

District Library Establishment & Law



BY LANCE M. WERNER, J.D., M.L.I.S.

EXECUTIVE DIRECTOR
KENT DISTRICT LIBRARY

PAST PRESIDENT
MICHIGAN LIBRARY ASSOCIATION

PAST LIBRARY LAW SPECIALIST
LIBRARY OF MICHIGAN

NOT LEGAL ADVICE

2

- I am **not giving legal advice** to any person or agency. This presentation is intended as an informational service only
- This presentation has been designed to furnish an overview of the District Library Establishment Act, 1989 PA 24, MCL 397.171 *et seq.*
- **Please consult with your own legal counsel for more specific information**

Overview

3

- **Background**
- **Major considerations**
 - Funding
 - The agreement
- **Library boards**
 - Board authority
 - Fiduciary duty
- **Also of note**
- ***Pros & Cons***
- **Conclusion**

Background

4

- The District Library Establishment Act was enacted in 1989
 - One of the primary reasons the Act was retooled in 1989 was to update and replace the outdated district library establishment law of 1955
 - The Act was intended to provide a contemporary legal library establishment mechanism

Background

5

- Library establishment under the District Library Establishment Act is the most popular legal method of establishing new public libraries
- There are over 380 public libraries in Michigan that have been created under various library establishment laws
 - There are approximately 153 district libraries within this group
 - There are more district libraries than any other type of public library in Michigan

Background

6

- The district library act offers some unique benefits that are not found in other library establishment laws
 - More funding is available 2 mills v. 4 mills
- District libraries are more autonomous than other types of libraries
 - May help to alleviate some of the library funding issues faced by municipalities

Major considerations

7

- Funding
- Section 13(1) provides that a district library board has exclusive authority to “annually determine the amount of money necessary for the establishment and operation of the district library and shall state that amount in an annual budget of the district library” [MCL 397.183, OAG # 6924]
- Local funding sources:
 - District-wide millages
 - ✦ Most widely used funding mechanism.
 - ✦ 2 mills for 20 years and 2 mills in perpetuity.
 - Local millages
 - ✦ Generally used until a district wide millage is approved.
 - Local appropriations
 - ✦ Generally used until a district wide millage is approved.
 - Bond issues
 - ✦ Generally used to fund building projects.

The agreement

8

- **District library establishment agreement – required by section 4 of the Act, MCL 397.174**
- An attorney for the participating municipalities drafts a district library establishment agreement
 - Must contain the provisions required by section 4
 - May be based on recommendations from the planning committee
 - May contain a millage clause
 - Encompasses the contractual relationships between the participating municipalities
 - ✦ Including any transfer of employees and library materials (if applicable), real property agreements, etc.
 - Must be agreed to by all participating municipalities

Required provisions

9

- The identity of participating municipalities
- The new district library name must contain the word “district”
- Method of selection of board members
 - Appointed (resident) or elected (district at large)
- The budget and each municipality’s share
- Procedures for amending the agreement
- Distribution of district library assets
- Withdrawal and timeframe restraints
- Specifics on district library termination
- Detailed map
- Millage clause (optional)

Statutorily granted district library board authority, MCL 397.182

10

- District library board authority comes from Section 12, MCL 397.182
 - Appointed v. elected = same authority
- Section 12 provides:
 - (1) A board may do 1 or more of the following:
 - (a) Establish, maintain, and operate a public library for the district.
 - (b) Appoint and remove officers from among its members.
 - (c) Appoint and remove a librarian and necessary assistants and fix their compensation.
 - (d) Purchase, sell, convey, lease, or otherwise acquire or dispose of real or personal property, including, but not limited to, land contracts and installment purchase contracts.
 - (e) Erect buildings.
 - (f) Supervise and control district library property.

Statutory board authority

11

- Section 12 continued:

(1) A board may do 1 or more of the following:

(g) Enter into a contract to receive library-related service from or give library-related service to a library or a municipality within or without the district.

(h) Adopt bylaws and regulations, not inconsistent with this act, governing the board and the district library.

(i) Propose and levy upon approval of the electors as provided in this act a tax for support of the district library.

(j) Borrow money pursuant to the district library financing act, 1988 PA 265, MCL 397.281 to 397.290.

(k) Issue bonds pursuant to the district library financing act, 1988 PA 265, MCL 397.281 to 397.290.

(l) Accept gifts and grants for the district library.

(m) Do any other thing necessary for conducting the district library service, the cost of which shall be charged against the district library fund.

Statutory board authority

12

- Section 12 continued:

(2) A board may reimburse a board member for necessary expenses that the member incurs in the performance of official duties. A board may compensate board members for attending official meetings of the board or committees of the board and shall include the amount of compensation in the annual budget. Compensation shall not exceed \$30.00 per board member per meeting. A board member shall not be compensated for attending more than 52 meetings per year

(3) Money for the district library shall be paid to the board and deposited in a fund known as the district library fund. The board shall exclusively control the expenditure of money deposited in the district library fund

Delegate authority to the director

13

- The director should be considered as the board's only employee
- A written delegation of duty should be made
- The board draws the map (via policy, etc.) and the director steers the ship

Fiduciary Duty

14

- A district library board is an autonomous municipal board that is accountable to the people that the library serves
- Board members should act in the best interests of the library and the residents of its jurisdictional service area at all times
- However, library board members should also be sensitive to the municipal governments that the library serves
 - Communication is critical

Also of note

15

- The Act was amended in 2005 by Public Act 60
 - Single municipality district libraries [MCL 397.173]
 - District library merger [MCL 397.173b]
 - District library dissolution by the Library of Michigan [MCL 397.194]
 - District library establishment through vote of the electorate
 - ✦ Upon petition of not less than 5 % of the registered electors [MCL 397.173a]

Pros & Cons

16

Pros:

- Independence
- Costs are paid by group rather than by a single municipality
- In the long run it can take much of the financial support burden off of the participating municipalities
- Combined resources
- More money is available
 - 4 millages v. 2 millages or even 0 millages

Cons:

- Control
 - Appointed v. Elected
- Additional legal responsibilities
 - The library is really on its own
- More establishment requirements
- If there is a district-wide millage in effect and a municipality withdraws from the agreement, the millage will continue to be levied until its expiration.

Conclusion

17

- It is vital that the district library agreement encompasses the entire universe of the understanding between the participating municipalities, including the transferring of employees, equipment, contracts and real property
- If the agreement is silent in certain areas, the District Library Act serves as the binding legal authority

Contact information

18

- Please note, the discussion set forth above is not intended as legal advice and should not be used as a substitute for obtaining the professional services of a licensed attorney.
- Questions?
 - Lance M. Werner, Director, Kent District Library
 - ✦ (616) 784-2091
 - ✦ lwerner@kdl.org