

17

CHAPTER SEVENTEEN

Boards of Charitable Corporation and Nonprofit Libraries

Almost two thirds of Maine’s libraries are non-profit entities with governing boards. Earlier chapters have discussed the different roles and responsibilities that governing boards have compared to the advisory boards that most municipal libraries have. This chapter will delve a little deeper in Maine’s laws (Title 13-B) for nonprofits. This information is in no way to be considered as legal advice. If you have specific questions, you should always consult an attorney.

- It is the responsibility of each Maine library to understand its legal status 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, special law, etc.)
- Search the IRS database (www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check)
- Contact Maine Association of Nonprofits for guidance (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. Mutual benefit corporations are organized to benefit their members not the general public. Public libraries would only rarely fall into this category.

Public benefit corporations must have at least 3 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.

Board Member Duties and Responsibilities

Based on the Maine Attorney General’s Office’s “Guide for Board Members of Charitable Corporations”, by law, the boards of charitable corporations have two major responsibilities: the duty of care and the duty of loyalty. The duty of care

means you should act with the level of care that an ordinary person would exercise. The duty of loyalty means you must act in the best interests of the organization.

To fulfill these obligations, board members should:

- Read and understand the organization's articles of incorporation and bylaws
- Attend and actively participate in meetings
- Ensure that accurate records of board meetings and activities are recorded and kept including financial records
- Carefully read all documents you receive such as minutes and financial reports
- Participate in regular reviews of the organization's financial records by an outside entity
- Avoid conflicts of interest which is any transaction in which you or family members might benefit personally
- Safeguard the organization's assets by putting in place measures to ensure that financial transactions have multiple checks and balances
- Consider the purchase of director's and officer's insurance coverage to protect individual board members in the event of a lawsuit connected to the board's activities

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 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. Municipal library boards must adhere to Maine statutes on ethics and conflict-of-interest, public records law, and open meetings law. In the case of open meetings law violations, an individual board member who is found to be in violation of the law may be fined and must pay the fine and associated legal costs personally, without reimbursement from the library or municipality. We recommend that the board consider purchasing Directors and Officers Liability Insurance (D&O) for just this possibility.

Library boards must also avoid taking actions that violate rights guaranteed by the 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 the “four tests of a legally defensible policy”
- 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 district consultant and/or the municipality or an attorney if you have concerns about the legality of any action or failure to take an action.

Donations to the Library

The library board may accept and manage donations on behalf of the library. Donations to a public library meet the IRS definition of a ‘charitable contribution’ to a ‘qualified organization’. According to the IRS publication on Charitable Contributions (Publication #526), “To become qualified organizations, most organizations other than churches and governments, as described below, must apply to the IRS.” That would include private libraries in Maine. If you are a municipal library, the publication goes on to define as one type of ‘qualifying organization’ any state or any of its subdivisions that perform substantial government functions.

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 the articles of incorporation or bylaws must also be filed with the Secretary of State.

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.

Sources of Additional Information

- Your District Consultant
- Text of Title 13-B Maine Nonprofit Corporation Act:
<http://legislature.maine.gov/statutes/13-B/title13-Bch0sec0.html>
- Maine Association of Nonprofits Guiding Principles and Practices Checklist for 501 (c) (3) Nonprofit Organizations in Maine
www.nonprofitmaine.org/learn/resources/our-publications/guiding-principles-practices-for-nonprofit-excellence-in-maine/
- Maine Attorney General's Guide for Members of Charitable Corporations
www.maine.gov/ag/consumer/charities/guide_charities.shtml
- Maine Secretary of State www.maine.gov/sos/
- Internal Revenue Service www.irs.gov
- Your municipal attorney, your district attorney, or the Maine Attorney General