

UNIVERSITY OF MISSOURI KANSAS CITY

LEGAL FRAMEWORK FOR PUBLIC LIBRARIES IN MISSOURI

AN INDEPENDENT STUDY, SUBMITTED TO

DAVID RENZ

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Introduction

A public library is a wonderful resource for the people of any community. For people in the United States, at the turn of the twenty-first century, public libraries are an expected service. With the adoption of the Internet and library's embracing the technology as a delivery method, public libraries are practically ubiquitous. In fact, the public library is such a common institution in the United States that it may not be clear how these institutions developed and how they sustain.

The purpose of this paper is to explore the legal framework and constraint affecting a public library operating in the state of Missouri. This study will focus specifically on *Missouri Revised Statutes*, Chapter 182 as well as other laws, and statutes that influence public library operation.

Missouri's Legal Framework for Public Libraries: Boards

Although a "library" may bring a single vision to mind, Missouri law provides for the creation of many types of libraries.¹ Within these types, there are seven categories of public libraries.² Ideally, all the types of public libraries are the same, with minor exceptions. Unfortunately, this is not the case. Before highlighting those minor exceptions, it may be useful to name the types of public libraries and their governing oversight of a well-established library of this type.³

¹ Alex Ladenson, J.D., Ph.D., ed., *American Library Laws*, 5th ed., (Chicago : American Library Association, 1983), 1087.

² Missouri Revised Statutes, sec. 182.

³ Missouri Revised Statutes, sec. 182.

Library Type	Statute	Board Members	Term	Who Appoints the Board?
County	182.010 – 182.130	5	4 years	County Government
City	182.140 – 182.280	9	3 years	Mayor or designate with approval of City Government
City-County	182.291 – 182.460	9	3 Years	Mayor and County Government
Municipal	182.480	9	3 Years	Mayor or designate with approval of City Government
Consolidated	182.610 – 182.670	4 per county	4 years	County Government
Urban	182.701 – 182.723	9	4 years	Mayor
School District	164.081 – 164.101	0	n/a	School district electors
Contractual	182.080	0	n/a	n/a

Before examining this information further, it may be useful to make a distinction between three library types that may seem to be the “same.” A municipal library district is a library formed before October 13, 1965. Up to this point, several cities had libraries in Missouri. However, as county libraries developed and cities expanded outward, there were increasing possibilities that an expanded city limit may spill into an established county library district and could result in double-taxation. The fixing of municipal library districts in 1965 is a contentious point in Missouri libraries. Many municipal libraries have migrated to the new “city” designation and one created the “urban” library district. From a practical standpoint, “municipal” should really be seen as a predecessor library, as many of the pre-1965 libraries eventually became a “city” or “city-county” or even part of a “consolidated” library.

City libraries are divided into three categories. There is the *City Library*, *City Library with city population of 100,000*, and a *City Library with city population greater than 300,000*. For the most part, all city libraries have the same basic structure and guidelines.

The Urban Library was established to create an independent library district from what was previously a school district library. This district was never a part of city government, like the old municipal libraries, but rather a part of the school district. Therefore, migration from the school district to a “city library” really was not possible.

It may be useful to expand on a few points concerning Board composition. Appointment for a City-County Library’s Board is based on population. For instance, Springfield-Greene Library is a City-County Library. The city of Springfield has a greater population than the remainder of Greene County. Therefore, five Board Members are appointed by the city and the remainder is appointed by the county.⁴

The composition of a Consolidated Library is related to the number of counties represented in the library district. For instance, Barry-Lawrence Library is comprised of Barry and Lawrence Counties. Therefore, each county appoints four Board Members for a total of eight. Mid-Continent Public Library is comprised of all or parts of three counties. Therefore, each county appoints four Board Members for a total of twelve. If a consolidated library merges with an existing municipal or city library that is not within contained within one of the existing counties making up the consolidated district, a single board member can be appointed to represent the new area. This change occurred when Sullivan Public Library (residing in both Crawford and Franklin counties) merged with Scenic Consolidated Library in 2017.⁵

⁴ Missouri Revised Statutes, sec. 182.050.

⁵ Missouri Revised Statutes, sec. 182.640.1.

There is only one Urban Library in Missouri (Kansas City Public Library). Their Board is composed of seven members appointed by the mayor of Kansas City, one from the mayor of Sugar Creek, and one from the mayor of Independence.⁶

A School District Library is a School Library that is open for the public to use. While they may have a universal mission, they tend to focus on the needs of the pupils. School District Libraries are a department of the local school district. While there may be an advisory council, typically, the School Board handles the library as any other division of the school district.⁷

A Contractual Library is more frequently called a Regional Library. A few counties and/or cities may band together and contract with each other to gain more favorable purchasing power, or to decrease administrative overhead. Most frequently, the Boards resolve to cooperate rather than drawing actual contracts. In such arrangements, the individual Library Boards remain intact and responsible for the destiny of their represented library. There is no legal basis for a "Super-Board" for the Regional Library.⁸ Clearly, the independent boards have to work together on issues that concern the entire body. Because the operational arrangement is tied to a resolution and that resolution can be withdrawn by a majority vote at any board meeting, the regional library may be the least stable governing arrangement of all library arrangements. In recent years, several regional libraries have voted to go back to individual operation. An interesting

⁶ Missouri Revised Statutes, sec. 182.707.1

⁷ (Ladenson 1983, 1127)

⁸ Missouri Revised Statutes, sec. 182.080.

case study was when the River Bluffs Regional Library dissolved back to the individual St. Joseph Public Library and the Rolling Hills Consolidated Library. This action occurred over several Board Meetings, created several questions regarding division of assets, and ultimately resulted with two new libraries being built or remodeled within a few blocks of each other.⁹

For each type of library, Missouri statutes illustrate several points concerning how the Board will operate. All library trustees have prescribed terms. Once the Board is created, statute indicates that terms overlap so there are limited new trustees at any one time. Library Boards are required to create bylaws, elect officers, and hire a librarian. Library Boards act as a corporate body. As such, they may sue or be sued, purchase or lease grounds, purchase, lease, occupy or erect buildings, sell, lease, exchange or transfer property on the behalf of the library, and receive gifts to be used for the benefit of the library.¹⁰

Library Boards are required to have a treasurer who is responsible for oversight of the library's funds. An interesting point is that library funds are collected by the county collector's office and must be turned over to the library immediately. Since the county already has an infrastructure to collect taxes, the library does not have to create a tax collection method. The Treasurer and Librarian are required to enter into a bond or bond with

⁹ "Rolling Hills library board will operate independently," St. Joseph News-Press June 7, 2002 : Available from St. Joseph News Press Online Archive <http://www.stjoenews-press.com/main.asp?Search=1&ArticleID=28910&SectionID=81&SubSectionID=272&S=1> (Accessed May 12, 2005).

¹⁰ Missouri Revised Statutes, sec. 182.070

corporate surety. The librarian is required to keep financial records for the library, using generally accepted accounting practices and is required to present a “state of the library” report to the board once a year.¹¹

A Library Board must establish an operating levy. Missouri Statute allows libraries to establish a levy based on every \$100 of property owned within the library’s district.¹² A library may also establish a temporary tax to build new facilities. These levies, if passed, cannot exceed ten years in duration, and become earmarked funds that cannot be spent for any other library purpose, including the purchase of new materials for a newly constructed facility.¹³ Libraries may also issue bonds for building and property acquisition for up to twenty years. Such bonds cannot be issued at an amount greater than 1 percent more than the total value of tangible taxable property in the district without a vote of the people.¹⁴

As previously stated, many aspects are similar for all libraries in Missouri. The following are examples of how there are some differences in the powers and obligations of Boards within the different types of libraries.¹⁵

- State of the Library Report -- Every librarian is required to present a report illustrating the condition of the library and its services. However, when that report is required differs by library type.

¹¹ Missouri Revised Statutes, sec. 182.073-182.075

¹² Missouri Revised Statutes, sec. 182.010

¹³ Missouri Revised Statutes, sec. 182.100

¹⁴ Missouri Revised Statutes, sec. 182.105

¹⁵ The following sections and bullet list involve a comparison of library law throughout the statutes. All points may be found in Missouri Revised Statutes sec. 182. However, noting each section would be far too cumbersome.

Library Type	Date of Annual Report
County	Second Monday in March
City/Municipal	Within eight weeks after the end of the fiscal year
City (100,000)	Within eight weeks after the end of the fiscal year
City (300,000)	Second Monday in June
City-County	Second Monday in June
Consolidated	September 30 th
Urban	Before August 31 st

- Nepotism - Most library boards have guidelines to prevent nepotism or other forms of favoritism in the hiring or appointment process. County, City-County and Consolidated libraries prohibit employment of anyone who is related within three degrees by blood or marriage, to any Board member. A Consolidated library also cannot employ anyone similarly related to the librarian. A City or Municipal library may not employ anyone who is related in any way to a Board Member. Equally, no member of city government can sit on the Library Board. An Urban library does not appear to have any nepotism restrictions. However, a City-County Board cannot be made up of more than five people of the same political party.
- Professional Librarian - All library districts are required to hire a “qualified” librarian. However, only Consolidated libraries require a “duly qualified graduate librarian” to fill this position.
- Term limits and other forms of official removal - City and Municipal library trustees are not allowed to serve four consecutive terms. No other library has mandate term limits within the statutes. However, it seems likely that a Board could establish a bylaw that creates term

limits. Likewise, an appointing body (e.g., the city council for a City library) could create an ordinance or practice beyond the statutory language. Consolidated libraries require that a Trustee be removed for failure to attend six consecutive meetings in a year. An Urban library trustee cannot be less than twenty-five years old.

- Numbers of meetings - Most libraries appear to meet monthly. However, a Consolidated Library Board may choose to meet as few as ten times per year.
- Additional privileges - All libraries may enter into contracts. Urban and Consolidated libraries are “political subdivisions of the state of Missouri” and have the right of eminent domain. A *City 300,000* also has the right of eminent domain. All libraries other than a County Library appear to be able to grant users outside the library district the right to use the district’s resources.

Missouri’s Legal Framework for Public Libraries: Financial

There are several financial guidelines for Missouri Libraries. The Statutes spell out most of the details for establishing levy amounts, including ballot language. One interesting point is that Consolidated and City-County libraries allow a “tie” to approve a levy increase.¹⁶ All other districts view a tie vote to be a rejection of the levy question. Another point about operating

¹⁶ Paul A. White, “Chapter 182 Comparison Chart,” provided to author June 17, 2005, Independence, MO.

levies is that a County, City, *City 300,000*, and Urban Library districts provide provisions for electors to reconsider the levy amount after approved.¹⁷

All libraries except City libraries in Missouri are required to operate with a budget. However, budgeting responsibility is different for the different types of libraries.

The Board is responsible for creating the budget for County and City-County libraries. Once created, the Board must present the Budget to the governing body of the appropriate cities or counties sixty days before the start of the fiscal year. There appears to be no language permitting budget adjustments once adopted.¹⁸

For Consolidated and Urban libraries, the librarian is responsible for creating a budget and submitting it to the Board for consideration, alteration, and ultimately adoption. The statutes indicate that the Board may adjust the budget by a vote any time during the fiscal year. Both libraries have a mandated fiscal year that starts July 1 of each year. For accountability purposes, Consolidated libraries must file the approved budget with each county commission or county executive and with the state auditor. The Urban library is required to file the approved budget with the State Auditor only.¹⁹

Librarians for County libraries are required to provide reports based on calendar year. This being the case, many County libraries choose to operate

¹⁷ (White, 2005)

¹⁸ (White, 2005)

¹⁹ Missouri Revised Statutes, sec. 182.645

with a January to December fiscal year. City libraries often mirror the fiscal year established by their city's government.²⁰

All public libraries may invest funds of the district. The library is required to return any revenue from the investments back to the original funding source. In other words, the interest income becomes public operating funds upon maturity and will be subject to the same requirements of tax revenues. Libraries, as tax supported organizations are very limited on how they can invest funds. All investments must comply with sections 110.010 and 110.020 of the Missouri Revised Statutes. Basically, that means that no investment can be made that places any amount of the principle at risk. Banks are required to hold collateral in excess of the principle for securities. Libraries may purchase government investment instruments that are backed fully by the government. Lastly, a library may not invest revenues beyond the date that those funds are needed. In other words, it is not acceptable to take operating funds and invest them to mature in a future funding year.²¹

Missouri Legal Framework: Other Considerations

Several other areas of Missouri law affect and influence public libraries in Missouri. Naturally, as an employer, employment laws and regulations apply to public libraries. In Missouri, there are three specific areas deserving

²⁰ (White, 2005)

²¹ Missouri Revised Statutes, sec. 182.800

additional attention. Those areas involve theft of library materials, open meetings and records, and record retention and patron confidentiality.

Library Theft

In an attempt to help local law enforcement officials, the Missouri General Assembly went to great lengths to define theft and destruction of library materials.²² However, most of these enforcement provisions were weakened as part of a larger criminal justice reform measure in 2016. In Missouri, a person can be found guilty of library theft if they purposefully try to deprive by taking library materials without authorization, or borrows materials without the intent to return the items. Whether using a valid, invalid or even a bogus library card all applies equally to the library theft law.

Not only is theft of materials illegal, also the destruction and defacement of library materials is also illegal. In both cases, the library is required to attempt to contact the person (if known). A person is permitted to make payment equal to fair market value if the item cannot be returned. Doing so is considered the same as “returning” the item. Generally, library theft is considered a misdemeanor. The matrix below illustrates the mandated charges for library theft.

Library Material Value	Charge
Less than \$150	Class D Misdemeanor
\$150.01 or More	Class A Misdemeanor

²² Missouri Revised Statutes, sec. 570.210

No single item need be stolen or defaced to meet the value criteria. A combination of items equaling these amounts also activates the charge.²³

One last provision of “library theft” involves detainment. A library may lawfully detain someone who has or is about to steal or deface library materials. As long as the detainment is reasonable, it is not considered unlawful and does not expose the library or library staff to any type of litigation.²⁴ Since libraries are not building detention centers for potential book thieves, what exactly does this provision mean? From a practical standpoint, it permits a library employee or agent to stop a person and search bookbags, briefcases and purses for items that were not checked out or for defaced library material, presuming there is reasonable suspicion that a search is warranted.

Open Meetings and Records

Transparency is very important when conducting the people’s business. To this end, Missouri established a section of the statutes addressing governmental bodies and records. Commonly, these provisions are known as the *Open Meetings and Records Laws* or the *Sunshine Law*.

The Sunshine Law applies to all Missouri government bodies and agencies. It also applies to quasi-government agencies and not-for-profits that contract with government agencies.²⁵ This might mean that if a library allows their NPO “friends” group to take care of property liquidations (i.e., run the

²³ Missouri Revised Statutes, sec. 570.030

²⁴ Missouri Revised Statutes, sec. 570.215

²⁵ Missouri Revised Statutes, sec. 610.010(4)

annual booksale) the friends of the library would also be responsible to adherence to the Sunshine law.

Public bodies are responsible for letting the public know about public meetings. Notices must be posted “prominently...at its principal office” twenty-four hours before the meeting.²⁶ It is also advisable to post meeting notices elsewhere, such as the library’s website. If the meeting is to take place over the computer, the law requires that the notice be posted online. The notice must contain the meeting time, meeting date, meeting place, the tentative agenda, and whether the meeting is *open* or *closed*. The Sunshine Law covers all meetings, including online meetings, conference calls, and other virtual meetings. If any of these methods are used to meet, and the meeting is *open*, provisions must be made for the public to observe the meeting.²⁷

In almost every case, government records are considered open for examination and copying by the public. A government body is not required to create a record to satisfy a request, however. A new development in the Sunshine Law identifies email messages sent among a majority of any governing body to be considered a public record. Copies of such messages must be retained.²⁸ Requesters may copy records and copy charges cannot exceed \$0.10 per page or “cost” for large format copying. Equally, a government body may charge an administrative fee not to exceed the hourly wage of a clerical employee for the hours required to copy the material. Libraries need to

²⁶ Missouri Revised Statutes, sec. 610.020

²⁷ Missouri Revised Statutes, sec. 610.020

²⁸ Missouri Revised Statutes, sec. 610.025

appoint a “custodian of records” to respond to all records requests. Responses should occur no more than three days after receiving the request.²⁹

In certain cases, meetings, votes and records may be *closed* to the public. The Sunshine Law is very specific about such situations. There are twenty-one conditions when it is appropriate to close meetings, records, or votes. The list below highlights the most common reasons.

- Legal actions, causes of action or litigation (except that votes, minutes and settlement agreements must be opened to the public on final disposition, unless ordered closed by a court).
- Leasing, purchase or sale of real estate where public knowledge might adversely affect the amount paid in the transaction.
- Hiring, firing, disciplining or promoting a particular employee.
- Welfare cases of identifiable individuals.
- Software codes for electronic data processing.
- Individually identifiable personnel records.
- Records related to existing or proposed security systems.
- Records that are protected from disclosure by other laws.³⁰

A roll-call vote is required to allow a body to go into closed session and the reason for going into closed session must be stated in the resolution. In some cases, when coming back into open session from closed session, a report of the business might be required. If the closed session comes between two open sessions, the public must be permitted back in the meeting following the closed session.

Any person may make a records request and may attend any meeting. No particular form or format is required to make the request “official.” Likewise, any person may bring suit against a government body for failure to

²⁹ Missouri Revised Statutes, sec. 610.010, 610.023, 610.024, 610.026

³⁰ Missouri Revised Statutes, sec. 610.021

follow provisions of the law. Current statute says that if a body violates the law, the individual or the body can be fined up to \$1,000 per violation. If the body knowingly and purposely violates the law, the individual or body can be fined up to \$5,000. In either case the member or body can be ordered to pay court costs and any attorney fees needed to bring the suit.³¹

The Sunshine Law does a lot to assure that government works in the open and under public examination. However, library records pose a problem. What if someone wants to know whether someone else is checking out certain titles at the library? Many libraries retain such records. Unless the request is for an employee, the Sunshine Law does not seem to seal other forms of personally identifiable records. Would the library have to comply?

Patron Confidentiality and Record Retention

Since the birth of the nation, Americans have been very cautious and careful about the government's power over the people. Clearly, information is power. However, if the government systematically monitored the information acquisition of its citizens, the citizens might be less likely to educate and inform themselves. This lack of information cripples democracy in creating uninformed voters and allowing the government to progress unchecked. Different times in American history, libraries have been at the center of national debates regarding patron confidentiality. In the two most heated debates, the library was pitted against the F.B.I. as the agency attempted to create criminal evidence from a person's library records.

³¹ Missouri Revised Statutes, sec. 610.027

During the 1960's and 1970's the F.B.I.'s "library awareness program" took a very active role investigating the reading and research habits of Americans. This effort was mostly focused in academic libraries, to combat communist spies in the United States. Although the original charter seemed very reasonable, the library awareness program eventually found itself searching political advisories of the bureau and the government's leaders. Herbert N. Foerstel chronicles the efforts of the library awareness program in the book, Surveillance in the stacks: the FBI's library awareness program.³²

Ultimately, the question at the center of the library awareness program was, how much inherent privacy should a person expect in his or her library use? Should law enforcement or anyone else be able to request information involving library use with or without probable cause? To what length are libraries required to retain records, and are all records created equally? For instance, does a library need to keep borrowing records as long as they are required to keep payroll records?

In Missouri, library records are treated separately from other types of government records and are closely defined. For instance, "library material" is defined as "any book, document, film, record, art work, or other library property which a patron may use, borrow, or request."³³ A library record is defined as documentation that links use of library material to a specific person and identifies that person.³⁴ An important thing to notice is that use of library

³² Herbert N. Foerstel, Surveillance in the stacks : the FBI's library awareness program (New York : Greenwood Press, 1991).

³³ Missouri Revised Statutes, sec. 182.815.

³⁴ Missouri Revised Statutes, sec. 182.815.

material not only includes borrowing records, but also use of library resources in the library. For example, use of an atlas, attending a library program, signing up to use a meeting room, using one of the library's computers or simply sitting in the library's reading area are all considered use of library resources.

Missouri law allows the disclosure of library records in two cases. First, the person who is identified in the library record may request the record. However, the law says nothing about spouses, parents, or children. In other words, you may request what books you have checked out. However, you cannot request what your child or your spouse has borrowed, or has overdue. The second area involves law enforcement. A library may turn over library records to law enforcement when the authorities have obtained a court order.³⁵

Although confidentiality of library records has always been a delicate topic, the issue heated up again following the terrorist attacks on September 11, 2001. Once again, the F.B.I. wanted to investigate the reading habits and library use of citizens who may or may not be potential terrorists. The U.S.A. P.A.T.R.I.O.T. A.C.T. (USAPA) gave the F.B.I. the power to request library records, observe library use, and prohibited library staff from telling the library patron his or her library records were requested. Furthermore, the new law allowed the F.B.I. to conduct surveillance on individuals using the library who were not the focus of an investigation. Ideally, this provision would allow law

³⁵ Missouri Revised Statutes, sec. 182.817.

enforcement to gather information on people who were associated with potential terrorists.³⁶

People concerned with privacy saw this final provision as a “slippery slope.” There was a fear that this provision allowed law enforcement to request information on anyone, since anyone could potentially be close to someone else who is potentially a terrorist. In reality, only thirty-five USAPA subpoenas were served under section 215 of the USAPA and none for library records through 2005.³⁷ Libraries continue to be concerned about laws like USAPA and its effect on library use. Lawmakers reached an impasse when attempting to renew the surveillance provisions of Section 215 of the USAPA, allowing it to expire on March 15, 2020. The impasse was centered around another part of the law. Consequently, it seems possible that the library provision of Section 215 could find its way into a new law sometime in the future³⁸.

The previous information really discusses library records. What about other records that a library might collect? The Secretary of State defines library records as, “any document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of

³⁶ Lee Ann Torrns, Law and Libraries: The public Library (Westport, CN : Libraries Unlimited : 2004) 45-49.

³⁷ National Public Radio, “The Patriot Act: Provisions Expiring Dec. 31.” Accessed July 20, 2005 Available from <http://www.npr.org/templates/story/story.php?storyId=4754214>

³⁸ India McKinney and Andrew Crocker, “Yes, Section 125 Expired. Now What?” Accessed June 23, 2020 Available from <https://www.eff.org/deeplinks/2020/04/yes-section-215-expired-now-what>

official business" (109.210(5) RSMo). This definition includes those records created, used, and maintained in electronic form."³⁹ From a very practical standpoint, this list really includes just about any records one would produce in the operation of a library.

Several records have a very long retention schedule. A record of library collection (accession book), annual circulation totals, and the articles of incorporation are required to be retained permanently. Building plans and specifications are required to be retained for the life of the building. Annual payroll records for each employee must be retained for seventy years. Most all other records are required to be held for a much shorter period of time. Most accounting records must be retained for five years. Tax payment records must be retained for seven years. Library patron registration cards are required to be held for two years beyond their expiration. Overdue records are to be retained for one year unless the overdue fines exceed \$2.00. In that case, the records must be retained for five years.⁴⁰

A very fine point involving record retention is that if a library does not create a record, then that record cannot be retained. Many library automation systems immediately disconnect a library user from a specific item as soon as that item is returned, unless there is an overdue fine or other type of bill. Although records retention laws suggest such information should be retained, nothing in the laws indicate that a record be created merely for the purpose of

³⁹ Office of the Secretary of State, "Public Libraries Records Retention Schedule." Accessed July 20, 2005 <http://www.sos.mo.gov/archives/localrecs/schedules/library.asp>.

⁴⁰ Office of the Secretary of State, "Public Libraries Records Retention Schedule." Accessed July 20, 2005 <http://www.sos.mo.gov/archives/localrecs/schedules/library.asp>.

compliance with the law. This point is very important when considering Missouri's library confidentiality laws. While civil libertarians may be concerned about the potential for someone to find out every library book that someone has read, many libraries do not retain such records due to the amount of space needed to retain such log files and data archives. Simply, most libraries are unable to create archival use reports connecting individuals to resources once an item is returned.

In recent years, the reliance on third party partners to help libraries provide ebook service or utilization of customer relationship management applications created a hole in this previously firm commitment to confidentiality. For instance, the ebook provider Overdrive provides ebooks in kindle format, adhering to the defacto industry standard and allowing a user's highlights and annotations to be stored in the "the cloud" to be transferred to the loaned content if borrowed again or to a purchased copy of the ebook. But what keeps Overdrive from violating Missouri's library privacy law?

In 2014, Missouri's library confidentiality law was amended to hold any vendor or third-party contractor working with a library to the same standards as the library. If Overdrive collects information from Missouri library users through a contracted arrangement with a Missouri library, then Overdrive would not be able to provide confidential use information without a court order.⁴¹

⁴¹ Missouri Revised Statutes, sec. 182.817

Other Considerations

Library law can be very interesting in the conflicts inherent when government tries to serve and to protect. This was very clearly illustrated with the struggle over internet filtering in public libraries. While it was clear that filtering content to protect minors was a good thing, it was not so clear that government could mandate the censorship of constitutionally protected free speech from adults who also use public libraries. Just to clarify the point, information that meets the legal criteria of obscenity is not protected speech. On the other hand, pornography is typically considered protected speech for adults. This point was a primary sticking point in the original Communications Decency Act and several other attempts to mandate that constitutionally protected free speech, while inappropriate for children, was not illegal and could not be filtered from adults. Eventually, the Children's Internet Protection Act tied telecommunication discounts for libraries to having a method in place to provide filtered access to information to children.⁴²

Most states have laws making it equally against the law to aid in the commission of a felony. If someone uses library material to learn how to commit a felony, is the library in some way responsible for breaking the law? Generally, the concept of sovereign immunity protects libraries. In its most simple state, sovereign immunity does not allow government bodies to be sued for monetary damages. The concept is that the lawsuit brings on an increased

⁴² Mary Minnow and Tomas Lipinski, *The Library's Legal Answer Book* (Chicago : American Library Association, 2003) 126-131.

tax burden and shifts funds from the voter's charge to the award. Libraries may not expect immunity in claims involving civil rights violations or for suits seeking a change in policy (and no monetary damages). However, the law becomes much hazier when considering where an employee's liability starts and the library's liability ends. Library employees are not well known for being wealthy. However, if a library employee does something resulting in a lawsuit, it would be much more profitable to try to bring in the library as a defendant, to try to tap the deeper pockets. Likewise, it is not clear whether an individual library employee might be protected if a suit is brought against the employee, rather than against the library.⁴³

Libraries are staunch protectors of free speech and providing alternate points of view for the public. However, what is the role of a library employee in such an environment? Is it appropriate for library staff to voice overt political speech or a specific point of view? Does a person have fewer rights as a library employee than as a library patron? There has long been a concept called the "doctrine of privilege" for government employees. The idea is that a person has the right to speak about any subject in any way he or she wishes. However, that person has no inherent right to be a library employee. Some of this doctrine has been eroded under "whistleblower" laws. However, the basic concept that overt opinionated speech that is potentially construed as voicing the library's stance on an issue may be restricted as a condition of employment. However, if a library attempted to curb such speech while the

⁴³ (Minnow and Lipinski, 2003, 2-10).

employee was not representing the library, the library would be violating the first amendment.⁴⁴

Technology will continue to morph and change the firm lines drawn around copyright law. Libraries will continue to be challenged by new interpretations of copyright law and practice. New legislation like the Digital Millennium Copyright Act has helped to better define the copyright impact of “linking” on a webpage. A cornerstone to library operation in the United States is the “first sale doctrine” found in section 109 of the U.S. copyright law. This states that once a library has purchased an item, it may do whatever it wishes with the item, including lending the item. This doctrine is different from counterparts in other nations. In Canada and the United Kingdom, a library is responsible for paying royalties to copyright holders each time that an item is borrowed.⁴⁵ Given the changing nature of copyright in a digital world, an erosion to the first sale doctrine is possible. In deed, most discussions on the effective ways to combat piracy of digital content (like ebooks) often come back to a “pay per use” concept that, if applied to libraries, would very much change how public libraries operate in the United States.

Conclusion

Missouri’s legal framework for libraries is very complex. While most of the guidelines can be found in section 182 of the revised statutes, as a political subdivision, Missouri libraries are also responsible for adherence to several

⁴⁴ (Minnow and Lipinski, 2003, 292-296.

⁴⁵ (Minnow and Lipinski, 2003, 54-60.

other sections of Missouri statute. The overlay of local laws, along with federal law makes things even more complex. As a simple exercise in risk management, librarians and library boards really need to be well versed in library law and the laws influencing the operation of a public library. Many library boards still do not have an attorney on retainer. Given the new complexities, of the workplace, let alone library law, changes in statutes, and the like, money spent on such a service is money very well spent. Short of this, an association of Missouri library executives, called The Missouri Public Libraries Directors (MPLD) has hired an attorney for their members. Becoming a member of MPLD can help protect the library by getting legal advice on topical issues effecting public libraries.

Bibliography

- Foerstel, Herbert N. Surveillance in the stacks : the FBI's library awareness program. New York : Greenwood Press, 1991.
- Ladenson, Alex J.D., Ph.D., ed., American Library Laws, 5th ed. Chicago : American Library Association, 1983.
- McKinney India and Andrew Crocker, "Yes Section 215 Expired. Now What?" Accessed June 23, 2020 Available from <https://www.eff.org/deeplinks/2020/04/yes-section-215-expired-now-what>
- Minnow, Mary and Tomas Lipinski, The Library's Legal Answer Book. Chicago : American Library Association, 2003.
- Missouri. Revised Statutes, 2019.
- Missouri Office of the Secretary of State, "Public Libraries Records Retention Schedule." Accessed July 20, 2005 <http://www.sos.mo.gov/archives/localrecs/schedules/library.asp>.
- National Public Radio, "The Patriot Act: Provisions Expiring Dec. 31." Accessed July 20, 2005 Available from <http://www.npr.org/templates/story/story.php?storyId=4754214>
- St. Joseph News Press, "Rolling Hills library board will operate independently," St. Joseph News-Press June 7, 2002 : Available from St. Joseph News Press Online Archive <http://www.stjoenews-press.com/main.asp?Search=1&ArticleID=28910&SectionID=81&SubSectionID=272&S=1> (Accessed May 12, 2005).
- Torrans, Lee Ann, Law and Libraries: The public Library. Westport, CN : Libraries Unlimited : 2004.
- White, Paul A., "Chapter 182 Comparison Chart," provided to author June 17, 2005, Independence, MO.