



Ten Critical Issues that Every Michigan Library Trustee Must Know

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Public libraries play an important academic, cultural, and social role in communities across Michigan. Public Libraries are governed by elected or appointed boards that meet regularly to make important decisions and provide oversight and direction for a library. The role of a board is to set policy, and to leave implementation of policy to the library's director and staff.

Board members must be aware of a number of important issues that affect their individual roles and responsibilities. Here are ten things that every board member must know to be an active and effective library leader.

1. Authority

Library boards derive their authority from statute. For example, in Michigan, authority for village, township or city libraries comes from 1877 PA 164 (a law first adopted in 1877) or from a city charter or ordinance. Similarly, district libraries are governed by the District Library Establishment Act, 1989 PA 24.. Authority also comes from the Michigan Constitution.

Every action that a library board takes must be specifically authorized by statute. For example, statutory law authorizes boards to purchase property for a library. But law authorizing such an action describes strict guidelines that govern how a purchase must be made, including the type of financing that a board can seek to complete a transaction. State law also dictates specific things that a board cannot do such as disclosing patron records except in specified circumstances.

2. Role of Board Member

Board members have "big picture" responsibilities. They should not typically get involved in day-to-day management decisions related to the library. Boards set policy through their official actions, and should delegate responsibility to carry out policy to the library director.

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Board members must always act in accordance with their fiduciary obligations to the library and board. Fiduciary obligations prohibit board members from acting in their own self-interests, or in the interest of the community at-large, at the expense of the library. Even though board members are elected by residents of a municipality or may be appointed by a municipality, their duty is to the library, not the municipality. Problems can arise if a board member serves on another board within the municipality, or is employed by the municipality. If this is the case, it's important to examine whether the board member has an incompatible conflict of interest based on his or her dual responsibilities.

Board members also have "appellate" responsibilities. Boards are responsible for considering appeals of violations of library policy, as well as appeals of Freedom of Information Act requests. If someone's right to access the library is stripped (an action which should be taken by the library director and not the board), it impacts the patron's First Amendment rights. The board's responsibility in the appellate process is to ensure that a patron whose First Amendment rights are implicated has the opportunity for due process in an appeal of the initial decision.

3. Friends of the Library

Many libraries are supported by "friends" groups or other organizations that support libraries through financial and other contributions. These groups are separate and distinct organizations and legal entities from libraries. They are not departments of the library, and boards must interact with these groups with this perspective in mind.

In practical terms, this means that boards must treat supporting organizations as they would any other third-party organization. For example, there is no statutory authority for a board to provide a friends group financial or other support. Accordingly, these groups should not be provided staff, resources, or physical space that would not be given to other non-profit groups. There are some ways to work around these restrictions, such as entering into service contracts with an organization, but any such contract must be bargained for, fair, and reasonable. For this reason, we recommend the Library and the friends entering into a contract.

Board members should also think twice about serving on both the library board and being involved in a supportive organization. There is nothing to legally prohibit a board member from doing so, but in order to avoid a conflict of interest a board member must keep in mind that his or her fiduciary duty is to the library.

4. Open Meetings Act

It's important for board members to know and understand the Open Meetings Act (the "OMA"). Library boards, as well as certain committees, are subject to the OMA. The OMA requires that notice of meetings must be provided in advance of meetings, both on the library's website and posted in the library. A "meeting" requires (1) a quorum, (2) deliberation or rendering a decision, and (3) on a matter of public policy. A common misperception is that a "meeting" is limited to only an event at which a decision is made. This is not accurate. At any time a quorum of the board is deliberating or discussing a matter of public policy, that discussion should take place at an open meeting.



At every regular or special meeting, there must be an opportunity for public comment. Although boards and committees cannot prevent someone from speaking, they can enact reasonable regulations, such as setting uniform limits on how long each person can comment, and requiring commenters to identify themselves. However, boards must let everyone speak - they cannot set limits on the aggregate amount of time devoted to comments if a very large group shows up, if such restrictions prevent someone from having the opportunity to speak.

The OMA contains many provisions to ensure transparency. For example, minutes of the open session of meetings must be provided to anyone who asks, and boards cannot prevent someone from taping or recording a meeting.

Board members should be careful when corresponding by email. The Library may violate the OMA by debating or deliberating an issue by email. The same is true of discussions about library business by board members, in any setting, that take place outside of formal, scheduled meetings.

Library boards can meet in a closed meeting for specific purposes outlined in the OMA. However, the purposes of the closed sessions are limited and there are rules related to conducting a closed session. Thus, we recommend consulting with legal counsel before conducting a closed session.

5. Freedom of Information Act

The Freedom of Information Act ("FOIA") requires that "public records" are subject to disclosure. Not every document constitutes a public record. For example, a purely personal email sent on a public computer will not automatically be considered a public record. Even if the document is a "public record," there are exceptions to disclosure, such as documents subject to attorney-client privilege and subject to the Library Privacy Act.

If Board members are using their home computers to conduct board business, the board members should be aware that, those emails must be turned over in response to a FOIA request. FOIA requests address the nature of the correspondence, not where the correspondence originated from.

6. Follow Your Own Rules

Do not ask for special favors that violate library rules or policies. For instance, don't ask for meeting space in violation of library meeting room policy. Don't ask for the library patron database to use for campaigning. Don't put library staff in the awkward position of having to enforce the board's own rules against you, or put the library director in the middle of board disputes. As a board member, you're in a leadership position of authority and influence. Take great care to not overstep that authority.

7. Understand the Role of Policy Maker

The right of access to a public library is constitutionally protected, so there must be clear rules in place for regulating behavior in libraries. Policies must be in writing. They must be clear regarding conduct that is prohibited in a library. For example, a ban on "loitering" may be interpreted as too vague. Instead, create



policies that are clear and not capable of subjective interpretation. And remember, there must also be an opportunity to appeal any decision to limit or deny access to a public library.

8. Understand Library Privacy Laws

Board members may not reveal “library records,” as defined by the Michigan Library Privacy Act, or the contents of library records to any person outside of the library without written permission of the patron or a court order. “Records” include things like a patron’s circulation records, video surveillance tapes, incident reports, and all information related to denial of library privileges that are put into written form.

For instance, if someone loses their library Internet privileges, this information cannot be revealed to anyone outside of the library, even to members of a board member’s family. The Library is also precluded from releasing information to law enforcement without the existence of a court order or written permission. Currently, there is no exception to this, even in the case of serious felonies.

9. Getting Along

Boards do not always agree, but it’s important for board members to engage in respectful discourse at all times. In cases where disagreement becomes disruptive to the board’s or an individual board member’s ability to carry out duties, the board president should be consulted and/or legal advice should be sought. Public discord erodes public and staff confidence in the board. Board members must use discretion, engage in civil discourse, and exercise good judgment, even if and when a decision doesn’t go their way. Remember, board members have a fiduciary duty to the library and the board, which means that once a vote takes place, regardless of how an individual feels about the outcome, it’s incumbent upon the board to present a unified front to maintain confidence in the community.

10. Officers

A board has the power to appoint officers, including a president and other officers as deemed necessary. Bylaws should define roles and responsibilities of officers. However, officers should keep in mind that most decisions must be made by the Board as a whole and officers should not act without authorization from the Board.

If you have any questions about library board member roles and responsibilities, please contact Anne Seurnyck at 616.726.2240 or at aseurnyck@fosterswift.com.