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MEMORANDUM

April 18, 1994

TO: MARY Y. MOORE, Chief
Library Planning and Development
Washington State Library, MS FJ-15

FROM: JEAN M. WILKINSON, AAG
Office of the Attorney General
General Legal Division; PO Box 40100

SUBJECT: Role of the Board of Library Trustees in Code Cities

In a recent memorandum, you asked several specific questions arising from a general question: in a code city, what are the powers and duties of the city library's board of trustees? In your memorandum, you indicate that you are seeking more definiteness than that provided in a March 23, 1983, memorandum from Assistant Attorney General Thomas Bjorgen. This memorandum may fall short of your expectation. Absence of clearcut answers are common when different legislative acts passed in different decades both pertain to one subject, and there are no court decisions interpreting the statutes. If current practices do not comport with the current state of the law, it could be that no or little attention has been given to these issues and therefore former practices have simply been continued. Furthermore, given the latitude code cities have to structure internal governance, there could be a specific provision in the charter or ordinance governing that particular city's practice.

BACKGROUND

Code cities are governed by Title 35A RCW, the Optional Municipal Code. The purpose behind the Optional Municipal Code is to allow code cities the broadest powers of local self-government consistent with the state constitution.¹ RCW 35A.01.010. Accordingly, within the limits set forth in Title 35A RCW the legislative body of each code city has the power to organize and regulate its internal affairs, and to define the functions, powers and duties of city officers. RCW 35A.11.010.

¹Cities that have not chosen to be governed by Title 35A RCW are governed by Title 35 RCW, which by statute dictates the powers and governance plans applicable to each class of city.

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Non-charter code cities usually follow either the mayor-council or council-manager plan of government. RCW 35A.02.010. Under these two plans, the only requirement is that the city have a city clerk and a chief law enforcement officer; otherwise, the city may decide which other subordinate city officials it will have and what their functions will be. RCW 35A.12.020.

In the alternative, code cities may adopt a charter, in which case the city may organize itself in a manner different than the mayor-council or council-manager plans. RCW 35A.08.050.

RCW 35A.21.160 provides as follows:

A code city organized or reorganized under this title shall have all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate and are not in conflict with the provisions specifically applicable to code cities.

RCW 27.12.190 and .210 place the management and control of a city or town library in a five member board of trustees. However, RCW 27.12.190 and .210 are statutes applicable to cities of any class. If RCW 27.12.190 and .210 conflict with Title 35A RCW, the controlling provision is the one found in Title 35A RCW.

YOUR QUESTIONS

Question 1: In a code city, who hires and fires a library director?

RCW 27.12.210(3) states that the board of trustees hires and fires the city librarian.

RCW 35A.12.090 states that in a code city operating under the mayor-council form of government, the mayor has the power of appointment and removal of all appointive officers and appointees.

RCW 35A.13.080 states that in a code city operating under the council-manager plan of government, the city manager has the power to appoint and remove all city department heads, officers, and employees.

Consequently, there is a conflict between RCW 27.12.210(3) and provisions in Title 35A RCW. Under RCW 35A.21.160, Title 35A RCW prevails in the case of conflict. Therefore, either the mayor or the city manager has the ultimate authority to hire and fire the city library director. See AGO 1949-51 No. 274 (in a city operating under manager-council plan pursuant to chapter 35.18 RCW, the city manager, not the library trustees, appoints the library director; Thomas Bjorgen's memorandum sets forth why this opinion supports a similar conclusion for code cities).

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A charter code city is permitted by Title 35A RCW to specify by charter the distribution of authority among city officials. RCW 35A.08.050. In my view, in order to observe the general intent of the Optional Municipal Code and RCW 35A.21.160, the charter would prevail over RCW 27.12.210 in the event of a conflict, and the answer to your question would be found in the pertinent city charter provisions. However, you should be aware that I could find no published case or opinion addressing the issue of a conflict between a code city charter and a statute such as RCW 27.12.210. A court could reach a conclusion different than mine.

Regardless of the governance plan (charter, mayor-council, or council-manager), city ordinance or policy could allow the board of library trustees some role -- even a substantial role -- in hiring and firing the library director. For example, a code city could delegate to the library trustees the duty of conducting interviews and selecting the library director, subject to the final approval the mayor, city manager, or other official given hiring authority under city charter.

Question 2: In a code city, who sets the salary of the library director?

RCW 27.12.210(3) states that the library board of trustees fixes the compensation of the city librarian.

RCW 35A.11.020 provides that in all code cities (charter and non-charter, mayor - council and council-manager) the legislative body has the power to fix the compensation of city officers and employees. Furthermore, RCW 35A.13.090 states that in a council-manager city, the city manager may make recommendations to the city council prior to the council's setting of compensation.

Here again, there is a conflict between RCW 27.12.210 and Title 35A RCW, and the provisions of Title 35A RCW prevail. Therefore, the city council sets the library director's salary in a non-charter code city. However, so long as the city council has the final say, the council may delegate to the library trustees a role in the matter of setting the library director's compensation.

Finally, with respect to a charter code city, the city council will set the library director's compensation, unless the charter provides for something different.

Question 3: In a code city, does the Board of Trustees have the power to contract?

Because you do not specify a kind of contract, my answer will of necessity be quite general. Please be aware that there may be different answers to this question depending on whether there are specific statutes in Title 35A RCW addressing the specific kind of contract.

RCW 27.12.210 states that the trustees have the power to lease or purchase land and buildings for library purposes, purchase books, supplies and materials, and do all other things necessary for the management and control of the library.

RCW 35A.11.010 vests the contracting power of a code city in the city council.

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However, under the broad powers of a code city (be it charter or non-charter) the council may within limits delegate its contracting power to city officials or employees. See Roehl v. Public Utility Dist. No. 1, 43 Wn.2d 214, 261 P.2d 92 (1953) (city may delegate ministerial functions to employees). Therefore, if the city council delegated contracting power to the library board, the board has the power to enter contracts.

Question 4: In a code city does the library have the authority to collect and retain funds that are as a result of contracts?

I must answer your question in a very general way, because the answer to this question will depend on the specific nature of the contract.

RCW 27.12.240 states "all library funds derived from taxation or otherwise . . . shall not be used for any but library purposes" If chapter 35A RCW contains a specific provision pertaining to the type of fund or contract, it would control over RCW 27.12.240. If not, the answer to your question could turn on whether the funds received as the result of a contract are "library funds" within the meaning of RCW 27.12.240. Without having specific facts before me, all I can state are the following generalities. First, because the city council has the power to contract on behalf of a code city, the city council has some authority to structure contracts and I cannot make a blanket assumption that a contract involving the library would necessarily generate "library funds." Second, the state auditor has the authority to prescribe accounting standards and procedures for all cities (RCW 35A.37.010); depending on the specific facts, these standards may have some bearing on your question. Finally, there could be other statutes that pertain to the particular kind of contract or funds and that would affect the answer.

Question 5. In a code city, does the Board of Trustees have the authority to establish or change policy as it affects the library?

I assume your question does not address personnel policies. If it does, statutes other than those discussed below could come into play.

RCW 27.12.210 authorizes the library trustees to adopt "such bylaws, rules and regulations for the government of the library as they deem expedient."

A mayor or a city manager is charged with general supervision over the administrative affairs of a code city. RCW 35A.12.100; 35A.13.080(1).

In my view, this situation is addressed by that part of RCW 35A.21.160 which provides that a code city is governed by general statutes applicable to all cities to the extent to which such laws are appropriate and do not conflict with Title 35A RCW. There does not seem to be an unavoidable conflict between Title 35A RCW (RCW 35A.12.100 and 35A.13.080(1)), and the library trustees' charge to set rules and regulations under RCW 27.12.210. The library trustees in a non-charter code city clearly have no authority in certain areas (e.g. hiring and firing). However, there are many areas in which Title 35A RCW makes no specific provision. As a general matter, "general statutes applicable to all cities" should be given some effect, and the

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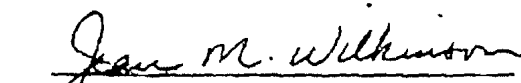
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mayor or manager should permit the library trustees to set policy in areas not otherwise addressed in statute or city charter. Therefore, the mayor or manager may have less involvement in library governance than in the governance of other city departments.

I am aware that the foregoing is very general, but hope it will be of assistance to you. Some of your questions can only be answered with greater specificity in response to very specific facts, in which case the particular library involved may need to consult its own legal advisor. Please be advised that the views expressed in this memorandum are mine, not a formal opinion of the Attorney General, and that this memorandum was written for guidance to the State Library.



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