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CHAPTER TWO

The Library's Legal Basis of Operation

[**Disclaimer:** *The information in this handbook is not legal advice. We recommend that you consult an attorney if you have any questions about how the laws apply to your library.*]

Law and Governance for Nonprofit Organizations

Almost two thirds of Maine's libraries are nonprofit entities with **governing boards**. Governing boards have different legal responsibilities compared to advisory boards for municipal libraries. This chapter will outline Maine laws related to nonprofit organizations, including 501(c)(3) libraries.

It is the responsibility of each Maine library board to understand its legal status for operation based on its establishment documents. If you are unsure of your status you can:

- Contact the Secretary of State's office or search their database (<https://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x>)
- Search for your library's source documents at your town hall (charter, wills, MOAs, special law, etc.)
- Search the IRS database (look under "Organizing Documents" at <https://www.irs.gov/charities-non-profits/charitable-organizations/charities-and-nonprofits-a-z-site-index-k-o>)
- Contact Maine Association of Nonprofits for guidance (<https://www.nonprofitmaine.org/>)

Types of Charitable Corporations

The State of Maine defines two types of charitable corporations: *public benefit* and *mutual benefit*. Public benefit corporations form for charitable purposes and usually have IRS 501 (c) (3) tax exemption. These organizations collect, hold and expend funds solely for public benefit. Public libraries would fall under this category. Mutual benefit corporations are organized to benefit their members, not the general public.

Public benefit corporations must have at least three board members. No matter the size of the board, the majority of the members cannot have a financial interest in the organization which means that neither they nor their relatives can be employed by the organization.

Liability Issues

Generally, library trustees need fear no personal loss or liability for the honest performance of their official duties and exercise of powers granted by law. Maine Statutes Title 14, Pt. 1, Chap. 7, 158-A, #2 <http://legislature.maine.gov/statutes/14/title14sec158-A.html> provides that Board directors are immune from individual liability for actions performed within the scope of their office but personal liability is still possible for intentional or careless injuries or damages, or the illegal use of public funds or authority. Thus, it is recommended that the board considers purchasing Directors and Officers (D&O) Liability Insurance.

Library boards must also avoid taking actions that violate rights guaranteed by the state or federal constitution or federal law. Special care must be exercised in actions that concern discrimination laws, employment laws, and First Amendment rights. Before taking any actions that may jeopardize these rights, it is strongly recommended that the board seek the advice of an attorney. Employment Practices Liability Insurance (EPLI) is another type of insurance that would protect your organization against claims by workers that their legal rights as employees of the organization have been violated.

Protections from Liability

You can greatly lessen the possibility of liability if you, and your fellow board members, do all of the following:

- Become knowledgeable about the various laws that apply to library board actions and library operations.
- Adopt written policies for operating the library and review all library policies on a regular cycle, ensuring that all policies (including the personnel policy) are reviewed at least every three years.
- Exercise care and diligence in board consideration of new or revised policies. Review each policy in light of ensuring it is “legally defensible.”

- Vote against any proposed board action that you believe is illegal or improper. Vote to table an issue if you believe insufficient information has been provided on which to base an informed opinion. Make sure the minutes reflect your vote.
- Act and speak for the library only when authorized to do so by the full board.
- Avoid even the appearance of conflict of interest. Consult with your regional consultant and/or the municipality or an attorney if you have concerns about the legality of any action or failure to take an action.

Your Rights as a Board Member

In order for board members to make informed decisions, the law guarantees board members the right to reasonably rely on the information you receive, such as financial reports or other staff reports, or advice from outside consultants. You also have the right to request this information if you aren't being provided with enough information to make informed decisions.

Reporting Requirements

Public benefit corporations must file an annual return with the Internal Revenue Service and the Office of the Attorney General. The corporation must also file an annual report with the Secretary of State by June 1 of each year. Additionally, major changes in the articles of incorporation, mission, or bylaws must also be filed with the Secretary of State and IRS.

Tax-exemptions

Most Maine public libraries are exempt from collecting sales tax: "Sales to any nonprofit free public lending library that is funded in part or wholly by the State or any political subdivision or the federal government and sales by any such library or a nonprofit corporation organized to support that library as long as the proceeds from the sales are used to benefit the library.

[2013, c. 420, §1 (AMD) .]"

Sources of Additional Information

- Your Maine State Library Regional Liaison
<https://www.maine.gov/msl/libs/districts/index.shtml>
- Text of Title 13-B Maine Nonprofit Corporation act:
<http://legislature.maine.gov/statutes/13-B/title13-Bch0sec0.html>
- Text of Title 27, Chapter 3 on Public Libraries
<http://legislature.maine.gov/statutes/27/title27ch3sec0.html>
- Maine Association of Nonprofits Guiding Principles and Practices Basic Infrastructure Checklist for 501 (c) (3) Nonprofit Organizations in Maine http://www.nonprofitmaine.org/wp-content/uploads/2013/01/PP_Checklist_Final_4thEdition.pdf
- Maine Attorney General’s Guide for Members of Charitable Corporations
https://www.maine.gov/ag/consumer/charities/guide_charities.shtml
- Maine Secretary of State Bureau of Corporations
<https://www.maine.gov/sos/cec/corp/index.html>
- Internal Revenue Service <https://www.irs.gov/>
- Maine Revenue Services: tax-exempt organizations
<https://www.maine.gov/revenue/taxes/sales-use-service-provider-tax/tax-exempt-organizations>
- Annual required filings
<https://www.nonprofitmaine.org/blog/nonprofit-help-desk-faq-filing-requirements/>
- Self-declared 501 (c) (3)s
<https://www.nonprofitmaine.org/answer/self-declared-501c3-nonprofits/>
- Reasons for Tax-exemption (MANP)
<https://www.nonprofitmaine.org/about-nonprofits/nonprofit-faqs/reasons-for-tax-exemption/>
- Your municipal attorney, your organization attorney, or the Maine Attorney General

