

Challenges in Giving to CT Municipal Libraries: How Can “Friends” Help?

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Statutes and Practicalities

- Title 11 (Libraries) of C.G.S. tries to outline the activities and **authorities** of municipal libraries and their trustees
- Title 11 does not reflect the realities of municipal fiscal management - no cross-references, no explanations
- So who decides how to spend donations to a municipal library? **Who really controls the purse strings?**

Overhaul the Library Statutes

- Some statutes within Title 11 conflict; some conflict with other statutes in Titles 7, 9 and elsewhere
- Some parts of Title 11 are not clear, or are out of date
- An effort to update the statutes to clarify existing problems might offer an opportunity to address this important question about the control of donations
- Query: Can Library trustees acquire the same autonomy as the Board of Education, where law prohibits anyone other than that Board³

CGS 11-20 – Establishing Libraries

- Let's review some basics first:
 - A town may by ordinance establish a public library
 - Use of library must be free to town inhabitants under regulations prescribed by trustees
 - “Any such **municipality** may receive, hold and manage any devise, bequest or gift for the establishment, increase or maintenance of any such **library** within its limits.”

Library Dollars

- Why does the municipality get to manage the gift?
 - Because the library fund is “placed in the treasury of the Town...” under CGS 11-27
 - Because the library is not a separate legal entity but is, legally, a department of the town
 - The Town treasury has many statutory requirements, and municipalities are held to high standards in the protection and proper expenditure of town funds, including management and reporting
 - Library fiscal activity is covered in municipality’s annual audit

Trustees

- Trustees, either elected by town or appointed by Mayor or legislative body (council, board of selectmen), shall elect a president and other officers as they deem necessary
- CGS 11-33: Trustees shall make and adopt bylaws, rules and regulations for the government of the library
- CGS 11-21: “Such board may make bylaws for its government...”

11-34: Trustees

Trustees must make an annual report to the city council that provides details on revenues and expenditures, number of library visitors, books owned and loaned “and the general character of such books,” and any other statistics, suggestions, etc of general interest. CGS 11-34

Trustees' Control of Funds

- CGS 11-21: “Such board **shall have exclusive right to expend all money appropriated by such municipality for any such library.**”
- The Trustees can determine how to spend the funds appropriated through the Town’s budget process, but the Town has the statutory authority to “receive, hold and manage” gifts? Does that include the authority to determine how and when it shall be spent?

Trustees' Control of Funds

- CGS 11-33: Trustees “shall have exclusive **control** of the expenditure of all moneys collected to the credit of the library fund [see definition in CGS 11-27]..., provided all moneys collected and received for such purpose shall be placed in the treasury of the municipality, to the credit of its library fund, and shall be kept separate from other moneys of the municipality....”

CGS 11-33: Gifts to the Library

- “Any person desiring to make a gift for the benefit of such library may vest the title to such donation in the board of trustees to be held and controlled according to the terms of the gift of such property; and such board shall be special trustee thereof.”
 - Any gift directly to the library becomes a restricted fund in the Town’s treasury
 - Not confident that this “gift” provision protects the library from reduction in library budget items

CGS 11-33: Gifts to the Library

- This is a convoluted section – the library belongs to the Town, and any library assets belong to the Town, although the library board of trustees may control the use of those assets; the board of trustees can be “special trustee” of the gift but they do not own it; the language that provides that the donor “may vest the title to such donation in the board of trustees” sounds as though the board might own it, but then the language about the board being “special trustee thereof” suggests the confusing split between actual ownership and

Trustees and Property

- CGS 11-33: Trustees have “exclusive control ... of the construction of any library building, and of the supervision, care and custody of the grounds, rooms or buildings constructed, leased, given or set apart for that purpose”
 - Bear in mind that all library assets are actually assets of the Town
 - Town generally addresses maintenance through Public Works, etc

CGS 11-33: Trustees and Employees

- “Such board may...appoint a library director and all necessary assistants and fix their compensation.”
- Salaries are driven by the Town budget
- Money questions:
 - How many libraries have employees who are members of a union that covers other Town employees?
 - How many libraries have the Town manage the library payroll?

CGS 11-22 – Expenses

- “The officer designated by the trustees of any such library shall draw his order on the treasurer of any such municipality for such sums as may be necessary to pay the expense of such library, but such sums shall not exceed in the aggregate the amount appropriated by any such municipality for such library.”
- The Town’s budget, once adopted pursuant to the charter (by council, by town meeting or referendum), sets the “amount appropriated” by the town for the library.

Library Budget

- Library trustees may set library budget **but** then must advocate for its adoption by council, board of finance and town meeting or referendum – and trustees must operate within the final adopted Town budget
- Additional gifts may be used to augment certain aspects of the budget, both operating and capital, **if used according to the gifts' restrictions**

Library operating dollars

- Town payroll normally covers library employees
- Any approved budgeted expenses are requested by library through Town finance office and require no further approvals
- Library financial management and fiscal procedures should follow the Town's procedures, including bidding for expenses over \$X
 - Even when a gift is designated for the library, or designated for a restricted purpose, Town finance procedures should still be followed in expending

Restricted Library Funds

- Donations made to the library in general go to the Town treasury in a fund restricted to library use
- Donations made for restricted purposes - solely for purchase of books, for special children's programming, for capital expenditures - go into Town treasury into a restricted fund to which the library has limited access
- Both trustees and Town finance department are responsible to assure that **restricted funds are only used according to the**

Friends?

- If the library is lucky enough to have a “Friends of the Library” organization **and the Friends organization has charitable tax-exempt status**, gifts can be made to the “Friends” and the Town cannot reach those gifts.
- Is this the best approach?

Friends

- Some “Friends” organizations are all volunteer, may not have capacity to handle larger donations or provide adequate fiscal oversight
- If the “Friends” does not have charitable tax-exempt status, it can raise funds to go directly to the library, but cannot protect those funds from affecting the town’s budget allocation to the library.

Friends

- The “Friends” group should establish a direct relationship with the Library the trustees, rather than working solely with the library director
- There are a variety of political issues that trustees may be better able to address.
- The trustees have the primary fiduciary responsibility for the library’s budget – the library director is supposed to execute the operating and budget plan adopted by the trustees.

Should the Friends Incorporate?

- Before you go too far, consider some alternatives:
 - Can you partner with an existing agency?
 - Avoid duplication of overhead, administrative costs
 - Attractive to funders
 - Much faster and easier to get going

Should the Friends Incorporate?

- Why should you incorporate?
 - Connecticut does not recognize unincorporated associations
 - Corporate structure provides Limited Liability as opposed to Individual and Collective Liability
 - Structure for Internal Decision-Making and Enforcing Third Party Agreements
 - Separate and Continuing Legal Identify - your mission can continue long after you are gone

Alternative Recipient

- Before creating your own non-profit, consider that donations to support the library can be directed to community foundation, in a local advised fund; foundation has capacity to manage the funds effectively
- Friends and library trustees could then better control how money is spent

Set up a Corporation?

- If you don't have an alternative, an existing foundation or charity in your town that could assist the Friends, then the process to seek your own charitable status should start:
- Set up a corporation
 - Describe your organization's **mission**

Set up a Corporation

Think about **control** questions:

- Will you have members?
- Will those members have the right to vote, to elect the board?
- Will some members have different rights than others?
- Who do you want to serve on your board?
- What kind of representation do you need on your board to be successful?

Set up a Corporation

- Once you have mission and control issues determined:
 - File a Certificate of Incorporation with the CT Secretary of the State that MUST include language required by IRS for tax-exempt entities
- After filing certificate, hold an Organizational Meeting
 - Appoint Directors
 - Elect officers
 - Adopt Bylaws

Board of Directors

- What IS a “director” of a Nonprofit?
- **The Board of Directors IS the nonprofit** – action of the corporation can only be taken by its Board
 - Statutory Requirements
 - Standards of Conduct, Care, Fiduciary Duties
 - Duty of Care
 - Duty of Loyalty
 - Duty of Obedience
 - Board’s Role and Responsibilities

Set up a Corporation

- Bylaws
 - What needs to be in your bylaws?
 - How will you govern your organization?

IRS Application

- Prepare your application to the IRS for tax-exempt charitable status
 - Need to demonstrate that your organization will meet all 4 tests (see next slides)
 - Need to show how the money will flow in, and flow out
 - Need to explain to an IRS agent who has no idea what you are talking about.....
 - Need to set the scene as well – IRS agent in Ohio may think all Connecticut residents are rich....

IRS Application

- List of directors and officers
- Three year budget
- Certificate of incorporation (certified copy), Bylaws, Conflict of Interest Policy, any other important policies:
 - Grant-making
 - Scholarship
 - Reimbursement
 - Fiscal management

IRS Application

- Narrative description of the activities of the organization
 - Who, what, where, why, how and when?
 - NOT just restating the mission
 - Describe how you will be spending the funds included in the budget
 - Prove that you meet all of their tests
- Any potential conflicts, explain them BEFORE the IRS agent asks about them

Best Practices

Other Advice

- ❖ Build your working group or board before going too far.
- ❖ Spend more time than you want to working on building the organization, not just on raising funds for your library.
- ❖ Think of this as a business – you can't accomplish the great things you want to do unless you have a strong organization; you can't attract funds and execute your strategies unless you have your house in order.

Gift Restrictions

- For a new library: For capital construction only, including expansion and new building
- For books, programming or other specific activities
- “Not for operating expenses”
- To **supplement** the ongoing maintenance and operation of the library
- “or, in the case that the intent is impracticable or impossible, then it can be used for other capital expenses”

Gift Advice

- If the Friends' gift to the library is not given for a specific purpose, but can be for the general use of the library, then the Town is not prevented from reducing the library's annual operating budget
- Therefore, a gift should be restricted
- Although, if the gift is for books, the Town could reduce the book line item in the annual budget

Gift Advice

- Restricted gifts should not be too restrictive – confer with your library's trustees about a realistic, practical approach
- Because, if the gift cannot be spent for the stated purpose, trustees may have to go to court to request another use, that the donor's intended purpose is impracticable, impossible or illegal.

General Political Advice

- If your library board of trustees is appointed by the mayor and town council, then trustees may be removed or replaced the same way in event of fiscal disagreements
- Friends can be very helpful to those trustees in developing strategic political approaches

General Political Advice

- Library leadership needs to develop and maintain good relationships with those responsible for town budget process - and Friends can help:
 - Town Council or Board of Selectmen
 - Board of Finance
 - Town meeting or referendum (your residents, taxpayers and library patrons)
 - Town Finance office

Thank you!

- If you have further questions, please feel free to follow up with me at
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