky v. Kantro, 57 Misc. 2d 924, 293 NYS 2d 934, April 3, 1968).*

### **§2116-a. Books and records to be kept by school districts**

*“Books and records relating to receipts and disbursements of moneys in the school district library fund are district records and subject to the annual audit required by Education Law section 2116-a. Records of moneys received by the library trustees from private sources and in the custody of the library treasurer are not subject to such audit.” (Op. Compt. 73-184, April 3, 1973).*

## **ESTATES, POWERS AND TRUSTS LAW**

### **§ 3651. Reserve fund.**

*“We find no constitutional provision or statute requiring or authorizing a referendum on the expenditure of library fund monies accumulated for capital purposes . . . In this regard, we are aware that, with certain exceptions, section 3651 of the Education Law requires voter approval for the establishment of, and expenditures from, capital reserve funds established by school authorities of any school district . . . As noted, however, it is the library board, not the school district board, that determines to carry over and accumulate library fund monies for capital*

*purposes. . . The voter approval requirements of section 3651, therefore, are not applicable to library fund monies.” (Op. Comp. 2002-7, July 18, 2002)*

### **§11-2.2. Power to invest**

*“Where restricted gifts of cash are made to a public library, a determination must be made as to whether the ‘gift’ is a restricted gift or a true trust in order to determine how the funds may be invested and who should have custody of the money.” (Op. Compt. 72-681, November 27, 1972).*

## **EXECUTIVE LAW**

### **ARTICLE 7-A - SOLICITATION AND COLLECTION OF FUNDS FOR CHARITABLE PURPOSES**

*See Op. Att.-Gen. 80-45, June 9, 1980, following Part I, Education Law, section 263.*

## **GENERAL MUNICIPAL LAW**

### **§50-e. Notice of claim.**

*“This appeal presents the opportunity to resolve an issue of municipal law that has not heretofore been explicitly addressed by any court of this state. Before suing a public library in tort for damages for personal injury, must the plaintiff comply with the notice of claim requirements of General Municipal Law §50-e? We answer this question , as did the Supreme Court , in the affirmative. Having done so, . . . we hold, contrary to the Supreme Court, that under the circumstances of this case, the plaintiff’s cross motion for leave to serve a late notice of claim should have been granted . . . As noted, the [East Meadow School District]created the library pursuant to Arts and Cultural Affairs Law §61.05 and Education Law§255. The funding for the library is provided by the district. The district provides the building in which the library is situated at no cost to the library. Indeed, it appears that the library is completely dependent upon the district for its very existence. Under these circumstances, we hold that, just as a suit against the district, a municipal corporation . . . may not be brought absent the service of a notice of claim, so too is the library a variety of municipal corporation entitled to the protection of a notice of claim requirements of General Municipal Law §50 – i . . . Having determined that a notice of claim was required as a condition precedent to suit, we further hold that the Supreme Court improvidently denied the plaintiff’s cross motion for leave to serve a late notice of claim pursuant to General Municipal Law §50-e (5). Bovich v. East Meadow Public Library,16 A. D. 3d 11, 789 NYS 2d 511, February 7, 2005.)*

### **§50-i. Presentation of tort claims; commencement of actions**

*“A city public library is a public benefit corporation, separate and distinct from the city, and it is doubtful if service of notice claim upon it is a prerequisite to commencement of action against it based on tort liability.” (Op. Comp. 72-539, October 16, 1972).*

### **§51. Prosecution of officers for illegal acts**

*“The primary question is whether or not section 51 of the General Municipal Law applies to a school district and its subsidiary, the library board... A school district is a civil division of the State, and the board of education is the agency to which the State delegates the power and duty of controlling the schools in the district... Such school districts, in general, are not municipal corporations, and the districts and their officers are not subject to a taxpayer’s action as provided in section 51 of the General Municipal Law... If such an action cannot be maintained against a school district, it surely may not be maintained against a subordinate body in the district, chartered by the Board of Regents for very limited purposes. It cannot be claimed on any reasonable or logical basis that this library board is a municipal corporation.”* (Johnston v. Gordon, 247 App. Div. 40, 284 NYS 149, December 27, 1935).

### **§73. Cities and villages may hold property in trust for certain purposes**

*See 8 Op. Compt. 72, February 29, 1952, following Part I, Education Law, Section 259(1).*

### **§77. Leases of public buildings to posts of veteran organizations, organizations of volunteer firemen, and child care agencies**

*See Op. Att.-Gen. 82-77, October 12, 1982 following Part I, Education Law, Section 255(1).*

### **§92. Vacations, sick leaves and leaves of absence of officers and employees (subsection 2)**

*“Even though it be assumed that the library board has control over vacations, however, the village board may be in a position to curtail village financial support to the library unless the library board adheres to a policy with respect to vacations, acceptable to the village board. In such a case, it becomes immaterial as to which agency actually fixes vacations.”* (10 Op. Comp. 361, #6957, November 15, 1954).

*“The governing board of a municipality may provide sick leave for employees of a municipal public library. (Gen. Mun L. sect. 92), but it may not delegate this authority to the library trustees. Any plan adopted should be nondiscriminatory, although it might provide for extensions of sick leave within reasonable limitations.”* (Op. Compt. 59-831, March 3, 1960).

*“The governing board of a municipal corporation may provide that municipal employees, including those of the municipal public library, be paid for earned and credited vacations prior to the commencement thereof.”* (Op. Compt. 71-560, August 4, 1971).

*“In the absence of collective bargaining or informal bargaining agreement provisions, the estate of a library employee who dies while in service is not entitled to the cash value of the employee’s accumulated, unused sick leave although the bargaining agreement provides for the cash payment of unused sick leave upon retirement or permits employees to utilize sick leave prior to retirement.”* (Op. Comp. 81-72, March 19, 1981).

*“The library board of a town public library, and not the town board, has implied authority to establish vacation and sick leave plans for library employees.”*(Op. Comp. 81-431, December 29, 1981).

### **§101. Separate specifications for certain public work**

*See French v. Board of Education of Three Village Central School District of Brookhaven and Smithtown*, 72 AD 2d 196, 424 NYS 2d 235, January 28, 1980, following Part I, Education Law, section 253(2).

### **§103. Advertising for bids; letting of contracts; criminal conspiracies**

*“In our opinion, [section 103] would apply [to purchases of library and text books] and require competitive bidding on all purchases of a particular book or set of books involving an expenditure of more than \$1,000 [now \$10,000]. If, in fact, any such book or set can be obtained only from one source, so that there is no possibility of completion, we believe that the courts would imply an exception to the statute and would not require the empty formality of inviting bids.”* (10 Op. Compt. 381, #6978, November 30, 1954). *See also* 12 Op. Compt. 256, #8185, July 5, 1956.

*See* 11 Op. Compt. 356, #7398, June 20, 1955, following Part I, Education Law, section 259(1).

*“A public library of a town is an agency of such town. Library trustees must let contracts for public work and purchases by competitive bidding in accordance with General Municipal Law section 103. The installation of a new heating plant is a public work.”* (12 Op. Compt. 179, #8093, May 11, 1956). *See also* Op. Compt. 77-385, August 1, 1977.

*“The expenditure of moneys received by the trustees of a village public library from gifts, legacies, and an endowment fund are subject to competitive bidding requirements.”* (Op. Compt. 59-937, December 29, 1959).

*“The contract...for... book processing services would be a public works contract. Since the expenditures for such services will exceed \$2,500 [now \$20,000], a contract for the work will be subject to competitive bidding requirements. The fact that a joint public library might be able to have such services performed by another cooperative library system (of which the library is not a member) would not remove the services from competitive bidding requirements.”* (Op. Compt. 68-901, December 16, 1968).

*“The purchase of books by a library system for or on behalf of a member library is subject to bidding requirements if such purchase would be subject to bidding requirements if made by the library itself.”* (Op. Compt. 80-35, March 4, 1980).

*“Where a bidder on a public library fuel oil contract in good faith mistakenly submitted a bid with a varying price although the bid specifications called for a firm price, and where the municipality knew or should have known that the bid was not in compliance with the specifications, it would seem that the contract could be rescinded. It would be improper to amend the contract to provide for price adjustments.”* (Op. Compt. 80-595, September 23, 1980).

### **§119-o. Performance of municipal activities; alternative powers (subsection 1)**

*“[A] town could pay moneys collected for the support of a school district public library directly to the library treasurer if such payment is made pursuant to a municipal cooperation agreement entered into between the town and the school district. The authorization for municipal cooperation agreements is found in Article 5-G of the General Municipal Law. Section 119-o(1) of such provides that municipal corporations, including school districts, ‘shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one of the other of their respective functions, powers and duties on a cooperative or contract basis...’ Once the school district receives a written demand from the trustees of the school district public library that library moneys be turned over to the library treasurer, the school district is under a duty to comply with the demand. In our opinion, the town could enter into a cooperation agreement with the school district to pay moneys directly to the library on the school district’s behalf. The school district would have to apprise the town of the amounts to be forwarded to the public library and receive a receipt or some other evidence that the payment has been made. This and other procedural details could be worked out in the agreement.” (Op. Compt. 83-80, April 18, 1983).*

## **LOCAL FINANCE LAW**

### **§10.00 Power of municipalities, school districts and district corporations to contract indebtedness; examination of local budget by state comptroller in certain cases**

*“Substantial doubt exists as to the power of public library trustees to borrow money in any manner.” (9 Op. Compt. 95, #6056, March 18, 1953).*

*See Op. Compt. 77-693, October 4, 1977 following Part I, Education Law, Section 256(1).*

### **§11.00 Periods of probable usefulness (subsection a)**

*“[T]he board of education has the legal right to employ an architect to prepare preliminary plans for a [public library] building which it proposes to construct at district expense, without first obtaining the approval of a district meeting. Such plans are essential to enable a board of education to present to the voters a proposition for construction of a building. In the event the voters approved the building and the issuance of district bonds or capital notes, costs of surveys, maps, plans, estimates and other incidental costs, may be paid from the proceeds of the General borrowing (Local Finance Law, section 11.00(a))” (9 Op. Compt. 95, #6056, March 18, 1953).*

*“School districts may issue bonds to finance acquisition of a building for public library purposes, notwithstanding that building is supported by a party wall. Such fact should be considered in determining whether building is class A, B or C.” (9 Op. Compt. 428, #6448, December 1, 1953).*

*“A public library building constructed by a school district is not a ‘school house’ within the meaning of [Local Finance Law, section 11.00 (a, 11)].” (10 Op. Compt. 17, #6500, January 14, 1954).*

*“It is our opinion that items, such as tables, chairs, bookcases, and computers constitute original furnishings, equipment, machinery or apparatus that are required for a library building. Therefore, pursuant to Local Finance Law, section 11.00(a)(11), such items may be financed with the proceeds of obligations used to construct the building if the proposition adopted by the voters pursuant to Education Law, Section 260(10) and the bond resolution adopted by the school district describe the object or purpose as including the purchase or acquisition of these items...” (Op. Compt. 86-3, February 3, 1986).*

#### **§24.00 Tax anticipation notes**

*“School district moneys may not be loaned to the library fund. A school district may, however, subject to the provisions of the Local Finance Law, issue tax anticipation notes in anticipation of the receipt of taxes levied by the district for library purposes.” (9 Op. Compt. 52, #6012, February 26, 1953).*

*“(3) If a school district has issued tax anticipation notes in anticipation of taxes levied for library purposes, the proceeds should be paid to the library fund or to the library treasurer, as the case may be, as soon as practicable after receipt. (4) Interest on such tax anticipation notes is a charge for which the school district, and not the library is liable. However, it is permissible for the library in its discretion, to reimburse the school district for interest costs with respect to such notes.” (Op. Compt. 92-28, September 30, 1992).*

### **MUNICIPAL HOME RULE LAW**

#### **§10. General powers of local governments to adopt and amend local law (subsection 1)**

*See Op. Compt. 83-96, May 2, 1983, following Part I, Education Law, section 259(1).*

*“A village may authorize a gift of services to a village public library in furtherance of a village purpose.” (Op. Compt. 83-242, December 16, 1983).*

#### **§34. Limitations and restrictions [on the powers of counties to prepare, adopt and amend charters and charter laws.] (subsection 3).**

*“The restriction in section 34(3)(b) applies to charter laws relating to the ‘educational system in the county or to the school districts therein’. [Emphasis added] The clear implication from this phrase is that a county’s educational system and its public school system are not synonymous. Rather, in our opinion, the phrase ‘educational system’ was meant to encompass a spectrum of activities broader than just the operation of a school system, and including the operation of a public library... Accordingly, it is our opinion that section 34 precludes the adoption of charter laws which supersede the Education Law relating to public libraries, except that functions, powers, and duties relating to public libraries which have been assigned to units of local government or to agencies thereof outside the educational system may be transferred to other units of local government, agencies or officers as authorized by the Municipal Home Rule Law. (Op. Compt. 83-219, November 10, 1983).*

## PUBLIC OFFICERS LAW

### §3. Qualifications for holding office (subsection 1)

*“A trustee of a cooperative library system vacates his office when he ceases to be a resident of the area served by the system.” (Op. Comp. 79-255, July 5, 1979).*

*See Inf. Op. Att.-Gen. 85-36, May 8, 1985 following Part I, Education Law, Section 260(2).*

### §63. Leave of absence for veterans on Memorial Day and Veterans Day

*“Duly qualified veterans employed in the free public library must have paid holidays on Memorial Day and Veteran’s Day.” (Op. Compt. 61-916, January 18, 1962).*

### §64. Payment of expenses of public officers

*“Public library trustees should be reimbursed for actual and necessary expenses incurred in attending library conferences.” (Op. Compt. 59-900, January 27, 1960).*

## ARTICLE 6—FREEDOM OF INFORMATION LAW (Sections 84-90)

*“...I believe that each agency, including a school district library, is required to prepare and make available a record that identifies every employee by name, public office address, title and salary.” (Adv. Op. Committee on Open Gov’t FOIL-AO-3367, June 8, 1984).*

*“[A]lthough the Freedom of Information Law, section 89(3), states, as a general rule, that an agency need not create a record in response to a request, an exception to that rule pertains to payroll information...Consequently, I believe that each agency, including a school district library, is required to prepare and make available such a record. I point out, too, that, even when the Personal Privacy Protection Law is applicable, the record described in section 87(3) (a) of the Freedom of Information Law remains available, for the Personal Privacy Protection Law does not restrict rights granted by the Freedom of Information Law [see Personal Privacy Protection Law, section 96 (1) (c)]. Further, in a situation in which a public employee union requested salary and fringe benefit data derived from a series of collective bargaining agreements between teacher associations and school districts, the Court of Appeals, the state’s highest court, held that the data is available [see Doolan v. BOCES, 48 NY 2d 341 (1979)]. In short, I believe that the payroll information described in section 87 (3) (b) of the Freedom of Information Law is available, irrespective of the pendency of collective bargaining negotiations.” (Adv. Op. Committee on Open Gov’t FOIL-AO-4502, March 19, 1987). “[T]he Freedom of Information Law is based upon a presumption of access. Stated differently, all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in section 87 (2) (a) through (i) of the Law. A novel maintained by a library would not in my view fall within any of the grounds for denial.” (Adv. Op. Committee on Open Gov’t FOIL-AO-5239, August 17, 1988).*

*See Adv. Op. Committee on Open Gov’t FOIL-AO-6t !6, April 26, 1990, following Part I, Civil Practice Laws and Rules, section 4509.*

*See Adv. Op. Committee on Open Gov't FOIL-AO-6721, July 10, 1991 following Part I, Civil Practice Laws and Rules, see 4509.*

*“For purposes of applying the Freedom of Information Law, I do not believe that an association library, a private non-governmental entity, would be subject to that statute...” (Adv. Op. Committee on Open Gov't FOIL-AO-7191, June 15, 1992).*

*“From my perspective, the kinds of records sought by Newsday's reporter would be accessible. The grounds for denial are limited, and none would apparently be applicable with regard to records containing 'financial information pertaining to the Queens Library in general' or with regard to financial information relating to members of the Board of Trustees acting in their capacities as Board members.” (Adv. Op. Committee on Open Gov't, FOIL-AO-7852, August 9, 1993).*

*“If a 'tape recorded Tier III hearing record' exists, in my view, it would be available to you. None of the grounds for denying the record would appear to be applicable.” (Adv. Op. Committee on Open Gov't, FOIL-AO-13308, April 15, 2002)*

*“[I] believe that any record maintained by or for the City [of Jervis] falls within the coverage of the Freedom of Information Law . . . Second, based on several judicial decisions, an assertion, a request for or a promise of confidentiality, unless it is based upon a statute, is generally meaningless.” (Adv. Op. Committee on Open Gov't. FOIL-AO-14055, June 3, 2003)*

*“In this instance, because New York City government officials have complete control over the membership of the [Brooklyn Public Library's] Board of Directors, and since ninety percent of its budget is obtained from the City and State, I believe that the BPL constitutes an 'agency' required to comply with the Freedom of Information Law.” ( Adv. Op. Committee on Open Gov't, FOIL-AO-149575, October 20, 2004)*

*“[S]ince Article 7 of the Public Officers Law is the Open Meetings Law, meetings of boards of trustees of various libraries must be conducted in accordance with that statute, even though the records of those entities fall beyond the coverage of the Freedom of Information Law (Adv. Op. Committee on Open Gov't FOIL-AO-15504, September 26, 2005)*

## **ARTICLE 7—OPEN MEETINGS LAW (Sections 100-111)**

*See annotations following Part I, Education Law 260-a*

*“Lastly, you asked whether residents have the right to ask questions during open meetings of the Library's Board of Trustees. Although the Open Meetings Law clearly provides the public with the right 'to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy' (see Open Meeting Law, §100), the Law is silent with respect to the issue of public participation. Consequently, by means of example, if a public body does not want to answer questions or permit the public to speak or otherwise participate at its meetings, I do not believe that it would be obliged to do so. On the other hand, a public body may choose to answer questions and permit public participation, and many do so. When a public body does permit the public to speak, I believe that it should do so based upon*

*reasonable rules that treat members of the public equally.” (Adv. Op. Committee on Open Gov’t FOIL-AO-8855, May 24, 1995).*

*“[I]t is clear that a library board of trustees is required to comply with the Open Meetings Law...Similarly, since other aspects of your inquiry pertain to access to records, the Library would also, in my opinion, be subject to the Freedom of Information Law... In view of the amendments to the definition of ‘public body’, I believe that any entity consisting of two or more members of a public body, would fall within the requirements of the Open Meetings Law, assuming that a committee discusses or conducts public business collectively as a body...[M]inutes need not consist of a verbatim account of everything that was said; on the contrary, so long as the minutes include the kinds of information described in section 106, I believe that they would be appropriate and meet legal requirements. Further, if none of the events described in section 106 occurs, technically there would be no requirement that minutes be prepared...From my perspective, every provision of law, including the Open Meetings Law, should be implemented in a manner that gives reasonable effect to its intent. Whether a meeting is held on public or private property, to give reasonable effect to the law, I believe that meetings should be held in locations in which those likely interested in attending and observing the deliberative process have a reasonable opportunity to do so. Since people are expected to purchase food in a restaurant, that kind of site would, in my view, be inappropriate for conducting a meeting of a public body.” (Adv. Op. Committee on Open Gov’t OML-AO-2925, August 13, 1998)*

## **REAL PROPERTY TAX LAW**

### **§102. Definitions. Subdivisions 14 (“Special ad valorem levy”) and 16 (“Special district”)**

*“[T]he provision of library services brings immeasurable benefits to property and nonproperty owners alike and does not directly benefit or enhance the value of the property within that library district. For that reason, we view the subject levy [by the Crandall Public Library Improvement District on the Glens Falls Housing Authority and Henry Hudson Townhouses] as a tax and agree with Supreme Court that the challenged resolution [by the Glens Falls Common Council exempting the above from the levy] is valid as it pertains to Henry Hudson.” (Crandall Public Library v. City of Glens Falls, 216 AD 2d 814, 629 NYS 2d 100, June 29, 1995).*

*“[I]t is our opinion that a village which imposes an ad valorem levy on benefited real property on behalf of a public library district created pursuant to a special act must charge to the district a proportional amount of the tax refunds it is required to make as a result of court ordered assessment reductions.” (Op. Compt. 96-2, February 12, 1996).*

### **§425. School tax relief (STAR) exemption**

*“[I]n our opinion, the STAR exemption does not apply to taxes levied for library purposes.” (10 Op. Counsel SBRPS [i.e., State Office of Real Property Services, successor to the State Board of Equalization and Assessment] No. 59, May 6, 1998).*

**§467. [Exemptions]. Persons sixty-five years of age or over**

*“Where a library has been established by the voters of a school district pursuant to the Education Law, and the governing body of the school district has adopted the partial real property tax exemption for aged persons, the exemption applies to the tax levied for library purposes.” (7 Op. Counsel SBEA No. 92, April 27, 1981).*

*See 10 Op. Counsel SBRPS No. 59 May 6, 1998 after RPTL, sec. 425 above.*

**§490. Exemption from special ad valorem levies and special assessments**

*“Property which is exempt pursuant to any of the sections listed in section 490 of the Real Property Tax Law (including section 420-a and 420-b of the RPTL) is exempt from special ad valorem levies of a special library district in which the property is located.” (11 Op. Counsel SBRPS No. 5 November 27, 2002)*

**§556. Refunds of taxes (subsection 6a)**

*“A school district making a real property tax refund attributable to either an administrative correction of an error on a tax roll or a court ordered assessment reduction may not recover from the school district public library an amount equal to the proportionate reduction of taxes levied for library purposes.” (Op. Comp. 95-15, July 5, 1995).*

**§1306. Levy of taxes**

*“Except as otherwise provided in the Education Law, section 3505 [now Real Property Tax Law, section 1314], taxes to be raised by a school district for the support of its library must be levied at the same rate throughout the district, notwithstanding that a village within such school district also levies taxes for the support of a library for the benefit of the inhabitants of such village.” (9 Op. Compt. 105, #6067, April 16, 1953).*

*See Op. Compt. 66-962, December 19, 1966, following Part I, Education Law, section 255(1).*

**§1308. Property subject to levy**

*See opinions cited following section 1306 above.*

**§1318. Collecting officer's warrant; delivery thereof**

*“The provisions of section 1318(1)...were added to the statute in 1977 (L.1977, Ch 73). However, there was no corresponding amendment to Education Law, section 259(1) or elsewhere within that chapter indicating that the limitation on carrying a school district surplus forward from the preceding fiscal year was to apply to the surplus moneys of a school district public library as well. Therefore, it is our opinion that the surplus moneys of a school district public library which... are separate and distinct from school district moneys are not subject to the requirements of Real Property Tax Law, Section 1318(1).” (Op. Compt. 87-49, July 9, 1987).*

## STATE CONSTITUTION

**Article V. OFFICERS AND CIVIL DEPARTMENTS. Section 6** [Civil service appointments and promotions; veterans' credits]

*See Op. Att.-Gen 71-15, August 11, 1971 following Part I, Education Law, section 255(2).*

**Article VIII. LOCAL FINANCES. Section 1** [Gift or loan of property or credit of local subdivisions prohibited; exceptions for enumerated purposes].

*“There is... a noteworthy distinction between an allotment of public funds directly to the library system to finance its administration and contributing the same for the support of a free association library... [I]t is said that an appropriation by a municipal corporation or school district to a free association library as consideration for the maintenance of public library service cannot be a gift or donation within the meaning of this section... It is quite apparent that the City of New York makes neither a gift nor a contribution to a free association library.”* (*Petker v. City of New York*, 87 Misc. 2d 534, 385 NYS 2d 495, July 6, 1976).

*“A tax for the establishment of a library or to defray a portion of the expense of maintaining it presents a question altogether different from that of raising and expending money to bring to, or retain in, a city, town or village a county courthouse or other county building necessary for the transaction of the county's business. The establishment of a library, or an agreement to share the cost of maintaining a library, or to pay for library privileges, as provided in sections 36 and 38 of the University Law, is educational in aim, scope and character, and is therefore that kind of purpose which is within the meaning and protection of section 10 [now 1] of Article VIII of the Constitution.”* (*Op. Att.-Gen. 1903-514, December 11, 1903*).

*“[T]o construe section 266 of the Education Law as authorizing the transfer of the property of a village public library to a free association library without consideration, would be a violation of section 1 of Article VIII of the New York State Constitution... In our opinion, a contract entered into between the village and the free association library would provide that moneys paid to the library by the village must be applied by the library for specific purposes set forth in the contract.”* (6 Op. Compt. 253, #4749, September 18, 1950).

*“A municipality or school district, ... in spending money for a library ‘maintained for the benefit and free use on equal terms of all the people’ [note: quotation is from Education Law, section 253(2)] of such municipality or district is spending money for its own municipal or district purpose. It may do so directly, by establishing a municipal or district library in conformity with section 255 [of the Education Law], in which case, under the laws of the State, the Regents would incorporate such library as a public library which is subject to the control of the Regents. However, the municipality or district may also perform this function through the medium of an institution which, while it may be established and controlled in the first instance by a group of private individuals operating as an association, nevertheless by the terms of its incorporation by the Regents is an institution ‘maintained for the benefit and free use on equal terms of all the people of the community’. If this service were not rendered indirectly through the medium free association library, it would have to be rendered directly by the municipality or district. Any money which the municipality or district appropriates for the support of the free association library and pays to it for such purpose, therefore, is paid for services rendered to the community,*

*that is, a municipal or district purpose. The library receives an annual appropriation and in consideration therefor maintains free library service to the community. Such service is sufficient consideration to remove the annual appropriation from the classification of gifts or donations in the sense of [New York State Constitution Article VIII, section 1]. ...Hence it is clear that any appropriation by a municipal corporation or school district to a free association library as consideration for the maintenance of public library service can not be considered to be a gift or donation within the meaning of article VIII, section 1 of the Constitution...The grant of funds to a free association library by a municipality or school district is clearly intended for the benefit of a third party, that is, the public at large in the area involved. It is equally clear that the free library association does not operate for private gain and does not receive, hold or use such grants for a private use, but does so for the 'benefit and free use on equal terms of all the people of the community'. To the extent that the free association library administers such public purpose, it is in effect a subordinate governmental agency...and participates pro tanto in the principle that all government agencies, in effect, are trustees administering public funds and property for the benefit of the public... Under this theory the control over the free association library is so complete that such library can not apply the funds granted by the municipality or school district for any other thing than the intended public purpose. Thus the grant from the municipality or school district to the free association library cannot possibly be construed as a gift contravening the provisions of article VIII, section 1 of the Constitution, any more than the grant of state aid moneys to the school districts of the state, or to its municipalities is a gift... In view of the statutory definition of a free association library as quoted above, it may well be argued that such a free association library is not a private association within the meaning of the constitutional provision. While the free association library is an institution established and controlled in part by a group of private individuals operating as an association and as such partakes to a certain extent of a private nature, the paramount feature of such a library is the fact that it is maintained solely as a public service, for the benefit and free use on equal terms of all the people of the community... [T]he thought appears extremely persuasive that such a free association library is not a private association but rather a public, or at least quasi-public, association. If it cannot be considered a public corporation because of the private nature of its origin and some of its control, it certainly must be held to be quasi-public and sui generis. While it is under the law a hybrid, partaking of both the public and the private, the paramount characteristic is its public nature and service and its classification as a private association appears at least highly doubtful." (1 Educ. Dept. Rpts. 707, Formal Ops. Of Counsel No.4, August 1, 1951).*

*"It seems clear to us that the erection of a library building for the purpose of conveyance or leasing as a free association library would not be for a village purpose. A free association library, while performing a public service, is a private organization... Since the village has no authority to expend money for such purpose, it would have no power to issue bonds therefor... In our opinion there would be serious doubt as to the constitutionality of such action on the part of the village (New York State Constitution, article VIII, section 1...." (8 Op. Compt. 87, #5594, March 19, 1952).*

*"While a town may not contribute money to a college for the establishment of a [public] library (State Const. Art. VIII sect. 1), it may grant money for the support of a free association library registered by the Regents or contract with such a library for reading privileges for its residents (Educ. Law sect. 256)." (Op. Compt. 59-866, December 7, 1959).*

*See Op. Compt. 60-795, October 5, 1960, following Part I, Education Law, section 259(1).*

*See Op. Compt. 61-25, March 9, 1961, following Part I, Education Law, section 259(1).*

*“Gifts or bequests to a village public library many [sic] not be invested in a savings and loan association.” (Op Compt. 62-178, June 7, 1962).*

*See Op. Compt. 64-778, September 16, 1964, following Part I, Education Law, section 256(1).*

*See Op. Compt. 65-480, August 30, 1965 following Part I, Education Law, section 226(7).*

*“[No] municipality may give or loan any money or property to or in aid of any individual or private corporation or association or private undertaking (St. Const. Art.VIII section 1)... An association library is a library established and controlled, in whole or in part, by a group of private individuals operating as an association, close corporation, or as trustees under the provisions of a will or deed of trust (Educ. L. sect. 254). The conclusion, thus, must be that a town may not make a gift of public moneys to an association library (or a free association library). Otherwise stated, a town may not appropriate public moneys for payment to a free association library without receiving a consideration thereof. . . Section 256 [of the Education Law] states that a town may grant money for the support of free association libraries (if such libraries are registered by the regents). So much of section 256 as authorizes such grant, if literally read, would, in view of State Constitution Article VIII section 1, appear to be unconstitutional. However, in keeping with the general rule of construction that, where an act is susceptible of two constructions, one of which will make it constitutional and the other unconstitutional, the former will be adopted. This Department interprets section 256 as follows: A ‘free’ association library, as that term is used in the Education Law, is an association library maintained for the benefit and free use on equal terms of all the people of the community in which the library is located (Educ. L. sect. 253). So a library which is a free association library is one which is not a ‘public’ library..., but one which, although privately owned and controlled, is, nevertheless, open to the free use of the people living in the community where it is located. There is no legal obligation imposed upon the trustees of an association library, once it has been established and commences to provide library facilities to the people of any community, to continue to furnish them. In effect, an association library which is ‘free’ is rendering a voluntary service to a community without consideration from the community in return. To encourage and assist such libraries to continue to provide a desirable community activity, the Legislature, in section 256, has authorized municipalities to grant money for the support of these libraries. Thus, State Constitution Article VIII is not violated, because the municipality is, in fact, receiving a consideration in return for the grant of money to the free association library, i.e. access to the library and its services by the residents of the particular municipality. In this respect, in any instance where a community makes a grant of public funds pursuant to section 256 for the support of a free association library, we feel that the library must be accessible by, and its services available to, all the residents of the community which is making the grant. Otherwise, the grant would run afoul of Article VIII, section 1, because the municipality then would not be receiving a fair consideration therefor, and it would amount to a gift of public moneys... [I]f the free association library here involved makes its services available to all the residents of town A, and the library is located so that it is reasonably accessible to such residents, then it is entirely within the discretion of the town board whether to appropriate tax moneys for the support of the library. If library privileges are not available nor accessible to the*

*townspeople, as a whole, then funds raised by general taxation should not be used for the support of the library.*" (Op. Compt. 67-771, November 14, 1967).

*See Op. Compt. 68-254 March 28, 1968 following Part I, Education Law, section 256(1).*

*See Op. Compt. 72-298, June 7, 1992, following Part I, Education Law, section 262.*

*See Op. Compt. 72-819, October 13, 1972, following Part I, Education Law, section 253(2).*

*"[T]he town library building may not be used for the purposes of a private 'Food Co-op'. Such use is not a municipal or library purpose and, thus, would be violative of State Constitution Article VIII section 1..."* (Op. Compt. 77-152, April 5, 1977).

*See Inf. Op. Att.-Gen. 82-77, October 12, 1982 following Part I, Education Law, section 255(1).*

**Same. Section 2.** [Restrictions on indebtedness of local subdivisions; contracting and payment of local indebtedness; exception.]

*See Op. Compt. 77-693, October 4, 1977, following Part I, Education Law, section 256(1).*

**Same. Section 3.** [Restrictions on creation and indebtedness of certain corporations]

*"The increasing proliferation of special districts, all operating as independent units of government, however, grew problematic, and in 1938 it was decided that 'the further development of overlapping, independent taxing units of government should be halted...Article VIII section 3 was added to the State Constitution, limiting the creation of municipal and district corporations to counties, cities, villages, towns, school districts, fire districts and certain conservation districts... These governmental subdivisions operate as independent units to which the taxing power may be delegated.... Special districts are still widely used for creating and funding local services, but are subject to control by the municipal corporations they serve.... The general statutes do not provide for the creation of library districts.... In recent decades, however, several special library districts have been created.... None of the special library districts – except for the one before us – has been delegated the power to tax... Their function is to provide a mechanism for creating and funding library systems similar to those authorized under the Education Law. Special library districts cannot be created as full-blown independent governmental units; like public improvement districts, they are properly viewed as administrative departments. Respondent City's argument that the taxing powers given to the Library District are constitutional because they are no different from those given to fire districts is thus without merit."* (*Greater Poughkeepsie Library District v. Town of Poughkeepsie*, 81 NY 2d 574, 601 NYS 2d 94, July 8, 1993). *See other quotations from this decision under Article XVI of the State Constitution, above.*

**Article XIII. PUBLIC OFFICERS. Section 1.** [Oath of office; no other test for public office].

*See Op. Comp. 67-860, December 7, 1967, following Part I, Public Officers Law, section 10.*

*“Members and officers of school boards and library trustees are required to take a constitutional oath before assuming office, and this must be filed in the office of either the clerk of the board or the county clerk, as the case may be.” (Op. Compt. 67-1014, December 21, 1967).*

**Article XVI. TAXATION. Section 1 [Power of taxation; exemptions from taxation].**

*“Under the statutory scheme as it has operated to date, the Library District sets the library budget with no input from the Town or City.... By controlling its estimated expenses and alternative sources, the Library District can effectively fix the Town’s tax rate, thus, there is a delegation of taxing power to the Library District.... The power to tax, of course, lies solely with the Legislature.... This power is inherent in our government and justified by legislative accountability to the electorate.... The taxing power may be delegated to legislative bodies of municipalities and quasi-municipal corporations.... The power to tax may not, however, be delegated to administrative agencies or other governmental departments....” (Greater Poughkeepsie Library District v. Town of Poughkeepsie, 81 NY 2d 127, 601 NYS 2d 94, July 8, 1993). See other quotations from this decision following section 3 of Article VIII of the State Constitution above.*

**TOWN LAW**

**§20. Town officers (subsection 1e.)**

*“The town library board of trustees has the power to hire and dismiss employees of the town library.” (Op. Compt. 74-597. June 10, 1974).*

**§27. Compensation of town officers and employees (subsection 1)**

*“In my opinion the operating expenditures of boards of trustees of free public libraries are not subject to the approval of municipal authorities such as town boards...” (Att.-Gen. Inf. Op. 55-23, January 28, 1955).*

**§63. Presiding officer and rules of procedure**

*See Op. Compt. 66-1049, November 28, 1966, following Part I, Education Law section 256(1).*

**§64. General powers of town boards (subsections 2 and 8)**

*“A town may not construct a building to be used as a town hall larger than it will need in the foreseeable future for the sole purpose of providing space and facilities for a free library association.” (Op. Compt. 69-385, January 13, 1970).*

**§64. (subsection 2)**

*“Towns are authorized to ‘convey or lease’ unneeded real property by resolution subject to permissive referendum (Town Law, section 64(2)). In light of that authorization and Education Law, section 256(1), it is clear that a town may lease unneeded town real property to a free*

*association library for use as a library site in exchange for cash consideration.” (Op. Compt. 83-117, May 23, 1983).*

**§64. (subsection 6)**

*“A contract for library service should be approved by the town board.” (12 Op. Compt. 127, #8024, March 26, 1956).*

**§64. (subsection 8)**

*“A town may not acquire by gift a building which is larger than the town needs and lease an unneeded portion thereof to the grantor library association, unless the town reasonably anticipates that it will require and use all of the space of the building for town purposes within the foreseeable future.” (Op. Compt. 62-94, February 6, 1962).*

*See Op. Compt. 85-40, June 28, 1985, following Part I, Education Law, section 226(5).*

**§81. Election upon proposition (subsections 1.e. and 4, formerly 5)**

*See 5 Op. Compt. 27, #3551, February 10, 1949, following Part I, Education Law, section 255(1).*

**§81. (subsection 23)**

*“A town may hold a recognition luncheon for its volunteer library workers but the town may only pay for the meals of the volunteers and the cost of the meals must be reasonable (Op. Compt. 82-66, February 18, 1982).*

**§113. Transfer from general purposes to other funds.**

*See Op. Compt. 67-93, January 26, 1967, following Part I, Education Law, section 256(1).*

**§117. Certain contracts and expenditures prohibited.**

*See Op. Compt. 82-84, March 10, 1982, following Part I, Education Law, Section 259(1).*

**§123. Annual accounting by town officials and employees**

*See Op. Compt. 93-15, March 18, 1993, following Part I, Education Law, section 259(1).*

**§215. Powers and duties of improvement district commissioners. (Subsection 1-b)**

*See Op. Att.-Gen. 71-92, April 28, 1971 following Part I, Retirement and Social Security Law, section 30(c).*

## **§220. General town improvements**

*See Op. Compt. 69-385, January 13, 1970 following Town Law, section 64, subsections 2 and 8 above. Also quoted following Part I, Education Law, section 253 (2).*

## **§263. Purposes in view**

*“Therefore, under the [Nehrbas v. Incorporated Village of Lloyd Harbor, 2 NY2d 190, 159 NYS 2d 145, 1957] case, a town public library is not subject to a zoning ordinance enacted under Town Law Article 16 (sections 263, 264) or to zoning ordinances of any other municipalities.” (Op. Comp. 67-750, September 13, 1967).*

## **VILLAGE LAW**

### **§1-102 (formerly sections 1a & 2-200) Powers of incorporated village (subsections 1 and 2)**

*See Inf. Op. Att.-Gen. 51-121, December 10, 1951, following Part I, Education Law, section 255(1).*

*“It seems clear to us that the erection of a library building for the purpose of conveyance or leasing to a free association library would not be for a village purpose.” (8 Op. Compt. 87, #5594, March 19, 1952).*

*“[I]t is our opinion that a village, by a local law, may authorize a gift of unneeded village real property to a school district public library if the village board determines that the gift will further that purpose.” (Op. Compt. 91-62, January 15, 1992).*

### **§3-300. Officers and elections (subsection 3)**

*“I do not believe that a trustee of a public library established pursuant to the provisions of the Education Law is a village officer within the meaning of section 42 [now section 3-300] of the Village Law. Such officer is nowhere listed as an officer of the village.” (Op. Att-Gen. 21-278, April 17, 1921).*

### **Same, (subsection 4)**

*See Inf. Op. Att.-Gen. 85-25, April 23, 1985 following Part I, Education Law, section 260(2).*

### **§9-912 (formerly section 56). Propositions - submission and general election**

*See Inf. Op. Att.-Gen. 49-9, January 24, 1949, following Part I, Education Law, section 255 (1).*

## **WORKERS' COMPENSATION LAW**

### **§63. Liability of county (subsection 7)**

*See 11 Op. Comp. 303, #7337, June 8, 1955, following Part I, Education Law, section 255 (1).*

*See Op. Compt. 65-27, March 1, 1965, following Part I, Education Law, section 255 (1).*

*See Op. Compt. 65-27, March 1, 1965, following Part I, Education Law, section 255 (1).*

**§201. Definitions (subsection 4)**

*“A library board of trustees may not elect to provide disability benefits for library employees.” (Op. Compt. 64-494, June 10, 1964).*

***Same (subsection 6)***

*“A public library is not required to provide disability benefits for its employees under Article 9 of the Workers' Compensation Law. However, it has the option of voluntarily electing to provide such benefits.” (Op. Comp. 79-824, February 21, 1980).*



## **PART III**

### **JUDICIAL DECISIONS AND ADMINISTRATIVE OPINIONS NOT PERTAINING TO A CONSOLIDATED STATUTE**

*“The legislature has the power to specify the duties of librarians of school districts, and for a violation of those duties may give an action, and fix the penalty which shall be recovered by the party aggrieved. The inhabitants of a school district may also make such regulations as they think proper, for the government of the librarian, and he is subject to the direction of the trustees, in all matters relating to the preservation of the books. But in the absence of any regulations or directions touching the rights of the inhabitants, and the duties of the librarian, an action will not lie by a resident of a school district, against the librarian, for refusing to him or his children access to the library, and permission to take books therefrom.”* (Kennedy v. Ray, 22 Barb. 511, September 8, 1856).

*“The court holds that donations by the trustees [of a residuary estate] to public lending libraries that charge a modest rental fee will not contravene decedent’s purpose provided such libraries are operated on a nonprofit basis.”* (Matter of Futterman, 197 Misc. 558, 95 NYS 2d 876, January 27, 1950).

*“A city charter provision requiring employees of the city to be residents of the city does not apply to the employees of a free public library which was chartered as an autonomous public corporation by the Regents of the University of the State of New York... Though the city owns the realty and the buildings occupied by the library and supplies three fourths of the library’s operating funds and channels the payment of the salaries of the library’s personnel through the city’s payroll system, the trustees of the library corporation hire and fire their own employees (even though they use the services of the city’s civil service commission) and fix their salaries (even though within the limits of budgetary provisions) and negotiate their own labor relations (even though with the same collective bargaining agency as the city itself does).”* (Binghamton Public Library Unit of the Broome County Chapter of the Civil Service Employees Association v. City of Binghamton, 69 Misc. 2d 1005, 331 NYS 2d 515, May 3, 1972).

*“Action taken and programs pursued by New York City public libraries, which adopted a system of ‘pairing’ whereby branches in or near particular communities were paired, i.e., when one branch was open, the other would be closed, were reasonable and proper under the strained fiscal circumstances then and now existing; the procedures were neither arbitrary nor capricious but within a structure of reasonable standards designed to afford the maximum library service under difficult circumstances.”* (Petker v. City of New York, 87 Misc. 2d 534, 385 NYS 2d 495, July 6, 1976).

[Defendant openly defied library's ban against the playing of cards and board games] *“He lost his license and privilege of remaining in the library when he defied lawful orders not to remain there personally communicated to him by people with the requisite authority...[I]t has already been held that a rule requiring library patrons not engaged in reading, studying or using library materials to leave is reasonable and perfectly valid* (Kreimer v. Bureau of Police for Town of Morristown, 959 F. 2d. 1242, 1262).” People v. Taylor, 164 Misc. 2d 868, 630 N.Y.S. 2d 625 (1995)

*“The argument is asserted...that membership in the library association is essential to the effective performance of the duties of the trustees, director and staff and that these persons can, therefore, be required to become members of the association and, at least where library trustees are concerned, be reimbursed for the cost of such membership as an expense actually and*

*necessarily incurred in the performance of their duties (Pub O L Sect. 64). We believe this argument to be without merit. There is nothing which would require library trustees and employees to become members of any private association, or which would authorize library trustees to impose such a requirement. Membership in such an organization is not essential to the performance of the duties of the officers and employees concerned, but is merely a possible aid to the improved performance of these persons. Thus, the decision as to the necessity of such membership must be left to each of the persons concerned, as must be the responsibility for the cost of such membership.” (Op. Compt. 68-93, March 17, 1968).*

*“There is no statutory authority for the joint purchase by association libraries, public libraries and cooperative library systems of short-term certificates of deposit. (Op. Comp. 73-1138, March 18, 1974).*

*“Directive that library employees wear name tags in order to make themselves readily identifiable to library patrons would not be mandatorily negotiable.”(PERB 29-5002, 1996)*

*“The supervisor of a town may not also serve as the town librarian.” (Op. A-G 99-39, December 30, 1999)*



**PART IV**  
**CODE OF RULES AND REGULATIONS**

## TITLE 8 – EDUCATION

### CHAPTER I

#### Rules of the Board of Regents

##### §1.1 Definitions.

As used in this Chapter and in the regulations of the department (see chapter II of this Title):

- (d) Association library means a library established and controlled, in whole or in part, by a group of private individuals operating as an association, corporation or trustees under the provisions of a will or a deed of trust.
- (h) Free library means a library maintained for the benefit and free use on equal terms of all the people of the community in which the library is located.
- (k) Public Library means a library, other than a professional, technical or public school library, established for free public purposes by official action of a municipality or district or the Legislature, where the whole interests belong to the public.
- (n) Registered:
  - (3) when used with reference to a library, means approval as maintaining an adequate library service;

## INCORPORATION

**§3.20 Form of incorporation.** The incorporation by the Regents, in accordance with the provisions of Education Law article 5, and of these rules, of colleges, universities and other post-secondary institutions of learning, of schools offering instruction at the levels from pre-kindergarten through secondary, and of libraries, museums and historical societies will be evidenced by the issuance of a charter. The incorporation of all other institutions and organizations having educational purposes deemed worthy of recognition and encouragement by the Regents will be evidenced by the issuance of a certificate of incorporation. All corporations created by the Regents, whether by the issuance of a charter or by the issuance of a certificate of incorporation, shall possess the corporate powers enumerated in and conferred by the charter or certificate of incorporation, together with those additional powers conferred by law upon corporations created pursuant to the provisions of the Education Law.

**§3.21 Absolute charter.** An absolute charter shall not be given to an institution, pursuant to section 216 of the Education Law, unless:

- (a) in the judgment of the Regents such institution possesses resources and equipment available for its use and support and sufficient and suitable for its chartered purposes, and maintains an organization of usefulness and character satisfactory to the Regents;...

**§3.22 Provisional charter.** A provisional charter shall be granted for a period not exceeding five years, but may be extended by the Regents, during which period the institution holding such charter shall have an opportunity to meet the requirements for an absolute charter. The institution shall have under such provisional charter all the powers, privileges and obligations that it would have under an absolute charter, except that it shall not have power to confer degrees....

**§3.23 Application and fees.** An educational institution desiring incorporation or admission to the university or registration by the department shall file application giving the information required in such form and manner as shall be prescribed by the commissioner. The fee for a provisional charter shall be \$100; for a Regents certificate of incorporation, \$100; for an order of consolidation, \$100; for an extension of a provisional charter, \$60; for an absolute charter, \$60; for an amendment of a charter, \$60; and for an order dissolving a Regents corporation, \$60. The fee, which shall accompany the filing of a request for the commissioner's consent to the filing with the Secretary of State of a certificate of incorporation, a certificate of amendment of a certificate of incorporation, an application for authority to do business in New York, a certificate of dissolution of a corporation, or a certificate of merger of a corporation, or for a waiver of the need to secure such consents, shall be \$20 for business corporations and \$10 for not-for-profit corporations.

**§3.24 Execution of charters, decrees and certificates.** The action of the Regents in incorporating institutions, changing their corporate names, altering, suspending or revoking their charter, dissolving their corporate existence, approving transfers of their property, approving the acceptance of conditional gifts, and all similar acts of the Regents shall, in addition to the record of their proceedings, be evidenced by charters, decrees, certificates or other appropriate instruments, which shall be executed by and in behalf of the university under its seal, be attested by the official signatures of the chancellor or the vice chancellor, or the senior Regent, and of the president, and a photostat copy thereof shall be filed in the office of the president as a public record.

**§3.25 Representations as to corporate status.** An institution or organization to which a charter, either provisional or absolute, or a certificate of incorporation has been issued by the Regents, shall make no statement as to its corporate status in its publications, letterheads, advertising or promotional material or other written materials prepared for distribution to or for the information of the public, except as follows:

- (a) An institution or organization to which a provisional charter has been issued may make the statement "Provisionally chartered by the Regents of the University of the State of New York."
- (b) An institution or organization to which an absolute charter has been issued may make the statement "Chartered by the Regents of the University of the State of New York."
- (c) An institution or organization to which .. certificate of incorporation has been issued may make the statement "Incorporated under the New York State Education Law."

## **PART 11**

### **LIBRARY EXTENSION**

#### **§11.1 Approved library requirements**

The commissioner shall establish regulations for the registration of libraries and auxiliary units, for personnel, for quarters and equipment, for collections, for schedules of service and reports.

#### **§11.2 Apportionments to free libraries**

- (a) A registered library unit shall be subject to visitation and inspection by the department, and so long as it maintains approved standards shall be entitled to the rights and privileges provided by the Education Law.
- (b) Library units set up to provide for circulation of materials, and registered by the Regents, may receive annually, so far as the available appropriation permits, apportionments equal to the money raised by them from other sources. One first apportionment may be made to a newly incorporated library before it has been registered.

#### **§11.3 Use of money**

- (a) The apportionment's and the local equivalent must be spent for approved books, serials and other appropriate library materials, unless otherwise used by special written permission of the commissioner.
- (b) A trustee of a free association, public or Indian library incorporated or registered by the Regents shall not take pay from such library for services rendered as an officer or employee thereof.

#### **§11.4 Annual reports of libraries**

Every library in the University, other than a school library, shall transmit to the department annually, on March 1<sup>st</sup>, a report for the previous year ending December 31<sup>st</sup> in such form as shall be prescribed by the commissioner; but a library may report for a year ending on some other date with the approval of the commissioner. Any library in the University whose annual report for the preceding year is not received by March 31<sup>st</sup> of the year following the expiration of such year shall not participate in any apportionments of library money for the ensuing State fiscal year unless such neglect is duly excused by the commissioner. Any library failing to report for two consecutive years shall be deemed to have discontinued its functions, and after due notice its registration may be rescinded, or its charter suspended.

#### **§11.5 Library council**

It shall be the duty of the library council to communicate annually to the Regents recommendations relating to the department's service.

**PART 90**

**PUBLIC AND FREE ASSOCIATION LIBRARIES**

**§90.1 Registration of libraries**

The Division of Library Development shall determine, by inspection and from the reports of public, free association and Indian libraries, whether the requirements of the Regents and of the commissioner for registration of libraries are met. If any library is shown to be operating a service that fails to meet such requirements, registration shall be suspended until they are met, or may be rescinded, and no State or local grants shall be paid for its support.

**§90.2 Standards for registration of public, free association and Indian libraries**

- (a) A public, free association or Indian library will be registered if it meets the following standards satisfactory to the commissioner:
  - (1) is governed by written bylaws which outline the responsibilities and procedures of the library board of trustees;
  - (2) has a board-approved, written long-range plan of service;
  - (3) presents an annual report to the community on the library's progress in meeting its goals and objectives;
  - (4) has board-approved written policies for the operation of the library;
  - (5) presents annually to appropriate funding agencies a written budget which would enable the library to meet or exceed these standards and to carry out its long-range plan of service;
  - (6) periodically evaluates the effectiveness of the library's collection and services in meeting community needs;
  - (7) is open the following scheduled hours:

<b>Population</b>	<b>Minimum weekly hours open</b>
Up to 500	12
500 - 2,499	20
2,500 - 4,999	25
5,000 - 14,999	35
15,000 - 24,999	40
25,000 – 99,999	55
100,000 and above	60

- (8) maintains a facility to meet community needs, including adequate space, lighting, shelving, seating and restroom;

- (9) provides equipment and connections to meet community needs including, but not limited to telephone, photocopier, telefacsimile capability, and microcomputer or terminal with printer to provide access to other library catalogs and other electronic information;
  - (10) distributes printed information listing the library's hours open, borrowing rules, services, location and phone number;
  - (11) employs a paid director in accordance with the provisions of section 90.8 of this Part.
- (b) Any public, free association or Indian library registered by the department at the time this section takes effect shall be required to meet the standards for registration in subdivision (a) of this section on the following schedule:
- (1) meet the standards of paragraphs (a)(1) through (5) and (10) of this section on or before January 1, 1995;
  - (2) meet the standards of paragraph (a)(6) of this section on or before January 1, 1997; and
  - (3) meet the standards of paragraphs (a)(7), (8), (9) and (11) of this section on or before January 1, 1999.

© **Variances.** If circumstances over which any public, free association or Indian library has no control prevent it from meeting one or more of the standards of service set forward in subdivision (a) of this section, such library may apply for a variance for such standard(s). The application for such variance shall be submitted for such library by the public library system of which such library is a member, in a form prescribed by the commissioner. No variance granted pursuant to this subdivision shall be deemed to relieve a public, free association or Indian library of any obligation imposed by any other provision of Federal or State law.

### §90.3 Approval of public library systems

(a) **Definitions.** For purposes of this section:

- (1) Public library system means a library established by one or more counties, a group of libraries serving an area including one or more counties in whole or in part, a library of a city containing one or more counties, or a cooperative library system established pursuant to the provisions of section 255 of the Education Law.
- (2) Approved plan of service means a plan of library service submitted by a public library system board of trustees in accordance with section 272 of the Education Law that has been approved by the Commissioner pursuant to the provisions of this section. The plan of service defines the mutual commitments, responsibilities and obligations of the public library system and its members in meeting the service needs of the area served and statewide library service goals.

- (3) Direct access means the ability of an individual, who resides within the boundaries of a public library system and who has a valid borrower's card issued by the system or any member library in the system, to borrow materials for home use directly from the premises of any library that is a member of the public library system on the same basis as that specified for cardholders in each individual library.
- (4) Chartered service area means the geographic area served by a library as stated in charter documents approved by the Board of Regents and on file with the department. For purposes of this section, the phrase "and its environs" or its equivalent as contained in any charter document will not be recognized by the commissioner as a valid part of the library's chartered service area. For purposes of this section, the commissioner will not recognize area served by the library under contract as a valid part of a library's chartered service area.
- (5) Resident borrower means an individual who resides within the boundaries of the chartered service area of a public or association or Indian library as defined in section 253 of the Education Law and who is a library cardholder at that library.
- (6) Non-resident borrower means an individual who resides outside the boundaries of the chartered service area of a public or association or Indian library as defined in section 253 of the Education Law and who is a library cardholder at that library or at another member library of the public library system or who is a system cardholder.
- (7) Library resources means the print and nonprint materials owned by the library and any other services provided by the library to the resident borrowers of the library's chartered service area.
- (8) On-site use means the ability of an individual to use library resources on the premises of a library.
- (9) Serious inequities and hardships means those conditions which adversely affect resident borrowers of member libraries. Such conditions are defined in accordance with the free direct access provisions contained in each system's approved plan of service and may include, but are not limited to, a definition of what constitutes excessive borrowing of a library's resources by non-resident borrowers.
- (10) Unserved means those individuals residing in geographic areas that are within the boundaries of a public library system but outside the boundaries of a chartered service area of a library which is a member of that system.
- (11) Underserved means those individuals residing in geographic areas that are within the chartered service area of a member library and which the public

library system has identified as having an inadequate level of local income to support the delivery of acceptable library services.

- (b) A public library system may be approved for State aid under sections 272 and 273 of the Education Law if it complies with the provisions of the aforementioned sections of the Education Law and the provisions of this section.
- (c) Full approval shall not be given to a public library system unless it will serve at least 200,000 people or 4,000 square miles of area. Provisional approval may be given to a public library system which will serve at least 50,000 persons, provided the area includes three or more political subdivisions, and provided further that a satisfactory plan is submitted for expansion of service during the ensuing five-year period.
- (d) In order to qualify for full approval, a public library system plan of service shall provide:
  - (i) on site use, by all individuals residing within the boundaries of the public library system, of the total library resources within the system. No such individual shall pay a fee for such on-site use. No such individual shall be excluded from on-site use of the library resources of the system or any of its member libraries because of age, cultural, economic or civic status.
  - (ii) direct access, by all individuals residing within the boundaries of the public library system, to the library resources within the system, by acceptance of a borrower's card issued by the system or by any member library in the system. Such card shall be issued at no cost to the individual and shall be honored on the same basis as that specified for resident borrowers in each member library. No resident shall be excluded from direct access to the library resources of the system or any of its member libraries because of age, economic or civic status.
  - (iii) a procedure, whereby member libraries may discuss, modify or amend the conditions, procedures, and agreed upon means of implementing, changing or altering the conditions of direct access within the system service area pursuant to paragraphs (2) and (3) of this subdivision. The system board of trustees, prior to submission of a plan of service for approval by the commissioner, shall by majority vote of the member libraries obtain ratification of the direct access provision. The plan shall be accompanied by a statement of agreement signed by the president of the public library system board of trustees and the presidents of the board of trustees of a majority of the member libraries.
  - (iv) an analysis of the library resources available to unserved and underserved populations residing within the system's boundaries in a format prescribed by the commissioner. Such analysis shall include, but shall not be limited to:
    - (a) a description of the unserved and underserved populations residing within the system's boundaries;

- (b) a description of any deficiencies in library resources currently available to individuals residing within the system's boundaries;
- (c) a summary of recommended actions to expand the availability of library resources to unserved and underserved populations residing within the system's boundaries;
- (d) a timetable for taking action on recommendations; and
- (e) assignment of responsibilities for providing library resources to unserved and underserved populations.

*“Pursuant to section 90.3 of the regulations, library materials may be borrowed by cardholders. Cardholders may include residents of the municipality or those residing in an area served by a public library system in which a public library is a participant. As such, the ability to borrow materials from a library is conditioned upon being a cardholder. Further, it is likely that a cardholder must present his or her card to the library staff as a prerequisite to borrowing or removing materials from a library.” (Adv. Op. Committee on Open Gov't, FOIL-AO-5239, August 17, 1988).*

*See 28 Educ. Dept. Rpts. 337, February 13, 1989, following Education Law, Part I, section 310(5).*

*See 32 Educ. Dept. Rpts. 635, June 8, 1993, following Part I, Education Law, section 310(5).*

- (2) Subject to the approval of the majority of the member libraries, certain modifications to unrestricted direct access as described in subparagraphs (ii) and (iii) of this paragraph may be made without the approval of the commissioner. An approved plan of service must describe the conditions under which such modifications will be implemented. If such conditions change, the public library system shall submit an amendment of the plan of service to the department in a format and according to a timetable established by the commissioner. The plan shall describe the conditions under which registered member libraries:
  - (i) shall not be required to provide free direct access to their materials and services to residents of a jurisdiction of 10,000 population or more which has not exercised the authority contained in section 255 of the Education Law, or other pertinent legislative act, to establish and maintain a public library, or which is not contracting for public library service in accordance with section 256 of the Education Law.
  - (ii) may place restrictions upon the loan of library resources. Such restrictions shall be limited to nonprint materials and equipment, and printed materials less than one year old, including fiction and nonfiction books and periodicals. Such materials must have been purchased from local funds.
  - (iii) may place restrictions upon attendance at library programs. If attendance must be limited, local residents may be given first access to them. Such programs must have been supported entirely from local funds.

- (3) Subject first to approval of the majority of the member libraries, and then to the approval of the commissioner, certain additional modifications to unrestricted direct access may be made for individual member libraries beyond those described in paragraph (2) of this subdivision. Such requests from individual libraries, once approved by the majority of the member libraries according to the procedures outlined in subparagraph (iii) of paragraph (1) of this subdivision, shall be submitted by the public library system to the commissioner for approval in a format and according to a timetable determined by the commissioner. The system board of trustees shall not unreasonably delay consideration of transmission of a member library's request to the commissioner. No such request will be approved if it includes a fee or charge to an individual for a borrower's card. The request for approval of additional modifications to unrestricted direct access shall be in writing and shall include, but is not limited to, the following:
- (i) documentation of the serious inequities and hardships affecting the resident borrowers of the member library making the request;
  - (ii) the proposed modifications to unrestricted direct access that will be implemented and a description of the anticipated impact on resident and non-resident borrowers;
  - (iii) a proposed timeframe within which such modifications will be in effect; and
  - (iv) recommendations for remedying the underlying inequity with a proposed timetable for action.

*“The amendment requires each public library system to include in its plan of service a direct access provision for the total library resources within the system to all individuals residing within the system boundaries. The plan of service must also include procedures whereby libraries may modify direct access conditions of the system or of individual libraries. Some public and association libraries have begun to charge individuals residing outside their chartered service areas for public library services. The proposed amendment reaffirms the commitment of no direct charge to an individual for public library services, requires a specific plan from the public library system for providing library services to unserved and underserved areas, helps reduce the burdens on overused libraries, allows flexibility for library systems to respond to local patterns of use and to modify free direct access at the public library system level, and provides a procedure for waivers when remedies are needed outside of those listed in regulation [sic].” (New York State Register, October 21, 1998, p. 7, following proposal EDU-42-98-00017-P).*

- (4) Provisional approval may be granted, provided that each member library of the system shall have the right to borrow for one or more of its cardholders from any other member library of the public library system any book or other material on the same basis as that provided by the lending member library applicable to its resident cardholder.
- (5) The provisional approval of a public library system may be extended by the commissioner for a period of not more than three years after the expiration of the original five-year period, upon satisfactory proof that immediate full compliance with

paragraph (1) of this subdivision would result in specific extreme hardship to such system or its participating libraries and upon the condition that such public library system submit to the commissioner, prior to such extension, a satisfactory plan for compliance with paragraph (1) of this subdivision within the period of such extension. As a further condition of such extension, the commissioner may require a demonstration by the public library system of free access to a portion of the population served by such system. Each such library system shall annually submit a report of progress toward full compliance with paragraph (1) of this subdivision.

- (e) Each system shall submit a plan which shall include a description of the means by which the various economic, cultural, civic and age groups will be assisted by qualified personnel in deriving maximum benefit from library resources.
- (f) Each system shall certify that there will be employed within the library system at least one full-time staff member (or the equivalent) for each 5,000 residents of the area served by the system, exclusive of janitorial, cleaning and maintenance workers. There shall also be employed by each approved system of libraries a director who holds or is eligible to receive a public librarian's professional certificate and who has eight or more full years of professional library experience in libraries or systems of libraries of recognized standing satisfactory to the commissioner, at least two years of which shall have been in an administrative capacity. In addition to such director, each approved system shall employ at least three full-time (or the equivalent) certified public librarians who shall be engaged solely in services which are administered by the system, exclusive of librarians employed in technical processing or in federally funded positions.
- (g) (1) For full approval, each system shall add annually at least 4,000 titles not previously held by the system.  
  
(2) For provisional approval each system shall add annually at least 2,000 titles not previously held by the system.
- (h) Each system shall provide a means of location of materials added in the libraries of the system.
- (i) (1) Each system shall prepare annually a budget (statement of receipts and appropriations) on forms prescribed by the Commissioner of Education, and file such budget with the department within 60 days after the beginning of the calendar year.  
  
(2) Whenever the apportionment of State aid to any system shall be increased, the system shall file with the department an amended budget showing how such increase will be used for the improvement of library services.
- (j) The plan of service of each public library system shall be revised periodically on a schedule to be determined by the commissioner.

- (k) The plan of each public library system shall provide for coordination of the reference and interlibrary loan programs and functions of the public library system with the approved plan of the reference and research library system of which it is a member. Each proposed revision of such plan shall be accompanied by a statement that the proposed revision has been transmitted to the board of trustees of the reference and research library system of which the public library system is a member, prior to its submission to the commissioner.
- (l) **Coordinated outreach services.** (1) Definitions. As used in this subdivision:
- (i) Solely for the purposes of Education Law section 273 (1)(h), *coordinated outreach services* shall mean a planned and integrated program of library services designed to identify, contact, and serve persons who are educationally disadvantaged, members of ethnic or minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically handicapped, aged or confined in institutions.
  - (ii) Institutions shall mean correctional facilities, hospitals, youth facilities, nursing homes, developmental centers, psychiatric centers and extended care centers.
- (2) Eligibility criteria. In order to be eligible for State aid for coordinated outreach services pursuant to the provisions of paragraph h of subdivision 1 of section 273 of the Education Law, a public library system shall:
- (i) be operating under a plan of service which has been approved pursuant to section 272 of the Education Law;
  - (ii) amend its plan of service, subject to approval by the commissioner, to show how coordinated outreach services to persons who are educationally disadvantaged, members of ethnic or minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically handicapped, aged or confined in institutions will be developed and implemented throughout the public library system service area. Such amendment shall include, but not be limited to:
    - (a) identification of special populations to be served including persons who are educationally disadvantaged, members of minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically handicapped, aged or confined in institutions;
    - (b) identification of special needs of such populations;
    - (c) a description of proposed additional or adapted services to meet the identified special needs;

- (d) a description of methods for coordination of expenditures and services in programs supported by coordinated outreach services funds provided under Education Law, section 273 (1)(h), State funds provided for services to local correctional institutions, other public library system funding and as appropriate, local funds;
  - (e) a description of cooperative efforts with representatives from Federal, State and local institutions;
  - (f) a description of expanded programming, use and maintenance of an optical scanner for use by the blind and physically handicapped in accordance with Laws of 1979, ch. 660; or
  - (g) a description of system efforts to implement section 504 of the Rehabilitation Act of 1973;
- (iii) certify that there will be employed within the library system at least one full-time certified professional librarian with expertise in outreach services who shall administer the coordinated outreach program and assist persons who are educationally disadvantaged, members of minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically handicapped, aged or institutionalized in deriving maximum benefit from library resources;
  - (iv) appoint an advisory council of not less than 5 nor more than 11 members, which shall be composed of persons who are educationally disadvantaged, members of ethnic or minority groups in need of special library services, unemployed and in need of job placement assistance, living in areas underserved by a library, blind, physically handicapped, aged or institutionalized, representatives of agencies serving such individuals within the system's service area and one director of a member library. Council members shall serve three year terms, provided that the first members of each council shall be appointed for terms of from one to three years so that, as nearly as possible, one third of the members of the council shall thereafter be appointed each year. The council shall meet at least twice each year, shall advise the public library system and assist in the evaluation of activities in the coordinated outreach program; and
  - (v) submit to the department, in a form prescribed by the department, an annual application and project description of its coordinated outreach services program, including budget information, prior year expenditure information, and narrative program information.
- (m) **Enriched coordinated outreach programs.** (1) Definitions. As used in this subdivision and in Education Law section 273 (1)(h)(3):

- (i) **Enriched coordinated outreach programs** shall mean any eligible services for preschool and school age children and their parents which are new or expanded library and information services beyond what public library systems and/or their members are currently providing to the designated outreach population through their coordinated outreach plan.
  - (ii) **Parents** shall mean any caregiver, parent or guardian of a child between the ages of birth to eighteen.
- (2) Eligibility criteria. In order to be eligible to apply for State aid for enriched coordinated outreach pursuant to the provisions of Section 273 (1)(h) of the Education Law, a public library system shall be operating under a plan of service which has been approved pursuant to Section 272 of the Education Law. Libraries shall be chartered and registered pursuant to Sections 254 and 255 of the Education Law. Approved projects must be under the supervision of a professional librarian.
- (3) Grants. Funds appropriated for the purposes of Education Law section 273 (1)(h)(2) shall be allocated in individual project grants of not more than \$50,000 each.
- (4) Application. Applications for a grant pursuant to this subdivision shall be in a form prescribed by the department and shall be submitted by member libraries to their public library system, with a copy to the department. The system shall submit such applications to the department on an annual basis, with any comments from its director, by a date prescribed by the department.
- (5) Content of applications. Each application shall be in a form prescribed by the commissioner. The commissioner may establish for a year or years, a theme, priority, or other parameter for enriched coordinated outreach projects.
- (6) Criteria for approval of an application. Approval of applications by the commissioner will be based upon the amount of available funds and degree to which each project demonstrates:
  - (i) a good balance between service provision and collection development;
  - (ii) a special need in the community for such a project;
  - (iii) that a qualified person will coordinate the activities of the project;
  - (iv) careful planning and community involvement;
  - (v) institutional commitment to providing such services;
  - (vi) potential to be replicated;

- (vii) description of a means for disseminating information about project design, implementation, and results; and
  - (vii) description of a means for disseminating information about project design, implementation, and results; and
  - (viii) appropriate means for evaluation of project and explanation of how evaluation results will be used.
- (7) Allowable costs. (i) Costs eligible for approval shall include the reasonable costs not to exceed the amount of the grants, of:
- (a) library materials used to improve enriched coordinated outreach;
  - (b) equipment for use in providing enriched coordinated outreach;
  - (c) personnel expenses directly related to the project and which do not subsidize existing library staff;
  - (d) supplies;
  - (e) contracting with independent contractors for the provision of services designed to assist enriched coordinated outreach;
  - (f) publicity designed to encourage participation of parents and children in need of enriched coordinated outreach;
  - (g) project evaluation; and
  - (h) such other costs as are necessary to complete the project.
- (8) Schedule of payment of State aid for enriched coordinated outreach. (i) 90 percent payment of the grant amount awarded for approved costs will be paid following approval by the commissioner for funding.
- (ii) The remaining 10 percent of the grant amount awarded will be paid after submission of evidence establishing that the project has been completed in accordance with the approved application and after submission of a final project report approved by the board of trustees of the public library and by the department.
- (n) **Adult literacy services.** (1) Definitions. As used in this subdivision and in Education Law Section 273 (1) (h) (2).

- (i) **Adult literacy services** shall mean a public library service program for adult literacy planned and operated in direct coordination with local public schools, colleges or other organizations which are operating similar adult literacy programs, which is designed to initiate, enhance or extend services to adults to increase their literacy skills.
  - (ii) **Adult** shall mean any person 16 years of age or older who is not currently attending public or nonpublic secondary school as a full-time student.
  - (iii) **Literacy skills** shall mean the minimal skills an individual needs to read and comprehend the English language up to and including the sixth grade level.
  - (iv) **Public library service program for adult literacy** shall mean any projects or activities which assist adults to improve their literacy skills which are provided at no cost to the individuals served by library systems or member libraries.
  - (v) **Direct coordination** shall mean that the adult literacy services are jointly planned and carried out in conjunction with one or more organizations which operate similar adult literacy programs.
  - (vi) **Organization which operates similar adult literacy programs** shall mean an organization which offers a program of services to adults to help increase their literacy skills and which is:
    - (a) a school district or board of cooperative educational services;
    - (b) a postsecondary institution authorized to confer degrees in this State;  
or
    - (c) a not-for-profit corporation or association which provides instruction on a not-for-profit basis.
  - (vii) **Member library** shall mean a public, free association or Indian library, as defined in section 253 of the Education Law, which is a member of a public library system.
- (2) Eligibility criteria. In order to be eligible to apply for State aid for adult literacy services pursuant to the provisions of section 273 (1)(h) of the Education Law, a public library system shall be operating under a plan of service which has been approved pursuant to section 272 of the Education Law.
- (3) Grants. Funds appropriated for the purposes of Education Law, section 273 (1)(h)(2), shall be allocated in individual project grants of not more than \$20,000 each, following approval of an application and plan pursuant to paragraph (4) of this subdivision. Nothing in this paragraph shall preclude a public library system from receiving an individual project grant during the same year in which one or more of its member libraries are awarded such a grant.

- (4) Application and plan. (i) Applications shall be submitted to the department on an annual basis, in a form prescribed by the department, by a date prescribed by the department. For any project in which the adult literacy services program is to be carried out by one or more member libraries, the board of trustees of the public library system shall submit separate recommended project applications or a composite application on behalf of the member libraries.
- (ii) The board of trustees of the public library system shall rank the approved applications from its system service area in order of greatest need as determined by such board of trustees.
- (iii) Each public library system submitting one or more applications on its own behalf and/or on behalf of member libraries shall submit a plan for public library service programs for adult literacy. Such plan shall be in a form prescribed by the commissioner.
- (5) Content of applications. Each application shall be in a form prescribed by the commissioner.
- (6) Criteria for approval of an application. Approval of adult literacy services applications by the commissioner will be based upon the degree to which each project demonstrates to the satisfaction of the commissioner:
- (i) that it will be effective in improving adult literacy services in the public library system service area;
- (ii) direct coordination with one or more participating public schools, colleges or any organizations which offer similar adult literacy services;
- (iii) a good balance between service provision and collection development;
- (iv) a special need in the community for such a project;
- (v) that a qualified person will coordinate the activities of the project;
- (vi) careful planning and community involvement;
- (vii) institutional commitment to providing such services; and
- (viii) the provision of library services in communities which are geographically isolated.
- (7) Allowable Costs. (i) Costs eligible for approval shall include the reasonable cost of:
- (a) library materials used to improve adult literacy skills;
- (b) equipment for use in providing adult literacy services;

- (c) personnel expenses for those projects in which a library system applies on behalf of member libraries;
  - (d) supplies;
  - (e) contracting with independent contractors for the provision of services designed to assist adults in improving their literacy skills;
  - (f) publicity designed to encourage participation of adults in need of adult literacy services; and
  - (g) such other costs as may be approved by the commissioner.
    - (ii) Costs ineligible for approval shall include, but shall not be limited to:
      - (a) building modification or construction;
      - (b) overhead or administrative costs; and
      - (c) personnel expenses for projects in which the library system is the applicant and will carry out the project.
- (8) Schedule of payment of State aid for adult literacy services. (i) Ninety percent payment of the grant amount awarded for approved costs will be paid following approval by the commissioner for funding.
- (ii) The remaining 10 percent of the grant amount awarded will be paid after submission of satisfactory evidence that the project has been completed in accordance with the approved application and after submission of a final project report approved by the board of trustees of the public library system and by the department.
- (9) Reports. (i) Upon completion of any project operated by a public library system which receives a grant pursuant to Education Law 273 (1)(h)(2), the board of trustees of such library system shall submit a final project report to the commissioner in a form prescribed by him, by such dates as the commissioner shall prescribe. Such report shall contain such data as the commissioner may require.
- (ii) Upon completion of any project operated by a member library, the board of trustees of the member library shall submit a final project report as described in subparagraph (i) of this paragraph to the board of trustees of the public library system for approval. Following approval or disapproval, such report shall be submitted to the commissioner by the public library system.

#### **§90.4 Standards for central libraries.**

Each public library system applying for State aid pursuant to the provisions of paragraph b of subdivision 1 of section 273 of the Education Law shall have a plan for the further development of its central library approved by the commissioner. Such plan shall comply with the following:

- (a) For the purposes of eligibility for State aid, pursuant to the provisions of subparagraph (1) of paragraph b of subdivision 1 of section 273 of the Education Law, the central library shall be the library so designated in the plan of organization and service of each public library system. If two co-central libraries are specified in the plan, the library with the greatest number of adult nonfiction volumes shall be deemed to be the central Library. A public library system shall be eligible to receive such grants prior to January 1, 1975 if its central library meets the following criteria:
  - (1) The local expenditure for the support of the central library, from other than State and Federal funds, is not less than two dollars per capita, excluding capital expenditures, based upon the population of the central library's service area. When the entire public support of the central library is derived from the entire system service area, the per capita expenditure of the entire system service area will be used in determining this grant. If the public library system receives support from other than State or Federal funds, the ratio between local and total income may be used to determine the percentage of system grants to central libraries which may be counted as local funds. System grants to the central library deriving entirely from other than State or Federal funds may be counted in their entirety. After January 1, 1975, the local expenditures for the support of the central library required to qualify for this grant shall be three dollars per capita, excluding capital expenditures, for the preceding calendar year.
  - (2) The central library shall provide an annual average of not less than 55 hours per week of service to the public, and not less than the number of hours in each week required under section 90.2 of this Part.
  - (3) There shall be provision in the central library for at least two full-time professional positions, financed from other than Federal funds, excluding budgeted positions vacant for more than 24 months.
- (b) In such years as are designated in a schedule to be established by the commissioner, the board of trustees of the public library system shall file with the commissioner a 10-year plan of central library development, prepared by the board of trustees of the central library, after consultation with the board of trustees of the library system, which meets systemwide needs. Such plan shall be based upon recognized standards of library service, and shall state, among other things:
  - (1) The optimum size of the library's collection needed to meet systemwide needs.
  - (2) Other special collections and information resources within the system service area to which the public has access by courtesy or by contract.

- (3) The number of professional and nonprofessional staff needed to provide service to readers.
  - (4) The amount of space and number of reader seats needed to provide this service.
  - (5) A statement by the board of trustees of the public library system on the adequacy of the proposed central library development plan to meet systemwide needs is required to be filed with the plan.
- (c) The board of trustees of each public library system applying for State aid, pursuant to the provisions of subparagraph (1) of paragraph b of subdivision 1 of section 273 of the Education Law, shall annually submit to the Division of Library Development, as a condition to receiving further aid under this program, a report, prepared by the board of trustees of the central library, on steps taken to achieve the objectives of this plan.
- (d) Each public library system applying for State aid pursuant to the provisions of subparagraph (2) of paragraph b of subdivision 1 of section 273 of the Education Law shall submit to the commissioner an acquisition plan. Such plan shall comply with the following:
- (1) Library materials to be acquired with this aid shall be located in the central library as designated in the plan of organization and service of the system. If two co-central libraries are designated in such plan, the system shall indicate the proportion of aid to be assigned to each. If, after approval of this acquisition plan, the system shall determine to change the location of materials acquired under this program, the system shall secure the commissioner's approval of the amendment of its plan of organization and service and shall amend its statement under this paragraph.
  - (2) The central library collection of adult nonfiction shall be physically assembled so as to provide maximum use of the collection by residents of the area served by the system.
  - (3) If the system provides that the central library collection is to be housed in two co-central libraries, the system shall:
    - (i) show that such separation of the central collection will not weaken the scope of the collection or the quality of the reference and informational service available to readers through such collection; and
    - (ii) provide that there shall be a unified means of location of the total adult nonfiction holdings of the two libraries in which the central library collection is housed.
  - (4) The central library or co-central libraries of the system shall provide information service and bibliographical assistance to residents of the system service area.

- (5) The material acquired under such plan by the system shall be adult nonfiction or foreign language materials, in print-form or microform.
- (e) The system shall annually certify to the Division of Library Development that the amount of State aid received pursuant to the provisions of subparagraph (2) of paragraph b of subdivision 1 of section 273 of the Education Law in the preceding calendar year was expended for library materials located in the central or co-central libraries. Such statement shall be endorsed by the board of trustees of the library or libraries receiving the material.

### **§90.5 Reference and research library resources systems**

#### **(a) Governance.**

- (1) The trustees shall employ a full-time director who is a trained professional librarian and who has had at least eight full years of professional library experience, at least two years of which shall have been in an administrative capacity, or equivalent experience as determined by the commissioner, and who holds, or is eligible for, certification under section 90.7 of this Part.
- (2) Prior to commencement of his or her duties, the treasurer of a reference and research library resources system, appointed pursuant to section 90.6 (c) (1) of this Part, shall execute and file with the trustees an official undertaking in such sum as the board shall direct and approve.

#### **(b) Membership.**

- (1) Criteria.
  - (i) Each reference and research library resources system shall file with the commissioner for his approval, as an amendment to its plan of service, its minimum criteria for membership.
  - (ii) Each reference and research library resources system shall file with the commissioner for his approval, as an amendment to its plan of service, each new application for membership in the reference and research library resources system.
  - (iii) Each reference and research library resources system petitioning the commissioner for approval of a plan of service amendment to add a new member shall demonstrate how such new member will improve the library resources presently available to the research community in the area of the system and/or will bring improved reference and research services to the users of such new member.
  - (iv) Each reference and research library resources system shall include all public library systems which provide service within the area served by the system and which have applied for membership and all school library

systems some part of which falls within the area served by the system and which have applied for membership.

- (v) Each reference and research library resources system may also include public, school, free association, and Indian libraries, libraries of educational agencies, libraries of nonprofit organizations, and other special libraries that provide service within the area served by the system, provided they meet the criteria for membership as contained in an amendment to the system plan of service approved by the commissioner pursuant to subparagraph (i) of this paragraph, except that no public, free association or Indian library which is not a member of a public library system or school library which is not a member of a school library system shall be eligible for membership in a reference and research library resources system.
  - (vi) Provisional approval of any new member of a reference and research library resources system may be given during the period December 31, 1980 to December 31, 1982, subject to review and redetermination after December 31, 1982.
- (2) Voting. Each member institution of a reference and research library resources system shall have one vote in the election of each trustee at the annual meeting, and each member institution shall designate an official representative who shall have the authority to cast the member institution's vote.

**(c) Plan of service.**

- (1) Each reference and research library resources system shall submit for approval by the commissioner a plan of service in a form to be prescribed by him. Such plan shall be revised periodically as determined by the commissioner.
- (2) In addition to the information required by paragraph d of subdivision 2 of section 272 of the Education Law, the plan shall include, but need not be limited to:
  - (i) a description of regional resources, including their variety in format and subject matter;
  - (ii) a description of programs to meet needs in services, materials and facilities;
  - (iii) a description of the system's efforts to fully use local responsibility, initiative and support of library services, and the manner in which State aid will assist their stimulation but not be used as their substitute;
  - (iv) an assurance that public funds will be utilized economically and efficiently;

- (v) the means by which the system will assure compatibility of its computerized and other technical operations with those of other library systems in the State and the New York State Library;
  - (vi) the identification of special client groups, their needs, and the means for meeting these needs;
  - (vii) a description of the means for locating library materials within the system area and the procedures for accepting, verifying and responding to loan requests, including delivery;
  - (viii) an indication that the plan is compatible with the approved plans of service of other library systems in the region, as demonstrated by evidence of appropriate consultation with public library systems, school library systems and the regional intersystem cooperative network; and
  - (ix) evidence that service programs are compatible with the Regional Medical Library Network or other special library networks which also serve member libraries.
- (3) Any contract relating to library services into which the system enters with its member libraries, other library systems, consortia or networks shall be considered an amendment to the plan of service, and shall be subject to the prior approval of the commissioner.
- (d) Reports.** No later than September first, each reference and research library resources system shall transmit to the department, on forms prescribed by the commissioner, an annual report for the 12-month period ending the previous June 30<sup>th</sup>.

**§90.6 Financial accounting in cooperative library systems and reference and research library resources systems.**

The following accounting procedures shall be employed by cooperative library systems and reference and research library resources systems.

- (a) The fiscal year of each library system shall begin with the first day of January and end with the 31<sup>st</sup> day of December or, at the option of the library system, shall begin with the first day of July and end with the 30<sup>th</sup> day of June.
- (b) No trustee, officer or employee of the system shall be interested directly or indirectly in any claim against or contract with the system for lawful compensation and expenses. However, a trustee who is not the treasurer may be a stockholder, officer or director of a bank designated as depository for the system.
- (c) The board of trustees of every library system shall:
  - (1) appoint two separate accounting officers: a financial clerk and a treasurer who shall hold office at the pleasure of the board. The secretary of the library

system board or the library system director may be appointed the financial clerk. In the event that either of these officers becomes temporarily incapacitated, the board may appoint one of its members to serve temporarily in either of these positions;

- (2) provide a satisfactory minute book for recording the minutes of the meetings of the board of trustees and the proceedings of the annual meeting of the participating libraries. In this minute book the secretary shall record the action of the board on all bills approved for payment or shall refer to a schedule of such bills by date, schedule number and amount approved. This schedule shall be filed as a public record;

*“The Commissioner of Education has adopted certain regulations applicable to cooperative library systems. Such library systems are required to keep a minute book for recording the minutes of the board of trustees and the proceedings of the annual meeting of the participating libraries. In this minute book, the secretary is required to record the action of the board on all bills approved for payment or else shall refer to a schedule of such bills by date, schedule number and amount approved. The schedule is required to be filed as a public record (8 NYCRR 90.6 (c) (2)). The fact that the schedule is specifically made a public record indicates, we believe, that a minute book is also a public record. Certainly, it was not intended that a library system in paying bills could avoid public scrutiny thereon, by including such accounts in the minute book. In fact, such regulation seems to be for the purpose of removing any doubt that where bills are paid by reference to a schedule of bills, and such bills are not set forth in the minutes, the schedule is also a public record open to inspection.” (Op. Compt. 65-519, July 7, 1967).*

- (3) provide the financial clerk with a distribution ledger in which he shall record itemized receipts and itemized payments, which shall be classified in each case as is required for the annual financial report;
- (4) provide the treasurer with a cashbook in which he shall enter an itemized record of all receipts and payments;
- (5) adopt a prenumbered receipt form printed in triplicate, and require the treasurer to acknowledge the receipt of any library funds paid over to his custody by issuing his receipt as follows; a copy to the payer, a copy to the financial clerk and a copy to be retained by the treasurer;
- (6) adopt a prenumbered voucher-check and require the use of this form in paying all system obligations except as otherwise provided in paragraph (18) of this subdivision. This form must provide for the signature of the treasurer and may provide for as many additional signatures as the board may require;

*“A director of a cooperative library system may approve vouchers for the payment of claims by the use of a perforating signature punch as authorized by the rules and regulations of the trustees.” (Op. Compt. 68-512, July 3, 1968).*

- (7) adopt, at least 30 days prior to the start of the ensuing fiscal year, an estimate of receipts and appropriations (annual budget) on forms prescribed by the

Commissioner of Education, and file such budget with the department within 60 days thereafter;

- (8) amend the budget at any time during the fiscal year and provide for appropriations from any additional revenues received;
- (9) keep the incurred obligations in each fiscal year within the amounts authorized by the budget and amendments thereto;
- (10) settle all accounts of the library system on or before the last day of the fiscal year;
- (11) disburse library funds only on the basis of itemized vouchers which have been certified by the claimants or the purchasing agent and audited and approved by the board of trustees except as otherwise provided in paragraph (18) of this subdivision. However, the board of trustees may by resolution determine that vouchers may be audited and approved by a committee comprised of at least three board members or by an individual designated by the board as auditor. Any individual so designated may not hold the office of financial clerk or treasurer and shall be bonded with such penalty and sureties as the board may require;
- (12) provide by resolution that amounts due upon contracts, for fixed salaries or for compensation of employees regularly engaged at agreed periodic rates, may be paid without prior audit upon submission to the treasurer of a voucher or payroll duly certified by the library system director or his duly authorized representative;
- (13) establish rules and regulations governing the reimbursement of trustees, officers and employees of the system and its member libraries for actual and necessary expenses incurred in the performance of official duties assigned by the trustees of the library system or in attending meetings designated by the library system board of trustees. In lieu of actual and necessary travel expenses, the trustees may establish a mileage rate for the use of personally owned automobiles;
- (14) require the treasurer to render monthly reports, showing the following information for the guidance of the board: balance on hand at the beginning of the month; itemized list of receipts during the month; total withdrawals made from the bank account during the month; balance on hand at the end of the month and reconciliation with the bank statement;
- (15) require a monthly report from the financial clerk showing amounts of receipts by source and expenditures by budget category for the months and year to date;
- (16) cause an annual audit of the treasurer's records to be made either by a committee of the board or by an independent auditor;

- (17) provide adequate filing equipment for the preservation and systematic arrangement of all paid and unpaid bills, cancelled checks, bank statements, debit charge slips, contracts and other financial records;
- (18) at its discretion, establish a petty cash fund for the purpose of making payment in advance of authorization of properly itemized bills for materials, supplies or services furnished to the library system calling for immediate payment on delivery.
- (i) Whenever a petty cash fund is established, the board shall designate the director or the financial clerk of the system to administer and be responsible for such fund. No such fund shall exceed \$50 at any one time.
  - (ii) The person in charge of such petty cash fund shall keep such records as may be necessary for the accurate accounting of all transactions and shall make reports to the board of trustees as required by such board.
  - (iii) From time to time checks may be drawn to the person designated to administer the petty cash fund in an amount which shall not exceed payments made in cash as indicated by receipts, receipted bills or other evidence of payment in form available to audit.
  - (iv) The petty cash fund shall be completely closed out at the end of each year and the general fund reimbursed by the original amount transferred to the petty cash fund.
- (19) The treasurer shall deposit all moneys within five days after receipt in a depository designated by the trustees. The trustees may authorize the treasurer to deposit or invest moneys not required for immediate disbursement in special time deposit accounts or certificates of deposit issued by a bank or trust company located and authorized to do business in this State, provided that such account or certificate of deposit shall be payable within the time the moneys shall be needed, and provided further that such account or certificate of deposit shall be secured by a pledge of obligations of the United States of America or obligations of the State of New York. Investments may also be made in obligations of the United States of America or of the State of New York, registered or inscribed, when possible, in the name of the system, and payable or redeemable at the option of the system within such time as the proceeds shall be needed, but in any event not later than the end of the fiscal year. Such obligations shall be purchased through, delivered to and held in the custody of a bank or banker designated by the trustees for the deposit of system moneys.

*“This section is the only authority for a cooperative library system to invest funds in obligations or interest-bearing accounts. These provisions require that no funds of the library be invested beyond the date on which they will be needed by the library for its purposes. In addition to the facts that there is no authority for ‘passbook loans’ and that the library should not have the savings accounts on which to make these loans, it is not permitted to invest funds for longer than the period for which the funds are not needed. Conclusion: A cooperative library system may not deposit its*

*funds in savings and loan associations and savings banks. Consequently, 'passbook loans' are unauthorized.*" (Op. Compt. 66-448, June 15, 1966).

- (d) The trustees of each library system shall file with the State Education Department, on forms provided by it, a financial report of the preceding fiscal year within 60 days of the close of such fiscal year.

### **§90.7 Certificates for librarians in registered public, free association and Indian libraries**

- (a) **Professional certificates.** Public librarian's professional certificates shall be granted to those who pay the statutory fee of \$5 and:
  - (1) have submitted evidence that they hold a graduate library degree from a library school located within New York State which is registered by the State Education Department, or from a library school program which is accredited by the American Library Association; or
  - (2) hold a conditional certificate and have completed at least six graduate credits in library science from a library school program which has been accredited by the American Library Association or registered by the department, and two years of satisfactory professional experience in a public library located within the United States.

*"It is axiomatic that courts do not have the power to substitute their judgment for that of the properly delegated administrative official, and where, as here, there is absent clear proof that the discretion of the administrative agency has been exercised arbitrarily, unfairly or capriciously, the courts are not to interfere...In our view, the record clearly demonstrates a sound basis for the exercise of the discretion vested in respondent, as well as the interpretation of respondent's own regulations."* (*Freiburger v. Sobol*, 168 AD 2d 817, 564 NYS 2d 512, December 1990, reversing 146 Misc. 2d 585, 551 NYS 2d 741, which characterized Commissioner Sobol's decision not to grant plaintiff a public librarian's professional certificate as "not rational").

- (b) **Conditional certificate.**
  - (1) A holder of a librarian's certificate or license evincing the completion of professional training and college education in a degree course or courses of no less than five years of postsecondary study, issued by an agency located outside of the United States may apply for a conditional certificate. The applicant shall submit full documentation of all postsecondary study, of degrees or credentials awarded therefor, and of the librarian's certificate or license to be evaluated. If, upon review of such documentation, the department determines that the applicant's preparation is equivalent to requirements for a professional librarian degree from a library school which is registered by the State Education Department or which program is accredited by the American Library Association, a conditional certificate may be issued for a period of two years. Such conditional certificate shall be valid for appointment to a beginning level professional position. The conditional certificate may be reissued at any future date for one, and only one, additional two-year period

upon presentation of evidence that the holder has completed, within the preceding two years:

- (i) at least three graduate credits in library science from a library school accredited by the American Library Association or registered by the department; or
  - (ii) six months of satisfactory professional experience in a public library located within the United States, as certified by the director of such public library.
- (2) A holder of a graduate library degree from a library school outside New York State which is, at the time of graduation, a regionally accredited institution of higher education may apply for a conditional certificate. The certificate is issued for a period of two years. Such conditional certificate may be reissued at any future date for one, and only one, additional two-year period, upon presentation of evidence that the holder has completed, within the preceding two years:
- (i) at least three graduate credits in library science from a library school program accredited by the American Library Association or registered by the department; or
  - (ii) six months of satisfactory professional experience in a public library located within the United States, as certified by the director of such public library.
- (3) The applicant shall pay a fee of \$5 for the evaluation of credentials pursuant to this subdivision and the issuance of a conditional certificate.
- (c) **Exchange of certificates.** Holders of the (1) librarian's graduate library school life certificate, or (2) librarian's professional life certificate shall receive the public librarian's professional certificate upon application.

### §90.8 Appointment of library personnel

- (a) Each registered public, free association or Indian library shall appoint library personnel on or after May 19, 1975, in accordance with the following provisions:
  - (1) A library which is a member of a public library system and serves a population of 2,500 to 4,999 shall employ as director a person who has completed not less than two academic years of full-time study in an approved college or university, or the equivalent as determined by the commissioner.
  - (2) A library which is a member of a public library system and serves a population of 5,000 to 7,499 shall employ as director a person who holds a bachelor's degree granted by an approved college or university upon the completion of

four academic years of full-time study, or its equivalent as determined by the commissioner.

- (3) A library which is a member of a public library system and serves a population of 7,500 or more shall employ as director only persons who hold the public librarian's professional or provisional certificate or a certificate of qualification. The library shall employ in all other professional librarian positions only persons who hold the public librarian's professional or provisional certificate, a certificate of qualification or a conditional certificate.
  - (4) A library which is not a member of a public library system and serves a population of 2,500 to 4,999 shall employ as director a person who holds a bachelor's degree granted by an approved college or university upon completion of four academic years of full-time study, or its equivalent as determined by the commissioner.
  - (5) A library which is not a member of a public library system and serves a population of 5,000 or more shall employ as director and in all other professional librarian positions only persons who hold the public librarian's professional or provisional certificate or a certificate of qualification. The library shall employ in all other professional librarian positions only persons who hold the public librarian's professional positions or provisional certificate, a certificate of qualification or a conditional certificate.
- (b) If a registered public, free association or Indian library which employs at least the equivalent of 25 full-time persons who hold the public librarian's professional or provisional certificate, a certificate of qualification, or a conditional certificate shall find it impossible to appoint a holder of such certificate for a professional librarian position, other than director, requiring unusual background or education in a specialized subject field, the library board may submit to the commissioner a statement of the facts involved and request that the position be exempt from the provisions of subdivision (a) of this section. The commissioner, in his discretion, may grant an exemption for such appointment.
  - (c) Failure by the trustees of any registered library to meet these requirements or observe these regulations shall be deemed a valid reason for the rescinding or suspension of registration.
  - (d) To provide for uniformity and greater mobility from one position to a similar position in another system, the Library Extension Division shall, from time to time, set up uniform titles and requirements for comparable library positions.
  - (e) The commissioner may in his discretion excuse the default of a library board in employing a staff member not meeting the requirements of paragraphs (1)-(5) of subdivision (a) of this section and legalize the time so served.

*“[T]he prevailing comprehensive statutory and regulatory scheme vests broad discretion in the library system, under the auspices of the State Education Department, to administer its own*

*affairs. Included within the discretionary power of the Commissioner of Education is the authority to oversee the functioning of the library system and to determine whether a staff member of the library must meet specified qualifications or if these requirements should be waived.” (Rodgers v. Koch, 111 AD 2d 727, 491 NYS 2d 181, June 1985).*

### **§90.9 Local library services aid**

A public, free association or Indian library may be approved for State aid, pursuant to the provisions of section 273(1)(f)(5) of the Education Law, provided that it meets the criteria for eligibility set forth in such paragraph of the Education Law and this section.

(a) **Definitions.** As used in this section and in Education Law, section 272(1)(f)(5):

- (1) **Chartered and registered library** means public, free association and Indian libraries, as defined in section 253 of the Education Law, which are chartered by the Regents or incorporated under a general or special act of the Legislature, registered by the department in accordance with the provisions of section 254 of the Education Law and sections 90.1, 90.2 and 90.8 of this Part, and members of public library systems. **Library** also means each public or free association library serving a city with a population of 100,000 or more which merged with the public library system on or before January 1, 1976. Libraries serving cities with populations over one million are not chartered and registered libraries within the meaning of this section.
- (2) **Library system** means an approved public library system as defined in section 272(1) of the Education Law, and does not include library systems serving cities with populations over one million.
- (3) **Chartered service area** means the geographic area served by a library as stated on charter documents approved by the Board of Regents and on file at the department. For the purposes of this section, the phrase “and environs” or its equivalent as contained in any charter document will not be recognized by the commissioner as a valid part of a library’s chartered service area. For the purpose of this section, areas served by the library under contract will not be recognized by the commissioner as a valid part of a library’s chartered service area.
- (4) The population of the chartered service area shall be deemed to be that shown by the latest Federal census for the political subdivisions in the chartered service area. Such population shall be certified in the same manner as provided by section 54 of the State Finance Law except that such population shall include the reservation and school Indian population and inmates of State institutions under the direction, supervision or control of the Department of Correctional Services, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, the Office of Alcoholism and Substance Abuse Services, and the Department of Social Services. In the event that any political subdivisions lie within larger political subdivisions in a chartered service area,

only the population of the larger subdivision shall be used for the purpose of computing State aid.

- (b) **Criteria for eligibility.** To be approved for local library services aid, a library shall:
- (1) be chartered by the Regents or incorporated under a general or special act of the Legislature;
  - (2) be registered by the department in accordance with the provisions of section 254 of the Education Law and sections 90.1, 90.2 and 90.8 of this Part;
  - (3) be included in the membership of a public library system, as recorded in the system's plan of service which has been approved pursuant to section 272 of the Education Law; and
  - (4) have filed with the department an annual report pursuant to sections 215 and 263 of the Education Law by March 1<sup>st</sup>. Any library whose annual report for the preceding fiscal year is not received within 90 days after the end of a calendar year shall not participate in any apportionments of local library services aid for the ensuing State fiscal year unless such neglect is duly excused by the commissioner.
- (c) **Determination of payment amounts.** The determination of the payment amount for a library for local library services aid is based on the provisions of section 273(1)(f)(5) of the Education Law and the provisions of this section. A library will be approved for payment of local library services aid based on the population of its chartered service area as on file at the department.
- (1) Changes in chartered service area. A library may request a change in chartered service area through a formal petition to the Board of Regents for an amendment to its charter, or, in the event the library was created by special act of the Legislature and has not been chartered by the Regents or admitted to the University of the State of New York, through an amendment to the special act.
    - (i) A library will be approved for a payment of local library services aid based on the population of an amended chartered service area in the calendar year following the year in which the charter amendment was approved by the Regents.
    - (ii) No change in chartered service area will be approved by the Board of Regents if the proposed chartered service area contains partly or wholly within its boundaries the chartered service areas of one or more other libraries.
  - (2) Population of chartered service area. A library will be approved for a payment of local library services aid based on the population of chartered service area as defined in this section. In the event that the chartered service area is not coterminous with a political subdivision, the population of which is shown in

the latest Federal census, such population shall be determined for the purpose of computation of State aid pursuant to section 273(1)(f)(5) of the Education Law by at least one of the following means:

- (i) applying to the population of such political subdivision the ratio which exists between the assessed valuation of the portion of such political subdivision included within the chartered service area and the total assessed valuation of such political subdivision;
- (ii) using a population figure for the chartered service area as cited in a published source acceptable to the commissioner;
- (iii) using a population figure for the chartered service area as attested to in writing by a Federal, State, regional, or local government official acceptable to the commissioner;
- (iv) in a case where there is no other reliable source for a population figure, using a population figure for the chartered service area as agreed to by the commissioner, the library board and the director of the public library system.

**(d) Disbursement procedures.**

- (1) Public library systems shall submit an application for local library services aid for their members on a form prescribed by the commissioner. The local library services aid payment to a public library system will be disbursed when the annual reports of all its member libraries have been received and approved by the commissioner.
- (2) The commissioner will not make direct payments to any individual library.

- (e) Waivers.** In any year in which the commissioner has apportioned a reduction adjustment, any public or association library may apply for a waiver in whole or in part of the standards of service set forth in section 90.2 of this Part. The application for such waiver shall be submitted for such public or association library by the public library system of which such library is a member. Such application shall be an addendum to the application prescribed in subdivision (d) of this section. Such a waiver shall be granted by the department for the period of one year provided that a public or association library demonstrates that standards of service, in part or in whole, cannot be met because local funding has been reduced or is insufficient or because of circumstances beyond such library's control, such as a natural disaster. No waiver granted pursuant to this subdivision shall be deemed to relieve a public or association library of any obligation imposed by any other provision of Federal or State law.

### §90.10 Local services support aid

- (a) A public library system may be approved for State aid, pursuant to the provisions of subparagraph (6) of paragraph (f) of subdivision (1) of section 273 of the Education Law, provided that it meets the criteria for eligibility set forth in such paragraph of the Education Law and submits an application on a form prescribed by the department.
- (b) Determining system's population that does not reside within the chartered service area of a member library. Each public library system shall provide to the department documentation of the population within the area served by the system which does not reside in the chartered area of a member library.

[NOTE: Section 90.11 repealed.]

### §90.12 State aid for library construction

- (a) **Definitions.** As used in this section and in Education Law, section 273-a:
  - (1) **Library** means public, free association and Indian libraries, as defined in section 253 of the Education Law, which are members of public library systems.
  - (2) **Library system** means a public library system, as defined in subdivision 1 of section 272 of the Education Law.
  - (3) **Library construction means:**
    - (i) the construction or acquisition of a building for library purposes, including construction of a building for library purposes pursuant to a lease-purchase agreement; or
    - (ii) the renovation or rehabilitation of a building already owned by a library; or
    - (iii) renovation or rehabilitation of a building to be leased for library purposes, including renovation or rehabilitation of a building for library purposes pursuant to a lease-purchase agreement.
  - (4) **Acquisition** means the purchase of a site and an existing building suitable for conversion to library purposes.
  - (5) **Renovation** means the overall improvement or conversion of an existing building, resulting in increased operational efficiency and economy.
  - (6) **Rehabilitation** means the restoration of an existing library building, exclusive of routine maintenance, with particular emphasis on energy conservation,

accommodation for computer equipment, or access by physically handicapped persons.

**(b) Application procedures.**

- (1) Each library system shall submit to the commissioner, no later than a prescribed date, a plan by which it will accept, review, and make recommendations on applications as required by Education Law, section 273-a (2). Such plans shall include a schedule of such actions, local funds matching requirements, planning and technical requirements, and procedures to be followed.
- (2) When the applicant is a library, the governing board of the system of which it is a member shall indicate to the commissioner its approval of such application by stating the extent to which the project for which State aid is requested will assist the applicant to provide more effective service within the system's standards of organization and service. If the governing board of the system does not approve a member library's application, such application shall be submitted to the commissioner with an explanation of such nonapproval.
- (3) When the applicant is a library system board, the application shall describe how the State-aided project will improve system services to member libraries and users.
- (4) The library system board shall rank the applications from its system area in order of its recommendations, giving particular attention to the service needs of any communities which are isolated or located beyond the reasonable service capabilities of other libraries which are members of such library system.

**(c) Content of applications.** Each application shall assure that:

- (1) when the construction project is completed, adequate operating support and resources will be available to sustain an improved level of service as reflected by the schedule of library open hours, the number of professional and nonprofessional staff needed to provide such service, and the upgrading of the inventory of all types of library materials;
- (2) the nonstate share of the cost of the project is or will be available, that the project has been started or will begin within 90 days after approval by the commissioner, and that the project will be completed promptly and in accordance with the application;
- (3) the approved project will be conducted in accordance with all applicable Federal, State and local laws and regulations;
- (4) not more than 60 percent of the approved costs have been expended as of the date of the application;

- (5) for all new projects or where otherwise required by law, competitive bidding procedures will be followed; and
  - (6) the premises constructed, acquired, renovated, rehabilitated or leased will be usable for library purposes for at least 20 years from completion of the project.
- (d) **Criteria for approval of an application.** Approval of construction project applications will be based in part upon the degree to which each project will result in:
- (1) more effective library service to the library's service area, as evidenced by new library programs and user accommodations resulting from the increased and improved building space and capacity;
  - (2) more efficient utilization of the library building, resulting in such economies as increased energy conservation and increased staff efficiency;
  - (3) improved access to and use of building services by all library users, including physically handicapped persons;
  - (4) the provision of library services in communities which are geographically isolated; and
  - (5) the satisfaction of such other criteria as the commissioner may deem appropriate.
- (e) **Costs.** Pursuant to Education Law, section 273-a:
- (1) Costs eligible for approval shall include:
    - (i) construction or acquisition of a library building;
    - (ii) renovation or rehabilitation of a library building;
    - (iii) renovation or rehabilitation of leased property;
    - (iv) purchase and installation of initial equipment and furnishings;
    - (v) site grading;
    - (vi) supervision of the construction, renovation or rehabilitation; and
    - (vii) such other costs as may be approved by the commissioner.
  - (2) Costs ineligible for approval shall include, but shall not be limited to:
    - (i) architectural and engineering plans;
    - (ii) building consultant studies;

- (iii) interest or carrying charges on bonds financing the project;
  - (iv) purchase of books and other library materials; and
  - (v) landscaping.
- (f) **Schedule of payment of State aid for library construction.**
- (1) Fifty-percent payment of awarded State aid for approved costs of the project will be made after notification of applicant by the commissioner of approval for funding.
  - (2) An additional 40-percent payment will be made after certification by the applicant that the project has been 50-percent completed in accordance with the approved application.
  - (3) The 10-percent final payment will be made after submission of satisfactory evidence that the project has been completed according to the approved application and has been accepted by the applicant.
- (g) **Reports.** The following reports shall be made to the commissioner on the forms and by the dates prescribed by the commissioner:
- (1) Each recipient of State aid pursuant to Education Law, section 273-a, shall report on the status of the approved project, including a final cost report.
  - (2) Each library system board shall report on the status of any project for which a [sic] approved application was submitted to the commissioner, but for which no State aid was provided.
  - (3) Each library system board shall report on the status of each project submitted to the commissioner for which the system did not recommend approval.
  - (4) Each library system board shall report on the anticipated State aid necessary for eligible projects to be completed in its service area.

### §90.13 Aid to Indian libraries

An Indian library or tribal government may be approved for State aid pursuant to section 271 of the Education Law, provided that it meets the criteria for eligibility set forth in section 253 of the Education Law and this section, and submits an application on a form prescribed by the department. For the purpose of determining the entitlement of the library for such aid, the following provisions shall apply:

- (a) **Service area.** The service area of an Indian library or tribal government shall be that specified in section 253 of the Education Law.

- (b) **Population base.** The population of the area of service of an Indian library or tribal government, for the purpose of State aid, shall consist of persons residing on the reservation served by the Indian library or by contract as shown by the latest Federal census or certified by the New York State Director of Indian Services or designee.
- (c) **Acreage.** The acreage of the area served by the Indian library or contract shall be certified by the New York State Director of Indian Services or designee.

#### §90.14 State aid for cooperation with correctional facilities

- (a) **Definitions.** As used in this section and in Education Law, section 285:
  - (1) **State correctional facility** means an institution under the control of the Department of Correctional Services.
  - (2) **Eligible State correctional facility library** means a collection of informational materials located in space in the facility which is primarily devoted to library service for the general inmate population, under the supervision of a librarian holding either a professional certificate or a conditional certificate as provided for in section 90.7 of this Part.
  - (3) **Inmate population** means the number of inmates of each participating State correctional facility named in a public library system's plan of service, as of July 1<sup>st</sup> of the year preceding the calendar year in which State aid to public library systems is to be paid, as certified by the Commissioner of Correctional Services.
- (b) **Participation.** Each eligible State correctional facility library may elect to participate in the development of the cooperative plan of service with the public library system and other such facility libraries in the system area.
- (c) **Plan of service.** A public library system operating under a plan of service which has been approved pursuant to section 272 of the Education Law, which has one or more eligible correctional facility libraries within its area of service and which is applying for State aid for cooperation with such library or libraries, shall file an amendment of its plan of service with the commissioner, setting forth a plan to make the library resources of such system available to meet the library needs of inmates within the facility or facilities located in the system's service area. Such amendment shall include, but not be limited to:
  - (1) the identification of the eligible State correctional facility libraries in the system area, and the reasons given by any such facility which elects not to participate;
  - (2) the identification of any State correctional facility or facilities within the system area lacking an eligible correctional facility library. A variance may be granted by the commissioner from the eligibility standards set forth in paragraph (a)(2) of this section, upon submission of a description of the services to be provided

- to ineligible facilities and of the benefits that the inmate population would derive;
- (3) the identification of system personnel involved in negotiating the plan of service with participating correctional facility libraries and of the personnel responsible for implementation of such plan, including any consultant services to be provided;
  - (4) a description of how the public library system resources will be made available for the educational, cultural and recreational needs of the inmates, as determined from a user needs assessment;
  - (5) an agreement on procedures to recover or replace missing or damaged materials loaned to a participating facility library; and
  - (6) the evaluation procedures to be used to determine the effectiveness of the public library system in providing services to the correctional facilities libraries in its area.
- (d) **Maximum apportionment.** Each public library system shall be eligible to receive an apportionment equal to the quotient, computed to two decimals without rounding, of the appropriation provided by law for the purpose of section 285 of the Education Law, divided by the State total inmate population, but not more than \$9.25, multiplied by the public library system inmate population.
- (e) **Reports.** Each public library system receiving State aid for cooperation with State correctional facilities, under an approved plan for the sharing of library resources, shall file with the commissioner such fiscal and evaluation reports as he may prescribe, in a form and by a date determined by him.

[NOTE: Section 90.15 omitted]

#### **§90.16 Grants for conservation and/or preservation of library research materials**

- (a) **Definitions.** As used in this section and in Education Law, section 273(7):
- (1) **Comprehensive research library** means those libraries designated in subdivision 7 of section 273 of the Education Law.
  - (2) **Agencies and libraries**, as used in Education Law, section 273(7)(d), means libraries chartered by the Regents or in institutions chartered by the Regents, other than comprehensive research libraries, and other agencies collecting, organizing, maintaining and making available to the people of the State, library research materials as defined in paragraph (6) of this subdivision.
  - (3) **A program of conservation and/or preservation** means a coordinated set of activities for the protection, care and treatment of library materials to prevent

loss of their informational or intellectual content and/or of the objects themselves, including but not limited to:

- (i) collection condition evaluation and preservation planning;
  - (ii) environmental control;
  - (iii) disaster prevention, preparedness and recovery;
  - (iv) preparation of library research materials for storage or exhibition, including binding, matting, boxing and other protective wrapping;
  - (v) collection maintenance, including cleaning and refurbishing;
  - (vi) screening to identify items needing preservation attention, including searching to establish the availability of replacements;
  - (vii) rebinding, minor repair and mending;
  - (viii) reformatting, including photocopying, microfilming, and copying disks to tape;
  - (ix) major conservation treatment, such as surface cleaning, deacidification, leather repair, and conservation rebinding;
  - (x) creating or modifying bibliographic records to reflect preservation decisions, including reporting microform masters to the library community;
  - (xi) quality control and testing of materials, processes and equipment used in any conservation and/or preservation activity; and
  - (xii) staff training and patron awareness programs.
- (4) A **cooperative program** means a program for the conservation and/or preservation of materials operated by a comprehensive research library for the benefit of two or more comprehensive research libraries that involves collective decision making on priorities, avoidance of duplicative effort, use of a national data base to make known decisions on items being preserved, and the dissemination of information resulting from the program.
- (5) A **cooperative facility for conservation and/or preservation** means a comprehensive research library which develops a capacity for serving the conservation and/or preservation needs of one or more other comprehensive research libraries beyond the immediate needs of the sponsoring institution, including but not limited to needs for:
- (i) reformatting, including microfilming and copying disks to tape;

- (ii) major conservation treatment, such as surface cleaning, deacidification, leather repair, and conservation rebinding;
  - (iii) the hiring of consultants to provide guidance to any or all of the comprehensive research libraries for the development of specific aspects of their conservation and/or preservation programs or for the overall development of their programs; and
  - (iv) training and education in conservation and/or preservation, including staff training and patron awareness programs.
- (6) **Library research materials** means informational materials in print, nonprint, manuscript or any other format or medium which are part of the applicant's collections and are, or will be, made available for reference, onsite examination and/or loan.
- (7) **Unique library research materials** means library research materials which are not accessible to the people of the State in any other collection in the State, or identifiable collections of library research materials, some portions of which may be accessible elsewhere in the State, which have research value not duplicated elsewhere in the State.
- (b) **Five-year plan.** In order to be eligible for State aid for a program of conservation and/or preservation of library research materials, pursuant to subdivision 7 of section 273 of the Education Law, each comprehensive research library shall submit a five-year plan and an annual program budget. The first five-year plan shall be submitted by March 31, 1985. Subsequent plans shall be submitted at five-year intervals.
- (c) **Plan.** The five-year plan for a program of conservation and/or preservation of library research materials shall include, but need not be limited to, the following elements:
- (1) a brief description of the types of materials in the collections and their overall physical condition;
  - (2) a description of the current program of conservation and/or preservation, as defined in paragraph (a)(3) of this section, including:
    - (i) a brief history of the program activity;
    - (ii) the number and type of staff involved;
    - (iii) the administrative organization;
    - (iv) current expenditures;
    - (v) the volume of annual activity; and

- (vi) the selection criteria, technical procedures, specifications or standards used, and monitoring or evaluation processes;
  - (3) a description of proposed expanded, modified and/or additional activities, including five-year goals for each area of program activity, and annual developmental objectives for reaching those goals covering each category set forth in paragraph (2) of this subdivision; and
  - (4) evidence that local programs are designed and conducted so as to complement other conservation and/or preservation activities within and outside the State.
- (d) **Preservation methods.** Activities in areas such as environmental control, the creation of microforms, and specifications for materials and procedures used in physical treatment shall be conducted in accordance with standards approved by the commissioner.
- (e) **Eligible expenditures.** Activities eligible for funding shall include those listed in paragraph (a)(3) of this section, including personnel costs, service contracts, supplies and equipment, but excluding the acquisition of library research materials and building construction. Activities shall be related to annual objectives contained in the five-year plan.
- (f) **Applications and reports.**
- (1) Each comprehensive research library which has received plan approval shall submit to the department, in a form prescribed by the department, an annual application and program description for conservation and/or preservation, including budget information for the next fiscal year, and a narrative and expenditure report on program activities during the prior year.
  - (2) Comprehensive research libraries applying for grants under Education Law, section 273(7)(c), shall submit project proposals in a form prescribed by the department, including but not limited to the following elements:
    - (i) a description of the unique library research materials to be preserved or conserved with grant funds;
    - (ii) a description of proposed conservation and/or preservation activities, and of the techniques to be employed in such activities
    - (iii) a description of staff and/or data about suppliers of contract services which demonstrates appropriate training, experience and expertise for performing the proposed work;
    - (iv) evidence of access to appropriate facilities for conservation and/or preservation;

- (v) assurance that bibliographic information in machine-readable form will be available on materials preserved;
  - (vi) evidence of institutional commitment to development of a coordinated approach to conservation and preservation in the State;
  - (vii) institutional contribution to the project in matching funds and staff resources; and
  - (viii) provision for use of a national database to make known to other libraries decisions on items being preserved.
- (3) Agencies and libraries applying for grants under Education Law, section 273(7)(d), shall submit project proposals in a form prescribed by the department, which shall include, but need not be limited to, the elements enumerated in paragraph (2) of this subdivision and data demonstrating the volume of interlibrary lending by the applicant within the State and beyond, and public access to the applicant's holdings.
- (g) **Advisory council.** The commissioner shall appoint a five-member advisory council to assist in the development and operation of the grant program for conservation and/or preservation of research library materials. Such council shall consist of one member from each of the following:
- (1) a comprehensive research library;
  - (2) an academic library;
  - (3) public library;
  - (4) an historical society, archive or other repository; and
  - (5) a person knowledgeable in conservation and/or preservation of library materials.

[NOTE: Section 90.17 and 90.18 omitted]

### **§90.19 Grants for regional bibliographic data bases and interlibrary resources sharing**

- (a) **Definitions.** As used in this section and in Education Law, section 273(6):
- (1) **Regional bibliographic data bases** means machine-readable files of bibliographic records and holdings of libraries within a reference and research library resources system region, including public, academic, school and special libraries.
  - (2) **Region** means the geographic area served by an approved reference and research library resources system.

- (3) **Library automation** means the application of computer and telecommunications technology to bibliographic control, data base access, resource sharing and other electronic communication or transmission for the purpose of improving and enhancing services to library users.
  - (4) **Automated circulation system** means the application of computer and telecommunications technology to control the circulation of library materials, which may be integrated with other functions in an automated system.
  - (5) **Automated system** means the application of computer and telecommunications technology to library functions, including control of circulation of library materials, acquisitions, cataloging, serials control, public access catalog, and similar activities and the integration of these functions into one system.
  - (6) **Automation program** means an organized plan applying automation to library functions to promote bibliographic control, data base access, resource sharing, and other electronic communication or transmission among the school, public, academic and special libraries within a region.
  - (7) **Five-year plan** means a regional library automation program which addresses the development and management of a regional bibliographic data base, access to this and other data bases, resource sharing, and other electronic communication or transmission and which incorporates the public library systems, school library systems, and other libraries within the region.
  - (8) **Annual plan** means a plan submitted by a reference and research library resources system which covers the current year of the five-year plan.
  - (9) **Electronic doorway library** means a library which enhances information retrieval and resource sharing for its users based upon two-way electronic capability, into and out of the library.
  - (10) **Statewide electronic library network** means a virtual network which includes existing and future physical networks in the State applicable for library purposes. The key concept underlying the network is interconnectivity among separate physical networks thus, in effect, resulting in one logical statewide network for libraries.
- (b) **Plans.**
- (1) Each reference and research library resources system shall submit for approval a five-year plan for the regional bibliographic data bases and interlibrary resources sharing program pursuant to Education Law, section 273(6)(b), in a form and by a date prescribed by the commissioner. Such plans shall be developed and kept current through amendments made with the ongoing participation of libraries and library systems in the region. Amendments to the five-year plan shall be in a form and submitted for approval by a date prescribed by the commissioner. The board of trustees of the reference and research

library resources system shall submit to the commissioner such evidence of participation of libraries and other library systems as he or she may require. Such participation shall include consultation with an automation committee, composed of representatives of all types of libraries and library systems in the region, which shall be established for such purpose.

- (2) An annual plan and budget, consistent with the five-year plan for a regional automation program, shall be submitted by each reference and research library resources system seeking a grant pursuant to Education Law, section 273(6)(a)(1). Such annual plans and budgets shall be developed in consultation with and the ongoing participation of an automation committee representative of all types of libraries and library systems in the region and shall be submitted in a form and in accordance with a timetable prescribed by the commissioner.
  - (3) For each public library system seeking a grant pursuant to Education Law section 273(6)(a)(2), an acceptable plan for an automation program shall be the approved plan referred to in Education Law section 273(1).
- (c) **Elements of a five-year plan.** Five-year plans and amendments shall provide a description of current library automation in the region, of library automation needs and of proposed actions, and shall include, but need not be limited to:
- (1) the number of machine-readable bibliographic records and holdings already in existence in the region, and the number of bibliographic records and holdings to be converted to machine-readable form;
  - (2) a description of the means of maintaining and updating bibliographic data bases;
  - (3) a description of the means of accessing bibliographic and other data bases including any interfaces between or among data bases, and the availability of materials represented in these data bases;
  - (4) a description of the process and mechanisms used to share or obtain resources, the effect on resource sharing or usage patterns, and a description of electronic communication or transmission used for these or other purposes;
  - (5) a description of regional library automation goals and objectives for the five-year period, including the anticipated progress during this period toward enabling all libraries in the region to become electronic doorway libraries;
  - (6) a year-by-year projection of library automation activities, which in year two through five of the plan may be revised or expanded through amendments;
  - (7) evidence that all types of libraries and library systems in the region participated in the development of the plan, and that the plan takes into account the automation needs of and is equitable for all types of libraries and library systems;

- (8) evidence that the plan will improve the quality of library service available to residents of the region;
  - (9) methods of and participants involved in monitoring and evaluating accomplishments.
- (d) **Criteria for approval of plans, amendments, annual plans and budgets.** Approval of five-year plans, amendments, annual plans, and budgets shall be based on the following criteria:
- (1) the goals and objectives of the automation program;
  - (2) the comprehensiveness of the plan including the number and types of participants, the number of records and holdings and type(s) and subject area(s) of materials to be converted, and the activities other than conversion of records and holdings; and
  - (3) how bibliographic or other data will be accessed and the anticipated increase in resource sharing or change in usage patterns;
  - (4) the potential for stimulating cooperation among libraries, and the importance to intersystem and inter-type library resource sharing;
  - (5) the impact on enabling libraries to become electronic doorway libraries or to expand upon existing electronic doorway library services provided or obtained on or through the statewide Electronic Library Network;
  - (6) activities involving professional development, education, and training;
  - (7) the cost(s) to implement;
  - (8) the libraries participating in and/or benefiting from each project, and the impact on service to users of these libraries;
  - (9) the specificity and supporting data provided, including the staffing required and processes to be followed in carrying out the proposed projects; and
  - (10) the adequacy of the evaluation procedures used to measure achievement of the stated goals and objectives, including the participants involved.
- (e) **Standards and requirements for library automation projects.** (1) Bibliographic records and holdings and telecommunications-interoperability procedures shall be created and maintained in a form which, in the determination of the commissioner, assures regional and intersystem statewide compatibility.
- (2) Bibliographic records converted through the use of these funds shall be made available, for the purpose of resource sharing, to the State library without charge other than the cost of duplicating such records.

- (f) **Reports.** Each reference and research library resources system which receives an annual grant for regional bibliographic data bases and interlibrary resources sharing shall submit in a form and in accordance with a timetable prescribed by the commissioner, progress reports on the project.

## **PART 146**

### **PUBLIC LIBRARIANSHIP TRAINING GRANTS**

[Note: these grants have not been funded since the early 1970's]

#### **§146.1 Eligibility**

Only those persons shall be eligible to compete for these training grants:

- (a) who are citizens of the United States and who at the date of the training grant award are, and for one year prior to such date have been, legal residents of the State of New York;
- (b) who present evidence that they have completed or are completing an educational program fitting them to enter an approved library school in this State;
- (c) who have taken the qualifying examination prescribed for the competition;
- (d) who file in the Education Department a formal application for the training grant, on a blank to be furnished by the department;
- (e) who are admissible to an approved library school in this State but who have not matriculated in a degree program prior to the date of the training grant award;
- (f) whose suitability for public library employment is endorsed by the director of a public library or library system in this State; and
- (g) who agree to work two years in a public library or library system in this State after completion of the degree program.

#### **§146.2 Awards**

- (a) Awards shall be made annually in order of merit from a list showing the standings of the candidates on the prescribed qualifying examination.
- (b) The total number of awards granted shall be determined within the limitations of available funds, as hereinafter provided.
- (c) A vacant training grant shall be reawarded to the next eligible candidate on the list in order of merit. A reawarded training grant shall entitle the recipient to the unused portion of the benefits still available and must be accepted or declined under the same conditions as those which govern an initial award.

### **§146.3 Amount of grant**

[Education Law, §107] The amount to be awarded to each of the qualified candidates in his order on the list shall be determined as follows:

- (a) Each recipient shall be awarded an amount equal to the cost of tuition and mandatory fees at the approved library school being attended.
- (b) To the amount for tuition shall be added an amount to cover the costs of texts and travel to the approved library school, except that the total award may not exceed \$3,000. This additional amount shall be determined as follows:
  - (1) A recipient who attends a library school within 40 miles of his legal residence shall be eligible for a maximum additional amount of \$500, if the combined next taxable balance of the income of the recipient and/or his parents, or parent, or other person legally responsible for his support, plus any income from tax-exempt securities as set forth in the New York State income tax return for the calendar year last preceding the school year in which the scholarship becomes effective, is \$1,000 or less.
  - (2) A recipient who attends a library school more than 40 miles distant from his legal residence shall be eligible for a maximum additional amount of \$1,000, if the combined net taxable balance of the income of the recipient and/or his parents, or parent, or other person legally responsible for his support, plus any income from tax-exempt securities as set forth in the New York State income tax return for the calendar year last preceding the school year in which the scholarship becomes effective, is \$1,000 or less.
  - (3) If such income exceeds \$1,000 the amount for which the recipient shall be eligible will be diminished by one dollar for each eight dollars, or parts thereof, of such income in excess of \$1,000, provided, however, that no training grant shall be less than the actual tuition costs.
- (c) Payment of awards shall be divided into installments made at the beginning of each semester of study in which the qualified candidate is registered for at least six semester hours. Each installment shall be proportionate to the total amount for which the candidate is eligible in the same ratio as the number of credit hours of study taken that semester is to the total year of study.

### **§146.4 Acceptance of training grant**

A grant for the training of public librarians shall be deemed vacant unless an acceptance thereof is filed with the department within 15 days of notification to the person entitled thereto. Except when a leave of absence has been granted as provided in the following section, the recipient of the training grant award must enter upon at least half-time work in an approved library school in this State at the beginning of the semester immediately succeeding the award of the training grant.

### **§146.5 Leave of absence**

Upon application, a leave of absence not exceeding six months in any 12-month period may be granted to a training grant holder for illness or other cause deemed satisfactory to the commissioner. Failure to attend upon instruction regularly without making proper application for a leave of absence subjects the training grant to forfeiture.

### **§146.6 Approved library school**

A training grant for professional preparation in public librarianship shall be issued originally and continued in effect only for attendance upon a program of library science acceptable to the commissioner as providing adequate training for public librarianship. Such study shall lead to a degree in library science and eligibility for the public librarian's' provisional certificate, but in no event shall any such training grant be awarded for more than one full year (36 semester hours) of study.

**[NOTE: Special district public libraries and library funding information is available on the New York State Library's website at <http://www.nysl.nysed.gov/libdev/publaw/contents.htm>]**