



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

October 10, 2005

Robert G. Bush
420 S. Washington Street
Green Bay, WI 54301-4217

Dear Mr. Bush:

This letter is in response to your letter to Michael Cross dated September 23, 2005, in which you ask questions about the application of the Wisconsin Statutes to a consolidated county library such as the Brown County Library.

To review your situation, a county is authorized to establish a consolidated county library. If a county decides to establish a consolidated county library, it must do so according to the terms of s. 43.57 Wis. Stats. Brown County has exercised this authority as indicated in the Brown County Code of Ordinances, Section 3.09, which states that a "County Library Board is hereby created in accordance with the Wisconsin Statutes, Section 43.57."

Since 1872, Wisconsin's public library laws have provided considerable autonomy to the library board in order to permit library collection and library operation decisions to be made in an environment insulated from political pressures. Reflecting this intent, once a county or municipality establishes a public library, s. 43.58 Wis. Stats. invests that library's board with a number of powers and duties. The statute grants to the library board "exclusive control of all moneys collected, donated or appropriated for the library fund" [s.43.58(1)], the duty to "audit and approve all vouchers for the expenditures of the public library" [s.43.58(2)], the authority to "supervise the administration of the public library" [s. 43.58(4)], the authority to "appoint a librarian" [s. 43.58(4)], and the authority to prescribe "the duties and compensation" for all library staff deemed necessary by the library board [s. 43.58(4)]. Public libraries in Wisconsin must operate in a manner consistent with these and other statutory provisions set out in ch. 43 of the Wisconsin Statutes.

The library board of a consolidated county library has the same powers and duties as a library board of a municipal library. This is made explicit by s. 43.57(4)(d), which provides that "boards appointed under pars. (a) and (b) have the powers and duties of a library board under s. 43.58." Paragraphs (a) and (b) refer to the library boards of consolidated county libraries and county library services.

A public library (whether it is a county, municipal, or joint public library) must be established and governed according to all of the relevant provisions of Chapter 43 to be a member of a library system, such as the Nicolet Federated Library System, of which the Brown County Library is a member. The Department of Public Instruction is responsible for the administration of Wisconsin's public library system aid program and must certify library system and member library statutory compliance before making state aid payments [s. 43.24(3)]. The statutory library system membership requirements for a municipal, county or joint public library are listed in s. 43.15(4)(c). In addition to those requirements, all counties (including counties that do not operate a public library) have system membership requirements as listed in s. 43.15(4)(b).

Wisconsin municipalities and counties have certain home rule powers that allow municipalities and counties to depart from state law under certain narrowly defined circumstances. Concerning home rule powers as they apply to Chapter 43, the Wisconsin Attorney General stated in 76 Op. Att’y Gen. 203 (1987) that “the operation and maintenance of public libraries, including municipal libraries, affects all the people of the state and they are a matter of statewide concern because of the extent to which libraries and municipalities rely on one another to furnish library services.” The Attorney General concluded that municipal home rule provisions would not justify local departures for the provisions of Wisconsin Statutes Chapter 43. Similarly, on January 13, 2004, the Wisconsin Attorney General concluded in an unpublished opinion to the Calumet County Corporation Counsel that the statutes granting home rule to counties do not authorize counties to alter the terms of appointment to federated library system boards, as prescribed by Wis. Stat. s. 43.17(1).

A discussion of the specific issues you raise follows.

1. Determination of the Library Table of Organization / Hiring & Firing Library Staff

Wisconsin Statutes s. 43.58(4) provides:

Notwithstanding ss. 59.17 (2) (br) and 59.18 (2) (b), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

This statute explicitly provides the library board with legal authority to determine library staff positions, the duties of all library staff, and the compensation provided to all library staff. This same section also authorizes the librarian to “appoint such other assistants and employees as the library board deems necessary.” The authority to hire and supervise staff encompasses the authority to fire or lay off staff.

In a November 21, 2003, letter, the Brown County Corporation Counsel asserted that s. 59.22(2) Wis. Stats. supercedes s. 43.58(4). Section 59.22(2)(c) provides that a county board may, for certain county departments and offices, establish the number of employees in the department or office, establish compensation, and establish regulations for employment. Based upon this section and s. 59.22(4), the Corporation Counsel concluded that the county board, rather than the library board, is authorized to establish the number of and compensation for library positions.

This assertion is contrary to Wisconsin’s long established and carefully constructed statutory approach which provides for independent library board control of library operations. The Attorney General’s office analyzed this issue in a letter to the Winding Rivers Library System dated December 27, 2000. That letter stated that “it is clear that in section 43.58(4), the Legislature intended that the Library Board—not the La Crosse County government—directly supervise the administration of the county library by appointing a librarian and prescribing his/her duties and compensation.” In a footnote following this quote, the letter stated: “This conclusion finds further support in the fact that section 43.58(4) explicitly removes library boards and librarians from the purview of sections 59.17(2)(br) and 59.18(2)(b), which would otherwise authorize the county, through the county executive or administrator, to establish a ‘department of libraries’ and appoint the director of such department. By excluding library boards and librarians from sections 59.17(2)(br) and 59.18(2)(b), the Legislature specifically protected such boards from merely ‘perform[ing] any advisory or policy-making function[s].’ Sec. 59.17(2)(br), Wis. Stats.”

The December 27, 2000, letter goes on to address s. 59.22(2) specifically. The letter states that an Attorney General opinion, 65 Op. Att’y Gen. 106 (1976) [related to the powers of a mental health board

operating under a statutory grant of authority similar to s. 43.58(4)], “supports the conclusion that section 43.58(4) expressly limits the powers of the county board under section 59.22(2).” The letter concludes that while the county board controls the total amounts made available to the Library Board by appropriation, “the Library Board nonetheless retains the discretion to spend the funds it receives from the La Crosse County government in the amounts and for the specific purposes it chooses without regard to line item amounts set forth in the appropriations.”

In addition, s. 59.22(2)(c) expressly provides that the county board has authority regarding certain county employees except as provided in s. 59.22(2)(d), which states:

The board or any board, commission, committee or agency to which the board or **statutes** [emphasis added] has delegated the authority to manage and control any institution or department of the county government may contract for the services of employees, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years.

As noted above, Wisconsin **Statutes** delegate the authority for management and control of a public library to the library board. Consequently, s. 59.22(2) does not supersede s. 43.58(4) which provides the library board with the legal authority to determine library staff positions, the duties of all library staff, and the compensation provided to all library staff.

2. Hiring the Library Director

The library board has the sole legal authority to hire the library director, as provided by s. 43.58(4), discussed above.

3. Determining Compensation of the Library Director

The library board has the sole legal authority to determine compensation for the library director, as provided by s. 43.58(4), discussed above.

4. Negotiating Labor Agreements

Section 43.58(4), Wis. Stats. clearly invests the library board with the authority to prescribe the duties and compensation of library employees. Based on this language, this department has advised that the library board has the legal authority to participate in collective bargaining conducted on issues that determine library staff duties and compensation. A county’s unilateral exclusion of the library board from such collective bargaining would impair the library board’s explicit statutory authority to determine the duties and compensation of library employees.

5. Control of the Library Budget—Budget Transfers

While the county board determines the annual appropriation provided to the library, the library board has exclusive control of how that funding is used to support library service. This is made explicit by s. 43.58(1), which provides in relevant part that “[t]he library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund” Because state statutes supersede conflicting county ordinances, Brown County Ordinance 3.14 does not limit library board decisions to transfer funds between budget lines.

6. Control of the Library Budget—Carryover of Unexpended Library Funds

The library board's exclusive control of the expenditure of all moneys collected, donated, or appropriated for the library fund includes the authority of the library board to carry forward unexpended funds from one year to the next. We believe this represents good public policy by encouraging careful spending decisions and by removing incentives for wasteful spending that may be encouraged by a "spend it or lose it" policy.

7. Authority to Close Library Branches

As noted above, the library director and library board have sole legal authority to lay off library staff (subject, of course, to the provisions of any employment contract or collective bargaining agreement). Also, as noted above, the library board has exclusive control of all library expenditures. In addition, s. 43.58(4) gives the library board the authority to "supervise the administration of the public library" and s. 43.58(1) gives the library board exclusive control of all library buildings. These statutory provisions give the library board the authority to determine library hours and library services, and the authority to lay off library staff and close a branch without county board approval.

Regarding all of the matters discussed above, it has been our experience that public officials will follow the law once they understand the relevant legal requirements and the consequences of noncompliance. In the event of noncompliance, the library system board may withhold grant payments, reduce or eliminate system services, or expel noncomplying libraries or counties from the library system [s. 43.18(2m)]. Before any formal board action is taken, however, the library system must receive approval for the action from the Division for Libraries, Technology, and Community Services of the Department of Public Instruction. A hearing is required before a public library system may expel a member library or county [s. 43.18(3)(d)]. Although not specifically required by statute, it is highly recommended that a hearing be held by the library system prior to a reduction of services to a member library. Expulsion of a member library will be approved by the Division only after a reduction of system services has failed to bring the library into compliance.

I hope this information is helpful. Please contact me if you have any questions.

Sincerely,

Sheila C. Ellefson
Chief Legal Counsel

Copies to:
Michael Cross, Director, Public Library Development
Richard Grob Schmidt, Assistant State Superintendent, DPI
Jeff Gilderson-Duwe, Director, Brown County Library
Mark Merrifield, Director, Nicolet Federated Library System
John C. Jacques, Brown County Corporation Counsel
State Senator Robert Cowles
State Senator Dave Hansen
State Representative Judy Krawczyk
State Representative Phil Montgomery