

# Wisconsin Library Law (Chapter 43): Summaries of Selected Sections of Interest to SCLS Member Libraries & Library Boards

Full text of Chapter 43 can be found at <http://docs.legis.wisconsin.gov/statutes/statutes/43.pdf>

## Legal Basis / Rationale and Library Definitions (s. 43.001)

### Wisconsin Legislature recognizes:

- Importance of free access to information and diversity of ideas
- Critical role of all types of libraries
- Major state educational, cultural, and economic asset represented by libraries
- Role of public libraries in the democratic process
- Necessity for interlibrary cooperation

*"It is the policy of this state to provide laws for library development and improvement of public libraries, school libraries and interlibrary cooperation among all types of libraries."*

## State Superintendent and the Department of Public Instruction (s. 43.03)

### Duties of State Superintendent:

Promote, assist, plan for, coordinate, and/or evaluate

- school library media services
- public library services and public library systems
- cooperation and resource sharing among all types of libraries
- development of networks
- groups with special needs

Contract for:

- library services to physically handicapped persons
- access to specialized library resources in and out of Wisconsin

Report to the Council on Libraries and Network Development (COLAND) on programs and policies; accept library development grants or gifts on behalf of the state from federal and other sources; develop and maintain WISCAT; disseminate information on continuing education opportunities; establish procedures for administering the Division for Libraries and Technology.

## Division for Libraries and Technology - DLT (s. 43.05)

### General Duties of the Division:

- Coordinate and conduct continuing education for librarians;
- Assist libraries in the identification and recruitment of qualified librarians;
- Provide professional and technical consulting to school districts, public libraries, municipalities, counties, state agencies, and institutional library programs;
- Collect statistics and conduct studies and surveys of library activities and needs, and publish reports;
- Designate a librarian to coordinate state document depository libraries;
- Recommend and distribute standards for school libraries, public libraries, institutional library programs, and public library systems;
- Establish rules for certification of public library directors;
- Approve establishment and alterations of library systems;
- Administer system aids;
- Maintain a reference and loan library;
- Assist COLAND with preparation of reports;
- Conduct a review of library systems if sufficient dissatisfaction is expressed by members.

## Council on Library and Network Development – COLAND (s. 43.07)

### Duties of COLAND

- Recommend standards for certification of public librarians and for library systems;
- Advise the state superintendent on policies and activities of the state's library programs;
- Give notice of and hold a biennial meeting to discuss report submitted by state superintendent;
- Make recommendations to the state superintendent regarding the report;
- By July 1 of odd numbered years provide report to state superintendent on condition and progress of library services and recommend improvements;
- Review library portion of the Department budget;
- Receive and investigate complaints, suggestions, and inquiries regarding programs and policies relating to library and network development, and advise the state superintendent and the Division of any action to be taken.

### Certification and Standards (s. 43.09)

Public library directors must be properly certified (see the DPI's website for details on director certification <http://pld.dpi.wi.gov/files/pld/pdf/certmanual.pdf>). In a nutshell, there are three types of Library Director Certification in the state of Wisconsin: regular, temporary, and provisional and three grades. The necessary grade level will depend upon municipal population:

- populations under 3,000 require no less than a Grade III
- populations of 3,000 to 5,999 require no less than a Grade II
- populations over 6,000 require a Grade I

The qualifications for public librarians shall be based on education, professional training, and experience. The Division may promulgate standards for public library systems. These must be consistent with s.43.15.

### County Planning and Funding (s. 43.11)

County boards may appoint planning committees to

- prepare a new plan for the organization of a county or multicounty system;
- revise an existing plan for system involvement or library services in the county;
- or change the boundaries of a public library system.

### County Payments for Library Services (s. 43.12)

"By March 1 of each year, a county that does not maintain a consolidated public library for the county under s.43.57 and that contains residents who are not residents of a municipality that maintains a public library under s.43.52 or 43.53 shall pay to each public library in the county and to each public library in an adjacent county, other than a county with a population of at least 500,000, an amount that is equal to at least 70% of the amount computed by multiplying the number of loans reported under sub. (2) by the amount that results from dividing the total operational expenditures of the library during the calendar year for which the number of loans are reported, no including capital expenditures or expenditures of federal funds, by the total number of loans of materials made by the public library during the calendar year for which the loans are reported."

The library's Wisconsin Public Library Annual Report is the basis for the circulation and operating expenditures used for the calculations for county payments. The public library must report to the county clerk the annual circulation and per circulation cost figures by July 1 of the following year. Payments must be made by March 1 of the year following the report from the municipality. For example, the library's circulation and operating expenditures information from the 2013 Annual Report forms the basis for the library's request for payment to the county during 2014 (July 1<sup>st</sup> deadline). Payments requested in 2014 would then need to be paid by the county to the library by March 1, 2015.

Legislative action in 2014 changed the regulations governing adjacent county reimbursement for Consolidated County Libraries where one library services all residents in the county. Prior to 2014 those libraries could request reimbursement from adjacent counties for service provided to residents of that county who are not served by a municipal library, but libraries in those adjacent counties could not request reimbursement from the

Consolidated County Library. Since 2014, if a Consolidated County Library bills an adjacent county, libraries in that county may request reimbursement from the Consolidated County. In most cases Consolidated County Libraries have ceased billing for adjacent county circulation.

Municipalities which appropriate an amount for library service at least equal to the municipal portion of the county tax levy may exempt from the county tax levy upon written application to the county board. A county may enter into an agreement with its participating municipalities or with a public library system to pay no less than the amounts determined above to the public library system for distribution to the public libraries that participate in that system.

Upon request of a county clerk, a public library shall provide access to all books and records used to determine the amount computed above. Nothing in this section prohibits a county from providing funding for capital expenditures.

The county library board distributes the aid provided by the county or shall transfer the aid for distribution to the public library system in which it participates.

## **Public Library Systems and State System Aids**

### **Division Review** (s. 43.13)

The Division must approve the establishment of a public library system

#### **Standards for Public Library Systems** (s. 43.15)

##### **Requirements for Establishment**

- Population of 100,000 or more. If because of withdrawal or realignment, has fewer than 3 participating counties and a population under 200,000, must realign with another system within 2 years;
- Demonstrated support from county/counties to implement plan, and maintenance of that support at average of previous three years.
- No new systems, if number of systems would exceed 17

### **Rules for System Participation & Organization** (s. 43.15)

- Consolidated systems shall consist of only one county;
- Federated systems may have one or more counties;
- Only one system may exist within a county, and if a library's municipality/municipalities cross system boundaries the library must choose which system it will be in;
- For a library to participate in a system, the county in which it is located must participate in the system;
- Counties and municipalities with libraries must enter into written agreements with the library system board to participate;
- Municipalities must also have written agreements with the county to participate in library systems
- **Library boards must employ a certified library director who is present in the library at least 10 hours each week during hours open to the public.**
- **Libraries must be open at least 20 hours per week, or the number of hours it was open in 2005.**
- **Libraries must spend at least \$2,500 annually on materials.**
- System must select and enter into agreements with a resource library, which should be the library with the largest annual budget in the region, have a collection of 100,000 volumes, be open at least 50 hours per week, with at least one full-time reference librarian with an MLS;
- Municipalities and/or counties may withdraw from a system after three years affiliations if all notice, hearing, and approval stipulations are satisfied.

### **System Operating Rules** (s. 43.17)

- System boards must elect a president annually in January;
- fiscal year for systems shall be the calendar year;
- administration of system shall be the responsibility of a certified librarian appointed by the system board;
- system must submit an annual report to the Division;
- no person employed by a member public library can be on the system board;

- all public libraries in a system shall honor valid borrower's cards of public libraries in adjacent library systems; however, 43.17 (11) allows a public library to refuse this service if they are not adequately reimbursed for circulating over 500 items to borrowers from an adjacent public library system.
- multicounty federated system boards shall have at least 15 and not more than 20 members, unless all counties approve a board of more than twenty for the intention of giving each county at least two representatives, and each member will have a three year term;
- system board members shall be nominated by the county board chair or the county executive, and approved by the county boards of the county the individual will represent on the system board;
- a federated public library system board shall have the powers of a public library board as specified under 43.58 with respect to system-wide functions and services;
- local library boards shall retain responsibility for their public libraries.

## Types of Public Libraries, Powers and Duties

### **Municipal Libraries** (s.43.52)

- A municipality may establish, equip and maintain, and levy a tax or appropriate money to be used exclusively to maintain the library; a municipality may enact and enforce police regulation to govern use of the public library.
- Every public library shall be free for the use of the inhabitants of the municipality.
- Library board size is determined by the classification of the municipality: 9 members in city of 2nd and 3rd class or school district, unless reduced to 7 by a two-thirds vote of the common council; 7 members in each city of the 4th class; 5 or 7 members in each village or town. Each board must include the school district administrator or his/her designee, and may include one member of the municipal governing body. First class cities have more specific rules for board composition.
- Members shall be residents of the municipality, except that not more than 2 members may be residents of other municipalities.
- Members must be appointed by the mayor, village president, town chair or school board chair, respectively, with the approval of the municipal governing body. Up to 5 additional members may be appointed by the county under s. 43.60 (3).
- Board members may not receive compensation for their participation on the library board except for reimbursement of actual expenses, or a per diem if authorized by the library board and the municipal governing body.
- Boards must elect a president.
- All library board members' terms will be for three years, and terms will be staggered so they do not all expire in the same year.

### **Joint Libraries** (s.43.53)

Joint libraries may be created by any 2 or more municipalities or by a county and one or more municipalities located in whole or part in the county by agreement of the governing bodies. Joint libraries must contain at least one municipality with a public library established before May 8, 1990.

Joint library agreements must: include procedure for adjusting board membership in line with most recent federal census, name one of the municipalities as the fiscal agent, and include procedure for dissolution of assets.

Joint libraries have the same authorities and responsibilities as other municipal libraries and must organize and operate under the same sections of Chapter 43.

### **County Libraries and County Library Services** (s. 43.57)

A county may establish and maintain a consolidated county library and may take over any libraries already established with consent of the authorities controlling those libraries. The county will then be the primary funding body for the library and a county library board will have the authorities and responsibilities of municipal library boards under Chapter 43.

Consolidated county libraries will have boards of 7 or 9 members appointed by the county board chair, with the approval of the county board.

A county board may establish and maintain a county library service to serve the residents of the county who do not live in municipalities with libraries or to improve the library services of municipal libraries.

### **Library Boards - Powers and Duties** (s. 43.58)

Library boards have exclusive control of

- 1) the expenditures of all moneys collected, donated, or appropriated for the library fund, and retains control of those moneys until expended;
- 2) the purchase of a site and the erection of the library building whenever authorized;
- 3) custody of the lands, buildings, money, and other property provided under any circumstances to the library;
- 4) gifts, bequests, and endowments made to the library, and responsibilities for managing and reporting the status of those gifts, bequests, and endowments.

Library funds from the municipality or any counties must be maintained in accounts by the municipality, which will pay all library bills once they are approved by the library board. (Regular wages or other recurring regular payments authorized by the library board and verified by the library, may be paid by the municipality by the due date, and approved at the board's next meeting.)

The library board shall supervise the administration of the public library and shall hire a library director and prescribe compensation for all library staff. The library director will appoint other employees for positions approved by the library board. Within 60 days of the end of the fiscal year of the municipality or county, the library board shall make a report to its governing body and the Division, providing specified information. The report shall contain a statement indicating whether the library system in which the library participates did or did not provide effective leadership and adequately meet the needs of the library, with an explanation of why the library board believes so.

### **Other Chapter 43 Statutes Vital to Public Libraries**

**Public Library Records** (s.43.30): Records of publicly-supported libraries or library systems which indicate the identity of individuals who borrow or use library resources may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library institution or to persons authorized by the individual to inspect such records or to custodial parents or guardians of children under 16, records relating to their child's library usage. Libraries may disclose, for the purpose of borrowing materials, such records to other libraries if the libraries to which the records are being disclosed are publicly supported, have a written policy prohibiting disclosure, and agree to follow s. 43.30 (1) as specified above.

Specific language about releasing library surveillance videos is addressed in s. 43.30 (5)(a) & (b).

**(5)(a)** Upon the request of a law enforcement officer who is investigating criminal conduct alleged to have occurred at a library supported in whole or in part by public funds, the library shall disclose to the law enforcement officer all records pertinent to the alleged criminal conduct that were produced by a surveillance device under the control of the library.

**(b)** If a library requests the assistance of a law enforcement officer, and the director of the library determines that records produced by a surveillance device under the control of the library may assist the law enforcement officer to render the requested assistance, the library may disclose the records to the law enforcement officer.

**County Appointments to Municipal Library Boards** (s43.60): A county chairperson, with the approval of the county board, may appoint from among the residents of the county additional members to the library board of a public library of a municipality located in whole or part in the county. *Calculations for county appointments are based upon municipal funding as compared to funding the library receives from the county.*

### **Other Miscellaneous Statutes Related to Libraries**

**Public Records** (s. 19.21-19.37): Wisconsin's public records law provides that almost all records of state and local government (which includes public libraries) are available to the public. The exception is mentioned under miscellaneous, s. 43.30. Thus, any record produced in response to a public records request must be



edited to remove any information which could identify an individual as a library patron, such as a patron's name or address.

Every organization subject to the public records law must designate in writing one or more legal custodians to respond to public records requests. In the absence of such a designation, the legal custodians are the authority's highest ranking officer and the chief administrative officer (most likely the board president and the director, in the case of a public library). The mayor, village president or town chair of your community has the option of appointing the legal custodian for library records.

Every organization subject to the public records law must also adopt and prominently display a notice identifying the legal custodian and establishing the time, place and method for requesting records, and indicating any copying costs. Generally, records must be available for inspection during all regular office hours. Most public records should be retained a minimum of 7 years. Prior to destroying public records, you must give the State Historical Society at least 60 days written notice. The Historical Society may, upon application, waive this notice requirement.

**Open Meetings** (s. 19.82- 19.85): Every library board is considered a governmental body under Wisconsin law. As such, each board must hold its meetings in open session. Meetings must be open to all members of the public and must be held in places reasonably accessible, with assistance, to people with disabilities.

Every library board meeting must be preceded by a separate **public notice**. The board president or that person's designee, usually the library director, is responsible for notifying the public of a meeting. This may be done by posting announcements in public places and by writing or telephoning the news media that have filed a written request for such notice, and to the official newspaper, or, if none exists, to a news medium likely to give notice in the area. While the notification must be provided, the law does not require that a meeting notice actually be published or broadcast.

A posted meeting agenda may serve as a public notice if it states the time, date, place and subject matter of the meeting, including the subject matter of any closed session planned before the agenda is issued. The description of meeting subject matter provided in an agenda should be as explicit as possible. While discussion of issues not on an agenda may take place under "other business," the list of such issues should not include any requiring a vote.

The notice must be given at least 24 hours prior to the meeting, unless for good cause this is impossible or impractical. In no case may the notice be provided less than 2 hours before a meeting.

Under Wisconsin law, a library board meeting is said to occur if one-half or more of board members are present for the purpose of carrying out duties delegated to the board. While chance meetings and social gatherings generally do not count, a gathering of fewer than half of the members of a board can also be considered a meeting if those present have the potential to determine the outcome of an issue being considered at a subsequent meeting of the larger body.

To go into **closed session**, a member of the board must make a motion to do so. The presiding officer must announce the nature of the business to be considered and the statutory exemption that authorizes the closed session. Any action taken in closed session must be part of the meeting record. No business other than that which has been announced may be conducted at a closed session. Once a library board has gone into closed session, it cannot meet again in open session within 12 hours after completion of the closed session, unless this has been provided for in the agenda published as part of a public notice.

**Theft of Library Materials** (943.61): Definitions, violation classifications, and penalties for ordinances relating to theft of library materials are specified. If a local ordinance is enacted in conformity with 943.61, it will allow for civil rather than criminal action. If the value of materials does not exceed \$1,000, the violation will be a Class A misdemeanor; if the value of materials exceeds \$1,000 but is less than \$2,500, the violation will be a Class E felony; and if the value exceeds \$2,500, the violation will be a Class C felony.

*Revised by Cheryl Becker, South Central Library System, June 2006*

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