
Legal Status of Public Libraries

WALTER BRAHM

THE LEGAL STATUS of public libraries has been so well presented by Joeckel¹ in 1935, by Garceau² in 1949, and by Leigh³ in 1950, that it would seem unnecessary in a short article such as this to attempt to go over much of the same ground. Because current trends may show more clearly when contrasted with the long history of library organization, however, a brief résumé, with apologies to the above authors, is in order. Aside from this, the present article will report events and trends of more recent years.

Our first "public libraries" were private libraries, designated variously by the general term "social," and specifically by the words "association," "partnership," or "vocational," derived from the way in which they were organized. The association or subscription library, and the partnership or proprietary library, became the two most common legal forms of organization. Association libraries are often referred to as subscription libraries because they accepted members for a set annual fee. "Proprietary library" is also another name for the private library organized as a common-law partnership, under which the partners invested their money in shares. The association or subscription library became the more popular type, although there were combinations using both methods of securing support.⁴ Names of these early libraries, often seeming to indicate the origin or purpose of the institution, have added to a certain confusion about the history of the period. "Ladies' libraries," "gentlemen's libraries," and "young men's institutes" are examples.⁵

When the idea of free tax-supported public libraries arose, library organization tended to become a part of some division of government. For the sake of brevity, a somewhat arbitrary description would be that, for most of the nineteenth century, public libraries were organized as a part of the government of the community in which the library was situated. In other words, some were set up under the municipality

Mr. Brahm is Librarian of the Ohio State Library.

or village, some under school districts, others under the township. The exception was the association library. It is natural that some of the older association libraries continue to exist at the present time, receiving public tax funds although privately administered. But even today new libraries, particularly small ones, are being established as association libraries. Although figures are not available this is probably more common than the library profession is aware of. As an example, Pennsylvania library laws permit the establishment of libraries by private groups, and if the library wishes to apply for tax funds it must permit two members to be appointed by the governing authority which provides the funds.⁶ Since association boards commonly have large membership, control still is in private hands. In Allegheny County, Pennsylvania, the seat of the Carnegie library idea, there were thirty-one libraries in 1950, twenty-four being of the association type.⁷

From the standpoint of legal status, the association library represents a conflict. The public accepts it and uses it as a public library, but no unit of government has direct responsibility for its support and management. Its area of service and jurisdictional rights may be non-existent or open to contest with another library.

Library organization next turned to the county as the unit of government, and the first half of this century, particularly 1930-50, has seen great emphasis and stress on selling this type of library organization. Multicounty and regional library units of organization have also come into being in the past few years. Today it seems the public library movement is still using all the various units of government as a legal basis for new library units, much as an opportunist using the path of least resistance, and in so doing has beaten three different paths in its attempt to reach the larger unit goal: the county library, the multicounty or regional library, and the state library. As a matter of fact, the *National Plan for Public Library Service*⁸ in 1948 proposed five principal types of large units for the United States, namely, (1) county libraries serving whole counties, (2) county libraries serving parts of counties, (3) regional libraries, (4) federated library groups, and (5) special state districts; but these boil down to the three mentioned just above. Federated groups represent merely a method or means for securing county, regional, or state service, as will be reported later. A look at each in the light of current happenings is desirable.

County as the library unit. Joeckel⁹ listed 230 county library units in existence prior to 1935, excluding those having annual income of

Legal Status of Public Libraries

less than \$1,000. By 1949 about one-fourth of the 3,069 counties in the United States had established county libraries of some sort.¹⁰ This figure includes regional libraries, however, and a breakdown of figures reported by the American Library Association¹¹ would show some 537 county libraries.

Legislative enactments of some of the states in the last few years indicate the speed of the trend toward the county unit. Maryland's public library law of 1945 set up the county as the only basis for new libraries, repealing the rights of other municipal units to establish libraries.¹² Similarly, while Ohio has supported all its libraries since 1934 from a county tax, new laws were passed in 1947 removing the right of all subdivisions of government except the county to create public libraries. Only county or multicounty libraries may now be established in Ohio.¹³ The powers of library boards regardless of the unit of government are the same, and likewise every public library in a county is free to all the residents of the county. The net result as far as the public is concerned is that only one library system exists, even though legally there may be a number of independent libraries in a county.

In 1949 Michigan amended its state aid law to facilitate the establishment and development of county and regional libraries. The same year twenty-seven counties in Arkansas passed a library tax measure, and by that date also, fifty-two of California's fifty-eight counties had county library service.¹⁴

Multicounty or regional library as a unit. Eighty-five "regional libraries" were listed in the 1949 *County and Regional Libraries*¹¹ issued by the American Library Association. The term "regional library" is a loose one, covering a wide range. It may be used because of a contract between two libraries in a single county, or at the other extreme may apply to an entire state area. The regional library now seems to represent the inspirational goal that the county library stood for some years ago, and the late legislation indicates a trend toward such organization.

The Kansas legislature enacted laws in 1951 permitting the establishment of regional libraries.¹⁵ The same year the New Mexico legislature provided for the organization of county and multicounty library service.¹⁶ Ohio, in 1949, passed enabling legislation for setting up regional libraries.¹⁷ Michigan amended its state aid laws in the same year to facilitate the establishment of such libraries.¹⁴ Massachu-

setts, a state with many small libraries, established in 1950 a demonstration regional library which is described later in this report, this in addition to three large-area libraries already in existence.¹⁸ The regional library seems to have taken more root in the southern part of the country than elsewhere, since Alabama, Arkansas, Georgia, Missouri, North Carolina, South Carolina, Tennessee, and Virginia display a total of forty-eight such agencies.¹¹

The State as a unit of service. Because of our system of government, the legal status of libraries is determined entirely by the states, either directly through legislation or indirectly through the "home-rule" powers of municipalities. Whether library service is primarily a concern of the state or of the locality has never received a convincing answer. Up to 1935 only one state had a constitutional provision specifically affecting the library.¹⁹ Since then Missouri has added a section to its constitution making the commonwealth responsible for library service.²⁰ State library legislation over the country is uniformly permissive, and there does not seem to be any inclination to make library service mandatory. Despite this, however, in actual practice executive agencies are making it more and more a concern of the state.

Several small states long have been giving direct library service, and additional ones are exploring this field of extension work. Although controversy exists on the matter, enough states are active in it to indicate a new pattern. By 1948 the Vermont Free Public Library Commission was supplying its entire area with regional service and supplementing the resources of the local libraries.²¹ The New Hampshire State Library operates bookmobiles, giving supplementary aid to public and school libraries which are not open daily, covering in this manner all sections.²² In 1949 New York State set up its \$100,000 a year experimental regional library service center at Watertown, offering additional facilities to existing local libraries in three counties.²¹ The Illinois State Library has devised a plan to divide the state into six districts and extend assistance to the libraries in each.²¹

Implications of a unit of library service larger than the state are to be found in the report of the Committee on Library Development of the Pacific Northwest Library Association, involving multistate planning.²¹ Likewise a northern Great Lakes Planning Council has been created to develop a joint program of library organization for six states in the area.¹⁴

Methods of obtaining larger unit of service. While a county or re-

Legal Status of Public Libraries

gional unit seems to be the common objective of these efforts, the legal means or methods used to obtain that end vary considerably, and the resulting library organization in many instances is coming to have extra-legal status. At the risk of controversy it is this writer's firm conviction that library service, whether it be in a city, township, county, or region can only be organized legally in two ways:

1. As a unit of government, i.e., a library organized as a part of government, and constituting a complete entity with a single administrative authority over the territory under its jurisdiction. Under this method the procedure in creating a county or regional library would be to combine existing libraries into one legal administration. When such consolidation takes place the number of existing units is usually decreased.

2. On a basis of contract, i.e., library service by contract, involving agreement of one administrative library unit, or government agency, with another library. If more than two libraries are included, the arrangement today is called a federation. A federation necessarily entails a contract. Likewise an association library is concerned essentially with contract service—to its members under the terms of membership, to the public in return for tax support, or by other understanding. When federation takes place, the number of units usually does not decrease but remains the same, and in some instances has increased. Since the National Plan for Library Service envisages a reduction in the number of units, federation may seem inconsistent with that.

Are the larger units of today being set up by consolidation or federation? As far as county libraries are concerned, search of library literature reveals only scattered examples in which consolidation of existing libraries into a single administrative unit, or with a larger unit, has taken place. There may be others, but they do not appear in the record. In Ohio the number of independent units has been reduced from 280 in 1948 to 271 in 1952.²³ Four small libraries in Ross County previously operating as a federation consolidated into one. Several small libraries in Cuyahoga County merged with the Cuyahoga County Library. These, together with similar mergers in other counties of the state, account for the nine eliminations. The independent libraries of Yakima City and Yakima County in the state of Washington joined into a single unit in 1951, to form the Yakima Valley Regional Library.²⁴ The

year previous the Vancouver City and Clark County libraries of the same state merged to become the Fort Vancouver Regional Library.²⁴

For the most part, however, the approach to county service seems to be through the door marked "Contract or Federation." The trouble is that this door, once opened, remains open, and that those who enter federation can usually back out. A clash of personalities or an unresolved difference of opinion can dissolve the arrangement. Nevertheless, there are many interesting examples. Monroe County, New York, established in 1952 a loose combination of twelve libraries in the county, including the large Rochester Public Library, each library to continue its local financing. The federation is to provide interlibrary loan service, delivery, publicity, and a union catalog.²⁵

A hybrid plan, between consolidation and federation, was the interesting and unusual procedure used in 1948 to unify small and large libraries in Erie County, New York. This is the county in which some twenty small institutions, each independent, together with the Buffalo Public Library and the Grosvenor Library, became "a part" of the Erie County Public Library. The arrangement is rather complex, but the units mandatorially are a part of the county library as far as finances are concerned. They can receive funds only through the county library budget. The local boards remain in existence, however, and the administration of each library is coordinated through a contract signed by all the parties.²⁶

A contract between county officials and an existing library for service throughout a county is a familiar device.¹¹ This is particularly applicable where a large library is in existence, and suggests that whatever the legal organization of large existing public libraries, it has not tended to change and is not likely to do so in the near future. Preference for the status quo, with legal and taxing obstacles, may account for the situation. Notable exceptions appear in the Yakima and Vancouver, Washington, libraries mentioned above, and at Dayton, Ohio. Recent Ohio legislation facilitates the transformation of existing libraries into county units. As a result the large Dayton Public Library shifted its legal basis from the school district to the county in 1948.²⁷

In setting up multicounty or regional libraries, the legal problems involved in crossing county lines have no doubt discouraged the formation of single administrative units and encouraged use of the federations now so common. Wisconsin appropriated \$50,000 in 1951 to set up a bicounty or regional library demonstration. This is planned

Legal Status of Public Libraries

as a three year trial, with the local area matching the state grant.²¹ Massachusetts, a state with many small libraries, in 1940 had established a form of regional library service in three separate sections, providing bookmobile service to supplement local facilities. In 1950 a new region, the Western Massachusetts Library Federation, was set up on the strength of \$36,500 from Marshall Field for a two-year demonstration. This coalition is concentrating on provision of professional services—pooling the resources of the libraries and allowing each in turn to share the services of trained library specialists, while retaining local autonomy.¹⁸

Finally, something new has been added. In a few instances the state agency is coming into the picture, giving direct public library service to the individual, or is on the ground as a partner doing the behind-the-scenes tasks for the local libraries. This is happening in various ways, but the final effect it will have on the legal status of the local library remains to be seen. Delaware, Illinois, Massachusetts, New Hampshire, New York, Tennessee, and Vermont are providing supplementary regional facilities in one form or another.¹¹ Delaware, New Hampshire, and Vermont give direct service. New York's Watertown demonstration is providing a headquarters for some fifty small libraries in a three county area, but does not serve the public directly. This plan has received national attention, and its proponents argue that it leaves the legal basis of the local library intact but is broad enough to reach unserved sections.²⁸ From the legal standpoint the only way such a result can be accomplished is by the creation of more independent units within the region, which would be counter to the attempt on the part of library leaders to lessen the number of libraries. Here it is of interest that "Tennessee has no regional library law but through contract has 10 regional libraries patterned after New York in general principle but less adequately financed."²⁹

Garceau's report for the Public Library Inquiry looks with favor upon the New York pattern, and suggests that possibly one-half of the total library expenditures within the state should be made directly by the state agency. He contends that "Such a plan escapes the most obvious hurdles of local tax limitations and frozen real property taxes."³⁰ The fallacy, however, is in the assumption that while local tax limitations and frozen taxes exist, they do not occur at the state level. Prior to the upheaval which produced the appropriation for

the New York regional experiment, the grant-in-aid arrangement in New York had remained frozen for many years.

The question arising here is whether library service can be provided partly by a local unit and partly by a state. Can it be managed half and half, or will the state, like the camel in the Arab's tent, eventually take over? It seems that this problem, and the broader aspects of the state agency's position in direct public library service, is in need of study. In this connection Leigh, in his summarizing for the Public Library Inquiry, implies that there may well be monopoly systems in library service comparable to those of public utilities.³¹ The idea has merit; and ways in which the legal obstacles to consolidating all the existing units in a sample state could be overcome could be a subject of profitable study.

This paper cannot discuss the legal aspects of the countless and different tax provisions by which libraries are supported. Potterf held that "a cardinal defect in the legal personality of many library boards lies in the narrow limits within which they can levy taxes."³² His solution was a broadening of the base of local taxation. This is certainly to be desired, but it should be pointed out that few library boards, if any, have direct power to levy taxes. Public libraries ordinarily have been organized as parts of taxing authorities, and not themselves as taxing authorities; so that final discretion for levying taxes, even within statutory limitations, usually rests with a school board or city council, or with township trustees or county officials. It would be most difficult for library boards to obtain legislation making them direct taxing authorities, and there is no indication of such a trend. Certainly existing association libraries, which are dependent upon whatever units they have persuaded to support them, show little desire to become part of government in order to overcome their inability to levy taxes. However, one result of introducing larger units of service is the broadening of the tax base, and is no doubt one of the factors encouraging the trend.

Within the last ten years there have been persistent efforts on the part of the library profession to secure federal legislation and funds to demonstrate public library service in every state. These attempts have thus far been unsuccessful, but if such legislation ever should be enacted a new pattern of library service would emerge, and could conceivably lead to changes in the legal status of library organization.

Summary. The constitution of many libraries still consists of the

Legal Status of Public Libraries

private corporation or association of one hundred years ago. Contrary to the trend toward the large unit, small libraries are still being formed on this basis. Women's clubs and other civic groups organize as private associations to provide public library service to new communities and new residential areas. Although no actual figures are available, it is possible that more new small library units are being created today than there is consolidation of existing units.

The legal basis of many other libraries is still bound up with the time-honored unit represented by the municipality, township, or school district. In the history of library development the county as the legal basis for service has only recently become a favorite. Multicounty or regional library organization seems to be the next step. In the creation of county and regional libraries, some are formed by consolidation of existing agencies into single administrative units; but currently a contract or federation of existing libraries, which may include the state library agency, without loss of local autonomy, seems to be the prevailing device. Lastly, with some state agencies providing facilities directly, the state itself may become a legal basis for public library service, and the largest unit of it.

References

1. Joeckel, C. B.: *The Government of the American Public Library*. (University of Chicago Studies in Library Science) Chicago, University of Chicago Press, 1935.
2. Garceau, O.: *The Public Library in the Political Process*. New York, Columbia University Press, 1949.
3. Leigh, R. D.: *The Public Library in the United States; General Report of the Public Library Inquiry*. New York, Columbia University Press, 1950.
4. Garceau, *op. cit.*, p. 17.
5. Joeckel, *op. cit.*, p. 3.
6. Brahm, W. T., and Sandoe, Mildred W.: *Allegheny County Library Survey*. Pittsburgh, Allegheny Conference on Community Development, 1950, p. 11.
7. *Ibid.*, p. 28.
8. American Library Association. Committee on Post-War Planning: *A National Plan for Public Library Service*. (Planning for Libraries No. 3) Chicago, The Association, 1948.
9. Joeckel, *op. cit.*, pp. 321-322.
10. Leigh, *op. cit.*, p. 58.
11. American Library Association. Public Library Executive Office: *County and Regional Libraries; The United States, Its Territories and Canada; a Selected List*. (Mimeographed) Chicago, The Association, August 1949.
12. Maryland. State Department of Education. Division of Library Extension: *Public Library Laws, 1945*. Baltimore, The Department, 1946.

WALTER BRAHM

13. Brahm, W. T.: Ohio Revises Its Library Laws to Encourage Large Units of Service. *Library Journal*, 72:1014, July 1947.
14. Ridgway, Helen A.: Library Legislation and Planning, in *Book of the States, 1950-51*. Chicago, Council of State Governments, 1950, pp. 299-303.
15. French, Zelia J.: Letter dated September 26, 1952.
16. Peck, Irene S.: Letter dated October 7, 1952.
17. Page, W. H., ed.: *Ohio General Code Annotated*; 5. Cincinnati, W. H. Anderson Co., 1951, Supplement pp. 45-46.
18. Sullivan, R. J.: Western Massachusetts Library Federation. *Library Journal*, 76:1980-1981, Dec. 1, 1951.
19. Joeckel, *op. cit.*, p. 54.
20. Compton, C. H.: Missouri's New Constitution and the Free Public Library. *Library Journal*, 70:1001-1003, 1115-1117, 1179-1181, Nov. 1, Dec. 1, Dec. 15, 1945.
21. Ridgway, Helen A.: Library Legislation and Planning, in *Book of the States, 1952-53*. Chicago, Council of State Governments, 1952, pp. 265-268.
22. McKay, Mildred P.: Letter dated September 29, 1952.
23. Ohio. State Library: *Directory of Ohio Libraries, 1952*. Columbus, The Library, 1952.
24. Washington. State Library: Largest Libraries in Yakima County Merge to Become Yakima Valley Regional Library. *Library News Bulletin*, 18:141-142, Dec. 1950, Jan.-March 1951.
25. New York Has New County Library. *Library Journal*, 77:1591, Oct. 1, 1952.
26. Erie County, New York. Public Library: *Annual Report, 1949*. Buffalo, The Library, 1949.
27. Ohio. State Library: *Directory of Ohio Libraries, 1948*. Columbus, The Library, 1948.
28. Mahoney, R. E.: Experiment in Regional Library Development. *A.L.A. Bulletin*, 45:140-141, April 1951.
29. Parks, Martha: Letter dated October 6, 1952.
30. Garceau, *op. cit.*, p. 230.
31. Leigh, *op. cit.*, p. 275.
32. Potterf, R. M.: Library Board's Achilles Heel. *Library Journal*, 71:1163-1167, Sept. 15, 1946.

ADDITIONAL REFERENCES

- Colorado: *School Laws; Enacted by the Thirty-sixth General Assembly, 1947*. Denver, Office of the State Superintendent of Public Instruction, 1947.
- Colorado. State Library: *The Colorado Plan for Better Libraries, Revised 1951*. Denver, Colorado State Library Advisory Board, 1951.
- Foutts, J. C., ed.: *American Library Laws*. Ed. 2. Chicago, American Library Association, 1943.
- Joeckel, C. B., ed.: *Current Issues in Library Administration; Papers Presented Before the Library Institute at the University of Chicago, August 1-12, 1938*. (University of Chicago Studies in Library Science) Chicago, University of Chicago Press, 1939.

Legal Status of Public Libraries

Joeckel, C. B., ed.: *Library Extension, Problems and Solutions; Papers Presented Before the Library Institute at the University of Chicago, August 21-26, 1944*. Chicago, University of Chicago Press, 1946.

Kay, C. K.: From the Watchdog of the Exchequer. *Wisconsin Library Bulletin*, 47:48-49+, March 1951.

Library Legislation Institute: *Proceedings of the Library Legislation Institute, New Brunswick, N. J., June 10-12, 1948*. (Mimeographed) Chicago, American Library Association, 1948.

North Carolina. Library Commission: *North Carolina Library Laws*. Raleigh, The Commission, 1943.

Ohio. State Library: *Public Library Laws of Ohio in Force September 4, 1947*. Columbus, The Library, 1948.

Report of MPLA Regional Library Planning Committee. *South Dakota Library Bulletin*, 38:56-59, July-Sept. 1952.

Tolman, F. L.: *Digest of County Library Laws of the United States, 1936*. Chicago, American Library Association, 1937.

Washington. State Library: *Library Laws of the State of Washington*. Olympia, The Library, 1948.