



# Library Legislation: Some General Considerations

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IT IS NO EXAGGERATION to assert that some of the most exciting developments in the field of librarianship are currently being debated in the halls of Congress and in the legislative chambers of many of our states. Library legislation has taken on new dimensions as well as a pressing significance in the library world of today. Many substantive changes have occurred in the library laws of this country in recent years. In some states the general laws governing public libraries have been completely rewritten. In other jurisdictions new concepts of librarianship have been introduced and enacted into law which will serve to illuminate and influence the future path of library development throughout the land.

Any general discussion of the subject of legislation may be prefaced by the observation that legislation does not originate in a vacuum. Most legislation, if not all, is deeply rooted in the social, economic and political soil of society, for law and legislation are merely tools to produce social results. Roscoe Pound, former dean of the Harvard Law School, stated this idea clearly when he wrote that legislation is asked to put what has already been worked out in experience into the form of legal precepts. It follows from this generalization that library legislation is not something that is static. It is in a constant state of change and evolution and hardly a legislative session either at the state or federal level is permitted to pass without some library law being enacted. The periods of greatest productivity in library legislation are those when new ideas are injected into the social crucible for the promotion of libraries. To be more specific, however, the term "library legislation" or the more encompassing phrase "library law" has three connotations corresponding to the three basic areas of the law: a) constitutional law, b) statutory law, and c) administrative law.

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Constitutional law as applied to the American legal system is the body of law that is to be found in the federal Constitution and in the constitutions of the fifty states. A constitution is the highest expression of the law because it emanates from the people who are the source of all power in the United States; therefore, as such, a constitution is superior to the will of the legislature. The legislature which is created by the constitution cannot change or alter any of the provisions in that document. This must be done by the people.

Statutory law consists of the compilations and codes of law that have been enacted through the instrumentality of a legislative body: the legislative body may be Congress, a state legislature, a county board of supervisors, a city council, a village or township board, or a town meeting. The legislative acts of Congress and those of a state legislature are generally referred to as statutes, whereas the legislative acts of a city council and similar bodies are generally denoted as ordinances. But in the eyes of the law, both of these terms constitute the statutory law.

Administrative law is that field of law that governs the functions of administrative agencies. Many administrative agencies are authorized by statute to make rules and regulations. These rules and regulations which boards and commissions formulate are sometimes referred to as quasi-legislation but nevertheless they have the binding effect of law. An example in point is the board of directors of a public library which is an administrative agency clothed with the power of making rules and regulations governing the operation of the library. The rules and regulations which the library board establishes have the effect of law and to that extent the library board is a lawmaking body.

To round out this brief analysis, it may be helpful to observe, also, that these three areas of the law are vitally affected by judicial decisions that interpret and construe the meaning not only of the provisions to be found in the constitutions of the federal government and of the fifty states, but of the entire body of statutory and administrative law as well. As early as 1803 in the famous case of *Marbury v. Madison*, Justice John Marshall proclaimed the doctrine of judicial supremacy. As a result of this doctrine, the Supreme Court of the United States and the supreme courts of the fifty states pass on the constitutionality of legislation and are the final arbiters on the meaning of the laws contained in the three areas designated as constitutional law, statutory law and administrative law. The significant thing to remember about the doctrine of judicial supremacy is that the courts in the process of

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interpreting the law are at the same time "making" the law. Thus often what the courts have declared negates what the legislature has proclaimed.

Constitutional provisions have a direct bearing on library legislation. Although some fifteen state constitutions refer to libraries, only two constitutions, those of Michigan and Missouri, contain provisions that are of broad general significance. Michigan has had a constitutional provision relating to public libraries since 1835. The present constitution adopted in 1962 declares: "The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof." This is an extremely important provision because it imposes a mandatory responsibility upon the legislature to provide for the establishment and support of public libraries. In the case of the Missouri Constitution, the article relating to public libraries is also of vital concern because it gives sanction to the principle of state aid for public libraries.

Constitutional provisions such as these are highly desirable, and whenever any state is in the process of revising its organic law, the librarians of that state would be well advised to place before the constitutional convention a proposed article relating to libraries. At the time of this writing a constitutional convention was in session in the state of Illinois. The Illinois Library Association was instrumental in having the following article introduced:

Since the use of library resources is an essential element in the educational process, it is hereby declared to be the policy of the state to promote the establishment and development of libraries designed to provide for free and convenient access to such materials for all its people without regard to location, institutional form or educational level, and to accept the obligation of their support by the state and its subdivisions (and municipalities) in such manner as may be prescribed by law.

There are other state constitutions such as those of Arkansas and Oklahoma which contain rather detailed provisions describing how county and municipal libraries may be organized and prescribing the maximum tax rate that may be levied. This is not good practice, the reason being that a constitution should be reserved for broad guiding principles rather than for procedural detail. Furthermore, from the standpoint of efficient governmental operation, it is much easier to alter or repeal a legislative act than it is to change or remove a con-

stitutional provision. Whenever circumstances permit, it would be well to have such detailed provisions eliminated from state constitutions and incorporated into a general library law.

Turning now to statutory law at the state level, we find that library laws fall into two broad categories: 1) those relating to public libraries, and 2) those relating to state libraries. Every state has one or more general laws governing public libraries. In some jurisdictions these are grouped together in a separate chapter of the state statutes or code under the heading "Libraries." In other states these general library laws will be found in the municipal or educational code. In some cases the general library law is so framed that one act covers all forms of public libraries such as city, village, township, county, district, regional or school district. In other jurisdictions there may be a separate law for each of the governmental units.

One of the key provisions in this kind of general library law is the grant of power from the legislature to the local governmental entity such as a city, village, township or county authorizing it to establish a public library. There are three different types of such grants. In some of the laws, the grant is made to the corporate authority, that is to the city council, village board, or county board of supervisors, for example, empowering these bodies to establish a public library. In other jurisdictions the law provides for a referendum of the legal voters to determine whether a public library is to be established. In still other states, the law authorizes the establishment of a public library through a petition addressed to a corporate body which has been signed by a certain number or percentage of the legal residents.

Another key provision is the authorization to levy taxes for library purposes. It should be noted that this grant of power to levy taxes is made to the corporate authority of the local governmental unit and not to the library board. There is one exception to this, however, in the case of a library district which is an independent governmental entity. In such an instance the district library board of directors is granted the power to levy taxes.

The provision for the levy of taxes is generally stated in one of two ways. About three-fourths of the states provide for a maximum tax rate for library purposes stated in terms of so many mills on every dollar of assessed valuation. In the remaining jurisdictions the law provides that the municipal authorities may appropriate funds for library purposes in such amounts as deemed necessary.

A third major provision in the law is a description of the plan of

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government for the public library. Provision is made for a board of directors of a specified number to be appointed or elected for a given term of years. Usually the law enumerates the powers and duties of the board.

In addition to these three key provisions, such a law contains many other items. Almost every general library law of this type has a provision declaring that the public library shall be forever free for use by the inhabitants of the governmental unit involved, subject to such reasonable rules and regulations as the library board may adopt. Another common provision authorizes the library board to accept donations of money, personal property and real estate by gift, by will or by a trust for the benefit of the library. Equally common is a provision authorizing the corporate authorities to provide suitable penalties for persons committing injury to library property, or for failure to return books belonging to the library. An extremely valuable provision is the requirement that the proceeds of the library tax shall be deposited in a special fund to be designated as the "library fund," which is not to be intermingled with other funds of the corporate authority. Most laws also authorize the library board to extend the privileges and use of the library to non-residents upon such terms and conditions as the board may prescribe. Finally, it should be noted that these laws contain provisions which relate to the acquisition of land, the erection of buildings and the methods of financing such construction, particularly the manner in which bond issues are to be floated.

A study of the general laws relating to public libraries in the fifty states indicates a strong pattern of uniformity. But a closer scrutiny reveals many variations in the provisions relating to the establishment, to the financial support and to the governmental management of public libraries.

At this point the question may occur: Why is it necessary to invoke the legislative authority of the state in order to make it possible for a public library to be created? The answer to this inquiry is to be found in the nature of our government. Although we make reference to three levels of government in this country—that is, federal, state and local—strictly speaking there are only two levels, federal and state, for local government is a part or subdivision of state government. Under the Constitution of the United States which is the fountainhead of all legal authority, the powers that have not been expressly delegated to the national government, nor prohibited to the states, are reserved for the states or the people. The federal Constitution says

nothing about local government. It is completely silent on the subject of cities, villages, towns or even counties.

Local government then is an arm of state government. Cities and other municipal corporations such as towns, villages, boroughs, townships and counties are creatures of the state. They are created by the state and they can be dissolved by the state, subject of course to such limitations as are provided in the state constitution. It is clear that whatever legal power cities enjoy is derived from the state. Since a city or other unit of local government possesses only such powers as are granted to it by the state, then it follows that in order for a city to provide public library service on a tax-supported basis, it must first obtain the necessary legislative authority from the state to engage in such activities.

Let us now move to the other major body of statutory law which is the legislation relative to state libraries. Every state in the union has a law which provides for the establishment of a state library or a state library agency, describes the manner in which it is to be governed and defines the scope of its functions. The governmental authority created to operate the state library and the functions which it is required to perform differ considerably in the fifty jurisdictions, and this is, of course, reflected in the laws.

From time to time it has been suggested that a model state library law be drafted. This has proved to be difficult, however, precisely because the legal authority and the functions of the state library vary so drastically among the states.

Before leaving the subject of state library legislation, we cannot neglect to mention the legal provisions that deal with state aid. The rationale for state aid is founded on the principle that education is a primary function of state government, and since public libraries are part of the educational system, it follows that the state has a direct responsibility for their financial support. An inventory of state-aid legislation for the extension of public library service reveals that some thirty-five states provide funds for this purpose. There is a wide diversity, however, in the laws governing the distribution of such funds. Nevertheless, several broad patterns have evolved which are common to groups of states.

The plan that has received the widest attention is that of New York. State aid in the Empire State is provided primarily for the development of cooperative library systems on a completely voluntary basis. This plan has now been in operation for more than ten years,

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and in a recent evaluative study, it was found to be effective. A number of states such as Illinois, California and Michigan have borrowed the basic features of the New York act.

A second pattern of state aid is that represented by the Pennsylvania plan. In the Keystone State, the state library agency is empowered to designate the district library centers that are to be established; they in turn contract with the public libraries of the district area for supplementary services. Rhode Island, Massachusetts and New Jersey in general follow this scheme.

A third pattern that might be identified is that represented by Maryland which provides direct state aid to public libraries in order to achieve a prescribed minimum per capita expenditure. Pennsylvania and Illinois also have this feature built into their state-aid programs.

The crucial stumbling block in attempting to broaden and improve public library service is the fact that none of the governmental bodies to which the public library is attached is a logical unit of service. For the most part the public library is chained to a political unit that is not large enough to support a modern library adequately. Moreover, it is becoming increasingly clear that the legal boundaries of a city, village or county are often artificial and have become meaningless insofar as public library service is concerned. Official statistics show that there is a wide variation in the quantity and quality of library service that is made available. They also indicate that the kind of public library to which a citizen has access depends not on his reading needs but on the wealth of the community in which he happens to reside. Yet it is recognized that books and ideas must move as freely in a democratic society as do vehicles of transportation, and it is for this reason that municipal boundaries must not be permitted to impede the flow of books. It is believed that through the instrumentality of state aid, the inequities and barriers that have developed can be removed. State aid serving as a stimulant can help to improve library service and make it available to all citizens of the state.

The federal government was a latecomer in the field of general library legislation. More than a century and a half elapsed before Congress enacted what might be considered the first general library law at the national level. It was the Library Services Act of 1956 that heralded the beginning of a series of legislative enactments that were ultimately to involve all types of libraries. President John F. Kennedy gave library development a strong initial impetus. In his message to Congress on January 29, 1963, dealing with education, he referred to

libraries in direct terms no less than six times, and outlined three specific proposals for strengthening and improving libraries. It was the first time in the history of this country that the presidential spotlight had been focused with such intensity on library problems. Never before had libraries received such attention and recognition at the hands of the chief of state of this land. This was truly an unprecedented performance.

The amount and extent of federal library legislation enacted during the past decade is impressive and includes the following major measures: Library Services and Construction Act; Elementary and Secondary Education Act; Higher Education Act; Higher Education Facilities Act; Medical Library Assistance Act; and the Library Depository Act. All types of libraries have come within the purview of federal law. Moreover, library education has experienced the munificence of the federal purse. Despite attempts to curb federal expenditures, it is inevitable that Washington will play an increasingly prominent role in the future development of libraries. Sharing of federal revenues with the states may supplant the categorical grant-in-aid, but it is quite certain that federal funds will be employed in the establishment of national networks of information, making scientific and other research data quickly and easily accessible to students and investigators across the land.

In this introductory statement, we have attempted to indicate the major substantive areas of library legislation. One salient fact emerges and that is that library service has become a concern of government at all levels with each having its specific role to play. The papers that follow in this issue summarize and analyze critically the current status of library legislation as it affects the various types of institutions.